

***Human Trafficking in Canada: “Crisis” or Confusion?:
An Examination of Canada's Trafficking Legislation
and the Development of a “Social Crisis”***

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Abstract

Since the implementation of Canada's domestic human trafficking legislation in 2005, the media, police, and government agencies have paid increasing attention to this issue. Using a social constructionist approach, this thesis analyzes the role of the mass media and official reports by various government agencies in the construction of human trafficking, demonstrating the development of the issue as a "social crisis", despite lack of empirical evidence to support it.

This thesis also examines the development of Canada's anti-trafficking law, as well as its meaning, application and impact as evidenced in charges and convictions under the new trafficking offence in Canada. Examining the legislative definition of human trafficking outlined in section 279.01 of the *Criminal Code of Canada*, the thesis demonstrates that the definition is highly abstract, and fails to centralize key factors, such as transportation, which are critical in the characterization of the human trafficking offence. The abstract legislative definition has resulted in a lack of a real distinction between human trafficking and procurement, or "pimping", covered under section 212(1) of the *Code*. In light of these concerns, the thesis aims to provide recommendations for the development of a more clear and consistent definition of trafficking, aligning it with the definition outlined in the *Palermo Protocol*, and distinguishing it from other *Criminal Code* offences.

Moreover, it is argued that Canada's increased border security and stricter immigration policies are a result of international pressures, particularly

from U.S., and especially after the post 9/11 amalgamation of the “war on terror” with anti-trafficking strategies. It is suggested that Canada’s campaign against human trafficking is in part used to justify increases in its border security and stricter immigration policies. The thesis proposes further research into Canada’s anti-trafficking approach, as current methods raise concerns in a number of ways.

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inspires me to be a better human being.

Introduction

Human trafficking is a term that describes the recruitment, transportation, and exploitation of people. The re-emergence of social concern over trafficking in the last two decades has been attributed to the globalization of capitalism and the consequent increases in the movement of people. Estimates regarding the extent of the problem range from 700,000 (RCMP 2010) to 4 million people per year (Oxman-Martinez *et al.* 2004). However, experts argue that these estimates are not supported by empirical evidence, and they are hard pressed to explain what an increase in human trafficking means in real terms (U.N. Gift. 2008a: 60). Despite this, forceful statements announcing the growth of global human trafficking, often labelled as “modern-day slavery” prevail. Canada has also been identified as a source, transit, and destination country for human trafficking. Canada joined the international community in the global fight against trafficking in 2002. Since then, Canada’s efforts in the battle have been criticized as mediocre by the international community and especially the U.S.

This thesis examines the social construction of human trafficking in Canada through analysis of media presentations, official reports, legislation, policy, and court cases. Although there is an adequate collection of research examining human trafficking from an international perspective, there are very few studies considering the manifestation of this issue in Canada. Particularly absent are studies which are not produced or endorsed by government agencies and which analyze the issue from a critical perspective. Therefore,

the value of this thesis stems from its critical focus on human trafficking in Canada, including its laws, court cases, government perspectives, news reports, and some Canadian anti-trafficking literature.

Examining representations of human trafficking in the social media, I argue that the issue is being constructed into a moral panic through undocumented claims of its prevalence, and horror stories depicting the dramatization of human suffering. “Moral panic” is a term coined by Stanley Cohen in 1972, which describes a period of focus on an issue deemed as a threat to societal values and interests (2002: 1). The deconstruction of moral panics is imperative, due to their potential for lasting influence in society, affecting everything from cultural beliefs to legislation, and policy, to human rights. However, a number of past attempts to debunk the validity of certain social issues have been unsuccessful due to the lack of rigorous evidence (Ungar 2001). According to Ungar, taking a critical stance on an issue can become unscientific, if it is not supported by evidence (2001: 287). However, the challenge in debunking moral panics partly stems from their use of unverifiable evidence, such as broad claims regarding the rise of a social problem, without empirical substantiation (ibid). Analyzing trafficking related media presentations, official reports, legislation, and court cases, I demonstrate the emergence of a moral panic against human trafficking in Canada, which meets the requirements of what Ronald Weitzer calls “the ultimate type of institutionalization” (2007: 458). According to Weitzer, “institutionalization” of an issue occurs if the concern has been “accepted by

authorities as a bona fide problem” (ibid). The degree of “institutionalization” may range from “consultation of activists, inclusion of leaders in policy processes, material support for crusade organizations, official endorsements of the ideology, resource mobilization, and the creation of legislation and new agencies to address the problem” (ibid). I argue that Canada’s moral panic against human trafficking includes all of the above listed factors, thus meeting the criteria for the “ultimate institutionalization” – a level that can result in profound societal effects.

I began my research for this thesis by focusing on the treatment of trafficking victims by the criminal justice system, in order to better understand Canada’s overall approach to human trafficking. In an effort to grasp the gravity of the issue and the seriousness of its consequences on victims’ lives, I directed my attention to examining the global and national efforts towards combating human trafficking. In particular, my goal was to focus on the approach that Canada - a country known for its emphasis on human rights - was taking on the issue. At the outset of my research, I believed that Canada’s anti-trafficking efforts were improving (as seen by the rise in the trafficking related charges and convictions), but required further advancements in order to enhance their efforts. Instead, however, I uncovered fundamental concerns in Canada’s anti-trafficking approach, including misconceptions regarding the basic definition of human trafficking as well as understandings about what constitutes a trafficking victim. I found crude discrepancies between the social constructions of human trafficking by media and the government, and the

existing evidence to support this. I further encountered a noteworthy resemblance between the human trafficking legislation outlined in section 279.01 of the *Criminal Code of Canada* and section 212(1) of the *Criminal Code*, which covers the offence of procurement for sexual exploitation, also known as “pimping”, leading me to question Canada’s categorization of trafficking offences. The combination of these observations revealed an account of Canada’s anti-trafficking efforts, which notably varied from my original perspective.

Therefore, even though I began my research with the intention of evaluating Canada’s anti-trafficking efforts with the goal of contributing to policy development, I found that evidence to support this “social crisis” is highly questionable. Upon examining the claims being made in the media, as well as government reports, and contrasting them with the existing evidence consisting of five questionable domestic trafficking convictions, and a handful of international trafficking charges, none of which have resulted in convictions, a persisting moral panic was the only viable conclusion. It is important to note that my conclusions are in no way meant to suggest that human trafficking does not exist in Canada or globally, or to diminish the suffering of its victims. It is merely to argue that the evidence to support human trafficking as a “social problem” in Canada is inadequate. This may be because it is not a crime of prevalence in Canada, or because the complexity of the offence, as well as the misdirected focus of law enforcement, has resulted in failure to uncover trafficking cases.

It is also important to contextualize Canada's anti-trafficking efforts in international politics. Thus, I analyze international and domestic laws and definitions of trafficking to argue that their ambiguity and breadth fulfill a particular political and moral agenda - that of renounced moral panic created around human trafficking, which as history has shown us, can be oppressive towards particular segments of society. Examining the application of these laws and definitions in trafficking related criminal court cases, I argue that the legislative changes in Canada have resulted in the re-labelling of procurement offences, which fall under section 212(1) of the *Criminal Code of Canada*, as human trafficking. Finally, I explore Canada's immigration system and its recent emphasis on border control, suggesting that the aftermath of 9/11 led to a greater focus on national security in the U.S., consequently increasing demands on Canada to tighten its borders. I suggest that the moral panic against trafficking is used to justify increases in Canada's border controls as a way to reduce illegal migration and human smuggling.

