Problematizing Canadian Human Trafficking Policy

Emily Simunic

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By: Emily Simunic

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_____ Chair
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_____ Examiner
Dr. Mireille Paquet

_____ Examiner

_____ Thesis Supervisor(s)
Dr. Stephanie Paterson

_____ Thesis Supervisor(s)

Approved by _____
Dr. Elizabeth Bloodgood Chair of Department or Graduate Program Director

_____
Dean

Abstract for Masters

Problematizing Canadian Human Trafficking Policy

Emily Simunic

This thesis seeks to determine how human trafficking is problematized in Canadian policy and what subsequent effects are produced by this problem representation in the lived experience of political subjects in Canada. Using Carol Bacchi's "What's the problem represented to be?" poststructural analytic strategy to Canadian policy texts, I demonstrate that human trafficking is represented as a "criminality problem" in Canadian policy texts. The criminality problematization represents the "problem" of human trafficking to be crime requiring state intervention in the form of enforcement and punishment through fees and incarceration. The criminality problematization is predominantly interested in women as potential victims of sex trafficking, and emphasizes strategies to safeguard women from predominantly male violence. Chapters three and four perform Foucauldian archaeology and genealogy, troubling the assumptions which undergird the problematization and revealing the impact of white slavery as a discursive precedent to human trafficking. Chapter five identifies the discursive, subjectification and lived effects of the problematization, revealing that the criminality problematization has served only to reinforce preexisting inequalities, oppressions, and vulnerabilities that create the conditions that lead to human trafficking in the first place. I conclude that the criminality problematization of human trafficking cannot yield socially just policy, and I suggest the "inequality problematization," as an alternative problem representation that considers human trafficking to be a "problem" rooted in, and exacerbated by, inequality.

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Chapter 1: Introduction

Human trafficking was first acknowledged as a policy issue in Canada less than twenty years ago when the nation ratified the United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. It would be another five years before trafficking was incorporated into the *Criminal Code* of Canada. However, these slow beginnings have given way to a frenzied amount of activity around human trafficking in Canada, with particular emphasis on trafficking for sexual services. Since signing the UN protocol, Canada has altered its policy on human trafficking no less than six times, including the adoption of new legislation on prostitution that conflates sex work with sex trafficking. While sex trafficking is one of the most sensationalized forms of human trafficking, and its ties to the sex industry have created a contentious landscape around human trafficking policy in Canada, anti-trafficking policy is also closely tied to immigration policy. This thesis seeks to determine how human trafficking is problematized in Canadian policy and what subsequent effects are produced by this problem representation, notably with respect to political subjects. I demonstrate, using poststructural policy analysis (PSPA) of Canadian policy texts, that human trafficking is represented as a criminality "problem," and that the carceral impulse which follows this problematization reproduces vulnerability and marginalization. The Canadian criminality representation of human trafficking reinforces preexisting inequalities, oppressions, and vulnerabilities which create the conditions that lead to human trafficking in the first place.

Human Trafficking - Definitions and Tensions

The internationally accepted definition of trafficking in persons is outlined in the UN Palermo *Protocol to Prevent, Suppress and Punish Trafficking in Persons* (2000),[1] which defines human trafficking as follows:

> *"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*
>
> (OHCHR 2000, 3(a))

This definition stipulates that three necessary elements - an action, means, and purpose - are present in a trafficking offence (OHCHR, 2010). The *action* is the "recruitment, transport, transfer, harbouring or receipt of persons," (OHCHR, 2000) by the *means* of force, coercion, abduction, fraud, deception, or "the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person," (*ibid.*) for the purpose of exploitation. In this case, exploitation refers to benefitting from "the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (*ibid.*) — a definition which can encompass a various number of diverse situations.

[1] Hereafter referred to as the Palermo Protocol

According to this definition, movement is not an essential element of trafficking — it is merely one of several possible forms of the 'action' element of human trafficking (OHCHR, 2014). Consequently, human trafficking can be both international, crossing national borders, or domestic, with victims exploited in the same country, or even city, as they were recruited. The cross-border element of human trafficking means that immigration and border policy are essential components of anti-trafficking policy.

It is from this definition set out in the Palermo Protocol that Canada derives its national approach to human trafficking. According to the Department of Justice of Canada (2016), "Human trafficking involves the recruitment, transportation, harbouring and/or exercising control, direction or influence over the movements of a person in order to exploit that person, typically through sexual exploitation or forced labour." The Canadian government is explicit in discerning two primary categories of human trafficking: forced labour and sexual exploitation, or labour trafficking and sex trafficking.

While human trafficking can take many forms, the emphasis in anti-trafficking advocacy and public policy debate tends to focus on sex trafficking, which is often falsely presented as the most common form of trafficking (Bernstein 2010; Smith and Mac 2018). The consequence of this overemphasis is that 'human trafficking' and 'sex trafficking' often become synonymous in the public imagination and in policy, engulfing vital conversations about labour trafficking. The concept of 'human trafficking' is further confused by the frequent conflation of sex trafficking with sex work — to the extent that all sex work is considered by some to be sex trafficking,

regardless of circumstance.[2] In Canadian policy, this position is evident in Bill C-36[3], the *Protection of Communities and Exploited Persons Act*[4], which targets sex trafficking through prostitution policy, not only because they both occur within the same industry, but also because the text considers all sex work to be a form of exploitation.

Human Trafficking and Anti-Trafficking Policy in Canada

While it is difficult, if not impossible, to accurately determine the number of trafficking incidents in Canada, it is without doubt a significant policy issue. According to a report published by Statistics Canada, the incidence of human trafficking cases being reported to the police in 2016 revealed "nearly one (0.94) police-reported incident of human trafficking for every 100,000 population - the highest rate recorded since comparable data became available in 2009" (Ibrahim 2018, 3). In comparison, the rate of homicide in Canada for the same year was 1.68 per 100,000 (Keighley 2017, 6) — and the proximity of these numbers alone reveals trafficking as an issue requiring address, particularly given that "[the] number and rate of human trafficking incidents have steadily increased since 2010" (Ibrahim 2018, 3). Not only are the rates of reported incidents rising, but there is no way to determine how many cases go unreported each year, making this number only a minimum threshold for trafficking incidents.[5] Regardless of the numbers, human trafficking which has extensive detrimental consequences on those who

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[2] See chapter four for further discussion.

[3] See chapter four for further discussion.

[4] Hereafter referred to as Bill C-36 or the PCEPA

[5] It is worth noting that these rates may not be indicative of the actual rates of human trafficking (see Bernstein 2018)

experience victimization. The severity of trafficking offences alone is sufficient to justify drafting appropriate policy responses, regardless of the prevalence data.

Canada has been committed to addressing human trafficking since signing the Palermo Protocol, a commitment which was first reflected in Canadian policy in Section 118 of the *Immigration and Refuge Protection Act* (IRPA), which states that: "No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion," (IRPA 2001, 104) to be punished by "a fine of not more than $1,000,000, or to life imprisonment, or to both" (*ibid.*). However, human trafficking was first introduced as a crime in the *Criminal Code* in 2005 through Bill C-49. The new offence for human trafficking in section 279.01 of the *Criminal Code* states that:

> *Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence.*
>
> *(*Criminal Code*, 1985)*

The *Criminal Code* subsequently specifies exploitation as:

> *causing a person "to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe their safety or the safety of a person known to them would be threatened if their failed to provide, or offer to provide, the labour or service.*
>
> *(*Criminal Code*, 1985)*

Bill C-49 further stipulates that under the conditions of a trafficking offence, whether a victim has consented to their exploitation is immaterial in discerning the trafficker's culpability. A Canadian trafficking offence carries a sentence of at most fourteen years in prison, with the possibility of life imprisonment should the perpetrator "kidnap, commit an aggravated assault or

aggravated sexual assault against, or cause death to, the victim during the commission of the offence" (Bill C-49 2005, 2). There are also charges for any individual receiving financial benefit from a trafficking crime as well as an offence for "withholding or destroying documents," (*ibid.*) be they travel or identity documents, of a victim in order to facilitate the trafficking of a person, for which there is a maximum penalty of five years imprisonment. Finally, section 279.02 introduces an offence for material benefit from a trafficking offence which carries a maximum sentence of ten years imprisonment.

Since its adoption, the trafficking policy in the *Criminal Code* has been amended through three Private Members Bills (PMBs): Bill C-268 (An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years)[6] in 2010; Bill C-310 (An Act to amend the Criminal Code (trafficking in persons)) in 2012, and Bill C-452 (An Act to amend the Criminal Code (exploitation and trafficking in persons)) in 2015. Bill C-268 amends the punishment for trafficking offences under section 279 to introduce a new mandatory minimum sentence of five years imprisonment for any offence that is committed against a minor. Bill C-310 allows Canadians who commit trafficking offences abroad to be prosecuted in Canada. The bill also makes amendments to the definition of exploitation in the *Criminal Code*, introducing the threat or use of force or coercion, deception, and the abuse of "a position of trust, power or authority" (Bill C-310 2012, 2) as factors to be considered when identifying exploitation. The inclusion of these factors facilitates the prosecution of trafficking relationships where coercion or manipulation are used by the perpetrator in lieu of physical force or violence to secure the victim's compliance. Finally, Bill C-452 introduces a clause which

[6] For clarity and concision, I will hereafter refer to these bills by their numerical titles.

requires trafficking offences to be served consecutively to any other sentences. This eliminates the possibility of sentences being served concurrently, and inevitably results in trafficking offences yielding extended prison sentences. In addition to creating the assumption of an exploitative relationship between a potential victim of trafficking and someone they frequently spend time with unless proven otherwise, Bill C-452 also allows for the proceeds of trafficking crimes to be forfeit as part of sentencing for the offence.

In 2012 the *National Action Plan to Combat Human Trafficking*[7] was drafted to communicate a consolidated Canadian response to human trafficking. The *National Action Plan* utilizes the four pillars of anti-trafficking – prevention, protection of victims, prosecution of perpetrators, and partnership, both domestic and international – as a model to construct a Canadian response to trafficking in persons. The following year, three provisions regulating prostitution in Canada were invalidated in the *Canada v. Bedford* ruling: communication for the purposes of prostitution, the keeping of a common bawdy-house, and living on the avails of prostitution. These provisions were deemed by the Supreme Court of Canada to be overbroad, grossly disproportionate, and arbitrary in their violation of sex workers' section seven rights to security of the person. The *Bedford* ruling was of relevance to anti-trafficking policy because these provisions were often used as secondary charges against sex traffickers in cases where human trafficking convictions were deemed too onerous to charge. Further, the *Bedford* ruling created an opportunity to alter prostitution policy, which is often a policy vessel for anti-trafficking due to the reduction of human trafficking to sex trafficking, and the conflation of sex trafficking with sex work.

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[7] Hereafter 'the *National Action Plan*'

The plaintiffs in *Bedford v. Canada* sought to remove the prohibitions placed on sex work in Canada, and represented those who desire the implementation of a regulationist approach to prostitution policy. Those who lobby for government regulation of the sex industry ascribe to "the idea that feminism should simply give women choices and not pass judgment on what they choose," (Snyder-Hall 2010, 255) and argue that there is a subgroup of sex workers who find prostitution empowering and liberating (Smith and Mac 2018). This perspective considers the harms experienced by sex workers to be a consequence of the stigmatization of the sex industry, which is partly attributed to prohibitive prostitution policy. Consequently, regulationists advocate for policies which will reduce the marginalization of the sex industry and provide protection for sex workers. The policy response from this perspective is the legalization and regulation of the sex industry by the state, which would create safer working conditions for sex workers and normalize their work. Regulationists were optimistic that the *Bedford* decision would lead to the adoption of policy that would completely decriminalize sex work in Canada. Instead, following the *Bedford* ruling the Conservative government adopted the *Protection of Communities and Exploited Persons Act* (PCEPA or Bill C-36), a policy model based on the Swedish end-demand approach to prostitution policy — also called the Nordic model. The Nordic model decriminalizes the selling of sexual services, but criminalizes purchasing sexual services as well as third-party profiteering from another individual's prostitution. This approach targets the 'demand' for sexual services in order to eliminate the need for a 'supply' of trafficked and exploited women. The goal of this strategy is the eradication of the sex industry, which is considered inherently exploitative, and would eliminate all sex trafficking and prostitution.

The global debate on prostitution policy is divided according to these two camps: regulationists who seek to decriminalize or legalize the sex industry so that it can be regulated by the state, and prohibitionists[8] whose goal is to eradicate the sex industry entirely. Contrary to regulationists, who consider prostitution to be a subcategory of sex work and a legitimate form of labour, prohibitionists believe that prostitution and the selling of any sexual service is inherently harmful and oppressive to women.[9] The *Bedford* case and the subsequent adoption of Bill C-36 stoked the tensions between prohibitionists and regulationists in Canada. While prohibitionists were content with the outcome and supported Bill C-36, sex worker rights advocates criticized the PCEPA for increasing the stigma and danger experienced by sex workers. Regulationists argue that Bill C-36 fails to conform with the *Bedford* decision, and there has been debate amongst scholars as to the constitutionality of the PCEPA, (Lawrence 2015; Samson 2014; Perrin 2014; Haak 2017; Steward 2016; Fuji Johnson, Burns and Porth 2017) as well as the

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[8] I use the term 'prohibitionist' here in lieu of 'abolitionist', and will do so throughout this thesis, because the legitimacy of the use of anti-slavery language by the anti-trafficking movement has been rightly troubled by critical scholars. (Brace and O'Connell Davidson, 2018; Maynard, 2018) The language for abolition is adopted from the 'anti-slavery' movement, and abolitionists believe that the end of the sex industry means freedom from the 'modern-day slavery' of sex trafficking. The term "abolitionist" has been adopted by many within the anti-trafficking community, and is often used in the media and academic literature to refer to those who seek to end the sex industry entirely. The right of this movement to use the title has been criticized by Maynard, who identifies that the "term "abolition" evokes the history of multiple struggles to end the transatlantic slave trade" (2018, 282), and that anti-prostitution activists have coopted the language of anti-slavery leading to a "whitewashed abolition [that] has undermined liberation struggles led by Black women (both cis and trans) to end racially targeted punishment." (*ibid*, 283)

This may create some confusion as typically 'prohibitionist' refers to individuals who advocate that all parties, including the seller, be criminalized. Nevertheless I believe it can be argued that the prohibitive policies aimed at purchasers within the 'abolitionist' model place it under the umbrella of prohibitionist policy. This is an imperfect label, but having considered all options, I believe that it is the most respectful, and least problematic terminology available to me at present.

[9] These two positions are discussed in greater detail in Chapter 4.

contents of the act and its expected or possible effects (Bunch 2014; Macfarlane 2018; Galbally 2016; Davies 2015).

While Bill C-36 and the *National Action Plan* were drafted under a Conservative government, Canadian policy texts on anti-trafficking have been implemented across the political spectrum. The first policies on human trafficking — the offences adopted in the *Immigration and Refugee Protection Act* and *Criminal Code* — formed under Liberal governments. Private members bills C-268 and C-310 were sponsored by Conservative MP Joy Smith and Bill C-452, was sponsored by Independent MP Maria Mourani. Finally, the *2019-2024 National Strategy to Combat Human Trafficking* was adopted by the Trudeau Liberal government. The diversity of political parties represented in the drafting and adoption of these policy texts reveals the crosscutting nature of human trafficking as an area of concern in Canadian policy.

Literature Review

The academic literature on human trafficking has substantially increased with the development of the field of critical anti-trafficking studies over the past decade, which has acquired its own academic journals in *The Anti-Trafficking Review*, published by The Global Alliance Against Trafficking in Women (GAATW) as of 2012, and the *Journal of Human Trafficking* as of 2015. The policy literature on human trafficking contains conceptual analyses of how trafficking is defined and measured, as well as analyses and critiques of the anti-trafficking movement and international law.

The literature on human trafficking as a concept debates the nature of trafficking, critiques various definitions of trafficking, and questions the empirical evidence of human trafficking — noting the lack of dependable quantitative data on the prevalence of human

trafficking which is used to inform and influence policy (Feingold 2010; Weitzer 2011; Toupin 2013; Fedina 2015; Millar, O'Doherty and Roots 2017). The debate on how to measure trafficking is complicated by the debate over the precise definition of trafficking - whether it should be constrained to international trafficking, whether movement is required, and how exploitation is defined.

This debate within the literature is important in part because it is a reflection of the larger debate regarding the distinction — or often lack thereof — between the concepts of sex work and sex trafficking. As previously discussed, end-demand prostitution policy is motivated by the consideration of all sex work as inherently exploitative, and therefore makes very little distinction between the two concepts. This perspective allows for a broad definition of trafficking that includes domestic trafficking and forms of youth or adolescent prostitution (Hunt 2015/2016; Rose 2015/2016). Conversely, liberal feminist scholars and those who support regulation of the sex industry argue for a stronger distinction between the two, with the more extreme perspectives of this group advocating for a definition of trafficking that requires cross-border movement (Doezema, 2005). This side of the debate argues that pre-existing domestic violence, sexual assault, and labour laws, as well as pimping offences, are sufficient to combat most instances of coercion and exploitation that human trafficking seeks to address. (Doezema 2005; Roots 2013; MacIntosh 2006; O'Doherty et. al. 2018)

The debate on defining human trafficking is also apparent in the scholarly literature addressing the drafting of the Palermo Protocol and the process of deriving its definition of transnational human trafficking. Doezema (2005) outlines the debate behind the drafting of the Palermo Protocol definition of human trafficking, revealing how NGOs representing sex worker

rights perspectives were disregarded in favour of that of anti-trafficking activist groups.[10] While there is literature which critiques the Palermo Protocol for its failure to account for prevention, its lack of enforcement mechanisms (Gallagher 2001) and victim rights (Toupin 2013), much of the critical anti-trafficking literature focuses on the anti-trafficking advocacy movement.

There is substantial literature which claims that the anti-trafficking movement itself harms both sex workers and victims of trafficking with reductionist and extremist depictions of human trafficking. The movement is criticized for its portrayal of sensationalist depictions of human trafficking in order to stir a response from middle-class, Western donors (Bernstein 2018). Bernstein critiques "activist trends that [embody] a form of political engagement that is consumer- and media-friendly and saturated in the tropes and imagery of the sexual culture it overtly opposes." (2018, 86) These sensationalist tactics feature violence and sexualized imagery which objectifies the women they are ultimately intended to help. In an analysis of the anti-trafficking campaigns released by the International Organization for Migration (IOM), Andrijasevic (2007) criticizes the content for being voyeuristic and reinforcing traditional gender stereotypes, which the author claims is itself violence against victims. The objectification and violence present in human trafficking awareness campaigns not only serves to reinforce heteronormative femininity, but also strips victims of their agency and reinforces a universal narrative of victimhood (Cojocaru, 2015). There is also a racial component to the construction of helpless victims, who are often depicted as women from the Global South requiring the rescue of Western women. Kempadoo (2015) refers to this imperative behind rescue in anti-trafficking work as the "modern-day white (wo)man's burden," (8) and suggests that a neoimperialist white

[10] See Chapter 4 for a more in-depth discussion of the drafting of the Palermo Protocol.

saviour complex underlies the modern anti-trafficking movement and overwhelms the narrative of human trafficking.

The narrative which is created and reinforced by anti-trafficking awareness campaigns is reflective of the international approach to human trafficking outlined in the Palermo Protocol, a document whose drafting led to a definitional compromise that failed to fully satisfy either party. (Doezema, 2005) The Protocol is primarily a criminal justice tool, and is the creation of the United Nations Office on Drugs and Crime (UNODC), which establishes trafficking as a transnational criminal justice issue (MacIntosh 2006). This definition is then adopted by the states who ratify the document — however, the Palermo Protocol contains significant gaps and leaves room for countries to determine their own approaches, which can allow for the inclusion of domestic forms of trafficking.

Scholars are also interested in performing both qualitative and quantitative analysis of human trafficking at the national level, as well as comparative policy analysis between nations. This thesis is focused on the Canadian context, and will consider research which addresses Canadian policy at the national and local-level. The scholarly literature on Canadian anti-trafficking policy primarily focuses on assessing the effectiveness of trafficking policy to protect victims and punish perpetrators; the consequences of the conflation of sex trafficking and sex work; the impact of anti-trafficking measures on migrants; the erasure of labour trafficking in Canada; and Indigenous critiques of Canadian anti-trafficking policy. While there is some literature which analyses local-level approaches, including policy communities in British Columbia (Fuji Johnson, 2015) and the ACT anti-trafficking coalition in Alberta (Kaye,

Winterdyk and Quarterman, 2014), the work which informs this thesis is focused on federal policy.

The literature on Canadian human trafficking policy reveals significant gaps in the protection of trafficking victims. The deportation of foreign victims of trafficking has been a criticism of trafficking policy made by MacIntosh (2006) shortly after the introduction of the 2005 *Criminal Code* human trafficking offence, and continues to be relevant in the literature that evaluates the Temporary Resident Permit (TRP) system. The Temporary Resident Permit (TRP) system, which is intended to allow foreign victims of trafficking to remain in Canada in order to receive assistance, has been accused of inaccessibility, inconsistent application, and underutilization, resulting in the deportation of trafficking victims and their family members (Barbagiannis, 2017; CCR, 2013; Hastie and Yule 2014, Maynard 2015). The TRP has been criticized for containing barriers to those who do not fit strict government definitions of trafficking and for excluding the family members of victims who are often at risk of retaliation and violence from protection. (Barbagiannis, 2017) The TRP system also fails to provide "a pathway to permanent residency" (*ibid* 585) for foreign victims of trafficking in Canada. In addition to critiques of the the TRP, the literature also addresses the insufficient services available to trafficking victims in Canada such as "systemic issues with respect to services such as adequate funding, translation, and interpretation aids" (Hastie and Yule 2014, 91); limitations and difficulties experienced by victims in pursuing compensation (Baglay, 2020); and "the inadequacy of community services directed towards men." (Hastie and Yule 2014, 91)

The lack of resources for male trafficking victims is reflective of the erasure of labour trafficking in favour of an oversimplified narrative of sex trafficking in Canadian anti-trafficking

policy and advocacy. This not only has implications for victim protection, but also for the prosecution of perpetrators. The language of the Canadian trafficking offence relies on determining a victim's fear for their safety, which is largely the result of its being written with a particular trafficking narrative in mind — that of a young, female victim of physical coercion and violence at the hands of a trafficker who is unknown to them. (Kaye and Hastie, 2015) In actual trafficking situations it is often difficult to prove fear of safety in court, making a trafficking conviction difficult to acquire. (Kaye and Hastie, 2015; O'Doherty et. al. 2018) While in the case of sex trafficking there are alternative offences which can be used against an offender, that option is not as readily available in labour trafficking cases. (Kaye and Hastie, 2015) Millar, O'Doherty and Roots (2017) argue that "Canadian legal efforts rely on a one-dimensional and exaggerated view of human trafficking, equating it with sex work, especially if involving pimps and/or minors." (35) Due to the focus on sex trafficking, much of the literature on Canadian human trafficking policy is focused on prostitution policy, and consists primarily of critiques from regulationist feminists who posit that end-demand prostitution policy harms sex workers.