Chapter Outline

In the first chapter, I briefly outline the claims-making process in the context of the social constructionist theory, and examine the various components required for the development of a moral panic. I discuss the history of global action against human trafficking leading to its most recent concern in the 1990s, which resulted in the development of the latest international anti-trafficking convention, also known as the *Palermo Protocol*

in 2000. This chapter focuses on the academic debate around human trafficking, examining the various issues relevant to the study of trafficking, and outlining the existing arguments and perspectives on each issue. Human trafficking cannot be examined separately from issues of victims' agency and consent, the distinction between smuggling and trafficking, sex work and trafficking and the difference between migrant workers and trafficking victims. I also examine the role of race and ethnicity in the context of the issue, analyze the gendered nature of the crime, and discuss the implications of anti-trafficking discourses for border control strategies.

In chapter two, I examine popular media sources to demonstrate the social construction of human trafficking in Canada. Analyzing newspaper reports, such as the *National Post*, *Globe and Mail*, *Toronto Sun*, *Toronto Star*, *Ottawa Sun*, *Ottawa Citizen*, and primetime television shows featuring episodes on trafficking, including *CSI*, *CSI: New York*, *CSI: Miami*, *Law and Order: SVU* and *NCIS: Los Angeles*, I draw out discourses operating in the specific construction of human trafficking as a "social problem". I contextualize my findings in the 19th century moral panic against "white slavery" as well as the 1980s panic against juvenile prostitution to demonstrate the historical similarities between the current and historical constructions of the issue.

Chapter three, examines various official trafficking related reports to consider the government's approach towards human trafficking. I unveil the development on human trafficking as a pressing "social issue" through

specific organization and broad interpretation of limited amounts of data. I argue that wide-ranging estimates, lacking in empirical evidence are used to claim that human trafficking is a prevailing issue in Canada. Furthermore, I demonstrate that the issue of human trafficking is linked with smuggling, stereotypes of race and ethnicity, as well as migration through subtle nuances evident in official reports. Finally, I examine the controversial issue of consent and its role in correlating trafficking with prostitution, procurement, and migration.

In chapter four, I analyze various definitions and laws on human trafficking in Canada, constructing a comparison between section 279.01 of the *Criminal Code of Canada*, section 118(1) of the *Immigration and Refugee Protection Act* and the *Palermo Protocol*. I argue that the ambiguous definitions have resulted in broad laws, which are further muddled by the existence of varying versions. I suggest that Canada's human trafficking laws incorporate a number of offences, which are also punishable under other provisions, therefore failing to distinguish trafficking from other offences. Furthermore, this chapter examines the application of these laws by analyzing trafficking related court cases and argues that the legislative changes have resulted in the re-labelling of procurement, or "pimping" offences governed under section 212(1) of the *Code* as human trafficking. By discussing cases of Canada's trafficking convictions and the imposed sentences, I examine various emerging issues, including inadequate sentences and guilty pleas.

Chapter five examines the structure of Canada's immigration system, including the special programs that facilitate migration, particularly the controversial Exotic Dancer Visa program, as well as temporary resident permits for victims of human trafficking. Finally, I analyze the impact of international pressures, and the U.S. amalgamation of the "war on terror" with anti-trafficking strategies post 9/11, on Canada's border control strategies, arguing that Canada's campaign against human trafficking has been, at least in part, used to justify increases in border security and stricter immigration policies.

Chapter 1: Setting the Context

Social constructionist theory assumes that social movements and issues are interactive, symbolically defined, and negotiated by many players, actors, and agencies (Kendall 2008: 497). According to this theory, crime is a social event, which involves not only the actions of individual offenders, but also those of the victims, bystanders, witnesses, law enforcement officials and members of the political society (Henry & Lanier 2001). The claims-making process is central to the social constructionist study of deviant behaviour. This is because exaggerated claims are essential in the construction of a moral panic (Victor 1998). As I briefly discussed in the introduction (*supra*. p. 8), moral panics are based on widespread, unfounded beliefs about a newly emerged threat. They are characterized by a collective increase in concern and hostility, which give rise to social movements aimed at its elimination, such as moral crusades, political struggles, and overuse of the law. The main identifying feature of a moral panic is the prevalence of claims, accusations, and rumours (*ibid*). Claiming an issue to be the subject of a moral panic does not mean that the issue does not exist, but merely that reactions to it are “fundamentally inappropriate” (Cohen 1972: 204).

In order to make the term more concrete, several specifications have been added to the term since its development by Stanley Cohen in 1972. According to Goode and Ben-Yehuda, there are five indicators of the moral panic: volatility, hostility, measurable concern, consensus, and disproportionality (as cited in Victor 1998: 543). There is also a consensus

within the population regarding the reality of the threat, but no empirical evidence to support it (ibid). Moral panics can cause significant and lasting damage to those who become its targets, through physical and psychological harm, property damage or hurtful laws and/or policies (ibid). As a result, it is important to deconstruct moral panics, such as the one currently taking place against human trafficking.

Despite common beliefs that human trafficking is a recent addition to the series of global concerns prioritized by the international community, the issue has been at the forefront of the international agenda since the end of transatlantic slave trade (Kempadoo 2005). Globalization of capitalism and the consequent internationalization of waged labour led to mass migration of both male and female labourers, mostly from lower class backgrounds, across international borders. As a result of the gendered and racially defined division of labour, women's jobs as migrant workers often involved domestic and sexual servitude (ibid). However, the potential for women's independence through this newfound employment opportunity was seen as threatening to the existing patriarchal order, causing enormous anxiety amongst the ruling classes (ibid). Under the rubric of patriarchal protection, women's migration was constructed as involuntary entrapment and enslavement known as "the white slave trade", which associated female migrant workers with notions of degraded sexuality, prostitution, and immorality (ibid). Thus, the myths around "white slavery" were developed in response to the perceived need to regulate female sexuality (Doezema 2000: 23).

Taking a backburner in the years surrounding World War I and II, the issue resurfaced in the 1970s, becoming of great importance on the international agenda by the 1980s (Kempadoo 2005). The most recent wave of this moral panic began in the 1990s, as a result of the increased rate of social, political, cultural and economic changes taking place on a global scale (Parker *et al.* 2004: 363), including the liberation of Eastern Europe, which became viewed as both threat and an opportunity for the West (Saunders & Soderlund 2003: 16). In response to these concerns regarding human trafficking, the United Nations developed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, also known as the *Palermo Protocol* in 2000. The subsequent version of earlier anti-trafficking conventions re-establishes human trafficking as an international concern, and provides an international strategy to combat the issue. Since coming into force in 2003, the anti-trafficking *Protocol* has been signed by 155 member states (UNODC 2009), 121 of them have also implemented a domestic anti-trafficking legislation (RCMP 2010). Following international efforts, Canada ratified the *Protocol* in 2002, taking numerous steps to fulfill its provisions, including the implementation of a domestic anti-trafficking law. Since then, Canada has been the target of significant pressures by the international community, particularly the U.S. to increase its anti-trafficking efforts (*infra.* p. 131-134).

Relevant Issues

There are two main perspectives governing human trafficking discussions: the dominant anti-trafficking perspective, which argues that human trafficking is a form of “modern day slavery” that violates basic human rights. This perspective is heavily influenced by anti-prostitution advocates, who argue that prostitution is inherently exploitive and violates the human rights of its victims (Doezema 2007). The dominant perspective emphasizes the need to take action against human trafficking, advocating a criminal justice approach and harsher punishments for the crime (ibid).