When the Canadian government adopted *The Protection of Communities and Exploited Persons Act*, it adopted the Nordic model's end-demand approach prostitution policy, which criminalizes purchasing and third-party exploitation, but decriminalizes the selling of ones own sexual services. The consequences of this approach are numerous and include redirection of funds to groups who advocate for end-demand strategies (Clancey, Khushrushahi, and Ham, 2014); silencing of sex workers who could be allies to the anti trafficking movement but are instead labeled as victims and shut out of the conversation (Rose 2015, Sumaq 2015); increased stigmatization and marginalization of sex workers (Rose 2015; Smith and Mac 2018); increased

policing of sex workers and their relationships with third-parties (Gillies and Bruckert, 2019); and most importantly, increases the harms that sex workers face. In practice, the Nordic Model has failed to improve the lives of sex workers, and has instead left them increasingly vulnerable to violence and less able to protect themselves (Smith and Mac 2018; Sterling, 2019). These harms are exacerbated for sex workers who exist at the intersection of multiple forms of vulnerability. The literature particularly identifies how sex workers of colour (Smith and Mac, 2018), migrant sex workers (Agustin 2007), and Indigenous sex workers (Hunt, 2013) experience overlapping oppressions which make them more vulnerable to violence from clients, the police, and the Canadian Border Services Agency (Butterfly, 2018; Maynard, 2015; Smith and Mac, 2018).

The literature on Canadian human trafficking policy reveals that anti-trafficking has been used as a justification to make migration increasingly difficult in the name of protecting migrants (Anderson, 2013; O'Doherty et. al., 2018; Sharma, 2005). These restrictions are particularly felt by female migrants (Toupin 2013) and women who migrate to work in the sex industry (Agustin, 2007; Smith and Mac, 2018). Restricting migration and paths to permanent residency leaves migrants holding precarious status in Canada, which makes them vulnerable to exploitation out of fear of losing their tenuous status (Anderson 2013; Canadian Council for Refugees, 2014; Maynard, 2015). This is aggravated in the case of those without status, but extends to all migrants in Canada (CCR, 2014). The narrative that migrants need to be protected as they are more likely to be victims of trafficking means that migrant sex workers are also more likely to be targeted in trafficking raids as suspected victims (Butterfly, 2018). Those who enter Canada with legal migration status are not permitted to work in the sex industry, and migrant sex workers are

engaged in illegal activity unless they are proven victims of trafficking. Those who are "rescued" but refuse to be labelled trafficking victims are often detained, deported, and have their earnings confiscated as the proceeds of illegal work in Canada (*ibid.*).

More insidious, government programs which recruit migrant workers to Canada for temporary low-skilled work through the Temporary Foreign Workers Program (TFWP), are often abused by employers and third-party recruiters who exploit these workers, sometimes to the extent that it constitutes labour trafficking (Beatson, Hanley, and Ricard-Guay, 2017; Strauss & McGrath, 2017; Straehle, 2013). Beatson, Hanley, and Ricard-Guay (2017) argue that considering degrees of coercion and exploitation in the experiences of migrant workers reveals that there are many cases which qualify as labour trafficking but are not considered such because they may fail to meet the criteria for exploitation laid out in the *Criminal Code* which requires that a victim fear for their safety. The obscuring of the presence of labour trafficking in Canada and the role that government programs play in producing the conditions of vulnerability to such exploitation is due in part to the emphasis of the state on human trafficking in Canada as being primarily the sex trafficking of women.

Finally there is literature which criticizes the weaponization of human trafficking policy as a tool to justify the continued colonization of Indigenous peoples in Canada. While there are those who suggest that reducing the overrepresentation of Indigenous women as victims of trafficking could be addressed by programs implemented in schools on reserves as a prevention strategy, (Louie, 2018) others propose that trafficking is directly linked to colonialism, and cannot be addressed without decolonization (Bourgeois, 2015; Kaye, 2017). It has also been argued that the acts of colonization, such as residential schools, forced displacement, can be

considered in light of the Palermo Protocol definition as the colonial settler state engaging in acts of human trafficking against Indigenous peoples (Kaye, 2017; Hunt, 2013). Bourgeois (2015) also addresses the role that colonialism played in constructing factors which increase the vulnerability of Indigenous peoples to recruitment into sex trafficking, such as "economic marginalization and poverty," (1458) "the destruction of familial and social support networks," (*ibid.*) perpetuating the "hypersexualization of indigeneity," (*ibid.*) and normalizing violence against Indigenous peoples.

Kaye (2017) argues that anti-trafficking is used to justify paternalistic policy against Indigenous peoples and to restrict who enters Canada through increased border securitization. Her work suggests that anti-trafficking has been used as a tool to strengthen legitimacy of the settler-colonial state by restricting immigration, ensuring that migrant labourers experience precarious status, and categorizing the trafficking of Indigenous women as domestic trafficking. Labelling the trafficking of Indigenous women as domestic erases the claims of Indigenous peoples to sovereignty and autonomy, and reinforces the settler state. Considering the research which suggests the colonial state is responsible for creating the conditions that exacerbate Indigenous women's vulnerability to victimization, the logic of anti-trafficking is being used to justify the ongoing colonial exploitation of Indigenous peoples which reinforces human trafficking in Canada. Maynard (2015) reveals how those groups identified as vulnerable to human trafficking in the *National Action Plan* — including Indigenous women and girls, as well as sex workers and migrants — experience harms resulting from systemic disenfranchisement and marginalisation by the anti-trafficking policies of the federal government. Consequently, the argument made in the literature is that anti-trafficking policy in Canada reinforces the conditions

of vulnerability which facilitate human trafficking's existence in Canada (Kaye, 2017; Maynard, 2015).

An overview of the policy scholarship on human trafficking in Canada reveals five foci: the effectiveness of trafficking policy in the protection of victims and punishment of perpetrators; the consequences of the conflation of sex trafficking and sex work; the impact of anti-trafficking measures on migrants; the erasure of labour trafficking in Canada; and Indigenous critiques of Canadian anti-trafficking policy. The literature indicates ways in which Canadian policy fails to measure up to the claims governments make about ending slavery and eliminating oppression, revealing gaps and weaknesses in Canadian trafficking response as well as elements within the system that facilitate exploitation. While the literature contains work that considers the impact of Canadian human trafficking policy on diverse groups, it is only Maynard (2015) and Kaye (2017) who come close to giving equal attention to the effects of policy on sex workers, migrant workers, and Indigenous peoples within a single text. This thesis will build upon the work begun by authors like Maynard (2015) and Kaye (2017), but will also extend the lens of analysis to include consideration of the impact of Canadian anti-trafficking policy on victims of trafficking and traffickers.

The majority of scholarship on Canadian anti-trafficking policy takes the traditional policy analysis approach of evaluating policy outcomes. A great deal of the scholarly literature is rooted in critical policy analysis and is overwhelmingly from a feminist lens that critiques the role of policy in reproducing inequalities and the oppression of women, Indigenous peoples, and migrants — however, the focus of these critiques is overwhelmingly on policy content and outcomes. While the feminist literature occasionally wades into poststructuralism, a

poststructural policy analysis (PSPA) of Canadian policy is missing from the scholarship. Adding a poststructural approach focused on representations enriches the existing literature by providing a mechanism to reveal not only who is given a say in policymaking and "problem" production, but also who is excluded from this process. The illumination and consideration of these marginalized perspectives reveals the various policy silences that serve to perpetuate power relations based on gender, race, class, and other intersectional positionalities.

The most similar work in the literature to this thesis is Kaye's (2017) book, which performs an analysis of texts derived from fifty-six interviews performed in 2010 and 2011 — including individual interviews, group interviews, and focus groups — and a document review. In analyzing this work, Kaye performs thematic content analysis to identify "the recurring and/or significant themes" (2017, 15) present in the texts, and then performs critical discourse analysis on these themes "from a postcolonial and anticolonial perspective." (ibid) Kaye concludes that the discourse of anti-trafficking has been used as a tool to strengthen the legitimacy of the settler-colonial state by restricting immigration, ensuring that migrant labourers experience precarious status, and categorizing the trafficking of Indigenous women as domestic trafficking — erasing the resistance of these communities to colonial rule.

While Kaye is interested in how discourse is used to reinforce existing institutions and power structures, this thesis seeks to determine how human trafficking is problematized in Canadian policy texts and how this representation of the problem produces unique lived, subjectification, and discursive effects. This thesis implements Carol Bacchi's *'What's the problem represented to be?'* PSPA strategy, a method wherein policies are analyzed "in terms of how they conceptualise social problems rather than along conventional lines, where approaches

to policy analysis have been distinguished in terms of how they address, or handle, social problems" (*ibid*, 25-6). Rather than focusing on the content and the outcomes of policy, this approach considers the role of policy in creating meaning. This lens illuminates "the potential of policy analysis as a means of apprehending how meaning is created in and through policy processes" (*ibid*, 27).

The intention of this thesis is to identify what the "problem" of human trafficking is represented to be in Canadian policy texts, how this problematization has come to be, and the productive effects of policies drafted in response to this problem representation. In particular, this thesis seeks to determine why Canadian human trafficking policy has yielded such a frenzy around the sex industry in an effort to eradicate sex trafficking while leaving labour trafficking concerns comparatively unaddressed. I seek to identify why human trafficking in Canada is often considered to be synonymous with violent sex trafficking, and how policy has played a role in reproducing this narrative which erases and minimizes the ubiquity of labour trafficking in Canada. I am also interested in identifying the impact of Canadian trafficking policy on marginalized individuals and communities, and this thesis will attempt to determine whether Canadian anti-trafficking policy is yielding unintended consequences on particular groups.

Bacchi's WPR method is a natural fit for this work, not only because it is interested in determining how problems are socially constructed as particular kinds of problems, but also because PSPA accounts for policy as a productive force wherein "discourses are […] practices that have effects which include the constitution of subjects and subjectivities; the imposition of limitations on what can be said and what can be thought; as well as the 'lived' effects, or the material effects on people's lives (1999:45)" (Goodwin 2012, 29). Using WPR to analyze

Canadian human trafficking policy texts allows me to consider how human trafficking is represented in Canada as a particular kind of 'problem' that has been socially constructed in a unique historical context, which reveals that alternative conceptions of the 'problem' of human trafficking exist for consideration. Of the greatest importance is that WPR allows for normative evaluation of policies by illuminating the unintended consequences of policy on marginalized persons and communities, and encouraging reconceptualization of the "problem" and retooling of policy to reduce injurious consequences. In this way, the use of WPR opens the possibility of identifying the negative repercussions of Canadian anti-trafficking policy on different types of people, revealing space for policy changes which could reduce these consequences.

In this thesis, I will demonstrate that human trafficking is currently problematized as a "criminality problem." This criminality problematization represents the "problem" of human trafficking to be unchecked criminal deviance which requires intervention through the criminal justice system, with a particular emphasis on protecting women from male deviance by restricting the sex industry and controlling female migration. The criminality problematization is primarily concerned with crimes against women and emphasizes violent sex trafficking to the exclusion of other forms of human trafficking and obscures labour trafficking in particular. WPR analysis considers marginalized and invisibilized perspectives and how these alternative constructions of the "problem" of human trafficking may suggest ways to shift policy in order to reduce negative impacts felt by specific groups of people. Through the deployment of WPR, this thesis proposes that the criminality problematization of human trafficking has led to the adoption of policy that reinforces existing inequalities — gender, global, racial, economic, and citizenship — which create the conditions of vulnerability that produce human trafficking. I conclude that

the silenced representations of the "problem" of human trafficking reveal the need to move beyond criminal justice responses by considering an alternative representation of human trafficking as the consequence of inequality, which calls for the deconstruction of structural oppression and the introduction of policy responses that reduce vulnerability on the individual, community, and international scale.

This thesis is organized in six sections, which loosely follow the questions of the WPR framework. The second chapter explains and unpacks the methodology of WPR analysis, including the key terms and concepts of the method, as well as a detailed discussion of the questions of WPR and their purpose in policy analysis. The third chapter begins the application of the WPR framework with an analysis of Canadian policy texts in order to identify the problematization of human trafficking. Using Foucauldian archaeology, this chapter not only reveals the problematization as reflected in the policy texts but also addresses the presumptions implicit within the problematization and troubles these discursive underpinnings. Chapter four continues the analysis by performing a Foucauldian genealogy of the problematization, tracing the history of the representation of human trafficking as a policy "problem" in order to identify the discourses and knowledges that have allowed the current problem representation's primacy over alternative representations of the problem.

The fifth chapter uncovers the effects and consequences of the criminality problematization of human trafficking on political subjects. This chapter looks at the discursive, subjectification, and lived effects of the criminality problematization on individuals and groups in the real. Determining these effects of the criminality problematization reveals that the representation of the "problem" of human trafficking as individual criminal deviancy reinforces

the oppressions experienced by racialized persons, migrants, sex workers, and victims of trafficking alike. This chapter reveals that the criminality problematization cannot yield socially just policy responses to human trafficking in Canada.

Finally, chapter six contains a discussion of how the problematization can be disrupted. In this chapter, I conclude that the current problematization and its emphasis on carceral strategies reinforces the conditions which create vulnerability to recruitment into both victim and perpetrator roles in trafficking relationships, and has negative lived effects on sex workers, migrant workers, and victims of sex trafficking, in addition to compounding the oppressions experienced by Indigenous peoples, visible minorities, impoverished citizens, and those in Canada with precarious status. In its stead, I propose that we need policy which reconceptualizes the "problem" of human trafficking as rooted in inequality.

Chapter 2: Methodology

This thesis seeks to determine how human trafficking is problematized in Canadian policy, the negative repercussions of that problematization on peoples lives, and whether there are alternative problematizations which could yield policy with less detrimental effects. In order to accomplish this, I employ poststructural policy analysis (PSPA) through the application of Bacchi's *"What's the problem represented to be?"* (WPR) framework to Canadian policy texts. In this chapter I will introduce the methodology of the WPR strategy, locate the framework within the tradition of poststructural policy studies, and outline each step of a complete implementation of WPR.

Traditional policy studies analyze policy as the responses that a government takes to address objective problems. Conversely, PSPA considers policy to be a constructive force which does not respond to "problems" that exist somewhere "out there" in the world, but to particular understandings or representations of "problems." The WPR framework is one such method of PSPA which is designed to facilitate the identification of a particular representation of a "problem" in policy texts. The WPR approach is a form of feminist PSPA, which "feminist policy researchers have [implemented] as a method for interrogating policies that impact on women and on gender inequalities" (Goodwin 2012, 33). The nature of the method also allows researchers to engage in inclusive critical policy studies, considering not only gender inequalities but also class, racial, and others.

Bacchi's WPR framework is a form of discursive policy analysis that criticizes positivist and evidence-based approaches for their assumption that policy is crafted as a reaction to the existence of objective problems — that is not to say that "troubling conditions" (Bacchi 2015, 6)

which warrant policy response do not exist, but that these conditions only become "problems" when they are produced as such through political processes. The WPR approach posits that policy "problems" are socially constructed as particular types of "problems" through *problematizations*. Bacchi (2015) theorizes that policy issues do not become "problems" until they have been constructed as such by prescriptive policy texts. The particular construction of a "problem" is referred to as the *problematization* of the "problem." Consequently, it is possible to detect the problematization — the "problem" as it is been represented to be — embedded within prescriptive policy texts. Identifying the problem representation within policy texts permits critical analysis of the discourses which underlie the problematization and the subsequent impacts this has on political subjects.

WPR is distinct from other forms of discursive policy analysis in its understanding of problematizations and how they are constructed. WPR is a form of Foucauldian policy analysis that takes its definition of discourse and discursive practices from an interpretation of Foucault, pulling away from the "linguistic turn" and its emphasis on *what* is said to instead question *why* and *how* the said becomes sayable. As Bacchi and Goodwin consider them:

> *discourses are understood as socially produced forms of knowledge that set limits upon what it is possible to think, write or speak about a "given social object or practice" (McHoul and Grace 1993:32). "Knowledge" in this context is not truth; rather, it refers to what is "in the true" — what is accepted as truth — and is understood to be a cultural product.*
>
> *(2016, 35)*

The conceptualization of discourse and discursive *practices* in WPR differentiates the method from critical discourse analysis. Discourse analysis in WPR goes beyond "forms of discourse analysis that focus on patterns of speech, rhetoric, and communication" (Bacchi and

Goodwin 2016, 35). In WPR discourse does not refer to language itself, but rather it is language that functions as a vessel through which discourses are revealed and disseminated. The words themselves are more than words. Bacchi and Bonham (2014) suggest that language is a means through which one can "*practise* discourse," (*ibid*, 174) and that *discursive practices* "[refer] simultaneously to the "things said" and to the rules that explain how it becomes possible to say (or know) certain things" (*ibid*, 180). These discursive practices are discourse in action — they "are the rules […] at work in the formation and operation of discourse, understood as [socially-produced] knowledge" (*ibid*, 183). As such, discourse in the WPR framework is considered to be a productive force.

WPR is a framework that can be applied to policy texts in order to conduct poststructural policy analysis that identifies the problematization, the assumptions and beliefs which underpin the problematization, and the material, discursive, and subjectification effects that the problematization has on political subjects. Identifying the discourses upholding the problem representation make it possible to identify marginalized perspectives — those voices which have been silenced and "invisibilized" in the process of problematization — which creates space to re-conceptualize the "problem" in order to create more socially just policy. By troubling the "problem" as it is represented to be in policy texts, voice is given to otherwise marginalized and invisibilized discourses. The consideration of silenced perspectives reveals that the problematization is not inevitable but the result of political processes and a distinct history, which suggests the existence of alternative ways of constructing the "problem" that may yield different policy responses. In questioning the "problem" as it is represented to be we reveal the world as it could be, and shed light on the ever-changing nature of power and subjectivity which

are constantly being produced and shifted under different discursive constructions. Through WPR application "it is possible to reflect on the complex array of implications that problematizations entail in specific contexts and to modify interventions in ways that reduce deleterious consequences" (Bacchi 2015, 9). Consequently, enacting WPR analysis not only provides insight on the underpinnings of policy, but also creates space to identify the detrimental effects experienced by different groups of political subjects and opens the door to mitigate these consequences by considering alternative problematizations and altering policy accordingly.

Locating the Theoretical Framework

Discursive approaches to policy analysis such as WPR question positivist methods of policy analysis and evidence-based strategies because these approaches assume the objectivity and neutrality of policy, which discursive approaches reject (Durnova, Fischer and Zittoun, 2016). Discursive policy analysis encompasses a diversity of strategies; however, all of these approaches are guided by two principles: first, "discourse is not simply a reflection of what actors call "reality, reduced to a mere problem of interpretation," but also the means through which they can shape this reality," (*ibid*, 43) and second, "discourses can only be understood through the social practices in which they are embedded" (*ibid*, 44). WPR is distinct from other discursive approaches in its poststructuralist, rather than interpretivist, perspective on problematizations (Bacchi 2015, Bacchi and Goodwin 2016). While poststructural approaches such as WPR and interpretivist approaches both reject the existence of objective policy problems, relying instead on the concept of problematization, they differ significantly in their understanding of what a problematization is conceptually. For interpretivists, problems exist but can be understood in different ways, and each of these understandings yields a different

problematization. These problematizations are held by rational, agentic political subjects, and interpretivist approaches focus on consensus-building efforts to create a shared problematization among these subjects. Unlike interpretivist approaches which consider the many problematizations of a preexisting "problem" in order to create a shared problematization to create policy solutions, WPR considers how policy texts reveal a specific problematization at work. The goal of interpretivists is identifying a shared problematization, whereas poststructuralists are interested in critiquing the problematizations present in prescriptive policy texts.

The perspective offered by WPR as an analytic strategy is unique in the field of policy studies, and although its theoretical basis draws on terms used in other strategies for policy analysis, such as problematization, discourse, and governmentality/ies, it approaches these concepts in a unique way. As mentioned above, WPR is not concerned with how different problematizations of trafficking compete with each other for policy dominance, but rather it seeks to uncover what is problematized by the text itself. WPR "is not concerned with conscious intentions," (Bacchi, 2014a) but with "how problem representations *themselves* are political" (*ibid*, emphasis added) and have constitutive effects wherein "things are made to come into existence, without deliberate intent, through practices" (*ibid.*). These discursive practices underpin problem representations and inform the problematizations that are used to govern political subjects under the WRP analytic strategy.

Data

Performing the WPR framework requires textual analysis of prescriptive policy texts. For the purpose of this thesis I will be using Canadian policy texts addressing human trafficking

ranging from the 2000 signing of the Palermo Protocol to the 2015 introduction of private member's bill C-452. There are eight texts included in the analysis: clause 118 of the Canadian *Immigration and Refugee Protection Act;* Bill C-49 (An Act to amend the Criminal Code (trafficking in persons)); Bill C-268 (An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years); Bill C-310 (An Act to amend the Criminal Code (trafficking in persons)); the *National Action Plan to Combat Human Trafficking* (Government of Canada, 2012); the *Protection of Communities and Exploited Persons Act* (Bill C-36); Bill C-452 (An Act to amend the Criminal Code (exploitation and trafficking in persons)); and the *2019-2024 National Strategy to Combat Human Trafficking.*

Implementing the WPR Analytic Strategy

WPR is a seven-step tool wherein six questions are utilized to analyze policies, followed by a seventh step that requires the application of the six questions to the researcher's own problematization of the "problem". WPR is a flexible analytical tool which does not require analysts to apply all seven steps in an analysis. The six questions of WPR are as follows:

> *Question 1: What's the problem [...] represented to be in a specific policy or policies?*
> *Question 2: What deep-seated presuppositions or assumptions underlie this representation of the "problem" (problem representation)?*
> *Question 3: How has this representation of the "problem" come about?*
> *Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the "problem" be conceptualized differently?*
> *Question 5: What effects (discursive, subjectification, lived) are produced by this representation of the "problem"?*
> *Question 6: How and where has this representation of the "problem" been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?*
>
> *(Bacchi and Goodwin 2016, 20)*

The first question of WPR requires selecting the proper texts for analysis, which involves identifying prescriptive materials — meaning any "*form of* proposal" (*ibid.*, 18) or "guide to conduct" (*ibid.*) — which are then analyzed in order to identify the problem representation. The texts to be analyzed in this thesis include clause 118 of the Canadian *Immigration and Refugee Protection Act*, and Bill C-49, which introduced anti-trafficking clauses into the *Criminal Code* of Canada. I will also consider three successful[11] private member's bills (PMBs): Bill C-310, Bill C-268, and Bill C-452, which amend sections of the *Criminal Code* relevant to human trafficking. Finally, the *National Action Plan to Combat Human Trafficking* (Government of Canada, 2012) and the *Protection of Communities and Exploited Persons Act* (PCEPA or Bill C-36) will also be included in the analysis. Question one requires identifying the problematization by tracing back from the solutions to a "problem" that are proposed in a text in order to determine how that "problem" is being problematized within prescriptive policy texts. In studying several texts it is possible to identify a shared problem representation, which reveals the overarching problematization of the "problem" in national policy. In this thesis, the analysis of multiple texts allows for the identification of the problematization of human trafficking across Canadian policy.

The second question of WPR requires discerning "the deep-seated presuppositions or assumptions [that] underlie [the] representation of the "problem"" (Bacchi and Goodwin 2016, 20) as identified in question one. Uncovering these underpinnings of the problematization through the implementation of Foucauldian archaeology creates a space where these illuminated assumptions can be questioned, which plays a role in troubling the "problem" as it is represented

[11] In this context, I consider "successful bills" to be those that have acquired Royal Assent.

to be in the text. Question three of WPR performs Foucauldian genealogy, which works in tandem with Foucauldian archaeology to further de-essentialize the problem representation. Performing a genealogy of the problematization requires retracing the history of the "problem" and its representation over time. This history reveals how the problematization has come to be, and illuminates alternative conceptions of the "problem" that have existed in tandem and in tension with the problem representation currently at work in a policy text. Genealogy is important because it ties a problem representation to a specific history, revealing not only how a problematization comes to be, but also how a problematization can be unmade. The third question's "intent is to disrupt any assumption that what *is* reflects what *has to be*" (*ibid.,* 22). Questions two and three reveal that the "problem" as represented in a given text is the consequence of a particular Foucauldian archaeology and genealogy, which allows for the existence of other representations that may emerge from subjugated knowledges. The fourth question of WPR is concerned with identifying these invisibilized and marginalized voices and the alternative conceptions of the "problem" that arise when these perspectives are taken into account. The goal of this question "is to destabilize an existing problem representation by drawing attention to silences, or unproblematized elements, within it" (*ibid.*).