The opposing side, represented by sex workers’ rights activists, argues that not every sex trade worker and migrant sex worker is forced or coerced into their situation, therefore assumptions regarding their lack of consent remove sex workers’ agency and violate their human rights. Advocates of this perspective call into question the effectiveness and ethical responsibility of labelling all cases of sex work as “trafficking”, when the alleged victims are choosing to escape from the protection and rehabilitation provided through anti-trafficking efforts (Soderlund 2005). Furthermore, they suggest that the prevailing anti-trafficking discourse is grounded in a particular mythology of trafficking, which is unconfirmed by factual evidence (Sanghera 2005). The consistent emphasis on human trafficking as a tragic and continually growing problem is at least in part, motivated by significant amounts of funding allocated towards anti-trafficking projects (ibid).

Based on these arguments, a number of sub-issues emerge in human trafficking discussions, including prostitution, migration, smuggling, border control, gender, race, and ethnicity. The following section discusses the prevailing arguments surrounding human trafficking, and provides an overview of the various issues. While many of the concerns in this discussion overlap significantly, I attempt to separate them in an effort to demonstrate the significance of each individual issue in the context of human trafficking.

Distinguishing between Smuggling and Trafficking

The U.N. *Protocol Against the Smuggling of Migrants by Land, Sea and Air* specifies that countries need to target smuggling and trafficking of people in order to ensure their safety (Bruckert & Parent 2004). However, the difference between smuggling and trafficking is often difficult to detect because of their frequent overlap. According to the *Bi-National Assessment of Trafficking in Persons* report “smuggling involves the facilitation, transportation or procurement of the illegal entry of a person or persons across international borders,” which occurs with the consent of the individual (U.S. Department of State & Government of Canada 2006: 1). Trafficking, on the other hand “...involves the use of threats, force, coercion or fraud, resulting in the conditions of servitude, slavery or commercial sexual exploitation of an individual” (ibid). Thus, individuals smuggled into a country are free at the end of the journey, whereas victims of trafficking are kept under the control of their traffickers (Oxman-Martinez *et al.* 2000). Trafficking may also take

place within national boundaries, while smuggling indisputably involves the crossing of international borders (Haque 2006). Trafficking is further complicated by its multistage process, consisting of recruitment, transportation and exploitation, which are often inconsecutive and overlapping. Thus, trafficking can start off as smuggling (with the consent of the individual), and turn into trafficking at any stage during the journey (U.S. Department of Justice & Government of Canada 2006). Exploitation is a key factor in trafficking since it violates basic human rights. However, the concept of “exploitation” is largely based on the moral perspective of the interpreter, and is therefore embedded with controversy regarding the meaning of the term (Chew 2005). Debates about exploitation tie together many of the underlying concerns in trafficking, such as its correlation with prostitution and migrant sex work, as well as issues of consent and agency (each will be discussed separately *infra*).

Theoretical arguments on this issue diverge. Advocates of the anti-trafficking perspective suggest that tightening border controls is necessary to reduce trafficking (Kara 2009; Malarek 2003; Perrin 2010; Sulaimanova 2006). For example, Kara (2009) argues that the effectiveness of aggressive anti-trafficking strategies involving strict border controls and stringent immigration policies are demonstrated through substantially lower rates of human trafficking in North America, in contrast with the rest of the world. The counter perspective suggests that trafficking is intentionally being confused with smuggling, prostitution, and migration, since the dominant anti-

trafficking paradigm rests upon the absence of this critical distinction (Sanghera 2005; Jeffrey 2002; Kempadoo 2005; Kapur 2005). These arguments provide a useful background for later discussions on migration and border control (*infra.* chapter 5).

Migration and Border Control

Human trafficking is often correlated with illegal migration and poor border control. The dominant discourse argues that individuals, who consent to migrating for the purpose of prostitution, do so based on erroneous information regarding their working conditions, which annuls their initial consent. According to Victor Malarek (2003), no one enters the global sex trade by choice. Malarek (2003) argues that women fall into the trafficking trap by imagining scenarios from the movie *Pretty Woman*, expecting to earn fast money, meet Mr. Right, and live a luxurious life. Malarek asserts that the majority of these women end up as sex slaves – “the victims of the worst possible forms of sexual exploitation” who are used, abused and traded (*ibid.*: 19). Sulamaimanova (2006) adds that many women become victims of sex trafficking because of their own naiveté and unrealistic expectations. According to Interpol-Ukraine, about seventy-five percent of women are ignorant about the true nature of the job until their arrival at the destination (*ibid.*). Sulaimanova (2006) furthermore argues that the extreme naiveté of the women from the former Soviet Union is a consequence of seventy years of isolation from the rest of the world. The illusions drawn from Western soap

operas, movies and commercials leads women to believe that a similar lifestyle awaits them upon migration (ibid).

The counter perspective insists that the moral panic against human trafficking is used to justify increased border control and limit migration to Western countries. According to this perspective, the anti-trafficking paradigm is harmful to migrants because it constructs them as naïve and incapable of decision-making, thus removing their agency. Kempadoo (2005) argues that the enormous global movement of people in the last two decades has resulted in a growing panic against unregulated migration. As a result, a significant part of the international anti-trafficking strategy is focused on restricting global migration in the name of national security (Kapur 2005). The proposed solutions mainly rest in initiatives dealing with human trafficking and smuggling, securities, border control, law, order, and sexual morality (ibid). This perspective also expresses concerns over the safety of migrants, and argues that increasing border controls will force migration even further underground, escalating the use of criminal organizations, and jeopardizing the safety of already vulnerable members of the global population. Leslie Ann Jeffrey (2005) adds that the failure to respect the choices and agency of migrant sex workers by treating them as trafficking victims is itself an abuse of their human rights.

Race and Ethnicity

Social constructions of race and ethnicity are deeply embedded in the context of human trafficking. Although researchers see the roles of race and ethnicity in various ways, they generally agree on the use of race and ethnicity in constructions of non-white victims and perpetrators of trafficking as “the other”. According to Denise Brennan, sex tourism and trafficking are fuelled by racialization of the victim through stereotypes and fantasies of white, privileged men who “exoticize dark-skinned ‘native’ bodies” (2002: 156). The cheap rate at which women can be bought in many developing countries, combined with their over-sexualized image, makes sex trafficking a highly lucrative business.

Perceptions of trafficking victims as “other” than a state’s own ethnicity may in part account for states’ indifference to human trafficking. Victor Malarek (2003) argues that governments across the globe are treating human trafficking with indifference because of racist attitudes that perceive sex trafficking as a necessity, in order to prevent the rape of the receiving nation’s own women (ibid). Malarek suggests that the complacency regarding trafficked women stems from “racism based in a community’s deep-seated fear that their men are out on the prowl and that innocent local girls will be sexually assaulted and raped. The cold translation: better them than ours” (ibid: 129). According to Malarek (2003), the same racist attitudes are widespread amongst judiciary and government officials in the context of human trafficking, as demonstrated by the frequent dismissal of trafficking cases in

courts. Kara (2009) supports Malarek's perspective adding that constructions of ethnic minorities as "ignorant" and/or "subhuman" are used to validate their exploitation and enslavement. According to Kara "enslaving them for sexual exploitation was an unabashed statement of racial superiority" (2009: 32).