The fifth WPR question moves beyond the problem representation itself to uncover how a given conception of the "problem" produces and impacts particular political subjects. Question five seeks to identify the discursive, subjectification, and lived effects produced by the problematization. The discursive effects of a problematization impact how "problems" can be conceptualized, understood, and spoken about — they "limit what can be thought and said about a particular issue" (Paterson 2016, 6). Subjectification effects impact categories and groups of

political subjects, revealing "how "subjects" are implicated in problem representations, how they are produced as specific kinds of subjects" (Bacchi and Goodwin 2016, 23). In creating ways of thinking and speaking about "problems" and people, discursive and subjectification effects also have lived effects on political subjects. Considering the material impacts of a problematization on the lived experience of individuals and groups is essential to identify where policies have damaging repercussions, and gives ground for the consideration of alternative "interventions that aim to reduce deleterious consequences for specific groups of people" (*ibid.*).

The final question of the framework creates space to trouble the "problem" as it is represented. Question six asks first *who* has had interest in producing and defending this problematization and by what means this conceptualization of the "problem" has been propagated. Further, question six requires identifying existing and potential opposition to the problem representation. Deployment of the sixth question "opens up space to reflect on forms of resistance and "counter-conduct" (Foucault 1978) that challenge (or could challenge) pervasive and authoritative problem representations" (*ibid.*, 24).

A complete WPR analysis requires a further seventh step, which involves first suggesting an alternative conception of the "problem" upon which to build new, more socially just, policy responses, and then conducting a six-question WPR analysis of this problematization. The purpose of this seventh step is the same as the goal of the framework as a whole: to develop reflexive practice wherein policymaking and policy analysis occur in a state of constant critique and evaluation (*ibid.*, 15). The scope of this thesis does not allow for a full implementation of the seventh step of WPR, and as such I only consider the six WPR questions in my analysis.

Strengths and Weaknesses of WPR

The WPR approach to policy analysis is premised on reflexivity and self-problematization, and as such it is an excellent tool for critiquing policy while also encouraging policymakers to question their own biases and assumptions when drafting policy texts. However, the practicality of this application for policymakers is limited — the tool is meant primarily for critiquing policy that is already written, and does not necessarily lend itself to drafting new policy. The WPR method is also labour-intensive; it is an elaborate strategy that requires dense and complex analysis, which necessarily involves an understanding of specialized knowledge in order to implement. Due to these factors, WPR has come to be located largely in the realm of academe where there is time for this extensive and detailed analysis of prescriptive policy texts or proposals, thereby restricting its usefulness for bureaucrats and policymakers. That the strategy has remained predominantly in the academy also restricts its accessibility to the people who are impacted by policy, which limits the perspectives available to speak to the lived impacts of a problematization. The methodology attempts to alleviate this gap by requiring that the analyst do their utmost to correct for this through creative thinking and by necessitating that possible silenced perspectives be sought out and considered in the process of critiquing the problematization.

The consistent growth of the method since its conception in Bacchi's *Women, Policy and Politics: The Construction of Policy Problems* (1999) reveals the flexibility of WPR as a method which can incorporate innovative ways of including the voices of real people who feel the impacts of policy into the process of critical policy analysis. The flexibility of WPR is one of its greatest strengths — it is a tool meant to encourage reflexivity, and the questions exist to

facilitate the analytical process rather than to box the analyst in. WPR allows for approaching policy in a way that considers multiple voices and perspectives in order to question the dominant perception of a "problem" while actively searching for silenced perspectives. The purpose of accounting for lived experience is to identify where policies are having uneven impact on particular communities, with the goal of altering policy to reduce these discovered consequences. The focus on real-world impacts moves WPR beyond the theoretical into the realm of the practical, which addresses critiques of PSPA as overly theoretical and lacking practical application. Consideration of real-world lived effects facilitates normative policy evaluation in the pursuit of policies that are more socially just. By accounting for the experienced impacts of policy on political subjects, different problematizations can be weighed for negative impact, allowing the analyst to recommend the policy that has the least damaging effects.

Conclusion

This thesis conducts a six question WPR analysis of Canadian policy texts which respond to human trafficking without performing the seventh step. In analyzing human trafficking policy WPR is useful because it reveals that our policy responses are not obvious, objective, or unavoidable, but rooted in a specific history and context which yield particular conceptions of the issue at hand. The framework allows identification of *how* trafficking is problematized and *why*, which opens the possibility to question the representation of human trafficking in Canadian policy texts. This process reveals different possible ways of thinking about the "problem" and facilitates the suggesting of different solutions to the "problem" through the introduction of an alternative problematization.

The application of WPR in this thesis is divided throughout the chapters as follows. Chapter three contains a textual analysis of Canadian policy texts which addresses questions one, two, and four of WPR. In this chapter, the criminality problematization of human trafficking is identified along with the tacit assumptions and unproblematized elements of this representation of the "problem." The fourth chapter addresses the third question of WPR by performing a Foucauldian genealogy of the criminality problematization of human trafficking in Canada. Chapter five contains a discussion of the discursive, subjectification, and lived effects of the criminality problematization in response to the fifth WPR question. Finally, the sixth chapter considers question six of the framework, troubling the "problem" as it is constructed in Canadian policy texts, and suggests an alternative problematization of human trafficking which holds the potential to yield more socially just policy.

Chapter 3: Discerning the Problematization

Trafficking in persons is a crosscutting issue that captures interest across the political spectrum in an effort to "end slavery." As discussed in chapter one, while united in the belief that human trafficking must be addressed and eliminated, there is significant debate between various political parties as to what is the appropriate policy response, particularly regarding prostitution policy as a vessel for addressing sex trafficking. Following ratification of the UN Palermo Protocol, Canada's first anti-trafficking policy was introduced under Paul Martin's Liberal government and has remained a prevalent policy issue since the election of the Conservative government in 2006. Stephen Harper's Conservative government introduced several anti-trafficking policies throughout its tenure in power, the most contentious of which is Bill C-36: the *Protection of Communities and Exploited Persons Act* (PCEPA), a new approach to legislating prostitution in Canada adopted in 2014. The bill was drafted in response to the 2013 *Bedford* ruling in which the Supreme Court of Canada struck down three *Criminal Code* provisions regulating prostitution: the keeping of a bawdy-house, communication for the purposes of prostitution, and living on the avails of another's prostitution. Bill C-36 is an important component of Canadian anti-trafficking policy, and takes an end-demand approach to sex work which seeks to eradicate the sex industry, ending sex trafficking as a consequence.

In this chapter, I deploy Bacchi's WPR ('What's the problem represented to be?) poststructural analytic strategy to analyze Canadian responses to human trafficking in order to determine how the issue is problematized in policy texts. This chapter performs three of the six

WPR questions on the Canadian anti-trafficking policy texts.[12] First, the policy texts will be analyzed to answer WPR question one: "What's the problem represented to be?" (Bacchi and Goodwin 2016, 20) Once the problematization is identified, questions two and four of WPR will be explored to determine: "What deep-seated presuppositions or assumptions underlie this representation of the "problem"?" (*ibid.*) "What is left unproblematic in this problem representation? Where are the silences? [And can] the "problem" be conceptualized differently?" (*ibid*.) This analysis reveals that Canadian policy texts signal a criminal justice response to trafficking in persons that emphasizes carceral responses and enforcement strategies. The criminal justice response to trafficking reveals that the problem of human trafficking in Canada is represented to be unchecked and unpunished crime, which I call the "criminality problematization."

WPR Question 1: "What's the Problem Represented to Be?"

Bacchi and Goodwin (2016) suggest that by reviewing several texts an analyst can identify "possible patterns that might signal the operation of a particular political or governmental rationality," (21) which in turn identifies what the "problem" is represented to be and how it is problematized. Considering these policy texts together reveals that human trafficking is produced as a "criminality problem," that is represented to be unchecked crime and

[12] clause 118 of the Canadian *Immigration and Refugee Protection Act*, and Bill C-49, which introduced anti-trafficking clauses into the *Criminal Code* of Canada; private member's bills (PMBs) C-310 (An Act to amend the Criminal Code (trafficking in persons)), C-268 (An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years), and C-452, (An Act to amend the Criminal Code (exploitation and trafficking in persons)); and finally, the *National Action Plan to Combat Human Trafficking* (Government of Canada, 2012), the *Protection of Communities and Exploited Persons Act* (Bill C-36), and the *2019-2024 National Strategy to Combat Human Trafficking*.

deviant criminal behaviour requiring the intervention of law enforcement and punishment through the Canadian criminal justice system in the form of fines and incarceration.

Analysis of Canadian trafficking policy reveals a pattern of increasing criminalization of human trafficking. As previously discussed, trafficking was first included in the IRPA, which signals a limited conception of trafficking as a migrancy issue. However, the inclusion of trafficking offences in the *Criminal Code* following Bill C-49 reveals an expansion of the definition of human trafficking which accounts for domestic trafficking offences. The grasp of the Canadian criminal justice system in the case of trafficking offences was then expanded through several private member's bills (PMBs). Bill C-268 establishes mandatory minimum sentences for trafficking minors. Bill C-452 presumes exploitation on the part of an individual "habitually in the company of a person who is exploited" (Bill C-452 2015, 1). Further, C-452 amends the *Criminal Code* to require trafficking sentences be served separately, rather than consecutively alongside other sentences, and allows for the forfeiture of the proceeds of trafficking offences. Finally, Bill C-310 allows trafficking offences committed by Canadians abroad to be prosecuted in Canada and introduces factors for consideration when determining the presence of exploitation between a third party and suspected victim. The consistent and increasing emphasis on prosecution and incarceration reveals the criminality problematization at work in the IRPA and Bills C-49, C-268, C-310, and C-452.

The 2012 *National Action Plan to Combat Human Trafficking* also reveals an emphasis on criminal justice responses to human trafficking. The language used throughout the *National Action Plan* overwhelmingly refers to human trafficking as a "crime," often with a violent qualifier added to emphasize its gravity. Examples from the text include: "these terrible crimes,"

(Government of Canada 2012, 1) "this disturbing crime," (*ibid.*) and states that human trafficking is a "crime [that] represents a consistent and pervasive assault" (*ibid*, 5). The government states that by "releasing this National Action Plan, we are sending a clear message that Canada will not tolerate this crime, that victims will be given the help they need, and that perpetrators will be brought to justice" (*ibid*, 2). Human trafficking is defined as a crime that is a danger to our entire society: "Traffickers reap large profits while robbing victims of their freedom, dignity and human potential at great cost to the individual and society at large" (*ibid*, 4). While the diversity of trafficking is mentioned and given credence, the problem of human trafficking in Canada as produced in the text is predominantly one of sex trafficking that is primarily an issue for women and children: "This crime is taking place in Canada, where human trafficking for the purpose of sexual exploitation is, to date, the most common manifestation of this crime and where the vast majority of the victims are Canadian women and children" (*ibid*, 4).

It is possible for a policy text to simultaneously contain multiple problematizations, and "problem representations tend to lodge or "nest" one within the other" (Bacchi and Goodwin 2016, 24). The *National Action Plan* is separated into sections corresponding with the four P's of anti-trafficking — prevention, protection, prosecution, and partnership — which reflects this potential for several different problematizations. The protection of victims of trafficking and prosecution of traffickers depends on an understanding of human trafficking as a crime problem wherein prosecution and protection are vectors for justice. The prevention and partnership sections of the action plan could potentially yield alternative problem representations, but closer analysis reveals that they also function to support the criminality problematization. While the partnership section of the text does indicate an intention to "[e]nhance engagement and

collaboration with civil society," (*ibid*, 19) the vast majority of partnership strategies are focused on enforcement. A large portion of these partnerships are bilateral and work to strengthen law enforcement and prosecution responses to trafficking in other countries. The overall emphasis of the partnership portion of the document reveals a primary interest in importing and exporting enforcement strategies and information about traffickers in order to strengthen the prosecution and punishment of criminals on an international scale.

The prevention section of the *National Action Plan* is a possible source of alternate problematizations of trafficking which focus on vulnerability and the causes of criminality. While prostitution and the demand for sexual services are mentioned as a cause of trafficking — "[t]he Government's view is that prostitution victimizes the vulnerable and that demand for sexual services can be a contributing cause of human trafficking" (*ibid*, 11) — neither of these factors are further developed or discussed in the text. Vulnerability, however, is discussed in detail and is the primary target of prevention attempts as outlined in the *National Action Plan.* This focus signals individual and community vulnerability as an alternate problematization present in the text, nested within the criminality problematization. The action plan identifies those most likely to be trafficked as located in "vulnerable, economically challenged and socially dislocated sectors of the Canadian population" (*ibid*, 6). Those vulnerable to trafficking also include

> *persons who are socially or economically disadvantaged, such as some Aboriginal women, youth and children, migrants and new immigrants, teenaged runaways, children who are in protection, as well as girls and women, who may be lured to large urban centres or who move or migrate there voluntarily.*
>
> *(*ibid.*, 6)*

While the prevention section of the *National Action Plan* reveals a vulnerability problematization, this representation is subsumed within the criminality problematization by focusing on individual protection and rescue from exploitation, rather than social protections. The response that is emphasized in the text is the promotion of training and awareness programs. Of the eight prevention efforts listed in the annex of the *National Action Plan*, only one is related to providing any services for vulnerable groups:

> *Supporting three foundational Public Health Agency of Canada health promotion programs that target vulnerable children and their families to produce positive health outcomes (e.g. Aboriginal Head Start in Urban and Northern Communities; Community Action Program for Children; Canada Prenatal Nutrition Program).*
>
> *(*ibid.*, 24)*

The other programs are awareness and training programs, including two programs that involve training for law enforcement.

The emphasis on raising awareness as a strategy of prevention is symptomatic of the conception of trafficking as a "criminality problem." The assumption revealed in the text is that if folks are made aware of the danger then they can protect themselves. It also assumes that trafficking is an external crime which enters the community from without, rather than a symptom of the particular pre-existing social conditions within the community itself. These assumptions stress the role of individual responsibility to protect both oneself and ones community from deviant criminals who engage in human trafficking. The solutions to vulnerability as outlined in the *National Action Plan* are disproportionately placed in the hands of law enforcement and the criminal justice system. The emphasis of prevention strategies on awareness over social welfare programs reveals the assumption that individuals must overcome their own vulnerability to

crime, and that the role of law enforcement is to equip individuals and communities to protect themselves from becoming victims and to report identified victims for rescue.

The budget presented in the *National Action Plan* also reveals where the government's priorities in addressing trafficking lie. The budget devotes the vast majority of the money to the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), and the Department of Foreign Affairs and International Trade (DFAIT) — which combined received 6.7M$ in comparison to the 1.14M$ allocated to all other parties in 2012/2013 (*ibid*, 10). The financial emphasis further signals the primacy of enforcement and carceral responses, which reveals the criminality problematization of trafficking.

The criminality problematization is also present in the *Protection of Communities and Exploited Persons Act* (PCEPA). The PCEPA is an amendment which was made to the *Criminal Code* to address the gap in legislation regulating prostitution after the *Bedford* decision. The PCEPA takes a carceral approach to prostitution and trafficking, expressing "grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it" (Bill C-36 2014, 1) in its preamble. The PCEPA's aim is "to protect human dignity and the equality of all Canadians by discouraging prostitution, which has a disproportionate impact on women and children" (*ibid.*). It also specifically prohibits "procurement of persons for the purpose of prostitution" (*ibid.*), which can be interpreted as a means to deter recruitment of victims into trafficking relationships, and thus addressing sex trafficking. The PCEPA also prohibits "the development of economic interests in the exploitation of the prostitution of others as well as the commercialization and institutionalization of prostitution" (*ibid.*). These stated goals, in addition to an emphasized desire to encourage women to exit the sex industry and to

"[protect] communities from the harms associated with prostitution," (*ibid,* 2) indicate the intention to eliminate the sex industry in Canada through this new model of regulation.

The PCEPA adopts the Nordic model of prostitution policy by decriminalizing the sale of sexual services while criminalizing both the purchasing of such services and any exploitative benefit of a third party from this sale. The purchasers of sexual services are criminalized under section 286.1 of the *Criminal Code* with the introduction of the new offence of "obtaining sexual services for consideration" (*ibid,* 10). There are also significant restrictions placed on communication for the purpose of selling sexual services, which can now no longer take place "in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre," (*ibid*, 7) including the introduction of mandatory minimum fines and maximum sentences for the offence. The new limits on communication are less restrictive than the provision contested in *Bedford* which prohibited any "communicating in public for the purposes of prostitution" (Canada (Attorney General) v. Bedford 2013, 1102) in order "to take prostitution off the streets and out of public view […] to prevent the nuisances that street prostitution can cause" (*ibid*, 1106). Nevertheless the communication restrictions maintain a form of criminalization of those who sell sex and a reveal a continued concern with removing prostitution from the public eye.

The PCEPA also introduces a new advertising offence which makes it illegal to advertise for sexual services which one is not personally providing. The intent of this restriction is to make it more difficult for exploitative pimps and sex traffickers to attract buyers, thereby reducing their profits in an effort to disincentivize them from committing these crimes. The provision includes third-party advertisers who now may be at risk of penalties if they allow sex workers to

advertise through them, which restricts sex workers to independent forms of advertisement. The PCEPA also reinstates the clause which makes it illegal to live on the avails of the prostitution of another person, although there are some exceptions outlined for legitimate business and living arrangements outlined in section 286.2(5) of the *Criminal Code*.[13] Under the PCEPA selling sexual services is decriminalized and therefore technically legal but is restricted by these clauses. The introduction of prohibitions on purchasing made prostitution illegal for the first time in Canadian history, making it arguable that the PCEPA has actually increased the criminalization of prostitution in Canada, regardless of the decriminalization of the act selling of sexual services.

The PCEPA also includes new sentences for preexisting offences, "[increasing] the existing penalties for offences related to prostitution and human trafficking" (Casavant and Valiquet 2014, 2) and introducing new mandatory minimum sentences for trafficking offences under sections 279.01, 279.02, and 279.03 of the *Criminal Code* (*ibid.*, 15). The punishment for section 279.01 includes a new minimum four-year sentence for trafficking offences and a five-year minimum for aggravated cases. The material benefit offence in section 279.02 was altered to carry a minimum two-year sentence in the case of underage victims. Finally, the PCEPA adds a sentence of at least one year to at most ten years for withholding or destroying documents in the case of a minor. Introducing and increasing minimum sentences reduces judicial discretion in sentencing and ensures increased fines and incarceration for the purchasers of sexual services and traffickers.

The criminality problematization is evident in the introduction of new offences regulating prostitution in the PCEPA which forbid purchasing sexual services and place restrictions on both

[13] As previously mentioned, this the result of PMB C-453, which includes a presumption of exploitation in a relationship unless proved otherwise.

communication and advertising for the purpose of selling sexual services. The emphasis in the PCEPA on the "problem" of human trafficking as a "criminality problem" is also signalled by the introduction of new mandatory minimum sentences and increased punishments for preexisting trafficking offences, which fall under the pattern identified in the IRPA, early *Criminal Code* provisions and PMBs related to human trafficking. Analysis of the PCEPA reveals an increased reliance on incarceration, fines, and enforcement tactics which indicates that the criminality problematization of human trafficking informs Canadian policy texts. This same problematization is present in the *National Action Plan to Combat Human Trafficking* whose focus is on prosecution and protection, with prevention and partnership placed firmly in the hands of law enforcement who are entrusted with large roles in anti-trafficking training, awareness, and partnerships. The criminality problematization is further reflected in the *National Action Plan* budget, which is unevenly balanced in favour of enforcement strategies. Considering all of the analyzed texts together reveals a policy response which emphasizes the role of state institutions, and law enforcement in particular, in addressing human trafficking in Canada. The increased role given to law enforcement and the emphasis on new offences and increasing punishments in the *Criminal Code* reveals that the "problem" of human trafficking is represented in the policy texts produced by the Canadian government to be unchecked criminality.

In 2019 the Trudeau Liberal government released the *2019-2024 National Strategy to Combat Human Trafficking.*[14] Textual analysis of the new strategy reveals the presence of new and more complex problematizations nested within the text. Here we see the beginnings of a combined problem representation that considers human trafficking to be the result of

[14] Hereafter referred to as the *National Strategy*

insufficiently robust criminalization, but also of vulnerability. The *National Strategy* describes human trafficking as "a complex, far-reaching and highly-gendered crime, […] which disproportionately affects women and girls," (Government of Canada 2019, 6) and identifies "a lack of education, social supports, and employment opportunities, compounded by poverty, sexism, racism, and wage inequality" (*ibid.,* 14) as causal factors of exploitation. The *National Strategy* also identifies that the

> *[i]ndividuals at greatest risk of victimization in Canada generally include women and girls and members of vulnerable or marginalized groups such as: Indigenous women and girls; migrants and new immigrants; LGBTQ2 persons; persons living with disabilities; children in the child welfare system; at-risk youth; and those who are socially and economically disadvantaged.*
>
> (*ibid.*, 16)

The *National Strategy* elucidates the role of socioeconomic inequalities in producing vulnerability which can make individuals more likely to be targeted as victims of trafficking. It is notable that the *National Strategy* continues to emphasize sex trafficking over labour trafficking in its identification of women and girls as the most vulnerable, however it does incorporate "migrants and new immigrants" as a vulnerable group, which may indicate greater consideration of labour trafficking concerns.

The *National Strategy* does reveal a strengthening of the representation of labour trafficking in Canadian policy texts by accounting for migrant workers and considering the role of the state in creating demand for trafficking. While the *National Strategy* does account for the vulnerability of migrant workers: "Migrant workers may be particularly vulnerable to exploitation and abuse due to many factors, such as language barriers, working in isolated/ remote areas, lack of access to services and support, and lack of access to accurate information

about their rights" (*ibid.*). It does not address the vulnerability brought about by the precarious status which is built into the TFWP. With regard to government responsibility, the *National Strategy* lists the goal of "[i]mproving ethical behaviours and preventing human trafficking in federal procurement and supply chains" (*ibid.*, 9). While it is an encouraging sign, this language is vague, unclear, and lacking practical application points and benchmarks of success. There is evidence of the presence of a representation of the "problem" as insignificant labour rights in these segments of the text, but they are overwhelmed by the continued focus on the criminality problematization.

The *National Strategy* is significantly less robust than the *National Action Plan*, but it indicates the presence of new nested problematizations of human trafficking in Canadian policy. While there is an acknowledgement of "an investment of $75 million dollars over six years" (*ibid.*, 6) there are no details on the allocation of these funds beyond the $14.51 million spent on the Canadian Human Trafficking Hotline. Without a detailed budget it is difficult to ascertain where the priorities of the government lie in this document, and therefore complicates the ability to gauge how problem representations are nested within the text and which are dominant within the problematization. Further, the criminality problematization remains dominant throughout Canadian policy texts from the signing of the Palermo Protocol to the adoption of the *Protection of Communities and Exploited Persons Act* (PCEPA). Although the *National Strategy* is surely a step in the right direction towards more socially just human trafficking policy, it is too soon to identify the effects of this text. While these signals are encouraging, they do not serve to dislodge the overarching criminality problematization of human trafficking in Canadian policy texts.