Kapur (2005) suggests that anxieties around global migration are closely linked with issues of race, ethnicity, and the construction of "the other". He argues that race and ethnicity are seen as a threat to the security of the nation, and work to justify increased border control and the tightening of immigration laws. According to Kempadoo (2005), human traffickers are often constructed as savage foreigners from non-civilized nations, who pose a threat to the civilized West. Such ideas are used as scare tactics to increase nationalism and create an "us" versus "them" division between Western and non-Western nations (ibid). Kapur adds that this approach "has the effect of keeping the 'rest' away from the 'West'" (2005: 25).

Factors such as racial and sexual rhetoric, norms about sexuality and fears of unrestricted immigration are conflated in both the moral panic and responses to human trafficking. Leslie Ann Jeffrey (2005) examines issues of gender, race, and national borders from a post-colonial perspective, arguing that the Canadian government's response to human trafficking works to maintain a particular gendered and raced neo-colonial Canadian identity. She points out that colonial discourse is present in trafficking related policy documents, constructing Canada as the "white knight", whose generosity in

the form of the welfare system is being taken advantage of by “illegal migrants” (ibid: 39). Canada’s stance on transnational trafficking is a consequence of its sense of moral superiority, which allows for the externalization of the problem, while maintaining a humanitarian reputation (ibid). Jeffrey (2005) furthermore asserts that Canada constructs its image as a nation that is acting in the name of global well-being and is motivated by a sense of moral responsibility, as opposed to its own interests. Canada’s missionary reputation allows it to distance itself from the global oppression, which works to hide Canada’s own exploitive colonial practices by demonstrating that the problems contributing to trafficking are outside of the nation’s control (ibid).

These arguments provide a useful background to understanding the relevance of these issues in Canada’s approach to human trafficking, and their construction in the social media and official reports. The exploration of this issue is particularly interesting in the Canadian context, due to Canada’s multiculturalism and consequent perceptions of racial and ethnic tolerance.

Human Trafficking as a Gendered Crime

According to the United States Department of Justice, approximately 560,000 women and children are trafficked each year across international borders for the purpose of the sex trade (as cited in Holman 2008). Women and children make up around ninety-two percent of all human trafficking victims (Oxman-Martinez *et al.* 2004), and about ninety-eight percent of the

victims trafficked for sexual exploitation (U.S. Department of Justice & Government of Canada 2006), demonstrating the emphasis on the gendered nature of this crime. Evidence of this is also found in the full title of the *Palermo Protocol – the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. This title places emphasis on women and children's special status in the context of human trafficking. Thus, there is no doubt that human trafficking is seen as a highly gendered issue.

However, arguments regarding the role of gender in the context of human trafficking diverge. The anti-trafficking perspective supported by theorists such as Perrin (2010), Holman (2008), Sulaimanova (2006), Shelley (2010) and Kara (2009), emphasize the disadvantaged position of women which makes them vulnerable to trafficking. According to this perspective, women's disadvantaged position results from systemic gender bias, leading to mass unemployment, lack of education, and reduced economic opportunities. As a result, women are more likely to migrate in search of employment, consequently placing them at a risk for trafficking.

The opposing arguments suggest that the construction of human trafficking as a gendered phenomenon has to do with re-establishing control over women's sexuality and the maintenance of patriarchy (Jeffrey 2005). According to Jeffrey (2005), the trafficked women as "victims", discourse maintains the "Madonna" versus "whore" division and justifies both the paternalistic and criminalizing treatment of trafficked women. Saunders and Soderlund (2003) argue that the anti-trafficking rhetoric is based on the 19th

century belief in women's purity and sexual innocence, which assumes their role in the sex trade to be that of a victim. The advocates of this perspective insist that despite appearances, anti-trafficking policy constructed on such ideas is harmful to women, since it removes women's agency and diminishes their status by equating them with children. Melissa Ditmore (2005) adds that establishing women's identity as "victims" and men's as perpetrators works to maintain long-standing gender stereotypes, which are also harmful to men, ignoring the reality of their victimization.

The Correlation between Prostitution and Human Trafficking

Human trafficking cannot be examined without considering its correlation with prostitution. There are three main theoretical frameworks on prostitution, which impact views on trafficking. The anti-prostitution perspective argues that all sex work is fundamentally exploitive, and assumes that entry into the sex trade is never by choice, but rather by force or lack of alternatives (Latin American Coalition to End Violence against Women and Children 2002). Represented by the Coalition against Trafficking in Women, Women in Action, and the Coalition against Prostitution, this perspective does not see prostitution as legitimate work, but rather a violation of human rights, thus condemning its legalization (ibid). Advocates of this viewpoint including Kathleen Barry, Sheila Jeffrey and Catharine MacKinnon, believe that trafficking should include all forms of recruitment and transportation for prostitution, regardless of whether any force or deception took place

(Doezema 2007). This was the approach taken by the 1933 *Draft League of Nations Convention on Trafficking*, as well as the 1949 *United Nations Convention for the Suppression of Traffick [sic] in Persons and the Exploitation of Prostitution*. Both conventions considered prostitution to be incompatible with the dignity of the person, and according to Doezeema (2007), resulted in violation of sex workers' human, labour and civil rights.

The second perspective views prostitution as legitimate work, but only if it is voluntary on the part of the individual participating. The involvement of intimidation, deception or luring results in the labelling of the sex worker as a victim (Latin American Coalition to End Violence against Women and Children 2002). While this distinction is more respectful of women's agency, the assumption that forced sex work is most common is often used to deny sex workers' rights (Latin American Coalition to End Violence against Women and Children 2002).

The third viewpoint, represented by Global Alliance against Traffic in Women, argues that prostitution is legitimate work in need of legalization and regulation. According to the advocates of this perspective, including Kamala Kempadoo, Jo Doezeema, Leslie Ann Jeffrey, and Ratna Kapur, criminalizing the sex trade impedes its regulation, therefore making sex workers vulnerable to exploitation. This position places an emphasis on the degraded working conditions of sex workers and not on the job itself (Latin American Coalition to End Violence against Women 2002). Advocates of this perspective argue

that anti-trafficking strategies are used to further criminalize and stigmatize the sex trade, and do not help real victims of trafficking.

Consent and Agency in Human Trafficking

The *Palermo Protocol* (2000) developed at the United Nations Convention against Transnational Organized Crime, specifies that an individual cannot consent to being trafficked. Despite the *Protocol's* blatant stipulation, the issue of consent is given significant consideration in discussions of human trafficking. Some argue that trafficked women are aware of the circumstances of their migration, and should be seen as migrant workers, instead of trafficking victims. Others view trafficked persons as victims due to the coercion, exploitation and deceit involved in trafficking, nullifying any decisions made at the outset.

Andrea Cornwall *et al.* (2007) argue that most women who migrate do so by choice, and are not trafficked against their will, therefore constructing women as victims of trafficking removes their autonomy and agency. Pamela Downe adds that images of violation and captivity deny women's agency, their "willful action and purposeful intent" (2007: 556). Downe (2007) suggests that we need to pay closer attention to individual narratives of women, and move away from the dominating image of trafficked women as victims of abuse and violence. This is supported by a study carried out by McDonald *et al.* (2000), which found that although service workers and key informants view trafficked women as innocent victims, the women themselves

often admit to having chosen migration with the intent to join the sex trade and improve their social and economic circumstances.