WPR Question 2: "What deep-seated presuppositions or assumptions underlie this representation of the "problem"?"

The second question of WPR requires "identifying the meanings (presuppositions, assumptions, 'unexamined ways of thinking', knowledges/discourses)" (Bacchi and Goodwin 2016, 21) required for this problematization to be produced, as well as considering the unquestioned binaries present within this problem representation. Canadian policy texts reveal a criminality problematization which produces human trafficking as a criminal act performed by deviant individuals against completely innocent victims — those who have not given any degree of consent to their exploitation. The corresponding solution is through the criminal justice system which emphasizes the role of law enforcement in the apprehension of traffickers and criminal justice system in the prosecution and strict punishment of perpetrators. This solution removes deviant individuals from the community, making citizens feel safe while attempting to deter other individuals from deviance by increasing the threat punishment. There are three prevalent assumptions evident in the texts which undergird the criminality problematization of human trafficking: trafficking as individual deviancy; the legitimacy of state paternalism; and punishment as an effective means of crime deterrence.

The assumption of trafficking as criminal deviancy builds the "problem" around deviant individuals who pose a threat to society at large by preying on the vulnerable. The criminality problematization as it appears in Canadian policy texts identifies these deviant individuals as johns, exploitative pimps, and traffickers. In the PCEPA, the prostitute is depicted as the victim of these deviant characters and the oppressive prostitution industry itself (Bill C-36 2014, 8). The IRPA offence considers migrants potential victims to criminal traffickers seeking to bring their

victims into Canada for the purpose of exploitation. The focus on evil criminals and innocent victims makes crime the responsibility of individuals, and the role of the state is to punish these perpetrators and protect victims through restrictive immigration policies and prosecutorial process. This is particularly evident in the approach to prevention outlined in the *National Action Plan* which places the responsibility for prevention primarily on individuals by emphasizing awareness strategies in lieu of targeting the structural inequalities that create and reinforce conditions of vulnerability. This approach reflects the assumption of the criminality problematization that victims of trafficking are naïve and must be taught how to protect themselves. It places the onus of protection on the individual and fails to account for the socioeconomic pressures that inspire the risk-taking behaviours which make an individual more likely to be targeted by traffickers. Further, it fails to account for the complex victimhood of those who are recruited into trafficking through boyfriend pimping techniques, wherein victims are manipulated in order to blur the lines of consent. Nor does it account for those exploited through migrant worker programs which prey upon the precarious status of non-citizens. Finally, this mindset removes all agency from victims, depicting them as helpless and requiring the rescue of the state — it infantilizes victims and fails to account for the diverse factors which restrict individual choices.

The criminality problematization of trafficking also upholds the assumption of state paternalism, which places responsibility on the state to protect its citizens through law enforcement and the criminal justice system. In the case of Canadian human trafficking policy texts the state is not only responsible for protecting citizens from each other by targeting johns, pimps, and traffickers, but also for protecting citizens from themselves, as is made evident in the

the PCEPA, which assumes all sex work is exploitative by nature and seeks to protect prostitutes by forcibly eradicating the sex industry. The PCEPA reflects both the deviance and paternalism discourses in its title alone, which addresses the protection of both exploited individuals and communities. This paternalistic approach to safeguarding society and communities reflects the assumption that the mere presence of the sex industry is inherently harmful to communities, and is linked to both deterrence and deviance discourses. In the deviance discourse crime is assumed to be the result of morally deficient individuals prioritizing their own desires over "the state's interest in social stability" (Corlett, 2013, 6) and who are thereby deserving of punishment. The spectre of punishment also functions as a deterrent which increases the potential cost to individuals who may consider engaging in deviant behaviour against society. The premise that punishment is a successful strategy for reducing crime is based on the deterrence theory of criminology, which suggests that "the rational calculus of the pain of legal punishment offsets the motivation for the crime […] thereby deterring criminal activity" (Atker 1990, 654). Deterrence discourse is evident in the emphasis of the texts on introducing new offences while increasing the penalties for preexisting offences and broadening the definition of exploitation to facilitate the successful prosecution of traffickers.

WPR Question 4: Troubling the Problematization

The fourth question of WPR analysis requires troubling "an existing problem representation by drawing attention to silences, or unproblematized elements, within it" (Bacchi and Goodwin 2016, 22). There are three subquestions within this step: "What is left unproblematic in this problem representation? Where are the silences? Can the "problem" be conceptualized differently?" (*ibid.*) This section of the analysis first requires problematizing the

presuppositions and assumptions of the problematization. Navigating the silences in the problematization requires not only addressing gaps in the text, but also identifying the marginalized and invisibilized perspectives that are not represented. Identifying these silenced voices in turn unveils alternative conceptions of the "problem" of human trafficking.

Implementing the fourth question of WPR analysis first requires troubling the unquestioned elements and assumptions of the problematization. In the criminality problematization the "problem" is represented to be unchecked crime requiring state intervention in the form of enforcement and incarceration. The assumption is that the carceral impulse, which is reflected by increasing sentences and facilitating prosecution, leaves both victims and the community safer. Placing traffickers behind bars is assumed to be the deserved response of committing crimes. It is rooted in an understanding of justice as retributive, wherein punishment is given to those who merit it, in combination with a consequentialist belief "that we punish criminals in order to bring about a particular good result beyond, or instead of, merely giving criminals their just deserts" (Levy 2014, 633-634). This "good result" can take several forms, such as the increased safety of the community who can now no longer be impacted by the behaviour of the incarcerated individual. The "good result" can also be the rehabilitation of the perpetrator who is equipped to reenter society upon serving their prison sentence. It can also be closure and justice for victims of crime who see their offenders punished for the actions they have committed. A presupposition of the criminality problematization is that the criminal justice system is in fact "just" in its doling out of deserved and appropriate punishments of offenders who can be effectively reintegrated into society after serving their sentence, and that this process leaves victims satisfied that justice has been done.

Assuming that the criminal justice system effectively and fairly punishes and rehabilitates offenders silences the voices of many who critique the system not only for its high rates of recidivism, but also for the over-incarceration of Black and Indigenous peoples (Western and Pettit, 2010; Walmsley, 2003; Zehr, 2004; Maynard, 2017). The assumption that prosecuting and incarcerating perpetrators vindicates victims is also under question in Canada and there are many who argue that the retributive system often excludes victims and can further victimize them throughout the juridical process (CRCVC, 2011). It also assumes that seeing their offender put in prison will bring closure to victims. However, for many this is not the case — the damage done requires much more than mere punishment of the offender to bring healing to victims. A retributive approach to justice fails to account for the many inadequacies of punishment to restore justice to both victims and perpetrators. The focus of the criminality problematization on the retributive model silences alternatives to incarceration. One such alternative is found in restorative justice models, which consider crime to be more than just the deviant behavior of morally inferior individuals requiring reprimand. For restorative justice theorists crime is the result of "a wound in the community, a tear in the web of relationships" (Zehr, 2014).

Restorative justice theorists maintain that crime is a consequence of the failure of the community to function properly and criminal behaviour is the result of damaged relationships — as such, they require discussion, acknowledgement of guilt on the part of the perpetrator, forgiveness on the part of the victim, and the provision of reparations (Zehr, 2014). Incarceration is only a last resort in restorative justice approaches and it is only those who are unwilling to acknowledge the harm they have done and take responsibility for their crimes who are excluded from restorative models. Incarceration as the blanket strategy to punish the deviant individuals

who commit crime is an assumption of the retributive framework. When these assumptions about the nature of crime and justice are questioned, there emerges an alternative framework which assumes that there are socioeconomic factors pushing individuals into lives of crime. A restorative justice lens thereby opens the possibility for considering the role of structural oppression, poverty, and marginalization in the creation of criminality. From this perspective we can question why and how individuals become human traffickers, which complicates straightforward narratives of deviance. Complicating narratives of deviance is also important for instances where the categories of victim and perpetrator overlap. This is of particular importance when considering cases of sex trafficking, as there are commonly instances where trafficking victims act as recruiters for their trafficker or even become traffickers themselves, creating blurry categories of victimhood and culpability (Perrin, 2011). The overlap of victim and offender roles also troubles the victim/offender dichotomy assumed by the criminality problematization.

The second part of the fourth question of WPR requires identifying the silences in the problematization by identifying the perspectives that are marginalized and invisibilized by the problem representation. This requires identifying different perspectives of the "problem" through which the inevitability of the criminality problematization of human trafficking is troubled and alternative problem representations are revealed. I suggest that by considering the voices of sex workers, migrant workers, racialized and Aboriginal women, and the financially underprivileged the "problem" can be reconceptualized as a labour rights "problem," a "problem" of individual vulnerability, or a socioeconomic (in)justice and oppression "problem."

Trafficking as a labour rights "problem" / The labour rights problematization

Considering the perspectives of migrants and sex workers, it is possible to conceptualize human trafficking as a labour rights "problem." From this perspective, labour trafficking is the result of inadequate oversight of the Temporary Foreign Worker Program and insufficient protections for migrants with precarious status in Canada. This lens would suggest that if the state were to expand labour rights and provide more oversight of employers, labour trafficking would be reduced. This representation of the "problem" of human trafficking can also account for the perspective of sex workers who argue that sex trafficking is a direct consequence of the marginalization of the sex industry. These sex workers argue that the criminalization of the sex industry forces sex work into the margins of society and prevents regulation of the industry. For advocates of regulation of the sex industry sex work is a legitimate job choice that ought to be regulated and should be subject to labour protections like all other jobs. This problematization suggests that providing sex workers with labour rights and protections would make it much more difficult for traffickers to exploit women in the sex industry. From this approach, all human trafficking includes labour trafficking as a component, and sex trafficking should be considered to be a form of labour trafficking. Considering this problematization, policy seeking to address the "problem" would require decriminalizing sex work. Decriminalization, it is argued, would allow for sex workers to protect themselves and each other from exploitation and have greater access to police protection and the ability to report instances of abuse, which would make sex trafficking easier to identify and report.

Trafficking as a vulnerability "problem" / The individual vulnerability problematization

Another perspective on human trafficking emphasizes recruitment as the nexus of trafficking and identifies the prevention of the recruitment of individuals into trafficking relationships as the key to resolving the issue in Canada. The prevention perspective shifts the analytical focus from post-victimization in the prosecution and protection phases to emphasize the prevention of recruitment by strengthening communities and reducing individual vulnerability. In this frame, vulnerability is conceptualized as the result of social and political conditions as opposed to a lack of knowledge of and preparedness to resist crime. In cases of sex trafficking, a prevention perspective considers the factors that create individual vulnerability to victim recruitment tactics used by traffickers. In sex trafficking, where there is an overrepresentation of women, gender is a vulnerability factor. Other factors include but are not limited to: poverty, loneliness, isolation, an unstable home, and previous exposure to violence or abuse. While the contributing factors of vulnerability are innumerable, "[p]overty, the desire for love, and the desire for money, in that order, are the three key vulnerabilities that permit domestic sex traffickers to recruit and control victims" (Perrin 2011, 61). Another important factor to consider is an individual's status in Canada. Inadequate access to pathways for permanent residency and citizenship leave migrants with precarious status and fewer employment options. As a result those who are not permanent residents or citizens are more vulnerable to be trafficked for either sex or labour. When this problematization is expanded to consider the role of structural oppression in producing vulnerability not only in individuals but in entire communities, this becomes the oppression problematization of human trafficking.

Trafficking as a social justice "problem" / The oppression problematization

From a social justice perspective it is the material conditions faced by marginalized groups that places them at risk of becoming victims of trafficking, and therefore raising awareness of the crime does not constitute a sufficient prevention strategy. Prevention from this perspective would require discovering the conditions that create vulnerability to trafficking and addressing the oppressions which create them. Problematizing human trafficking as a social justice "problem" conceptualizes human trafficking as the result of multiple intersecting factors of oppression wherein each of these oppressions represent silences in the criminality problematization.

Vulnerability to victimization can be the result of gender oppression in a patriarchal culture that objectifies, sexualizes, and marginalizes women. Economic oppression also has a significant role in the creation of individual and community vulnerability. These two oppressions often overlap — the earning potential of women is stifled not only through continued gender wage disparity which rewards men more highly than women for equal work, but also in the continued exclusion women face from more lucrative careers and positions due to discriminatory hiring and promoting. These issues are further compounded by intersecting oppressions experienced by racialized women who face racial oppression and migrant women who experience racial oppression in addition to the pressures of insecure status and linguistic barriers to economic and social inclusion.

For Aboriginal women in Canada, racial oppression is magnified by colonial oppression. A criminality problematization of sex trafficking silences the role of the criminal justice system in reinforcing the settler colonial state and colonial oppression. As Kaye (2017, 21-22) argues,

> *criminalization and increased police visibility address neither societal vulnerabilities nor the reality that violence is rooted in multiple and overlapping systems of dominance that produce spaces of dehumanizing poverty, restricted choice, isolation, and commodification. Rather than reduce violence, criminalization produces another version of a long history of colonial state violence.*

Kaye proposes that the colonial state committed trafficking offences against the indigenous inhabitants of the territory, and that the legacies of colonialism such as poverty and the effects of intergenerational trauma create the conditions of vulnerability that fuel human trafficking. When considering the overrepresentation of Aboriginal women in the sex industry as well as in the criminal justice system, (Hunt, 2013; The Correctional Investigator Canada, 2015) Kaye suggests that responding to the sex trafficking of Aboriginal women in Canada requires decolonization and not the bolstering of the settler-state and its institutions which occurs within the criminality problematization.

The oppression problematization of human trafficking suggests that the "problem" of human trafficking is a social justice "problem" whose solution is found in the reduction of the vulnerability of marginalized communities. The solution to human trafficking according to this conceptualization is to increase gender, economic, racial, and status equality in Canada. This representation of the "problem" is further discussed in Chapter 6, where it is expanded into what I call the inequality problematization, which considers the concerns of the oppression problematization in conjunction with the individual vulnerability problematization and the labour rights problematization.

Conclusion

The WPR analysis of Canadian policy texts reveals that human trafficking is represented to be a "criminality problem." The criminality problematization constructs human trafficking as a criminal act that is committed by deviant individuals against individual victims and the community as a whole which merits retributive punishment to bring justice to perpetrators, protect the community, and deter others from committing this crime in the future. It assumes the inherent justice of the retributivist, consequentialist criminal justice system and presumes crime as an amoral, asocial, and self-interested behaviour that is exclusively committed by deviant individuals. The role of prior victimization in producing criminal behaviour is not considered and the victim/perpetrator dichotomy is solidified without being properly questioned. Additionally, the failure of the criminal justice system to rehabilitate perpetrators is left untroubled by the criminality problematization.

When the criminality problematization is questioned according to questions two and four of WPR alternative perspectives of the "problem" reveal that the role of systematic marginalization through precarious migration status, insufficient labour protections, capitalist patriarchal oppression, and colonialism in the production of human trafficking in Canada has been silenced. What these other possible problematizations reveal is that the "problem" of human trafficking is not limited to criminal deviance and therefore trafficking cannot be addressed by criminal justice policy alone. Producing the "problem" of human trafficking as instead rooted in marginalization, vulnerability, sexism, poverty, and racial oppression has the potential to shift responses to trafficking from the enforcement emphasis on prosecution and protection to prevention. In order to prevent trafficking in persons, anti-trafficking responses much look

beyond "tough-on-crime" law and order approaches and be willing to invest in social policy to reduce vulnerability and poverty while adopting strategies to reduce the harms experienced by women in the sex industry. Finally, policy must address the structural inequality and oppression that contributes to the presence of human trafficking in Canada. In response to these alternative representations of the problem, I suggest problematizing human trafficking in Canada as an "inequality problem," which will be discussed in chapter six. This alternative problematization is also informed by the harms of the criminality problematization which are revealed in the analysis of the discursive, subjectification and lived effects uncovered in chapter five.

Chapter 4: Genealogy of the Problematization

"At any given time, it is believed that worldwide at least 2.45 million people are forced to perform degrading, dehumanizing and dangerous work in conditions akin to slavery. […] This crime is taking place in Canada, where human trafficking for the purpose of sexual exploitation is, to date, the most common manifestation of this crime and where the vast majority of the victims are Canadian women and children." - National Action Plan to Combat Human Trafficking (Public Safety Canada 2012, 4)

"This is a moral crusade, dressed up as concern for women […] If we look at Canada's attention on trafficking over the past ten years, it's telling that our total focus has been on sex trafficking."
- Former RCMP Superintendent John Ferguson (as quoted in Kimball, 2014)

This chapter performs a genealogy of the criminality problematization of human trafficking in Canada. A history of Canadian policy reveals that while human trafficking policy was first explicitly introduced following the Palermo Protocol there was a discursive precedent in White Slavery — a nineteenth-century concern that young white women were being sold into sexual slavery by racialized men, and a consequence of a growing xenophobia in the face of an increasingly diverse world. The expansion of the definition of human trafficking in Canada to include labour trafficking and male victims occurred in tandem with the international community and the United Nations trafficking protocol of 2000. Consequently, the representation of human trafficking as "problem" of criminal deviance is the result of the discursive affinity between human trafficking and sex trafficking, and contains its roots in the racist fears of the white slavery panic.

WPR analysis involves the deployment of both Foucauldian archaeology and genealogy. Chapter four contains a deployment of Foucauldian archaeology, which "draws attention to the embedded knowledges […] that underpin contemporary practices" (Bacchi and Goodwin 2016, 46) to reveal the criminality problematization of human trafficking in Canadian policies. This

chapter utilizes Foucauldian genealogy to answer the third question of WPR analysis, which asks how “has this representation of the "problem" come about?” (Bacchi and Goodwin 2016, 20) Foucauldian genealogy requires “genealogical mapping of the discursive practices involved in the production of specific governmental problematizations in selected policy proposals” (*ibid.,* 37). In tracing the history of a discourse, Foucauldian genealogies reveal “the battles that take place over knowledge” (*ibid.,* 46) and function as “records of *discontinuity*” (*ibid.*) which “can make the unfamiliar familiar.” (*ibid.*, 47) The goal of such analysis is to reveal how the problem representation found in a policy text is produced by a specific historical context and from particular practices that allowed it to gain primacy. Foucauldian genealogy thereby allows us to question the perceived inevitability of the criminality problematization of human trafficking and opens the possibility of reconceptualizing the “problem.” In so doing genealogy gives voice to subjugated knowledges revealing how events, practices, and relations have led to their invisibilization and marginalization.

The genealogy of Canadian human trafficking as a policy “problem” reveals an emphasis on sex trafficking over other forms of human trafficking as a consequence of a historic affiliation of prostitution with sexual slavery. This emphasis exists despite evidence that labour trafficking is as prevalent, if not more so, than sex trafficking in Canada. This has particularly deleterious effects because it has both diverted attention from labour trafficking and strengthened the discursive link between sex trafficking and sex work/prostitution, which has been contentiously used as justification to alter prostitution legislation. The history of conflating human trafficking with sexual slavery, and that of white women in particular, invisibilizes other forms of trafficking and allows the exploitation of migrant workers to continue with relative impunity in Canada. The

emphasis on sex trafficking as the result of unchecked criminality justifies policy responses that focus on punishing criminals rather than identifying and responding to the root causes of exploitation.

The debate on prostitution policy is split between those who view prostitution as violence and consequently seek to end the industry, and those who think of it as work requiring regulation and workplace protections. As previously discussed, when extended to the debate on sex trafficking prohibitionists consider all prostitution to be inherently exploitative and therefore no different from sex trafficking, whereas regulationists and sex worker rights groups insist on a distinction between sex trafficking and sex work.[15] The terminology used in discussing these concepts is also diverse and will vary depending on the situation. Prostitution is the term used in most legal texts, and is also the preferred terminology of prohibitionists who refer to 'prostituted persons' and 'victims of trafficking.' Regulationists do not use the term 'prostitute,' but instead refer to 'sex workers' working in the 'sex industry.' As discussed in chapter one, according to international and Canadian legislation, a victim of sex trafficking is a prostitute/sex worker who has experienced force, fraud, or coercion as an inducement to sell sexual services for the financial benefit of another individual. It is important to note that sex trafficking and sexual assault are separate issues: a victim of trafficking can experience rape and consensual sex outside of their trafficking experience, as can sex workers outside of the sexual services they sell.

This chapter will reveal that the emphasis on sex trafficking over other forms of human trafficking in Canadian policy is an inheritance of the late nineteenth-century white slavery panic, which is a discursive precedent to the modern conception of human trafficking and serves

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[15] See discussion in Chapter One

to cohere nationalist and morality discourses. As demonstrated in the previous chapter, human trafficking in Canada is represented as a "criminality problem" whose solution lies in stricter policing, tighter immigration policy, and expansion of prosecution accompanied by increasingly severe sentences. The shift in Canadian prostitution policy from regulation to prohibition in response to white slavery is a precursor to the current policy response to human trafficking.

Canadian Responses to Prostitution and Human Trafficking

Khan (2018) divides Canadian perspectives on sex work into three categories which have been present throughout the country's history. First, sex work was considered a necessary evil wherein sex workers were thought of as "socially useful deviants" (68) who functioned as outlets for the natural passions of men. In this way "the necessary evil" perspective depicts "sex work as serving the public good" (*ibid.*). An alternate conception to this is that of sex work as an inevitable evil, which depicts "the sex worker as a social nuisance and contagion" (*ibid.,* 69). This perspective maintains that while sex work is undesirable it cannot be eradicated, and consequently those who hold this position sought to minimize the harms of the industry through its regulation and restriction. Both the necessary evil and inevitable evil stances require responding to sex work with regulatory policy, and were thus regulationist responses. Khan also presents a third perspective which considers sex work a social evil that is inherently violent towards "the victim sex worker" (*ibid.*) and advocates for the prohibition of all activity related to the sex industry. Nineteenth-century Canadian policy was torn between these three perspectives, leading to tension between regulatory policy prohibitionist approaches which sought to eliminate prostitution as a social evil. It is of note that despite diverse opinions on the exact nature of

prostitution and appropriate policy responses all three perspectives considered prostitution to be morally undesirable.

The earliest responses to prostitution in colonial Canada were prohibitive and focused on the outlawing of brothels and street prostitution. Although similar to British policy responses to prostitution Canadian policy was more severe and included provisions against "habitual frequenters and inmates of bawdy houses" (Backhouse, 1985, 390) as well as being positioned such that "it was the "status" of being a prostitute that was unlawful" (*ibid.*, 299). The debate on prostitution policy truly began following the passing of the Canadian *Contagious Diseases Act* (CDA) in 1865. The CDA represented a new regulation-based approach to prostitution in Canada with the goal reducing the exposure of military men to sexually transmitted infections. It required the medical examination of prostitutes accused of carrying venereal disease who were then sent to a hospital where they were detained "for up to three months" (*ibid.*) and given compulsory medical treatment. The task was given to police officers, the enforcers of the criminal justice system, to identify suspected or accused diseased prostitutes "who could then choose to submit voluntarily for a medical examination or be arrested" (*ibid.*).