The opposing argument is presented by Jo Goodey (2004) who analyzed the large scale trafficking of women from Central and Eastern Europe after the collapse of the Soviet Union. Goodey (2004) argues that economic turmoil and communist regimes in Central and Eastern Europe led to a “feminization of poverty” through lack of education and jobs as well as widespread gender discrimination. According to the author, a combination of such factors leads to desperate social situations, which push women into accepting seemingly legitimate job opportunities abroad. Goodey (2004) claims that women are often aware that the opportunities are too good to be true, and yet the desperation of their situation leaves them few alternatives. Goodey’s perspective is supported by Sally Cameron (2008) who discusses the impact of poverty on an individual’s “choice” in being trafficked. Cameron (2008) argues that the limited options available for those living in poverty challenge the neo-liberal notions of individual choice. She asserts that a woman’s awareness of her future as a migrant sex worker does not necessarily constitute a “choice” to be trafficked, since the working conditions often remain concealed (ibid).

According to the research findings of Oxman-Martinez *et al.* (2005), some Canadian government officials take into consideration victim’s declaration of consent when deciding whether to label a situation as human trafficking. The contested issue of victim’s consent demonstrates the

confusions that persist around the definition of trafficking and the ways in which it differs from migration and sex work. Through an examination of official documents by various government agencies, court cases dealing with human trafficking and media portrayals of the issue, I explore the role of consent in the approach taken towards human trafficking in Canada. The air of suspicion that accompanies the consent of migrant workers will be further discussed (*infra.* chapters 3, 4).

Chapter 2: Human Trafficking – “Modern Day Slavery” or a Moral Panic?

Media plays an important role in determining and amplifying the issues that concern the public (Fahmy & Johnson 2007). The more an issue is covered by the media, the more it is perceived to be of importance (ibid: 25). However, the media does not simply reflect communal meanings, but has a more ideological role, by attributing exaggerated attention to an issue, thus causing social anxiety (Killingbeck 2001: 187). The media’s sources of information are those in powerful and authoritative positions ensuring that dominant ideas or ideologies are constantly reproduced (ibid). According to Deborah Brock (1998), forming societal beliefs involves reporting the perspectives of “average citizens”, whose lives are affected by the issue at hand. Such narratives, combined with the expertise of the “authorized knower”, which include the police, social workers and politicians, are assembled in a way that illustrates a “social problem” (ibid). Stanley Cohen argues that while moral crusading is not the goal of the mass media, “their very reporting of certain ‘facts’ can be sufficient to generate concern, anxiety, indignation or panic” (1972: 16). Creation of “crime waves” in the media thus result in the desired effect of creating public fear (Killingbeck 2001), which in turn allow for intensification of government control through tougher laws, and other initiatives (White & Perrone 1997).

Human trafficking is a prime example of how the media inflates an issue through unverified claims. The following media analysis deconstructs the moral panic against human trafficking, demonstrating the way in which it

is brought to the forefront of public concern. My goal is not to draw conclusions about the ways that media representations affect people's views or to draw any empirical conclusions regarding the changes in the frequency or representations of human trafficking in the media. Instead, the analysis is meant to demonstrate the various existing representations of human trafficking, and the ways in which these ideas construct the issue. Finally, it is valuable to look at the way that this and similar issues have been constructed in the past, in order to detect patterns and place the issue in a historical context.

The Construction of Human Trafficking in Social Media

In the following section, I analyze newspaper articles on human trafficking from a variety of news sources, including the *National Post*, *Globe and Mail*, *Toronto Sun*, *Toronto Star*, *Ottawa Sun*, *Ottawa Citizen*, *Edmonton Sun*, *Winnipeg Sun*, *Calgary Herald*, *CTV*, *CBC*, *the Province*, *Northshore News*, *Postmedia News*, *Burnaby Now*, *Digital Journal*, *The Spec.com*, *C2C Journal*, *Victorian Times Colonist*, *Mississauga.com*, and *Star Media Group*, *Yahoo News Canada*. Although Canada had an anti-trafficking law in its *Criminal Code* since 2005, the legislation had not been successfully used until 2008. Since that time, there has been an increasing amount of government, police, and media attention attributed to the issue of human trafficking in Canada. As a result of the added attention, and the consequent increase in the number of news articles and reports on the issue, I focused my analysis on articles published between 2008 and 2010. The articles were found through an internet search, using search terms such as *human trafficking*, *human*

trafficking for sex exploitation, people smuggling, organized crime, sexual slavery, forced prostitution, procurement, pimping, sex trafficking, migrant sex work and so on. The sample includes the vast majority of the articles available on the internet based on the search results. The few excluded articles did not fall into the prescribed timeframe, or were too similar to articles already included.

I also examine popular television shows including *Law and Order: Special Victims Unit*, *CSI*, *CSI: New York*, *CSI: Miami* and *NCIS* to consider the construction of human trafficking in the media, analyzing the claims being made and the underlying discourses. As with newspaper articles, I focus my analysis on episodes aired between 2008 and 2010. The sample includes all episodes on primetime television shows dealing with human trafficking aired during the three-year period in Canada. Contextualizing these findings in history, I demonstrate that the current campaign against human trafficking is a modified account of previous moral crusades against juvenile prostitution in the 1980s, and the turn of the 19th century moral panic against “white slavery”.

Analysis of newspaper articles

The findings below are based on an examination of fifty articles from various print media sources between 2008 and 2010. Themes emerging from this analysis include, the prevalence of human trafficking, declarations of trafficking as a “modern day slave trade”, constructions of race and ethnicity, and discourses of victimization. Examining the issue of human trafficking I

demonstrate its construction as both a transnational organized crime as well as a domestic one. Finally, I analyze Canada's anti-trafficking efforts as conveyed by the media, including an emphasis on stricter border controls, and laws governing trafficking.

Prevalence of the Issue

One of the key factors in the creation of a moral panic is exaggerating the extent of the problem. An absence of numbers on the extent of an issue, as is the case with human trafficking, is used to offer vague and largely inflated estimates with statements such as “It could be as high as...!” (Stanley 2009: 12). In line with this, Canada's news reports place tremendous emphasis on the prevalence of human trafficking in the country. For instance, an article in the *Ottawa Citizen* quotes Benjamin Perrin's claim that, “There are hundreds, perhaps thousands of victims being exploited every year in our country” (*Postmedia News* 2010: 1). In fact, seventeen-out-of-fifty articles focus on the extent of Canada's human trafficking problem, six of them emphasizing it in the title of the article. For example, the *Globe and Mail* ran an article entitled “Human trafficking rampant in Canada: RCMP” (Freeze 2010), while *North Shore News* published one entitled “It happens in Canada: Human trafficking is not just a ‘poor country’ problem” (Howsam 2010). Evidence of this is also in a *Toronto Sun* article that quotes a member of the Prostitution Awareness and Action Foundation of Edmonton stating “lots of people, they don't want to know its there. Not in beautiful Canada...Now it's not prostitution, now it's

human trafficking” (Cherry 2010d: 3). Another *Toronto Sun* article entitled “Human trafficking lurks in Canada” suggests, “the one thing experts can agree on is that it’s only the tip of the iceberg. How big that iceberg is and whether, we’ve even scratched the surface of it, is a whole other story” (Cherry 2008b: 2). Yet, according to Constable David Park of the RCMP, when it comes to estimating the prevalence of human trafficking “There are no numbers. No numbers at all” (ibid: 5). With only occasional references to the knowledge gap as a problem, the media is clearly constructing human trafficking as an issue of such enormity, that the scope of it is simply unknown.