The CDA constructed prostitutes' bodies as vessels for disease which carry the potential to infect the male population and their morally upright wives and the family. The assumption behind this was a "boys will be boys" approach to male sexuality which assumed that men in the military could not be expected to refrain from sexual relations with prostitutes. As such, the CDA was designed to protect purchasers from venereal disease, which it accomplished through the vigilant policing and forcible confinement of prostitutes whose moral deviance was tied to illness and infection. The CDA was specifically designed to not only protect military men from disease,

but also to prevent disease from infecting their wives and thereby tainting virtuous women and bringing degeneration into the family. As discussed earlier in this chapter, the perception of prostitution as an inevitable evil came with the belief that while prostitution cannot be eradicated, its effects can be mitigated through regulation or restriction (Khan, 2018). The CDA represented prostitution as an inevitable evil whose negative effects required mitigation through regulatory policy by controlling prostitutes' bodies.

The CDA was short-lived in Canada and following significant public debate, as well as a failure to secure hospitals which could function as repositories for diseased prostitutes, it was left to expire without renewal in 1870 (Backhouse, 1985). The return to prohibition was reflected in the new Canadian *Criminal Code* of 1892 which criminalized "every aspect of prostitution except the actual and specific act of commercial exchange for sexual services" (*ibid.*, 395) despite leaving prostitution technically legal. Canadian policy shifted to prohibit living on the avails of the prostitution of another person or the keeping a bawdy house and allowed for the arrest of vagrants.[16] While the CDA was interested in restricting prostitutes to reduce disease, these new prohibitive policies sought to eliminate elements relating to prostitution in order to reduce the public nuisance associated with prostitution. The new policies would remove all indications of the sex industry from communities by eliminating brothels and arresting vagrant individuals suspected to be prostitutes.

This new prohibition approach was heavily influenced by the perspective of prostitution as a social evil — a position taken by the Canadian social purity movement which opposed

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[16] The definition of vagrancy included "being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;" (University of Toronto Libraries, n.d.)

prostitution as "a glaring illustration of promiscuity and the commercialization of sexuality" (*ibid.*, 393). The social purity movement in late nineteenth-century Canada believed that immorality at the individual level would extend out to contaminate society as a whole. Social purity "activists did not separate physical health from moral health," (Valverde 2015, 1) and therefore considered "[d]rinking, smoking, and lewd entertainment [as] not only threats to individual health/purity but also symptoms of national and racial decay" (*ibid.*). This shift required a novel approach to male sexuality which demanded virtuous sexual behaviour of both sexes and deviated from the past "sexist double standard, which winked at male sexual adventures" (*ibid.*). Social purity advocates were strengthened by the emergence of the white slavery panic, which they were able to mobilize in support of prohibitionist policy. The "white slavery" narrative enabled social purity advocates to emphasize the evils of prostitution and to justify the prohibition of immoral behaviours which were perceived as threats to the nation because of the belief that individual vices could expand to poison the entire community.

White Slavery in Canada

In the nineteenth-century a moral panic about the emergence of white slavery began to spread across Europe and North America. The narrative of the perversity and prevalence of white slavery was propagated through sensationalist journalism such as W.T. Stead's "The Maiden Tribute of Modern Babylon." Stead's 1885 publication depicts a new criminal enterprise centered on the buying and selling of the bodies and virtue of young girls — an "unnatural combination of slave trade, rape, and unnatural crime" (173). The article describes white slavery as the acquiring of young virgins without their consent and coercing them into prostitution: "daughters and sisters purchased like slaves, not for labour, but for lust" (*ibid.*, 166). The connection is further stressed

by the connection made between the victims of the white slave traffic and prostitutes in general: "Maidens they were when this morning dawned, but to-night their ruin will be accomplished, and to-morrow, they will find themselves within the portals of the maze of London brotheldom" (*ibid.*, 165). Through depictions like Stead's, the white slavery narrative created a discursive link between sex work and sexual slavery by depicting all prostitutes as possible victims of white slavery. This was further strengthened by those who "insisted that most women would never choose sex work for financial reasons. Instead, they argued, unscrupulous men, especially immigrants, forced them into prostitution" (University of Toronto Libraries, n.d.). In the white slavery narrative, the perpetrators were primarily believed to be racialized men:

> *In Canada in the late nineteenth and early twentieth centuries, the National Committee for the Suppression of the White Slave Traffic, supported by the National Council of Women and the Women's Christian Temperance Union, identified Chinese and Japanese men as the purported leading perpetrators of the white slave trade — that is, the traffic in white women's bodies.*
>
> *(Maynard 2018, 284)*

The discursive affinity between sexual slavery and prostitution as depicted by the white slavery narrative reinforces the representation of prostitution as a social evil, and justifies prohibitionist policy responses to prostitution. However, the response to white slavery was not limited to prostitution policy. In addition to restricting prostitution, states and activists encouraged women not to travel or migrate in an effort to protect women from falling victim to the sensationalized horrors of white slavery. Canadian feminists like Nellie McClung called for stricter criminal justice responses against third parties in order to address both prostitution and white slavery:

> *If prostitution is proven against a house, that house is closed for one year, the owner losing the rent for that time. This puts the responsibility on property*

> *owners, and makes people careful as to their tenants. Every owner forthwith becomes a morality officer. This is the greatest and most effective blow ever struck at white slavery.*
>
> *(McClung 1915, 76)*

As the above quote illustrates, the prohibitionist perspective on prostitution in Canada opened the possibility of addressing the role of purchasers and exploitative third parties in the sex industry, however in practice the law was only enforced against sex workers themselves (Backhouse, 1985). Consequently, the policy response to white slavery problematized prostitutes' and women's sexual behaviour in lieu of considering the gendered and racialized social and economic factors which acted as pathways into prostitution.

While the state response was to control women in the sex industry (Doezema 2000) civil society engaged in "bourgeois philanthropy" (Kaye 2017) to prevent white women from entering prostitution and to assist and rehabilitate prostitutes and the victims of white slavery. This philanthropic work was done by Canadian women who formed charitable organizations that "employed agents to meet the immigrant women arriving at major Canadian ports and help them to secure respectable lodging and employment. Others actually set up shelters to house former prostitutes and women who were believed to be prime candidates to enter the trade" (Backhouse 1985, 415). These efforts by Canadian women aligned with the social evil understanding of prostitution that considers all prostitutes as victims to be rescued and rehabilitated. This stance was then used to justify overriding the freedom of those prostitutes who had been chosen to be rehabilitated, as was the case of one Toronto shelter where "women were required to stay for 12 months, during which time they were not permitted any contact with their former friends and associates," (*ibid.*, 415-6) and were sentenced to prison if caught escaping. The rehabilitation

efforts of Canadian philanthropic organizations ultimately failed and the state introduced women's prisons as an alternative to the defunct shelters and programs. Incarceration and rehabilitation became entwined through the use of prisons as sentences for women facing prostitution-related charges who "could then receive the benefit of special correctional programs […], whether they wished it or not" (*ibid.,* 416). The rehabilitation element of prohibitionist response was subsumed by the criminal justice system and incarceration was mobilized as an essential tool in the protection of women from prostitution and the fight against white slavery.

The rehabilitation of prostitutes through the prison system and the prohibition of all prostitution-related activities in the *Criminal Code* was also combined with an effort to prevent white slavery by focusing the child welfare system on adolescent girls (Backhouse, 1985). In order to prevent girls from entering into prostitution the Canadian government "began to enact a rash of statutes to remove young girls from the custody of parents who lived in a dissolute manner" (*ibid.*, 418) and move them into state or foster care. Prevention policies began to be used as a justification for giving "the courts, the police, and Children's Aid officers [authorization] to interfere with the lives of young girls, wrench them from their families and compel them to submit to forced detention in state custody for years at a time" (*ibid.*, 418-9). Policies were also put in place to sterilize criminals, including prostitutes, to prevent their giving birth to children who would one day grow to emulate the undesirable behaviour of their parents. (*ibid.*) According to Backhouse (1985) these policies disproportionately impacted the lower class while state efforts at rehabilitation and prevention failed to address the root causes of prostitution or white slavery.

There was a distinctly nationalist and racist element to the white slavery narrative which emphasized the foreignness of white slavers and the whiteness of their victims. Doezema argues that racial panic triggered by “the huge increase in migration between 1860 and the outbreak of the First World War” (Doezema 2000, 39) played a key role in the white slavery myth. The white slavery panic was upheld by a racist desire to protect white women from the dangerous foreigners engaged in "the abduction and relocation of white European and North American women for prostitution in South America, Africa, and Asia” (Kaye 2017, 43). The desire to protect racial purity was coupled with the goal of safeguarding the moral purity of white women and, by extension, the family and national identity (Doezema 2000, 40). In Canada specific policies were adopted in order to prevent white slavery, such as “Saskatchewan's [1912] "Female Employment Act,” [which] criminalized any immigrant Chinese business owner who hired a white female employee’’ (University of Toronto Libraries, n.d.). The goal of protecting purity, innocence, and whiteness required not only protection from the foreign Other, but from the Indigenous “Other” within the nation’s borders, and as such the white slavery narrative was used as a justification in the colonial project of the settler state (Kaye, 2017).

From White Slavery to Human Trafficking

The anti-white slavery movement lost momentum with the onset of World War I in 1914, due largely to the decline of European migration (Doezema 2000, 30), but it did not disappear from view entirely. The anti-white slavery campaign first made its way into the international arena in 1904, yielding a series of conventions and policies in the following decades adding to and altering international response to the issue.

The first international legislation on white slavery was the 1904 *International Agreement for the Suppression of the 'White Slave Traffic,'* which was followed by the 1910 *International Convention for the Suppression of the White Slave Traffic.* The transition in rhetoric from white slavery to human trafficking began with the League of Nations 1921 *International Convention for the Suppression of the Traffic in Women and Children*, which was followed by the 1950 *UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*. These documents exclusively addressed the slavery or trafficking of women and children for the purposes of prostitution, and it was not until the 2000 United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (The Palermo Protocol), that a definition of human trafficking as distinct from prostitution began to take shape.

The White Slave Traffic (1904 - 1921)

The 1904 *International Agreement for the Suppression of the 'White Slave Traffic'* emphasizes surveillance and coordination between countries to identify criminal activity and facilitate repatriation of victims to their country of origin. This agreement considers trafficking to be "the procuring of women or girls for immoral purposes abroad," (League of Nations 1904, 86) emphasizing a conception of the "problem" of trafficking, which required border crossing, to be the consequence of the moral failings of deviant criminals. Whereas the 1904 agreement focused primarily on the identification and treatment of victims through surveillance and philanthropic organizations, the 1910 *International Convention for the Suppression of the White Slave Traffic* expands on the 1904 agreement by shifting increasing focus onto the figure of the trafficker and ensuring that trafficking offences are punished. In the 1910 convention the definition of

trafficking was expanded to having "hired, abducted or enticed, even with her consent, a woman or a girl […] for immoral purposes" (League of Nations 1910, 103). While the definition of trafficking continued to consider prostitution through a morality lens, it also included a new prohibitionist bent which insisted that a woman cannot consent to being prostituted for the benefit of another, regardless of her age. The convention also emphasized the criminal justice focus of international trafficking agreements through the inclusion of articles that make trafficking an extraditable offence, and that require states to alter preexisting legislation to ensure that trafficking offences are punished with sufficient severity — requiring at least imprisonment and accounting for aggravating factors.

Considered together these texts depicted white slavery as the result of deviant foreign men kidnapping helpless women and girls who they then moved across borders to be forced into prostitution against their will. The women in this representation are not agents but helpless victims in need of rescue by the state. The solutions suggested by these texts are increased governmental surveillance, the extradition of foreign white slavers, and the adoption of mandatory minimum punishments for these crimes. These texts do not allow for the existence of voluntary sex work or willing migrant sex work, nor do they consider that white slavery may have occurred for any purpose other than prostitution.

Traffic in Women and Children (1921-2000)

In 1921 the language of white slavery shifted to 'the traffic in women and children' with the *International Convention for the Suppression of the Traffic in Women and Children*. This convention built on that of 1910, with the parties agreeing to place heavier emphasis on identifying and punishing those who commit trafficking offences. The 1921 convention also

called for further surveillance and supervision at borders, particularly at ports and railway stations, in order to identify victims. These locations were also required to place "notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance" (League of Nations 1921, 5-6). This implementation of the discourse of white slavery and trafficking was used to justify increased border control and augmented immigration surveillance.

The convention also required parties to increase "licensing and supervision of employment agencies and offices, to prescribe such regulations as are required to ensure the protection of women and children seeking employment in another country" (League of Nations 1921, 5). The convention of 1921 and the following 1933 *International Convention for the Suppression of the Traffic in Women of Full Age*, emphasized extradition and prosecution of offenders in addition to prevention efforts centred on surveillance and management of women's movements both between countries as well as between the home and the workplace. One constant throughout the progression of these conventions was the definition of the traffic in women referring to procurement for "immoral purposes," through deception or other means, where the consent of the woman is irrelevant in determining whether an offence had been committed.

These documents reveal a consistent emphasis in trafficking discourse on the surveillance and control of women and racialized persons as the correct response to the "problem" of human trafficking. There is no mention of the men who purchase the services of these women — instead the emphasis is placed on rescuing helpless victims from villainous foreign men who must be

strictly punished through the criminal justice system, ideally through extradition, which ensures the punishment of offenders and the racial and moral purity of the nation.

The longest-standing international document on human trafficking is the 1950 *United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* which was drafted by the United Nations and was much more extensive than its predecessors in addressing trafficking. In this convention the definition of trafficking in persons was extended to include the possibility of male victims of trafficking, although trafficking continues to refer only to sex trafficking. The convention stipulated that the crimes to be punished by this document were three-fold: first, the procurement of a person for prostitution or exploitation of another's prostitution, regardless of having received the consent of said person; second, keeping, managing, or financing a brothel, or renting "a building or other place or any part thereof for the purpose of the prostitution of others" (United Nations 1950, 3); and finally, the convention expanded both the victim and perpetrator categories by adding greater detail to what constitutes a trafficking offence, strengthening the discursive affinity between sex trafficking and sex work in the process. It is noteworthy that this convention also introduced third party offenders, as the punishment for the above crimes applied to traffickers and any individual who assisted them in committing these offences.

In order to facilitate and coordinate the international criminal justice response to trafficking offences the 1950 convention required parties to keep a record of trafficking convictions which would not only illuminate possible instances of reoffending but also ensure the ability to "[disqualify] the offender from the exercise of civil rights" (*ibid.*, 4). Information sharing was intended to create a database of information on trafficking offences to facilitate the

punishment of traffickers and the prevention of future offences. In the name of prevention, the parties were also called to "[supervise] employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution," (*ibid.*, 6) reflecting the continuity of the role of surveillance in the protection of potential victims.

Another component of international coordination as stipulated in the convention was border control. The convention required parties to focus on the surveillance of both immigrating and emigrating persons at borders as a means of reducing trafficking in persons. Parties agreed to: "make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while *en route*;" (*ibid.*) "arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;" (*ibid.*) "take appropriate measures to ensure supervision of railway stations, airports, seaports and *en route*, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;" (*ibid.*) and to "take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, *prima facie*, to be the principals and accomplices in or victims of such traffic" (*ibid.*). As such the document followed in the footsteps of the preceding international conventions and agreements by merely adding detail and increasing the requirements of the criminal justice-centred response to trafficking.

Where the 1950 convention diverged from previous texts was in its depiction of and response to prostitution, which was more detailed and complex than prior international agreements and conventions. Morality remained in the language of the text, referring to

trafficking as an "accompanying evil" (*ibid,* 3) of prostitution, and prostitution itself was depicted as "incompatible with the dignity and worth of the human person and [a danger to] the welfare of the individual, the family and the community" (*ibid.*). Similar to early prohibitionists, the 1950 convention considered prostitution inherently at odds with humanity and as such fundamentally harmful and oppressive to the individuals involved and the community at large. It is of note that this view was consistently represented by forbidding certain restrictions on prostitutes, requiring Parties to

> *repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject to either special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.*
>
> *(*ibid., *4)*

The convention also contained enriched prevention and protection policies which called for the use of "public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention" (*ibid,* 5). This also revealed the prohibitionist bent of the text, which sought to deter not only trafficking but prostitution in general. It is for this reason that Canada, out of a reluctance to make prostitution illegal, never signed the convention out of a refusal to adopt the prohibitionist position on prostitution (Library of Parliament, 2014). Canada did, however, ratify the 1979 UN *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), which contained an article that "specifies that states parties must take all appropriate measures to suppress trafficking in women and the "exploitation of prostitution of women"" (*ibid*, 2).

The Palermo Protocol

After the passing of the 1950 convention the issue of human trafficking lay dormant in international legislation until the Palermo Protocol of 2000. The Palermo Protocol is a supplement to the *United Nations Convention against Transnational Organized Crime*, and is therefore is not a human rights protocol but a criminal justice tool with the goal of reducing transnational organized crime (MacIntosh 2006, 414). The protocol's approach to trafficking is radically different from that of the 1950 convention as it broadens the scope of human trafficking to include sex, labour, and organ trafficking, in addition to removing the language around prostitution which "strongly condemns all forms of prostitution as a violation of individual dignity and welfare, whether that prostitution is voluntary or not" (Library of Parliament 2014, 1).

The Palermo Protocol was the result of Argentina's lobbying for international legislation on child trafficking, child prostitution, and child pornography. Argentina became frustrated waiting on negotiations to include this issue in the *Convention of the Rights of the Child* and instead began to lobby "strongly for trafficking to be dealt with as part of the broader international attack on transnational organized crime" (Gallagher 2001, 982). Alongside the interest of many countries in addressing human trafficking and migrant smuggling, the push from Argentina led to the beginning of negotiations on a protocol to address human trafficking to be added to the *Convention against Transnational Organized Crime* (2000). The result was the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, hereafter referred to as the Palermo Protocol.

The Palermo Protocol negotiations were fraught by disagreement between two NGO coalitions representing the opposing sides of the prostitution/sex work debate: the International Human Rights Network (IHRN) and the Human Rights Caucus (HRC). The IHRN was led by the Coalition Against Trafficking in Women (CATW) and held a prohibitionist stance which desired that the protocol adopt "measures to make prostitution illegal and to punish clients as well as brothel owners and other 'third parties'. If all prostitution is violence, it follows that anyone involved in helping a woman move from one place to another to engage in sex work is a trafficker" (Doezema 2005, 67). Conversely, the HRC, which was led by the Global Alliance Against Trafficking in Women (GAATW) in conjunction with the International Human Rights Law Group (IHRLG) and the Asian Women's Human Rights Council (AWHRC), distinguished between sex work and trafficking, considering the latter as "characterized by the use of force during the migration process and/or the consequent labour or services" (*ibid.*, 68). This position led to "the HRC strategy of seeking to remove all mention of prostitution from the proposed definition of trafficking" (*ibid.*, 75). The two NGO coalitions engaged in extensive debate that eventually led to a compromise wherein the definition of human trafficking in the protocol "does include a specific reference to 'exploitation of prostitution'" (*ibid.*, 79) and "the use of force or coercion is included as an essential element of trafficking" (*ibid.*). This definition was the centre of the negotiations between the two NGOS as "an attempt to decide […] at an international level, the meaning of prostitution through the discourse on trafficking" (*ibid.*, 72).

The definition attempts to overcome the different conceptions of consent to prostitution that are held by the prohibitionist and regulationist camps. For the prohibitionists, consent to prostitution is not possible because in their understanding it is inherently violent and exploitative,

and a person cannot consent to their own harm or exploitation. For this group the inclusion of prostitution in the definition of human trafficking is essential. On the opposing side, regulationists emphasize the existence of voluntary sex work and argue that the emphasis on consent in the Palermo Protocol definition "offers nothing to sex workers whose human rights are abused, but who fall outside of the narrowly constructed category of 'trafficking victim'" (*ibid*, 80). For Doezema and the Global Network of Sex Work Projects (NSWP), consent is used to reinforce the voluntary/forced dichotomy of sex work/sex trafficking, and all of these concepts require overhauling in order to address the needs of sex workers who experience abuses which fall outside of the construction of sex trafficking. The dependence on consent allows for a continued reading of prostitution and trafficking as inherently linked because of the tensions around the concept of consent itself. When one considers consent as requiring complete freedom to make any decision, there are those who argue that the limitations on choice which may lead to an individual's decision to enter the sex trade make true consent impossible. This narrowed conception of consent facilitates the continued discursive linking of sex work and sex trafficking through a prohibitionist lens.

Although the Palermo Protocol does contain references to the prevention of trafficking and protection of trafficked persons, these provisions are not considered with equal importance to criminal prosecution and partnership in law enforcement, information sharing, and border control. Ratifying the Palermo Protocol requires that states implement criminalization strategies which align with the document, but despite the protection of victims being given its own subsection of the protocol this segment "contains very little in the way of hard obligation" (Gallagher 2001, 990). Prevention also is given a subsection, however it contains "no reference

to the acknowledged root causes of trafficking" (*ibid.,* 995). Both of these sections were debated throughout negotiations, and there was lobbying for provisions "protecting trafficked persons from prosecution for status-related offences such as illegal migration, working without proper documentation, and prostitution" (*ibid.*, 990-1). This is important in light of the contention of sex workers that "[historically] anti-trafficking measures have been used against sex workers themselves, rather than against 'traffickers'" (Doezema 2005, 62). However, "the Ad-Hoc Committee did not directly address the problem of national anti-trafficking measures being used to discriminate against women and other groups" (*ibid.*, 995).

While the Palermo Protocol on human trafficking does add some nuance to the distinction between sex work and sex trafficking in addition to expanding the international definition of trafficking to include labour and organ trafficking, it continues to depict these issues as the result of insufficient criminal justice responses from the international community. While the Palermo Protocol does contain recommendations which could encourage other representations of the "problem" of human trafficking, these are weakly stated and often merely recommended rather than required responses of signatories. The "root causes of trafficking" (*ibid.*) and the possible repercussions of trafficking policies on marginalized groups are not addressed in the Palermo Protocol. Moreover, some scholars suggest that human trafficking discourses rely on a "retelling of the myth of "white slavery" in a modern form" (Doezema 2000, 24; see also Kaye, 2017). Kaye (2017, 54) observes:

> *campaigns against human trafficking parallel responses to the white slave-trade, particularly by equating human trafficking with prostitution and relying on emotionally charged awareness materials to stir moral sentiments and potentially moral panic in the development of criminal intervention strategies to what advocates perceive as a new form of slavery.*

Consequently, the result of the negotiations in Palermo was the reinforcement and expansion of the criminality problematization of human trafficking which was first introduced by international documents responding to the white slave trade.

Canadian Policy Responses

Canada is a signatory of the Palermo Protocol and as such its national policy aligns with the criminality problematization found in the protocol. MacIntosh (2006) argues that Canada has responded to the Palermo Protocol only through criminal justice responses and has failed to implement the suggested measures required to protect victims of trafficking. While government "rhetoric [claims] that Canada sees trafficking as "first and foremost" a human rights problem," (*ibid.*, 434) policy in Canada clearly responds to trafficking as "a matter of law enforcement and not human rights" (*ibid*, 414).

The primacy of the criminality problematization of trafficking in Canadian policy can also be attributed to bilateral pressure from the United States. Following the Palermo Protocol, the United States declared itself the international watchdog on trafficking and initiated the annual Trafficking In Persons (TIP) report. Through the use of the TIP report and other naming and shaming tactics, the United States has played a role in pushing Canada into a more hardline stance against trafficking through criminal justice policy in the form of stricter immigration laws, increased border control, and harsher sentencing (Roots, 2013; Katrin, O'Doherty, and Roots, 2017).