Historians have found a similar pattern in the case of the late 19th, early 20th century “white slave trade” (Doezema 2000: 25). Even back then, a lack of evidence did not stop the media from overestimating the extent of the “white slave trade” (ibid). In a similar manner, media accounts inflamed the extent of juvenile prostitution in the 1980s through clumping together the number of youth on the streets and the number of juvenile prostitutes (Brock 1998). At other times, the media moved from reporting the number of young runaways to the issue of juvenile prostitution, linking the two issues in the minds of the readers. There were also attempts to estimate the number of juvenile prostitutes. Despite the fact that the numbers varied widely, a “new social problem” was still being created (ibid: 118).

Constructing the Slave Trade

One of the recurring themes in the news media is the construction of human trafficking as a “modern slave trade”. The term “slavery” brings forth images of the worst known treatment of humans associated with the cross-Atlantic slave trade of African people (Kempadoo 2005: xix). According to Stanley, this association is meant to legitimize the crime of trafficking as worthy of legal, oral, and social attention (2009: 10). The phrase is frequently used to emphasize the horrific nature of human trafficking in headlines such as “Hungarians treated like slaves: RCMP” (McDowell & Vallis 2010). The article describes victims as being brought to Canada by fellow Hungarians and forced to live in basements, work at difficult construction jobs without pay, and eat scraps of leftovers (ibid). The same story is reported in another article, which quotes one of the victims saying, “I was told that I could come here and start a new life and I was sold into slavery” (Saran 2010: 1). Another article argues that the Canadian government must take action against human trafficking if they want to end “modern day slavery” (Greenaway 2010). A *Toronto Sun* article suggests that women and girls are victimized by the lucrative business of sex slavery (Cherry 2008b). Finally, a *Globe and Mail* article summarizes Benjamin Perrin’s argument that “modern day slavery” is all around us (Sher 2010). In total, fifteen-out-of-fifty articles refer to human trafficking as the “modern day slave trade”.

A similar moral panic was constructed by social reformers against “white slavery” in the 19th and 20th centuries, in response to the alleged

widespread trafficking of women and girls (Brock 1998). Media accounts from 1911 entitled “Canada’s War on the White Slave Trade” and “Canada is the Slaver’s Golden Opportunity” warned against the dangers of human trafficking allegedly occurring in Canada and elsewhere (ibid: 122). In reality, however, this response was a result of the “social purity movement” concerned about “raising the moral tone” of Canada through issues such as prostitution, divorce, illegitimacy, “Indians” and Chinese (Valverde 2005). Majority of the “social purity movement” advocates were also supporters of the “social gospel”, which was an attempt to impose Christian values on Canadians (ibid). The focus of the “social purity movement” on prostitution and other issues of morality, therefore demonstrates the far reaching effect of “the modern day slave trade”.

Victimization

The concept of victimization is central to the anti-trafficking discourse since without a victim there can be no savage or saviour (Makau Mutua as cited in Stanley 2009: 11). The victimization discourse is common in news reports on trafficking, with half of all articles focusing on the tragedy of the victims. Victims are often constructed as vulnerable, young, innocent, naïve and unfortunate. An article in the *Toronto Sun* (Cherry 2010d), adds emphasis to the victimization component by describing a young woman with Fetal Alcohol Syndrome, whose mother’s suicide and history of sexual abuse magnified the horror of her experience of being trafficked. Another *Toronto*

Sun article claims there to be thousands of trafficking victims who are “weeping, waiting for the despair to end, living lives filled with drugs, sedatives, physical and sexual abuse and suicidal thoughts” (Mrozek 2010: 1). In addition to the victimization discourse, this article also emphasizes the prevalence of trafficking and calls for tougher laws for the protection of women (ibid). Victimization discourse is also present in an *Edmonton Sun* article, which describes the bodies of trafficked women as being sold in countries across the world (Liebrecht 2010). Such examples demonstrate the specific construction of trafficking victims and the prevalence of the victimization discourse, which may bring forth sympathy and create public outrage.

The victimization discourse is a common human rights narrative, also seen during the 1980s juvenile prostitution crisis, where young prostitutes were often referred to as “children” in order to increase the sense of urgency (Brock 1998: 120). Media often personalized the need for “child saving” through case studies of young prostitutes, which focused on their youth, vulnerability and desire to be rescued (ibid: 121). The problem with the victimization discourse is that labelling someone as a “victim” if they themselves do not see it as such, can result in their re-victimization through confusion, psychological harm, or violation of their human rights (Stanley 2009). Despite this, its effect is invaluable to the anti-trafficking paradigm, therefore victimization is being emphasized as a central concern in human trafficking.

Organized Crime

Given the lack of empirical data on human trafficking globally, it is impossible to estimate the degree to which trafficking is associated with organized crime. Nevertheless, media often focuses on the organized crime aspect of the issue. Out of the fifty articles analyzed, eighteen noted the involvement of criminal organizations in human trafficking. For example, *Burnaby Now* quotes Constable Michael McLaughlin's statement, "human trafficking is generating huge profits for criminal organizations" (Lau 2010: 1). RCMP Constable David Park suggests in another article that human trafficking is continuously changing due to the ability of the criminal element to evolve quickly in response to the changing strategies of law enforcement (Cherry 2008b), alluding to the involvement of organized crime in trafficking. Domestic trafficking is attributed to street gangs such as North Preston's Finest, operating in Ontario and Western Canada, according to an article in *The Globe and Mail* (Sher 2010). A *CTV* article claims that many street gangs lure local women into organized prostitution through ads for work overseas (*The Canadian Press* 2008). Another article suggests that many human trafficking suspects are linked to organized crime groups (*CTV* 2010), thus demonstrating the frequent connection drawn between human trafficking and organized crime.

Linking organized crime with social issues increases their urgency and danger. This strategy was also used in the expansion of the sex industry in the 1970s in Toronto's downtown core, which led to a conservative action plan to

clean up the area. In order to increase public support, it was reported that the downtown's sex industry was being taken over by organized crime, despite the absence of any evidence (Brock 1998). Similarly, the moral panic against juvenile prostitution, which emerged in the 1980s, was also linked with organized crime, particularly with the Nova Scotia based street gang North Preston's Finest (ibid). In 1994, an article in *Chatelaine* featured a story from the 1980s where a member of the North Preston's Finest was found prostituting a young woman (as cited in Brock 1998: 123). The article explained that no one knows the number of Nova Scotia girls that have been pimped throughout Canada, and as far as New York, Los Angeles, and even Italy (ibid: 124). Ironically, the same criminal organization is implicated in the trafficking of young women and girls across Canada in the current human trafficking "crisis". Even more noteworthy is the similar wording of the statements being made, distinguished only by the replacement of the word "prostituting" with "trafficking". According to Deborah Brock (1998), linking organized crime with social issues allows for the creation of the "crisis" and consequent public support for the cause.