The first policy on human trafficking in Canada was border policy in the IRPA, which was focused on eliminating the trafficking of victims into Canada. This was followed by the

introduction of new offences to the *Criminal Code* in 2005,[17] and the drafting of the *National Action Plan* in 2012. The adoption of these anti-trafficking policies occurred in Canada alongside dramatic shifts in prostitution policy in the wake of the *Canada v. Bedford* case. In 2013 the Supreme Court of Canada (SCC) ruled on a case that was initially brought to the Ontario Court of Appeals in 2007 by Terri Jean Bedford and two other former and current sex workers against the Government of Canada, claiming that three provisions on prostitution were unjustifiably encroaching on sex workers' rights to life, liberty, and security of the person as outlined in section seven of the *Canadian Charter of Rights and Freedoms*. These women argued that the *Criminal Code* provisions regulating communication for the purposes of prostitution, living on the avails of prostitution, and the keeping of a bawdy-house, made it significantly more dangerous for prostitutes to engage in the otherwise legal act of selling sex. In 2013 the case made its way to the SCC, which deemed these provisions as arbitrary, overbroad, and grossly disproportionate in their restriction of sex worker's section seven rights when considered against their purpose of deterring public nuisance. Consequently, the three provisions were invalidated by the SCC and the government was given a year to create new legislation in response.

The *Bedford* decision led to heated debate about the nature of prostitution and appropriate policy response in Canada. Prohibitionists decried prostitution altogether as oppressive and exploitative, demanding that a prohibitionist model of prostitution policy be introduced to replace the struck down legislation. Simultaneously, regulationists celebrated the ruling, believing that the only way for the government to act in line with the decision of the SCC would be to fully legalize and regulate sex work. However, the SCC ruling stipulated that parliament

[17] For details on these policies see chapters one and three.

was not “precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes” (*Canada (Attorney General) v. Bedford* 2013, 1107). The Conservative Government’s *Protection of Communities and Exploited Persons Act* in 2014 took the prohibitionist approach and adopted a variation of the Nordic Model, leaving regulationists bitterly disappointed.

The PCEPA amends the *Criminal Code* first by introducing the new offence of “obtaining sexual services for consideration,” (Bill C-36 2014, 10) for which the penalty is a minimum fine of $1000 (with higher fines if the offence is committed in a public place), and a maximum sentence of five years in prison. If the prostitute is a minor these penalties escalate to a minimum of six months to a maximum ten years in prison. The PCEPA also essentially reinstates the "living on the avails” provision through the new “[m]aterial benefit from sexual services” (*ibid*, 12) offence, which penalizes any third party benefitting materially from the prostitution of another person. The material benefit offence carries a maximum sentence of ten years if the prostitute is of age, but escalates to a maximum fourteen years, minimum two years, if the prostitute is a minor. There are a few notable exceptions to the material benefit offence for general services engaged by a prostitute; “legal or moral obligation” (*ibid.*) on behalf of the prostitute; and legitimate living arrangements wherein “evidence that a person lives with or is habitually in the company of a [prostitute] is, in the absence of evidence to the contrary, proof *that* the person received financial or other material benefit” (*ibid.*). There is also an offence for procuring which carries a maximum fourteen year sentence with a minimum five years in the case of procuring a minor for prostitution. Finally, advertising the prostitution of another person is prohibited and subject to incarceration for maximum eighteen months in a summary

conviction, up to five years maximum if indicted independently. Through these offences, the Canadian model criminalizes the buyers of sexual services and exploitative third parties.

The response of the Harper Conservative government to the *Canada v. Bedford* ruling was justified in part by the motivation to combat sex trafficking. According to the Department of Justice Canada, among the research conclusions which informed the PCEPA is that "[p]rostitution also negatively impacts the communities in which it takes place through a number of factors, including: related criminality, such as human trafficking and drug-related crime" (2014, 4) and that "[c]ommercial enterprises in which prostitution takes pace also raise [concerns of third-party exploitation] and create opportunities for human trafficking and sexual exploitation to flourish" (*ibid.*). The technical paper on Bill C-36 (the PCEPA) also cites the recommendation of the Council of Europe that "observer states, which includes Canada, consider criminalizing the purchase of sexual services, as the most effective tool for preventing and combating human trafficking, and banning advertising sexual services and pimping" (*ibid.*, 12).

The provisions introduced in the PCEPA also aligned with the Conservative government's "tough on crime" stance, which sought to reduce crime in Canada by introducing new criminal offences and increased penalties for preexisting violent offences. In the criminalization of purchasers there is also an echo of the social purity movement's desire to end prostitution as a space wherein men indulged in vice which would bring moral decay upon the nation. The PCEPA is a variant of the Nordic Model, and claims to remove the target of criminalization from sex workers, completely decriminalizing the selling of sex. However, the PCEPA maintains some restrictions on the actions of prostitutes with regard to advertisement and communication, which

reflects the perspective of prostitution as an inevitable evil wherein the only response is attempting to eliminate nuisance by removing prostitution from the public eye.

Conclusion

The history of response to the white slave panic, both domestically and internationally, has shaped the Canadian understanding of human trafficking as being predominantly a sex trafficking "problem." Canadian and international policy texts reveal a conception of sex trafficking as sexual slavery that does not distinguish between consensual and involuntary sex work. These documents are the precursors to modern human trafficking policy, and they reveal that the inclusion of labour trafficking was an afterthought that was only incorporated into the international definition of human trafficking in the 2000 Palermo Protocol, which emerged over a century after the 1885 publication of W. T. Stead's "The Maiden Tribute of Modern Babylon." This historic conflation of human trafficking with sex work continues to the present day, and has inspired the adoption of an end-demand model of prostitution policy in Canada. The focus on sex trafficking overshadows and diminishes the prevalence and gravity of labour trafficking issues.

The moral panic that motivated response to the white slave trade is akin to that which inspires passionate response to sex trafficking in the present. The stereotypical narrative of sex trafficking is dramatic and involves the exploitation of innocent women at the hands of male criminals — it touches upon deviant sexuality, and it often evokes racialized depictions of traffickers as men of colour, and can evoke an uneven fixation on the Black pimp as suspected sex trafficker (Williamson and Marcus, 2017). Sex trafficking easily conforms to the narrative of deviant and inhumane traffickers who commit terrible crimes against innocent victims for the purpose of satisfying their immoral desires. These victims are often depicted as young white

women — when they are migrants they are generally depicted as victims of kidnapping who simply wish to return to their home country. When the victims are women of colour, be they Black Canadians or Indigenous, their victimhood is often ignored and erased (Chan and Chunn, 2014). In this way, the narrative of sex trafficking in Canada complies with the nation-building project — it legitimizes the settler state (Kaye, 2017) and does not require much introspection on behalf of the average Canadian.

Conversely to the innocent Canadian victim of domestic sex trafficking, the victims of labour trafficking are predominantly migrants who are more difficult for many to relate to and empathize with. These are not "our people" and they inspire less compassion when they are exploited in Canada, as many Canadians do not want them here to begin with. Unlike internationally sex trafficked women, labour trafficked migrants have often chosen to be here and many do not wish to leave. As such, migrant trafficking victims stoke xenophobic fears and their presence challenges the nation-building project in a way that sex trafficking victims do not. Treating labour trafficking with equal concern to sex trafficking requires that Canadians make sacrifices, which many are unwilling to make, in opening our borders to economic migrants and creating increased pathways to permanent residency and citizenship.

There is also an element of complicity in labour trafficking which requires facing the inherent inequalities that are sown into the very fabric of our economy — when the state benefits from the presence of low-skilled temporary workers, so do Canadians by virtue of the economic benefits. Confronting labour trafficking is therefore more difficult because it requires criticizing the capitalist structures that make cheap labour expedient, and considering our complicity within these systems. While there is a moral high ground from which outrage at deviant, amoral

criminals can be expressed in the case of sex trafficking, there is a far more even playing field with regard to labour trafficking. Labour trafficking is not just the result of individual deviancy, but is the consequence of the Canadian economy's dependence upon cheap labour in order to provide inexpensive wares to citizens. I contend that the reason labour trafficking is so silenced, despite being alluded to in policy texts, is that addressing it would require real change and discomfort on the part of white Canadians. It would require that the state and its citizens be willing to admit our own complicity in an economic system which thrives upon the exploitation of inequality.

Chapter 5: Effects and Reimagining

This chapter focuses on the fifth question of WPR analysis, which asks "What effects (discursive, subjectification, lived) are produced by this representation of the "problem"?" (Bacchi and Goodwin 2016, 20) The goal of this question is to identify the real-world effects of problem representations on political subjects, (Bacchi 2010) which allows the researcher to gauge whether the policy is having unanticipated negative consequences on political subjects in Canada, including both citizens and non-citizens alike, opening the possibility to create more socially just policy — which is policy with less detrimental or uneven impacts. This chapter performs WPR's fifth question to reveal the discursive, subjectification, and lived effects of Canadian anti-trafficking policy texts on Canadian political subjects, revealing how these subjects are produced and governed through the criminality problematization of human trafficking. Thinking about the discursive, subjectification, and lived impacts of policy "as the effects of policies rather than as necessary and natural ways of grouping people creates an opening to consider how they are produced and how they translate into diverse lived realities" (Bacchi 2016, 6).

While the effects are separated in the framework for heuristic purposes, in actuality these categories often overlap and blur together. The discursive effects of a problematization are those "effects that follow from the limits imposed on what can be thought and said" (Bacchi 2010, 64). As discussed in previous chapters, problem representations produce particular ways of thinking and speaking about "problems," which restrict and minimize the possibility of conceptualizing the "problem" through lenses which may yield alternate problematizations. These discursive limitations on how the "problem" can be thought or spoken about then produce particular

categories and types of political subjects. The subjectification effects of the problem as it is represented to be "impact categories and groups of political subjects, revealing how "subjects" are implicated in problem representations, how they are produced as specific kinds of subjects" (Bacchi and Goodwin 2016, 23). These discursive and subjectification effects impact political subjects in the real and are "the ways in which problem representations within policies directly affect people's day-to-day lives and socially-embedded bodily possibilities, 'making live' and 'letting die'" (Bacchi 2010, 64). Bacchi emphasizes that the importance of "this category of [lived] effects [is] to drive home the fact that we are not talking about representations of the real but that how problems are represented has a material impact on how people live their lives" (Bacchi, 2014b).

In the case of human trafficking in Canada, the criminality problematization yields discursive limitations in which trafficking is thought and spoken of as a crime problem. These limitations create particular subjectivities, such as the ideal victim and ideal offender, which in turn impacts how different political subjects are constituted and encouraged to think of themselves according to the subject positions produced by problematization. Finally, there are real-world consequences of the policies which respond to the "problem" of human trafficking as criminal deviance requiring criminal justice responses; these lived effects have uneven impact on marginalized populations.

Discursive Effects

As discussed in chapter three, Canadian human trafficking policies represent the "problem" of human trafficking as a "crime problem." The criminality problematization centres the "problem" of trafficking around criminal and sexual deviance which must be addressed by

the criminal justice system. Consequently, the criminality problematization yields criminal justice policy responses which address human trafficking through the regulation of deviance by policing and punishment, which also act together as a measure of deterrence. This representation of the "problem" of human trafficking as the consequence of unchecked deviance centres the issue on both criminal deviance and sexual deviance, which can then be policed, regulated, or punished. Consequently, human trafficking becomes a "problem" which can only be solved through the criminal justice system and the use of coercive state power, not only through law enforcement, prosecution, and incarceration, but also through reinforced borders and restricted immigration regimes.

As discussed in Chapter 4, the discursive affinity between sexual slavery and sex work has resulted in the conflation of sex work with sex trafficking. This conflation can result in concluding that all sex work is sex trafficking, and the belief that strategies are required to protect and rescue anyone who is in the industry. This rescue impetus is felt particularly by migrant sex workers who are often targeted in anti-trafficking raids and deported if they refuse to identify as trafficking victims. Consequently, the adoption of the end-demand strategy to eliminate prostitution can be understood as a discursive effect of the criminality problematization. This way of thinking about human trafficking erases the sociopolitical context which drives individuals into the sex industry to begin with and erases the role of the state in producing the conditions of vulnerability which create opportunities for exploitation and sex trafficking. This is also true of restrictions on migration which are justified as protecting migrants from trafficking. These strict border policies fail to consider the causes of international migration and leave individuals attempting to enter Canada either without status or with

precarious status which makes them vulnerable to exploitation. Consequently, the representation of human trafficking as a "criminality problem" distracts from the role of the Canadian state in creating conditions of vulnerability to exploitation through increasingly controlled immigration policy, limited protections for temporary foreign workers, and the weaponizing of deportation. The details of these failures will be further addressed in the discussion of the lived effects of the criminality problematization on sex workers and migrants.

Subjectification Effects

The subjectification effects of a problematization are "the ways in which subjects and subjectivities are constituted in discourse" (Bacchi 2010, 64). Determining the subjectification effects of a policy requires identifying the specific 'subjects' constructed by the problematization, as well as those which are invisibilized or erased by it (Bacchi, 2014b). Policy produces specific subject positions and these positions are used to categorize political subjects as particular kinds of subjects. According to Bacchi, this "is linked to the idea of power as productive," (*ibid.*) and the production of dichotomous types of political subjects is used to facilitate their governance.

The criminality problematization of human trafficking is built on a dichotomy of traffickers and victims which constructs guilty traffickers as criminal deviants who exploit innocent people for financial gain. It assumes a rational, individual decision to engage in criminal acts for the sole purpose of benefitting financially, reflecting the absence of personal morality. It assumes that criminality is exclusive to traffickers, and that victimization is exclusive to the trafficked. However, traffickers have often experienced victimization along their pathway to offending and trafficking victims can become traffickers as a form of exit from their

exploitation. Further complications arise when trafficking victims are complicit in secondary criminal activities while they were being exploited.

Viuhko (2018) applies Christie's (1986) concept of the 'ideal offender' to describe the "ideal trafficking offender [as] an offender who is a member of an organised criminal group and who exploits the victim very severely […] and is not in a personal relationship with the victim" (182). The reality is that traffickers are not always connected to organized crime, and are often known by or related to their victims (*ibid.*). This dichotomy also erases the role that prior victimization can play in leading individuals into criminal activity — in interviews with three traffickers Mehlman-Orozco observed that "each told stories of childhood introductions to sex and violence" (2020, 111). The ideal offender exists in conjunction with the ideal victim, who "is weak […] and innocent, and s/he is not doing anything "morally questionable" (Viuhko 2018, 182). In reality, traffickers and victims are much more complex, with victims frequently having engaged in criminal activity throughout their exploitation — such as illegal entry or working illegally in Canada. In cases of sex trafficking the transition from victim to offender is common in the form of second-wave recruitment, wherein a victim of trafficking may begin into assisting their trafficker by recruiting new victims in order to ease to conditions of their own exploitation. The result is a female offender who simultaneous occupies the subject position of victim and trafficker. In trafficking cases "it is sometimes not even clear whether a person is a victim or a perpetrator, or both" (*ibid.*, 186). The production of victims as innocent/worthy or complicit/ unworthy ignores the very nature of trafficking itself, which is not defined internationally as a state of existence but rather as an action accomplished using coercive means for the purpose of exploitation. An individual can experience several instances of being trafficked without

associating their entire experience in an industry as "being a victim of trafficking," since victimization does not necessarily present itself as an ongoing state of being.

The criminality problematization produces trafficking victims akin to the "ideal victim," constructed as helpless innocents forced into exploitation through force, fraud, or coercion by their traffickers. According to Cuniff Gilson, "there is often a misfit between the dominant concept of victim, which is static, dichotomous, and unambiguous, and people's experiences, which are variable, diverse, and ambiguous" (Cunniff Gilson 2016, 80). In the criminality problematization, victims are constructed as being without agency, fully duped or coerced into their victimization. Victims of labour trafficking are constructed as those who have been forced across the border against their will for the sake of exploitation through debt bondage or the withholding of documents. Labour trafficking victims are also depicted as migrants who entered Canada legally on a work visa, only to find that the job for which they had been hired does not exist, or that the conditions are substantially less than what was promised, and they find themselves being trafficked for their labour. This construction of victimhood fails to account for the instances of labour trafficking which occur through the abuse of government programs such as the TFWP, wherein employers take advantage of the precarious status of migrant workers in order to exploit them.

The criminality problematization in Canadian policy texts primarily produces victims of trafficking as sex trafficking victims who have been forced into sex work to which they never consented. This fails to account for the role of manipulation employed by some traffickers who use a boyfriend-style approach to exploit their victims who they first seduce into a romantic relationship and then exploit using behaviours that mirror domestic violence. This production of

sex trafficking victims also creates an overly simplistic dichotomy of sex workers. Canadian policy constructs sex workers either as duped victims-in-denial or as sexual deviants whose defence of the sex industry propagates the oppression of trafficking victims. In this way the criminality problem representation of human trafficking both vilifies and infantilizes sex workers. The purchasers of sexual services from sex workers are in turn constructed as "sexually dangerous men" (Bernstein 2018, 96) and criminal deviants who sate their sexual desires at the expense of sex workers — be they trafficking victims or not.[18]

There are also effects on a personal level for those labelled as victims who must adhere to an overly simplistic narrative of their experience in order to fill the role of "ideal victim." The criminality problematization funnels money into anti-trafficking NGOs who often emphasize the use of victim testimony in their advocacy campaigns. When victims are limited in their involvement in the anti-trafficking movement to the role of "rescued victim" and are expected to spend the rest of their lives telling their victim story, this can be incredibly damaging (Cojocaru 2015; Countryman-Roswurn and Patton Brackin 2017; Kaye 2017). Even the act of identifying someone as a victim can itself be harmful, as it implies a lack of agency:

> *Exoneration from responsibility accompanies victimization. The essence of being a "victim" resides in a person's perceived lack of control over the harm that he or she has experiences. Thus, to "victimize" someone instructs others to understand the person as a rather passive, indeed helpless, recipient of injury or injustice.*
>
> *(Holstein and Millner 1997, 43 as cited in Dunn and Powell-Williams 2007, 982)*

In the process of creating the "ideal victim" of human trafficking, all nuance is removed from a trafficked person's narrative, and instead "[t]he locus of attention is a fabricated character,

[18] See Khan (2018) for further discussion on how this perspective of johns has developed and changed over time. Also, see Chapter 4.

the ultimate victim archetype" (Cojocaru 2015, 191). By focusing on a particular narrative of victimhood, the anti-trafficking movement in Canada (funded in part through the state as a consequence of the criminality problematization), "force[s] survivors to stay in the role of victims" (Countryman-Roswurn and Patton Brackin 2017, 331) instead of properly recognizing trafficked persons as "experts and leaders in the movement" (*ibid.*). The result is that a victim is left in a state of "reliving [their] own trauma by perpetually narrating [their] victimization to raise awareness instead of healing from trauma and moving on" (Cojocaru 2015, 193).

Policy produces subject positions which encourage political subjects to define themselves according to these classifications which can elicit certain behaviours and beliefs from those in these positions. While the subjectification effects of policy can result in the creation and reification of subject positions in order to facilitate governance, it is important to note that these positions are not deterministic. According to Bacchi, "the plurality of practices ensures that subjectivities are always in continuous formations" (2014b) and "attempts to make us governable may fail" (*ibid.*). This means that in order to ascertain the impact of policy on political subjects we must also look beyond the discursive and subjectification effects to the lived effects of policy. In discussing the lived effects of policy on particular groups I will further elucidate and introduce new subjectification effects, revealing how the criminality problematization produces sex workers and reinforces the categories of citizen and migrant.

Lived Effects

When considering the lived effects of policy the analyst must consider both systemic impacts and the effects on individuals. The purpose of this step of the WPR is to emphasize the real-world impacts of problem representations by moving from the discursive realm to the

material world. Considering the lived impacts of policy reveals the unintended and unexpected consequences of the criminality representation of the "problem" of human trafficking. This process is essential for identifying where policies have had damaging repercussions which provide justification to consider alternative problematizations, to alter policy, and to "promote interventions that aim to reduce deleterious consequences for specific groups of people" (Bacchi 2016, 23).

The criminality problematization of human trafficking fixes trafficking as deviant behaviour committed by amoral people which requires punishment through fines and incarceration. As discussed in chapter three, this problem representation has shifted the focus of human trafficking policy to the criminal justice system, with particular emphasis on enforcement and incarceration. A lived impact of this problem representation is that resources are funnelled into the criminal justice system instead of being invested in communities or in prevention and rehabilitation programs. Practically this means that there is greater police presence and involvement in communities in order to deter crime and apprehend criminals, and a dependence on the prison system as punishment for traffickers. Increased policing and incarceration have the consequence of reinforcing the institutionalized oppression that minority Canadians experience at all levels of the criminal justice system, which results in an uneven impact of anti-trafficking policy on racialized and poor communities. Further, the criminality problematization has located the "problem" of human trafficking in both the sex industry and immigration policy, justifying the increasing criminalization of immigration.

The "tough on crime" approach to policing which has taken root in Canadian politics in recent decades increases police presence and power to intervene in the lives of people in Canada.

While there are many who believe that the police exist to protect all members of the community from crime, this is not the lived experience of marginalized populations. This is not surprising given the origins of modern policing, which was not created to deter crime but to maintain social order and protect elites from the poor, the working class, colonized populations, and foreigners (Razack 2015; Vitale, 2017). The legacy of this history is an institutionalized oppression of these populations who have become associated with danger and criminality and which are subsequently over-policed.

In Canada "there is no one single racialized group in Canada that occupies [the category of 'the criminal']," (Chan and Chunn, 2014, ebook) and this role is shared amongst Black people, Aboriginal people, Muslim and Arab people, and immigrants or migrants. This association of the Other with crime is rooted in a belief that these groups of people are dangerous and more criminogenic than others — namely the White settler population — and that for this reason they are overrepresented in the criminal justice system. The truth, however, is that the belief in the inherent criminality of racialized people is what leads to the over-policing of these groups, which results in the more frequent arrest of racialized individuals than White settlers.[19] Because marginalized communities are more intensely surveilled by the police they are arrested more frequently and are incarcerated at higher rates than the general population. According to Monchalin, "Indigenous as opposed to non-Indigenous incarcerated peoples are sentenced to longer terms, spend more time in segregation and maximum security, and are less likely to be granted parole and more likely to have parole revoked for minor infractions" (2016, 145).

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[19] The tragic inverse of this is also true — that racialized people are often disbelieved and unsupported when they are the victims of crime, meaning that they experience both over-policing and under-policing. Indigenous people, and particularly Indigenous women, are also more likely to be the victims of crime than white Canadians. (Chan and Chunn, 2014; Monchalin, 2016)

In Canada there is a notable overrepresentation of Black, Indigenous and multiracial people in federal prisons (Owusu-Bempah, Akwasi, and Worley 2014). In 2014, Black people "[represented] only 2.5 percent of the Canadian population, but almost one-tenth of all federally supervised offenders" (*ibid*, 290). The Correctional Service of Canada reports that "[as] of the end of December 2019, Indigenous offenders represented 30% of the total incarcerated offender population (inmates) and Indigenous women offenders represented 42% of the total women incarcerated offender population (inmates)" (Public Safety Canada, n.d.). These numbers are staggering given the 2016 census data which indicates that Indigenous people compose only 4.9% of the population (Statistics Canada, n.d.). While the Canadian government incarcerates fewer individuals annually than the United States, the rates of overrepresentation of Indigenous persons in Canada is on par with the rates of imprisonment of Black persons in the U.S. (Owusu-Bempah, Akwasi, and Worley 2014).

Racialized people in Canada are also more likely to experience violence from the police in their interactions with them (Maynard 2017, Razack 2015). Perhaps the most shocking illustration of this violence is the "starlight tours," a name given to refer to the police practice of taking Indigenous people into their patrol cars and dropping them off on the edge of town to find their way back. The practice has led to the freezing deaths of many Indigenous men, often bearing the marks of police brutality (Razack 2015; Monchalin 2016). This cruelty is carried over into the prison system, wherein racialized persons experience negligence and violence from prison staff. Prison is a dehumanizing experience that is exacerbated by the use of tools like solitary confinement — which is also imposed on racialized individuals "at particularly high rates" (Maynard 2017, 111). In federal prisons in 2014 "Black prisoners accounted for almost 15

percent of all reviewed use-of-force incidents in 2014, far about their population of 9 percent" (*ibid.*). According to Razack's (2015) research on Indigenous deaths in custody, Indigenous people are also more likely to die in prison.

Beyond this violence, incarceration also has detrimental effects on their families and communities of the incarcerated. Western and Pettit (2010) "define carceral inequalities as invisible, cumulative, and intergenerational" (16). The authors argue that

> *Incarceration may reduce economic opportunities in several ways. The conditions of imprisonment may promote habits and behaviors that are poorly suited to the routines of regular work. Time in prison means time out of the labor force, depleting the work experience of the incarcerated compared to their non-incarcerated counterparts. The stigma of a criminal conviction may also repel employers who prefer job applicants with clean records.*
>
> *(Western and Pettit 2010, 14)*

The inability to access employment ensures that many of the formerly incarcerated struggle to make a living — when this is applied to an over-incarcerated population this leads to the reinforcement of the impoverishment of entire communities. The formerly incarcerated also experience what Murray (2007) refers to as "social exclusion" of several types "including pre-existing deprivation; loss of material and social capital following imprisonment; stigma; 'linguistic exclusion'; political exclusion; poor future prospects; and administrative invisibility" (55). Isolation reinforces the Othering of racialized communities, and is often experienced by the children of incarcerated parents both during and after the period of incarceration. When a parent is imprisoned, the family experiences breakdown which may extend beyond release (Western and Pettit, 2010). Children of incarcerated parents experience the "combined traumas of parental arrest, parent-child separation, loss of family income, changes in childcare arrangements,

caregivers' own distress and difficult experiences visiting prisons" (Murray 2007, 56). The traumas experienced by the children of incarcerated parents creates a cycle wherein

> *Socioeconomic disadvantage, crime, and incarceration in the current generation undermine the stability of family life and material support for children. As adults, these children will be at greater risk of diminished life chances and criminal involvement, and at greater risk of incarceration as a result.*
>
> *(Western and Pettit 2010, 14)*

The result is that "incarceration contributes to crime in the long run" (*ibid.*, 17).

Cumulatively these impacts serve to reinforce the oppression of racialized communities who are overrepresented in federal prisons. While this institutionalized oppression is discussed frequently with respect to the incarceration of Black people in the United States, the experience of Indigenous communities in Canada is less widely acknowledged. Mussell (2020) suggests that prisons are a tool of colonial domination that have been used to assimilate and eliminate Indigenous peoples. Razack (2015) proposes that the criminal justice system has been used as a means of "disappearing" Indigenous people. It has also been suggested that "imprisonment in prisons follows in the footsteps of other forms of removal from communities, including residential schools, segregated hospitals, the Sixties Scoop, and ongoing child welfare system apprehensions" (Mussell 2020, 15).

Bearing in mind all of these repercussions, it is important to consider whether incarceration is effective in preventing crime. Part of the purpose of the criminal justice system, and incarceration in particular, is to rehabilitate offenders and prevent them from reoffending.

Recidivism[20] rates reveal whether the prison system is doing an effective job in rehabilitating offenders and deterring them from committing crimes upon their release. A 2019 study done for Correctional Services Canada (Stewart et. al. 2019) revealed that of prisoners released in 2011-2021, the average rate of recidivism within two years of release was 23%. When the follow-up period was extended to five years, the rate of recidivism jumps to 38% — it is also revealing that the recidivism rate of Indigenous men was 60%. These rates are more severe for offenders under 25, who "had the highest rates of recidivism and violent recidivism, [and the] rates of violent recidivism were over six times than that of offenders over age 55" (*ibid*, iii). These statistics expose the failure of incarceration to rehabilitate offenders — especially those who are young or Indigenous.[21] Considering the data on recidivism in conjunction with the intergenerational trauma experienced by the children of incarcerated parents that may increase their likelihood of interaction with law enforcement and the criminal justice system, incarceration is clearly ineffective in reducing crime. If the system is not meeting its objectives of rehabilitation and deterrence, but exposes the incarcerated and their families to violence and trauma, resulting in the reinforcement of the marginalization experienced by racialized communities through this process — then perhaps this is not a system in which the state ought to further invest.

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[20] There are several different measurements and definitions used to define recidivism depending on the particular study or country. In general it simply refers to the committing of an offence after having been released from incarceration. The study referred to in this chapter, Stewart et. al. (2019), "provides a comprehensive estimate of recidivism rates of federally sentenced offenders based on reconvictions that resulted in a return to federal custody or reconvictions that resulted in provincial or territorial sanctions." (4-5)

[21] It is deserving of note that the PCEPA introduces new mandatory minimum sentences for crimes, despite evidence that "increased prison sentences do not decrease recidivism." (Cook and Roesch 2012, 218), and that "[t]ough on crime" policies [like the PCEPA] are also ineffective at deterring individuals from committing crimes" (*ibid.*)

The over-policing of racialized communities and their overrepresentation in federal prisons serves only to reinforce the social and economic marginalization of these communities. Reinforcing the criminal justice system and funding its expansion will inevitably heighten the racial oppression and institutionalized racism experienced by racialized groups. The criminality problematization thereby ensures the enduring lived experiences of violence and oppression of racialized people in Canada by fortifying the criminal justice system.

Effects on Migrants

The criminality problematization has resulted in negative repercussions in the lives of migrants by creating increasingly difficult conditions that restrict immigration and criminalize irregular migration. Migrants are produced by the criminality problematization as either villains or victims — villains traffic others into Canada and victims are brought into Canada for the purposes of exploitation. The depiction of migrants as villains is due both to the conflation of human smuggling with human trafficking.[22] While human smuggling interactions can evolve into trafficking situations through the introduction of debt bondage or other forms of exploitation, the two are conceptually distinct. Smuggling is an offence because it introduces migrants into Canada through irregular and unregulated channels without state consent, and has roots in the fear of the racialized Other and the stereotyping of racialized persons as dangerous and more criminogenic than White citizens (Chan and Chunn, 2014). Conversely, international trafficking offences are intended to protect migrants from exploitation, and scholars such as O'Doherty et. al. (2018) have presented Canadian anti-trafficking laws as a form of ""crimmigration" (Stumpf,

[22] Human smuggling is the illegal movement of an individual from one country to another with the assistance of a third party, whereas human trafficking is the exploitation of an individual for financial gain, which does not necessarily require movement.

2006), [wherein] the convergence of criminal and immigration laws […] are ostensibly used to "protect" migrant women as workers, students, and visitors" (105). Crimmigration has resulted in "the regulation of migration [moving] from the civil to the criminal sphere," (Chan and Chunn, 2014) wherein "asylum seekers and other non-citizens [are considered] criminals [for whom] detention and deportation can be presented as "natural" solutions in controlling immigration" (*ibid.*).

Anderson (2013) argues that depicting migrants as potential victims of human trafficking "marked the emergence of the prevention of 'harm' as a concern of immigration policy" (155) but that the increased criminalization of immigration serves only to reinforce the vulnerability of migrants. Setting strict controls on immigration fails to account for the reasons that people choose to migrate, which are increasingly "a result of the dislocation wrought by spatial disparities in prosperity and peace than at any other point in human history" (Sharma 2005, 105). The claim of protecting migrants from the harms of international trafficking through tighter border controls fails to acknowledge that for many migrants who are "needing to move away from a number of (politically, economically, and/or socially) violent and/or untenable situations," (*ibid.*, 105-106) desperation will cause them "to endure dangerous migration routes" (*ibid*.). For those who enter Canada with status other than Permanent Resident, "traffickers may take advantage of their limited rights in Canada and the threat of detention and deportation" (Canadian Council for Refugees 2014, 2). This is aggravated in the case of those without immigration status, as those who do enter Canada illegally are left with very few protections against exploitation and "are systematically relegated to precarious working conditions and heightened abuse in the workplace" (Maynard 2015, 45).

Toupin (2013) suggests that trafficking has been used as a justification to restrict female migration, and that of migrant sex workers in particular, while failing to address the root causes of international migration. Consequently, the growing number of women required to migrate for work are increasingly forced to engage in illegal migration through informal networks. In turn, this smuggling is often conflated with and confused for human trafficking, and these middlemen become the targets of anti trafficking efforts and policing rather than those who use the precarious status of these migrant workers to exploit their labour.[23] Because this clandestine migration is the often the result of the sexist policies and rights restrictions experienced by women in their countries of origin, increased border securitization justified through the protectionist rhetoric of anti-trafficking not only fails to protect migrant women from exploitation, but often resorts to simple repatriation as a solution, leaving women to return to countries where they may be experiencing gender oppression. Toupin suggests that in the case of migrant women, "the services that assist them must aim not to repatriate them at all costs (unless that is what they want), but to support them in their migratory process and help them recover their independence" (2013, 128).

The criminality problematization places the onus of responsibility for trafficking on deviant individuals rather than addressing the structural inequalities which create conditions which facilitate the exploitation of migrants. The emphasis placed on border control as a response to human trafficking erases the role of the state in creating conditions where labour trafficking can thrive. Historically immigration controls have been used as a means to strengthen

[23] It is worth noting that while sometimes it is fellow migrants who engage in this exploitation. Broad (2015) has shown that the same factors which produce vulnerability and victimization in some migrants can create a pathway towards offending in others, and in this way structural inequality can breed a desperation which pushes migrants into the role of trafficker.

the nation-building project and it was "through the regulation of the international mobility of 'undesirables' that states nationalized their sovereignty and the subjectivities of those who believed they 'belonged' to the 'nation' that such states purported to rule *for*" (Sharma 2015, 142). While the language of international trafficking is used to protect the nation state by reducing undesirable migration, the language of domestic trafficking is used to protect the settler state from Indigenous peoples. Depicting the trafficking of Indigenous women as domestic trafficking is a subtle means of reinforcing the settler state narrative of colonization and of erasing Indigenous claims to sovereignty and self-rule. In this way the narrative of domestic human trafficking props up the settler state and justifies the ongoing colonization of Indigenous peoples which creates and fortifies the conditions that lead to Indigenous women's overrepresentation as trafficking victims and sex workers in the first place (Kaye, 2017).

The criminality problematization of trafficking has created further justification for exclusionary immigration policy which filters 'undesirable' migrants into the country as a source of labour without giving them a foothold upon which to move towards citizenship:

> *while negatively racialized people were generally 'unwanted' as co-members of the 'nation,' their labour power was nonetheless very much needed. Immigration regulations and restrictions, thus, worked not only to deny them entry (which they certainly did at particular moments in various national histories) but also to place them into new state categories of 'immigration status' that ensured their labour power would be cheapened and weakened*
>
> *(*ibid.*, 140)*

Maynard argues that this process takes place through "state-mandated policies [which] effectively create and maintain legal classifications that relegate people to a structurally exploitable labour pool with little recourse to rights" (Maynard 2015, 41). The primary means

through which this is accomplished in Canada is through the Temporary Foreign Worker Program (TFWP).

The TFWP recruits migrant workers into low-skilled jobs which employers struggle to fill with willing Canadian workers. The program emphasizes the use of temporary workers to meet labour needs and has been criticized for failing to provide migrant workers with a pathway to gain status in Canada. The Canadian Council for Refugees (CCR) proposes that the reality of the treatment of low-skilled workers in the TFWP is that "[m]igrant workers are being used to address a labour demand that is *not* temporary. It is permanent. Using temporary workers who enjoy fewer rights than permanent residents to fill long-term jobs is exploitative" (CCR, n.d.). According to the CCR, "TFWP conditions place migrant workers in a situation where they are vulnerable to exploitation and trafficking" (CCR 2014, 3). One of the primary sources of vulnerability for migrants under the TFWP is that their precarious status in Canada is tied to their employer. Work permits for temporary foreign workers (TFWs) are employer-specific, "[tying] migrant workers' immigration status to a single employer, causing them to risk deportation if they leave their job. This limits complaints and the prospect of seeking alternative job options in case of mistreatment and unpaid wages" (*ibid.*). Employers are able to use this as a means of exploiting migrant workers under the legal TFWP, weaponizing deportation as a threat against workers. The vulnerability of migrant workers is exacerbated by other factors such as "physical and social isolation," (*ibid.*) "language barriers," (*ibid.*) "[l]imited access to services," (*ibid.*) and insufficient oversight by the federal and provincial governments. Under these circumstances TFWs are vulnerable to a spectrum of labor exploitation which includes precarious labour, unfree labour, and forced labour, which at its most severe may constitute labour trafficking

(Strauss and McGrath, 2017). Beatson, Hanley, and Ricard-Guay (2017) have concluded that the TFWP is a source of labour trafficking in Canada, and argue that TFWs "can be considered, de facto, to be engaged in unfree labour" (141).

The criminality problematization places such strong emphasis on border control as a response to international trafficking. However, Strauss and McGrath argue that "trafficking policy and trafficking law […] are often imbricated with the very immigration regimes that produce precarious employment and precarious legal status, and which emphasize managed migration, border security and the criminalization of 'illegal' migration" (2017, 200). This implies that the criminality problematization as expressed through strict border control serves only to reinforce the structural inequalities that leave migrants in Canada, especially those without status, vulnerable to workplace exploitation, including instances of labour trafficking. According to the work of Beatson, Hanley, and Ricard-Guay (2017): "[t]he reality for many migrant workers is that they arrive through legitimate, legal channels. However, once they are here in Canada it is very easy for them to be taken advantage of and for their status to become irregular" (154). O'Doherty et. al. in conjunction with SWAN (Supporting Women's Alternative Network) Vancouver Society (2018) have also identified that "the barriers that immigrants and migrants face in the Canadian labour market - such as being unable to obtain work in their field because of language barriers, their lack of Canadian work experience, and/or policies against acceptance of their foreign credentials," (111) can lead migrant women to enter the sex industry.

Sex Worker Effects

In Canada, sex workers primarily experience the lived effects of the criminality problematization through the implementation of the *Protection of Communities and Exploited*

Persons Act. As discussed in previous chapters, the PCEPA introduced an end-demand approach to regulating prostitution which decriminalized the selling of sex — with the exception of advertising on behalf of another person and some restrictions on communication — while criminalizing purchasing and exploitative third-party profits. The goal of this policy is to end the demand for sexual services by deterring johns from purchasing the services of sex workers. Theoretically this lack of demand would make sex trafficking less lucrative, which would work in concert with the threat of punishment to disincentivize sex trafficking. While the goal of the end-demand policy framework is to remove the burden of criminalization from sex workers, in practice such strategies have had damaging effects.

When purchasing sexual services becomes illegal the number of purchasers does, in fact, reduce, which leaves sex workers with a smaller pool of clients. This makes the sex industry a "buyer's market," driving down prices and putting more power in the hands of clients — power which is taken from the sex worker (Mac and Smith, 2018). For many sex workers this pushes them further into the margins of society — they become increasingly impoverished and desperate, and this desperation results in a loss of safety. Where previously sex workers could engage in strategies to increase their security by screening clients they are now required to take greater risks in order to assuage client fears. The consequence is that street sex workers increasingly work alone so as not to attract police attention, which removes the safety that working together can provide. Street sex workers are no longer able to properly screen clients who are more likely to expect sex workers to service them in more remote and dangerous locations. Indoor sex workers also face greater risks as clients are less likely to be willing to give them accurate personal information which is as a check to ensure good behaviour. Clients are

more likely to request out-calls. When a sex worker performs out-calls they are taking a greater risk in entering an unknown environment over which they have no control. For all types of sex workers making purchasing illegal only deters the safer clients, whereas dangerous clients are less likely to be dissuaded by the prohibition. The need to make money leaves sex workers having to accept clients or offer services that they otherwise would not, in order to survive. The repercussions of restricting demand have led to increased poverty and decreased protection for sex workers.[24] Mac and Smith (2018) suggest that many sex workers are in the industry because they lack other opportunities to support themselves and that in reducing their ability to make money by shrinking their client pools, end-demand models also lower sex workers' chances of survival: "When people are pushed into prostitution by poverty, the response of the Nordic model is not to alleviate their poverty, but to try to take away their survival strategies" (*ibid.,* 155).

The difficulty in acquiring clients may even make the use of a third-party for bookings more attractive to sex workers, an unexpected consequence of a policy seeking to reduce the presence of third-parties in the sex industry (*ibid.*). Canadian policy criminalizes third parties in order to restrict exploitation and prevent trafficking — the problem with policy like this is that it does not align with the reality of third-party involvement in the sex industry. The law as introduced by the PCEPA criminalizes receiving material benefits from another person's selling of sexual services. That an individual is receiving material benefit can be presumed of any "person who lives with or is habitually in the company" (Bill C-36 2014, 12) of a sex worker, unless proven otherwise. There are exceptions for individuals offering services to the sex worker

[24] For a more detailed discussion of the impacts of reducing demand on sex workers, see Mac and Smith, 2018.

(such as security, driving, etc.) and for those in romantic relationships with a sex worker. For sex workers in abusive relationships the material benefit clause can become a barrier to reporting domestic violence. According to qualitative research done by Gillies and Bruckert (2019), the possibility that reporting a romantic partner for domestic violence could result in "having abuse from intimate partners dismissed in favour of prosecuting a sex work-related charge" (88) against the sex worker's will. The criminality problematization and the prohibitionist underpinnings of the Nordic model may cause police to "[frame] domestic violence as pimping [which] not only invisibilizes these women's experiences but also serves as a powerful disincentive to seek police assistance and legal redress" (89).

The PCEPA also introduced a new restriction on advertising for the provision of sexual services with the exception of advertising ones own services, which remains legal, and this has has negative impacts on independent escorts. According to Sterling (2019) independent escorts acquire most of their business from their websites, which is how they communicate what services they do and do not offer. Explicitly stating these services and their costs means no surprises from clients who would either expect services they do not provide or who balk at the prices — these clients are a risk for aggression or violence. Since the introduction of the PCEPA, many escorts are removing these details from their websites for fear of the repercussions of breaking the advertising restrictions. While the restriction does not apply to advertising services that one is personally providing, misunderstanding of the policy and overly cautious reactions motivated by fear are causing many escorts to remove overt references to their services online, and this places them at risk for potentially dangerous disagreements with clients (*ibid.*).

The advertising offence has also resulted in a reduction of client access for independent escorts, who will often advertise duo services — which are services offered with another escort. Escorts also will often have links to other escorts' websites on their webpage, which is a method used to make recommendations for each other and build their respective client bases. Both of these practices involve advertising the sexual services offered by another individual, which is an offence under the PCEPA. The lived result of the advertising offence in independent escorts' lives, therefore, is not only greater risk of misunderstandings with potentially dangerous clients, but also "changes that threatened the important social networks they had developed to receive information and support and to increase their economic viability" (*ibid*, 98).

A consequence of Canada's end-demand strategy is that it conflates all sex work with sex trafficking.[25] By constructing sex workers as victims-in-denial, the criminality problematization excludes them from engaging in anti-trafficking efforts by refusing to allow them to exist as anything but victims. Shutting sex workers out of the dialogue eliminates nuanced approaches to sex trafficking in favour of overly simplistic criminal justice responses. This may be harmful to trafficking victims, as sex worker rights organizations argue that sex workers are often the best poised to "detect and report cases of human trafficking or exploitative labour situations" (GAATW, n.d.). As stated by Sumaq: "That prostitutes are not seen as obvious and valuable allies in the anti-trafficking movement or as part of the migrant workers movement is only to the detriment of these movements and their efforts to build in inclusive and sustainable ways" (2015, 16).

[25] For more information see chapters one and three.

The conflation of sex trafficking victims with sex workers also has exposed sex workers to increased surveillance from, and interaction with, police who are pursuing anti-trafficking operations. When these operations are enacted in the form of raids they "frequently result in the closure of workplaces and often force sex workers to move from licensed establishments to unlicensed, harder to reach, and less safe working environments; they do not "free enslaved women"" (O'Doherty et. al. 2018, 112). Migrant sex workers are particularly vulnerable to trafficking raids, where they are racially targeted as potential trafficking victims (Butterfly, 2018). When these workers refuse to identify as victims, they are often jailed without cause for extended periods of time without being told why they are being held or for how long they will be held (*ibid.*). Because migrants are not permitted to work in the sex industry in Canada, migrant sex workers have had their possessions and finances taken by the police in these interactions, never to be returned. The seizure of these assets is justified as the penalty for having been earned by illegally working in Canada (*ibid.*). Police also often contact the Canadian Border Services Agency (CBSA) (if CBSA was not a part of the raid to begin with) and begin the process of deportation. The Canadian organization Butterfly (Asian and Migrant Sex Workers Support Network) argues that: "It has become common practice for police officers to enter sex work establishments with the Canada Border Services Agency (CBSA), under the guise of anti-trafficking mandates, leading to the deportation of sex workers who did not identify as victims of trafficking" (2018, 26). In these processes the attempted rescue of potential victims perversely victimizes and criminalizes individuals who did not ask to be rescued to begin with. We see at work here the intersection of two consequences of the criminality problematization: the

increasing criminalization of immigration and the insistence on determination of victimhood by outsiders in lieu of victim self-identification.

Effects on Trafficked Persons

As discussed earlier in this chapter, trafficking victims are produced by the criminality problematization as helpless innocents who exist in diametric opposition to the villainous traffickers who exploit them. The reality, as I have also elucidated, is significantly more complex. One of the consequences of the criminality problematization on the lives of trafficking victims is its insistence on placing so much power in the hands of law enforcement when, for diverse reasons, many victims of trafficking do not trust the police. In the case of trafficked migrants in both sex and labour trafficking, there is a well-founded fear of deportation should they turn to law enforcement. Sex trafficking victims may also have a history of criminal activity (secondary recruitment, drug-related offences, etc.) which may deter them from engaging with the police. Sex trafficking victims may also resemble those of domestic violence, and may share the reluctance to report that is often seen in domestic violence victims due to feelings of attachment to their abuser (Roe-Sepowitz et. al. 2014). For those victims who do choose to press charges against their traffickers, human trafficking cases have proven to be incredibly difficult to prosecute in a court of law.