Construction of Ethnicity

Media focus on trafficking as a crime of foreign nationals is what Stanley calls, "the classic case of 'othering'" (2009: 5). This is demonstrated in a *Toronto Sun* article (Cherry 2008b), which suggests that women are being brought into Canada from Eastern Europe, Romania, Ukraine, Russia,

Moldova as well as Asia to work in the sex trade. An article in *CBC News* (2010) claims that there are thousands of foreign nationals in the sex trade in Canada, and asserts that the top four source countries for victims trafficked to Canada are China, Romania, Philippines, and Moldova. Several articles also emphasize the increased difficulties of obtaining convictions in human trafficking cases in Canada due to the foreign nationality of victims and the consequent language barriers, their lack of knowledge on laws of the country, and unwillingness to cooperate with the police (CBC 2010; O'Reilly 2010; McDowell & Vallis 2010; Mullins 2010). The Public Safety Minister Vic Toews, was quoted as saying that trafficking cases often “go unnoticed and unreported due to threats by traffickers, language barriers, or mistrust of authorities” (*The Canadian Press* 2010: 1).

This focus on the foreign nationality of traffickers, draws upon the early 20th century moral discourses and anti-immigrant sentiments, which reinforced ideologies of the enslavement and entrapment of white, Western, European, and North-American women in prostitution (Kempadoo 2005: x). An example of this is the “Oriental Menace”, a panic that constructed Chinese men as preying upon white women and girls in order to force them into prostitution (Brock 1998: 122). According to Deborah Brock, combining race fears with contemporary discourses around women’s and girls’ victimization adds an additional moral imperative (ibid). In the current “crisis”, fears of foreign nationals are being combined with trafficking discourses to create the same effect.

Border Control

The link between trafficking and foreign nationals is also used to demonstrate a need for increased border control and stricter immigration policies. This is exemplified by the media attention attributed towards earlier discussed case of the Hungarian family accused of human trafficking (O'Reilly 2010; Brown 2010). Particular emphasis in this story is placed on the fact that the Hungarian victims were instructed to claim refugee status, and file for social assistance upon its receipt (ibid). An *Ottawa Citizen* article describes Canada's immigration system as sufficiently generous towards new arrivals, and claims that the abuse of this generosity will only hurt those attempting to migrate through legitimate means (Nirman 2010). A *CTV* news article makes completely erroneous statements, claiming that "the majority of human trafficking convictions in Canada between 2005 and 2009 involved victims who were brought to Canada to work in the illegal sex trade" (2010: 1). In fact, the first human trafficking conviction in Canada did not come about until May of 2008, and the victims in all five of the convicted cases, have been Canadian citizens. The link between human trafficking and border control is also demonstrated in a *CBC News* article, which claims that according to the Public Safety Minister, smuggling sometimes turns into trafficking, alluding to the idea that illegal migration must be targeted in order to stop human trafficking (*CBC News* 2010). Furthermore, an article entitled "New human trafficking bill 'hits close to home' in B.C.: Stockwell Day" (Austin), published on October 27th, 2010 outlines a bill to limit human

smuggling. Interestingly, the bill was introduced only two months after the arrival of a refugee ship in August of 2010, carrying five-hundred Tamil migrants into Canada. Despite the bold trafficking related title, the article made no direct mention of the issue in the discussion. According to Victor (1998), at certain times, the public is more receptive to a moral panic than others, therefore timing is crucial to the emergence of a moral panic. The above discussed article clearly demonstrates this through the connection drawn between the arrival of the Tamil refugees and human trafficking, which was used to argue for stricter border controls.

In response to the frequent confusion between smuggling and trafficking in the media, Federal MP Joy Smith published a news article in the *Winnipeg Sun* asserting that she is “alarmed by the regular use of the term human trafficking in place of human smuggling” (Smith 2011: 1). The crude importation of human trafficking into issues of migration and smuggling can therefore be seen as a strategy to draw a connection in the minds of the readers between human trafficking and the consequent need for border control. According to Smith (2011), the recognition of this difference is important in order to maintain awareness and focus on domestic trafficking.

Domestic Trafficking

Despite the common assumption that human trafficking is a transnational crime, media reports increasingly emphasize domestic trafficking. An *Edmonton Sun* article claims that human trafficking is not just

affecting women overseas, but it is also affecting Canadian women (Liebrecht 2010). A *Toronto Sun* article suggests that most cases of human trafficking in Canada involve Canadian women and girls (Cherry 2010c). Another article argues that it is a misconception that most trafficking victims are brought in from other countries and suggests that this diverts attention from Canada's own exploited children, thus making them even more vulnerable to victimization (Cherry 2010b). A *North Shore News* article claims that human trafficking is not merely an issue in foreign countries, as is frequently assumed, but is also prevalent in Canada, on a transnational as well as domestic level (Howsam 2010). The article suggests that Canadians are turning a blind eye to the issue of trafficking since they are more comfortable in their belief that such problems are not happening in our country (ibid). According to a *Toronto Sun* article "human trafficking is a booming business in Canada" (Cherry 2010a: 1). Despite the unverified nature of these claims, they work to construct a collective opinion about the issue, which is disproportionate to the reality. According to Adam Hochschild, "people are more likely to care about the suffering of others in a distant place if that misfortune evokes fears of their own" (2005: 222). Thus the construction of human trafficking as a domestic issue may be a part of goal to increase public support for anti-trafficking campaigns and legislation in Canada.

Correlation between Sex Work and Trafficking

There is a well-known and controversial connection between human trafficking and sex work and no shortage of evidence to demonstrate it. In order to be convinced one must look no further than the headlines, “City man facing charge of keeping a bawdy house: Case involves women brought in from Hong Kong to work in the sex trade” (Lau 2010); “Sex trafficking: a national disgrace” (Sher 2010); “Majority of human trafficking for sex trade, RCMP says” (CTV 2010); “Woman faces human trafficking charge in forced prostitution case” (CBC News 2008); and “Prostitution sparks human trafficking” (Perrin 2010b). According to Kapur (2008), this correlation between human trafficking and sex work justifies the use of anti-trafficking discourses as anti-prostitution measures.

The anti-trafficking paradigm’s focus on the sex trade may be in part explained by Canada’s current social, economic, and political situation. Particularly due to the mismatch between Canada’s conservative government and its liberal views of sexuality, a symbolic battle brought to life in the landmark case of *Bedford v. Canada* (2010), which challenges Canadian prostitution laws. A similar shift took place in the 1980s when the election of a conservative government resulted in drastic shifts towards women’s sexuality. Trudeau’s era of sexual liberalism in the 1960s was counteracted with restructuring of legal and social policy. In order to construct this moral panic against juvenile prostitution, a Special Committee against Sexual Offences against Children and Youths was appointed in 1981. The

recommendations of the resulting Bagdley Report, published in 1984, led to legislative changes enacted in 1987, which not only targeted juvenile prostitutes¹ but also anyone purchasing their services as well as their pimps² (Brock 1998).

Call for Tougher Laws

The effect of the moral panic is evident in the calls for tougher anti-trafficking laws. This is demonstrated in an article entitled “Woman forced into life of stripping” (Cherry 2010d), which outlines a violent case of forced prostitution, concluding with an announcement that the conservative government is introducing a private members’ bill that calls for mandatory minimum sentences for child traffickers, despite the fact that the victim was nineteen at the time of the offence. Headlines such as “Activists call for greater efforts on human trafficking” (Lilley 2010), “Tories target human trafficking in campaign” (*CBC News* 2010), “Strict laws protect women” (Mrozek 2010) and “Critics say campaign to fight human trafficking falls short” (Greenaway 2010), demonstrate the alleged need for tougher anti-trafficking laws. An article entitled “Canada turns its back to victims”, explains the prevalence of human trafficking in U.S. and Canada, and suggests that unlike the U.S., Canada still has no strategy to combat human trafficking, nor is it doing much to eliminate the problem (Cherry 2008a). Finally, a *Globe*

¹ The recommendations of the Bagdley Committee included the criminalization of juvenile prostitution. This was rejected by the federal government as being too harsh, based on the principles of the *Young Offenders Act*

² Sections 196(2) to (4) of the *Criminal Code* were amended to make living off the avails of juvenile (under 18 years of age) prostitution punishable by fourteen years imprisonment.

and Mail article asserts that trafficked women and girls have to pay the price for Canada's inadequate efforts to combat human trafficking (Sher 2010).