According to Kaye and Hastie (2015), there is confusion about the human trafficking offence in the *Criminal Code* and its applicability. The trafficking offence is difficult to use because of significant confusion around its meaning and applicability, such as the uncertainty around the the necessity of movement as a requirement for an offence to constitute human trafficking. Trafficking offences are also complicated by the definition of exploitation in the

Criminal Code which requires that an individual fear for their own safety or that of their family members. In practice, this means that determining whether a trafficking offence has occurred requires that a victim *prove* that they feared for their safety. The evidentiary burden, then, falls to the victim, who must prove that they were exploited when there is often no physical evidence, and in situations where any indicator of consent could be used to discredit their "fear for safety." The use of any incidents of consent to negate the presence of exploitation is incredibly problematic for trafficking cases because victims often consent to a certain set of conditions for labour or sex work, and then experience trafficking when those conditions are broken. As Kaye and Hastie argue, "knowledge of the work or services to be performed (whether sexual or non-sexual) does not negate the possibility that the situation could be one of human trafficking," (97) but it may function as a barrier to successful prosecution of a trafficking offence. For this reason alternate charges are implemented in sex trafficking cases, but there are often no such options for a labour trafficking cases, leaving victims of labour trafficking with little recourse through the judicial system. Beatson, Hanley, and Ricard-Guay (2017) also argue that considering degrees of coercion and exploitation in the experiences of migrant workers reveals that there are many more cases which qualify as labour trafficking but are not considered such because they fail to meet the criteria for exploitation laid out in the *Criminal Code.* O'Doherty et.al. (2018) conclude that "the reductive narrative of human trafficking as predominantly an issue of extreme sexual exploitation is a major impediment to prosecuting cases successfully" (113). In light of these critiques of the efficacy of the trafficking provision, it is evident that the human trafficking offence in the *Criminal Code* was written with the "ideal victim" in mind and fails to meet the needs of actual victims seeking redress.

Pursuing justice through criminal proceedings can also be actively harmful to victims of human trafficking in the form of secondary victimization. The Canadian Resource Centre for Victims of Crime (CRCVC), defines secondary victimization as "victimization which occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim" (2011, 6). Secondary victimization can be experienced by victims of crime throughout "[t]he whole process of criminal investigation and trial," (*ibid.,* 7) and is often triggered by the structure of "the common-law legal tradition, [which] views victims primarily as witnesses to a crime against the state. As a result, victims are treated as objects and used by legal actors to advance their case" (Wemmers 2012, 72). As Kaye and Hastie (2015) identify, due to the definition of exploitation and the lack of physical evidence in many human trafficking cases, "the evidentiary burden for criminal justice authorities is perceived to be heavily reliant on victim cooperation and testimony" (96). Consequently, the defence is heavily invested in discrediting the witness, and O'Doherty et.al. (2018) have found that "the same issues that lead to sexual assault acquittals (i.e., witness credibility and reasonable doubt concerning consent) are exacerbated in the context of human trafficking" (114). Having one's victimization questioned or erased in this way can be another source of secondary victimization and the experience of revisiting the crime may be traumatic for victims (Canadian Resource Centre for Victims of Crime, 2011).

The criminality problematization also fails victims through the provision of inadequate victim services, which are often linked to the requirement of meeting the 'ideal victim' narrative. As the subjectification effects reveals, there is only one specific victim narrative that is given any real credence and anything which differs even slightly can result in an insufficient access to

services. This is particularly true in cases of labour trafficking, where the victims often stray significantly from the "ideal victim" who is usually the female victim of violent sex trafficking. Hastie and Yule (2014) conducted an analysis of a landmark case of labour trafficking in Ontario which involved the trafficking of Hungarian men by an organized crime ring led by the Domotor family. The authors argue that while the *Domotor* case was viewed as a victory for Canadian anti-trafficking policy, the case "illustrated numerous unexamined gaps in Canada's current response to human trafficking, particularly from a service and protection perspective," (84) including "the inadequacy of community services directed towards men," (*ibid.*, 91) weaknesses in the Temporary Resident Permit (TRP) program, as well as "systemic issues with respect to services such as adequate funding, translation, and interpretation aids" (*ibid.*) for the victims. Consequently, despite being "the first successfully prosecuted case of international human trafficking, and the largest uncovered trafficking operation to date in Canada" (*ibid.*, 83), the *Domotor* case revealed the failure of Canadian human trafficking policy to protect victims.

The TRP program is a tool which is intended to provide temporary status to non-Canadian victims of trafficking for a period of 180 days, and is subject to renewal for up to three years. Recipients of a TRP "are not required to testify against their traffickers" (Barbagiannis 2017, 576) and are given access to "healthcare benefits and trauma counseling, and the ability to work legally in Canada" (*ibid*.). However, Barbagiannis criticizes the TRP program for containing barriers to those who do not fit strict government definitions of trafficking and excluding the family members of victims who are often at risk of retaliation and violence from protection. The Canadian Council for Refugees has also criticized the TRP program for often being inaccessible in practice and for its gaps in protection and service provision. According to

the CCR, access to a TRP is limited by the discretion of Immigration, Refugees and Citizenship Canada (IRCC) employees. Consequently, victims may face delays or may be wrongfully denied in their consideration for a TRP. The CCR has also identified that a TRP is often dependent upon cooperation with a criminal investigation, despite this not being a requirement for the permit. The TRP also places financial burdens on trafficked persons, who are obligated to pay a two hundred dollar fee to renew their TRP. Additionally, there is "no consistent policy regarding the issuance of TRPs to family members of survivors of trafficking" (CCR, 2013) which in some cases has led to deportation and family separation. The CCR has also identified instances where "decisions to deny a long-term permit have been made without officers clearly considering the impact that being trafficked in Canada has had and what it would mean for their lives if they returned to their country of origin" (*ibid.*). More insidious are the requirements that a trafficked person must "renounce their current legal status or wait until it expires to be considered for a TRP, with no guarantee that they will be issued one," (*ibid.*) and restrictions which require those who have been refused refugee status to wait twelve months before they are permitted to apply for a TRP. This loophole is then used by traffickers who "force their victims to make a refugee claim, which is then withdrawn or abandoned, or force them to make a refugee claim which is destined to fail" (*ibid.*). Finally, the TRP program fails to include "a pathway to permanent residency" (*ibid,* 586) for victims of trafficking in Canada, wherein "[t]he conditions and time required to attain permanent residence have not always been clearly articulated" (CCR, 2013) to victims. The reality of the TRP program is that there are insufficient practices in place to protect victims of trafficking. Barbaggianis (2017) argues that the TRP "is underutilized [by a government which] in practice, prioritizes prosecution over protection" (585).

Trafficking victims also are limited in their access to compensation. Baglay (2020), has identified four possible avenues through which trafficked persons may seek financial restitution: "provincial compensation schemes;" (22) "restitution as part of a criminal sentence;" (*ibid.*) civil lawsuits; and "[l]abor and human rights complaints" (*ibid.,* 23). In reality there are limitations on the accessibility of these options to trafficking victims and "available compensation mechanisms are highly under-utilized by trafficked persons" (*ibid.*).

Conclusion

The goal of the fifth step of WPR is to identify how policies may be harmful to particular groups of people, which creates an opportunity to alter policy in order to alleviate these consequences. Examination of the criminality problematization reveals that human trafficking in Canada is discursively restricted to being a criminal justice issue which focuses on rescuing victims and punishing traffickers. This representation of the problem has consequences for both marginalized persons within Canada and those from without Canada who seek to enter the country. Increased emphasis on the criminal justice system serves only to reinforce the institutional oppressions experienced by racialized Canadians and Indigenous peoples at the hands of law enforcement and their subsequent overrepresentation in the federal prison system. The desire to protect Canadians from racialized criminality has been weaponized against migrants who are refused permanent status in favour of temporary labour programs whose conditions are rife with opportunities for exploitation, including labour trafficking. For those who are permitted to enter, opportunities to work in Canada are restrictive and may create pathways to exploitation in the workplace, trafficking others out of desperation, or entering the sex industry.

Those within the sex industry have been also been negatively effected by the criminality problematization. The *Protection of Communities and Exploited Persons Act* is aptly named, as Canadian policy has revealed itself to be far more interested in protecting communities from nuisance — the visible presence of sex workers and migrant sex workers — than it is in identifying exploited persons and responding to them with compassion. The criminality problematization has resulted in increased surveillance of racialized persons and sex workers, and has treated them with disdain and suspicion. When victims are identified they are not adequately protected or assisted, and in many ways are treated as tools that the police can use to make arrests and prosecutors can use to gain convictions. Overall, the criminality problematization leads to policy that considers border restriction, deportation, and incarceration to be the ideal responses to human trafficking, which reinforces the oppression, marginalization, and impoverishment of many while in reality doing very little to help victims. The lived effects of the policy are damaging to already marginalized and vulnerable groups. Consequently, I conclude that this problematization of human trafficking cannot yield socially just policy, and instead I suggest a new problematization of human trafficking as a "problem" of inequality.

Chapter 6: Disrupting the Criminality Problematization

In this thesis I have implemented Carol Bacchi's WPR strategy to Canadian human trafficking policy texts in order to identify what the "problem" of human trafficking is represented to be. This chapter will summarize the results of the WPR analysis of Canadian policy texts and recommend an alternative representation of the "problem" of human trafficking in Canada: the inequality problematization. Performing the WPR method revealed that Canadian policy texts problematize human trafficking as a "problem" of criminality requiring intervention through the criminal justice system. The criminality problematization is predominantly interested in women as potential victims of sex trafficking, and emphasizes strategies to safeguard women from predominantly male violence by equipping them to protect themselves through awareness campaigns, restricting their movement (either through migration restrictions, criminalization of the sex industry, or the deportation of migrant sex workers), and arresting and imprisoning offenders.

Following the identification of the problem representation, I performed a Foucauldian archaeology which revealed that the criminality problematization is dependent upon assumptions that the criminal justice system is in fact "just" and capable of adequately punishing and deterring criminal behaviour while rehabilitating offenders to reenter the community. These assumptions are revealed and questioned in chapter three, where they are tied to the false presumptions about the nature of crime and the existence of a clear dichotomy between victims and perpetrators. Chapter three also considers perspectives which are marginalized and invisibilized in the problem representation, and reveals alternative ways to conceptualize the "problem" of human trafficking as a "problem" of labour rights, individual vulnerability, or

institutional oppression. These alternative representations of the "problem" expose how systematic marginalization in the form of precarious migration status, insufficient labour protections, capitalist patriarchal oppression, and colonialism, are essential to the existence of the human trafficking "problem." Consequently, the "problem" can be produced differently, and in ways that would yield policy responses which address marginalization and oppression instead of focusing on criminalization, enforcement, and incarceration.

A Foucauldian genealogy of the problematization was performed in chapter four in order to elucidate how the criminality problematization has come to be as the result of a specific history and context. A genealogy of the problem representation reveals both how the criminal justice response to trafficking, and the reduction of human trafficking as primarily sex trafficking, are inherited from the discursive predecessor of the nineteenth-century white slave panic. Canadian and international policy has been drafted in response to the narrative of white slavery which depicted innocent and young white girls being abducted and forced into prostitution by racialized men for their own financial gain. The concern over white slavery led to the adoption of several international documents addressing this criminal "problem," which shifts over time from "the White Slave Traffic," (League of Nations, 1904) to "Traffic in Women and Children," (League of Nations, 1921) and eventually becoming "Trafficking in Persons, Especially Women and Children" (OHCHR, 2000). The criminality problematization is revealed to be the inheritance of over a century of criminal justice policy focused on ending the perceived exploitation of white women in the sex industry by racialized men. This construction of the "problem" of human trafficking erases the complexity of human trafficking realities, and minimizes the prevalence and gravity of labour trafficking in favour of an overemphasis on sex

trafficking. Much like white slavery, sex trafficking is often conflated with sex work, which directs anti-trafficking responses to focus primarily on the regulation of the sex industry, often through efforts to end the industry entirely, such as the Canadian PCEPA.

The consequences of the criminality problematization are identified in chapter five, which reveals the discursive, subjectification, and lived effects of the problematization. Analyzing the effects of the problematization reveals that the representation of human trafficking as a "criminality problem" has consequences which unevenly impact racialized and impoverished communities. Increased dependency on the criminal justice system reinforces the institutional oppressions experienced by Black and Indigenous people in Canada who are over-policed and overrepresented in Federal prisons. In order to protect potential victims of trafficking, the criminality problematization has been used to justify increasingly restrictive border policy which has limited access to legitimate pathways into Canada. These limitations push migrants into either illegal entry or entrance through programs such as the Temporary Foreign Worker Program (TFWP) — both of which make them more vulnerable to labour trafficking and exploitation. The criminality problematization also underpins the *Protection of Communities and Exploited Persons Act* which seeks to eradicate the sex industry — a policy that has left sex workers increasingly vulnerable to both exploitation and abuse. Finally, the criminality problematization places emphasis on the apprehension and prosecution of traffickers rather than focusing on the needs of victims. Representing the "problem" of human trafficking as a "criminality problem" results in the direction of funds away from victim protections and often results in deporting foreign victims rather than providing for them. Considering the lived, subjectification, and discursive effects discussed in chapter five, it is evident that the criminality

problematization has served only to reinforce the marginalization and vulnerability experienced by Indigenous and Black communities in Canada; migrants without status; temporary migrant workers; sex workers and especially migrant sex workers; and victims of trafficking.

This concluding chapter seeks to briefly address the final question of the WPR framework, which asks first *who* has had an interest in producing and defending this problematization, by what means this conceptualization of the "problem" has been propagated, and requires identifying any existing and potential opposition to the problem representation. Deployment of the sixth question "opens up space to reflect on forms of resistance and "counter-conduct" (Foucault 1978) that challenge (or could challenge) pervasive and authoritative problem representations" (Bacchi and Goodwin 2016, 24). The answers to questions six can be found throughout the previous chapters, however it is of importance to here briefly restate these in a consolidated form of an answer to question six.

It has been suggested in this thesis that the criminality problematization serves to reinforce national interests and solidify the legitimacy of the state. The criminality problematization has been weaponized against Indigenous peoples and migrants in an effort to legitimize the settler state and its sovereignty. The criminality problematization has been used to enforce the illusion that Indigenous peoples are Canadians and that they are the responsibility of the state to protect. Kaye (2017) argues that human trafficking is used as a justification for the continued colonization of Indigenous peoples and the erasure of their sovereignty. It is worth noting, however, that the position of Indigenous advocacy groups on prostitution policy, and the PCEPA in particular, varies. An example of this is seen in the Standing Senate Committee

hearings on PCEPA, wherein the Native Women's Association of Canada witnessed pro, but Aboriginal Legal Services of Toronto witnessed con (Fuji Johnson, Burns and Porth, 2017).

While the criminality problematization has served to justify the settler state, it has also served as a means to "protect" the national identity of Canada from racialized Others by justifying the increased criminalization of immigration and restriction of migration. Trafficking has thereby been weaponized against migrants, particularly migrant sex workers, and has restricted their access to entry into Canada in order to "protect" them. These restrictions have been criticized by academics (Anderson, 2013; Chan and Chunn, 2014; Toupin, 2013) as well as the Canadian Council of Refugees, who criticize the trend "from permanent to more precarious temporary immigration" (2014). Criticism has been particularly acute with regard to the TFWP, which is designed to benefit Canadian employers and businesses, and the Canadian economy, at the expense of the well-being and security of migrant workers. The TFWP allows the state and Canadian citizens to benefit from the labour of racialized migrants without incorporating them into Canadian society or community. These racial "Others" enter Canada, their labour is exploited — whether they are labour trafficked or not — and they safety return whence they came, without disrupting the social order.

Finally, the criminality problematization also benefits those who advocate for the eradication of the sex industry — whether that desire is inspired by social conservative morality or radical feminist gender equality. As discussed in chapter four, those who consider the selling of sexual services to be either immoral, a social nuisance, or inherently oppressive to women advocate for the eradication of the sex industry through end-demand policies like the PCEPA, which criminalizes the purchasing of sexual services and third-party profiteering. While the

PCEPA was supported by various feminist and conservative organizations, including the Canadian Women's Foundation and Real Women of Canada, it was staunchly opposed by sex worker rights groups such as Stella, Maggie's, and Butterfly Asian and Migrant Sex Workers Support Network, who argued that the Nordic model left sex workers more vulnerable to harm (Fuji Johnson, Burns and Porth, 2017).

Question six of WPR asks how this representation of the "problem" has been propagated. One of the issues presented throughout this thesis is the role of awareness and education as forms of prevention.[26] The awareness campaigns produced by the Government of Canada and by the anti-trafficking movement have played an essential role in proliferating a particular narrative of human trafficking. The Canadian government has been criticized for restricting anti-trafficking funding to groups who support the Nordic model and its goal to eliminate the sex industry in Canada. Consequently, these funds are funnelled into advocacy groups who depict a version of trafficking that aligns with the state narrative.[27] This narrative is one which often conflates sex trafficking with sex work and depicts the vast majority of human trafficking as violent sex trafficking. Awareness campaigns by anti-trafficking groups often implement sensationalism in their marketing in order to evoke emotion in viewers with the goal of acquiring resources in the form of donations, policy support, petition signatures, or volunteer hours. These depictions are often over-simplified and gloss over the nuances present in many sex trafficking realities, and have the unfortunate consequence of objectifying and dehumanizing the very people they are

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[26] See Chapters 3 and 4

[27] De Shalit, Heynen, and van der Meulen identify the Canadian Council for Refugees as "the only NGO receiving federal dollars for anti-trafficking programming that offers substantive critical perspectives on trafficking" (2014, 392).

seeking to assist and protect (Andrijasevic, 2007). The media also has a role to play in reproducing the "problem" of human trafficking as a "criminality problem." De Shalit, Heynen and van der Meulen suggest that:

> *The framing of trafficking through narratives of victims and saviours dominates media representations. It is in this respect that the overlapping perspectives offered by government and NGO "experts" in news reporting serve so strongly to limit perspectives on migration and to set a very narrow anti-trafficking agenda*
>
> *(2014, 390)*

While criticism of the Canadian anti-trafficking movement exists, it is primarily located in academic literature and in the work of migrant worker and sex worker rights groups. Accordingly, the dominant narrative of the anti-trafficking advocacy movement in Canada is primarily representative of the privileged perspective of outsider knowledge which silences many voices that could enrich and strengthen the Canadian response to human trafficking.

One of the assumptions of the WPR method is that policy does not respond to "problems" that exist in immutable form, but that policy texts instead respond to particular representations the "problem." This means that problematizations can change and policy texts can be altered accordingly. Taking into account the various alternative problematizations suggested in chapter three and considering the lived effects of the problematization in chapter five, I suggest that the criminality problematization, whose focus is on controlling deviance, erases the many ways in which human trafficking is rooted in, and exacerbated by, inequality. The inequality problematization of human trafficking locates the "problem" in the socioeconomic inequalities that create the conditions of vulnerability which can lead individuals into criminal behaviour or make them likely targets for victimization. This problematization assumes that criminality and

vulnerability are intrinsically linked, and that criminal behaviour is often motivated by previous experiences of victimization and the desire to escape difficult socioeconomic circumstances. Considering trafficking as an "inequality problem" allows for the incorporation of all of the alternative perspectives outlined in chapter 3: trafficking as a "social justice problem," trafficking as a "vulnerability problem," and trafficking as a "labour rights problem." If trafficking is represented to be an "inequality problem," then policies should be put in place to reduce social, racial, gender, financial, and global inequality. An inequality problematization of human trafficking would consider a myriad of factors that go into the production of vulnerability to multiple forms of victimization on the individual, community, societal, and global levels. This conceptualization of the "problem" would produce policy with drastically different discursive, subjectification, and lived effects than the criminality problematization.

The inequality problematization of human trafficking considers the role of global economic inequality in creating a market of migrant workers seeking employment and stability. This problem representation also accounts for the role of precarious status in producing increased vulnerability to exploitation for all migrants whether they are non-status, on a visa, or a temporary foreign worker (TFW). Consequently, the inequality problematization requires increased access to legal entry into Canada, introducing pathways for migrants to acquire permanent residency and citizenship, and making adjustments to the TFWP which relieve the dependence of TFWs on their employer, increase oversight of employers, and introduce methods for TFWs to report abuses.

A representation of the "problem" as rooted in inequality also accounts for the role of institutional oppression in creating the conditions of vulnerability to human trafficking

experienced by Indigenous peoples. The criminality problematization places the state in the role of saviour and protector, which invisibilizes a colonial history of acts of trafficking against Indigenous peoples (Bourgeois, 2015) and the damage that continued colonization wreaks upon Indigenous communities. In order to properly address human trafficking in Canada, the inequality problematization requires decolonization and reconciliation with Indigenous communities.

The inequality problematization also considers racial and class inequality and the role of institutional oppression in perpetuating the vulnerability of racialized individuals to trafficking. These considerations require reconceptualizing the role of law enforcement and the criminal justice system in responding to human trafficking. The criminality problematization is dependent upon increased criminalization and incarceration in the name of protecting victims. In this way the "criminality problem" representation fails to account for a history of violence and mistrust between law enforcement and marginalized communities which has resulted in the over-policing of racialized and impoverished communities as suspected perpetrators of crime, while simultaneously under-policing their experiences of victimhood (Chan and Chunn, 2014). The racist and classist history of policing has institutionalized biases against racialized and poor individuals, (Vitale, 2017) resulting in the overrepresentation of minority populations in federal prisons which increases the marginalization of these groups. The inequality problematization accounts for the role of institutionalized oppression in reinforcing marginalization, and would respond with relegating criminalization and incarceration as a last resort, rather than a first response, and would include restorative justice approaches in human trafficking cases where possible.

The inequality problematization also requires a nuanced approach to prostitution policy which accounts for the realities of sex trafficking while acknowledging the spectrum of agency and independence experienced by sex workers. Sex traffickers target particular types of vulnerable young women who are made so through poverty, social isolation, violence or abuse in the home, and systemic inequality. Vulnerability to trafficking is often the result of gender and class inequality which is exacerbated for girls who exist at the intersection of multiple oppressions. In the cases of sex trafficking, victim recruitment often involves deploying strategic tactics that manipulate young women into a sense of responsibility for their own oppression — a process is similar to the experience of victims of domestic violence. In response to this similarity, our treatment of trafficking victims ought to learn from the domestic violence movement and account for possible victim reluctance to press charges against their trafficker, a likelihood of a victim returning to their trafficker, and a victim's potential desire to remain in the sex industry because this is the life that they are used to. The inequality problematization requires creating legitimate pathways to alternate employment for women who do choose to exit the sex industry, however, these alternatives must account for the indignity of many low-income jobs which are offered to women without education and the wage gap experienced by women in the workforce. The gendered inequality of our economic system is itself considered a driving force of the "problem" of human trafficking in Canada under the inequality problematization.

While sex work can be a choice, for many women sex work is a last resort (Smith and Mac, 2018). The solution to this inequality cannot be to remove the option that these women have chosen as a means of survival (*ibid*.). Instead, an inequality problematization of human trafficking requires rethinking how we value women's labour, and offering further options for

women's economic provision. This could take several forms, such as enforcing wage equality, introducing universal basic income, or more effectively valuing care work as labour worthy of financial compensation. Offering women increased opportunity to thrive economically will reduce gendered financial inequality and provide alternative survival strategies for women which lie outside of the sex industry. The inequality problematization would also require that the Nordic model be rescinded and a new approach to prostitution policy considered. The inequality problematization also requires defunding police departments that conduct trafficking raids which result in the deportation of migrant sex workers and victims of trafficking and instead increasing the funding available to NGOs who offer harm reduction and protective services to sex workers.

Overall, the inequality problematization of human trafficking requires introducing policies and programs which reduce socioeconomic inequalities from the individual to the global scale. On a global scale this would require reducing border control and addressing the status inequality, and the accompanying precarity this produces, experienced by migrants by providing pathways to permanent residency. At the national level the inequality problematization requires pursuing racial equality through decolonization, reconciliation, and dismantling the racist institutions of law enforcement and the prison system. Responding to crime from an inequality perspective encourages the use of restorative approaches, minimizes prison sentences, and focuses on prevention by strengthening communities. Practically this means that the inequality problematization requires redirecting funds from law enforcement and prisons into social welfare programs that strengthen the resilience of communities and individuals.

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