The construction of a "social problem" for the purpose of gaining public support for tougher prostitution laws and increased police power has been well documented. In the juvenile prostitution crisis of the 1980s, the police continually emphasized the fact that weak laws encourage the abuse of young prostitutes by pimps and customers. Police efforts to curb the prostitution of young girls by pimps was also the focus of the vast majority of news reports on the issue at the time (Brock 1998). Unsurprisingly, the 1984 Bagdley Report, a government funded enquiry into the juvenile prostitution issue, also concluded that the problem stemmed from lack of tougher laws (ibid). According to Deborah Brock, "what the law really accomplishes then is symbolic, in establishing a society's moral code, and is punitive towards those who transgress it" (ibid: 116). What this demonstrates is that "social problems" are created in order to establish greater legislative control over a particular aspect of society.

Construction of Human Trafficking on Primetime Television

This section discusses six episodes from primetime crime shows dealing with human trafficking, including *Law and Order: Special Victim's Unit*, *CSI: Crime Scene Investigation*, *CSI: Miami*, *CSI: New York*, and *NCIS: Los Angeles* airing between November 9, 2009 and October 16, 2010. I examine these shows in order to detect emerging themes and discourses,

exposing noteworthy differences between the construction of human trafficking in newspaper articles and television shows. It is important to note that the shows are produced in the U.S., which may account for some of the differences between the discourses emerging in the shows and those in Canadian news articles. Despite their American origins, these primetime television shows are available and watched in Canada, therefore shaping the ideas around human trafficking amongst Canadian viewers.

Crime shows have been prominent on television since their development in the 1950s, with violent crimes being presented most frequently (Reiner 2002). “The pattern of fictional representations of crime is similar to that in news stories—and shows similar discrepancies from the picture conveyed by official crime statistics” (ibid: 312). For example, sex crimes are portrayed by crime shows as being perpetrated by psychopathic strangers and involving extreme brutality, torture and often murder. This is in stark contrast with criminal justice data, which shows that most sex crimes are committed by intimate partners or acquaintances (ibid).

Analyzing crime shows is important since visual media presentations have an enhanced ability to arouse emotion in ways that language does not (Stanley 2009: 13). The emotional and dramatic images “propel the viewer into a distinct state of mind or sentimental feelings” (ibid: 2). Through these visual presentations, images are affixed into minds of consumers, who often fail to question the dominant visual narrative or the images they may not be seeing, thus transforming belief into “reality” (ibid).

Human Trafficking - Transnational? Domestic? Or Both?

The newly emerging focus on domestic trafficking is one that is not only evident in newspaper media, but also in television shows. Although several episodes demonstrate international ties in trafficking related activities, shows construct the majority of trafficking as taking place domestically, with both victims and traffickers as U.S. citizens. The references to this shift from foreign trafficking, or “their issue” to domestic trafficking, or “our issue”, are present in several episodes. A *Law and Order: SVU* episode entitled “Merchandise” (Leto 2010), features a district attorney who claims that funding to help domestic victims is not available, as it is allocated to combating international trafficking, adding that the number of domestic victims of human trafficking is unknown since no one is counting (ibid). The episode implies that the focus, thus far, has been on international trafficking, which has left domestic trafficking on the periphery. In *CSI: NY* episode “She’s Not There” (McCormick 2010), a detective asserts that sex trafficking victims are from Eastern Europe, Latin America, and *even* the U.S., demonstrating a shifting emphasis from international to domestic trafficking. Furthermore, unlike international trafficking, its domestic version is depicted as more urgent in television shows. This is because the risk of traffickers being caught is greater when dealing with domestic victims due to lack of usual inhibitors, such as language barriers and cultural differences. This is seen in *Law and Order: SVU* episode “Merchandise” (Leto 2010) where a detective asserts that domestic trafficking victims are more likely to give

evidence than foreign victims therefore increasing their risk of being murdered in order to silence them.

According to Victor Malarek (2003), the indifference of law enforcement officials towards transnational sex trafficking results from racist attitudes which see it as a crime that prevents the rape of their nations' own women. Thus, the purpose of emphasizing the victimization of the nation's own women and the increased risk to their lives, may be done to create a public reaction against human trafficking, which in turn may assist in gaining greater support for anti-trafficking strategies. This ties in with previously discussed discourses around prostitution and the control of women's sexuality. The idea of the nations' own women being forced into prostitution, combined with the added danger, may create an environment, which nurtures public support for anti-trafficking strategies, both domestic as well as transnational.

Profile of Victim

According to Doezema, the "white slavery" campaign of the 19th century distinguished between the "guilty" prostitute and the "innocent" victim by emphasizing the involvement of deceit, abduction, and her youth (2000: 36). Thus, "innocent", "naïve", and "desperate" were code words for non-prostitute (ibid). The presence of these patterns in the modern day "crisis" against human trafficking are evident through similar constructions of the victim.

In all six episodes, the victims ranged from mid-teens to early twenties, placing an emphasis on their youth, which is accompanied by innocence and naiveté. The abduction and/or deceit of victims by traffickers in the shows demonstrates the victims' innocence through their unwillingness to cooperate. In two of the episodes, the victims are from small towns and in one episode from another country. The girls all moved to a big city for alleged modelling jobs, a purpose, which renders them as innocent and pure. However, if the women had migrated for a job in the sex industry, they would no longer be seen as "innocent", and "good", but rather the co-conspirators of traffickers (Cameron 2008: 85). Phone calls home, attempts to escape and notes left in bathroom stalls emphasize the women's desire to escape and therefore their victimization. Subsequent admissions of fear are demonstrated in *Law and Order* episode "Merchandise" (Leto 2010), where a trafficking victim admits that escape attempts were not an option because a wrongdoing by any of the captives resulted in a beating for all. The use of sedatives to demonstrate the victims' unwillingness is a theme that ran through all six of the episodes analyzed. In *CSI: NY* "She's Not There" (McCormick 2009), the girls are drugged with large amounts of heroin, laced with ecstasy and codeine, which allegedly stopped them from fighting back, thus demonstrating their victimization. The distinction between "voluntary" and thus sinful prostitutes, and "involuntary" and therefore innocent victims, constructed by the slavery imagery in the 19th century, is very much alive in the current campaign against human trafficking. Constructing the victims in the television shows as average

citizens who have been tricked by traffickers, may also increase the viewers' ability to relate to the situation, therefore resulting in greater sympathy towards victims of trafficking.

Violence

During the 19th century “white slavery” campaign, violence and death rhetoric was used to construct an image of complete victimization, through repeated emphasis on the horrific treatment experienced by the victim. Similar methods are employed in the modern day construction of the human trafficking issue. This is especially the case in television shows, which exhibit a much greater degree of violence in contrast with newspaper articles. According to Reiner (2002), fictional narratives have focused on violent crimes, with a particular emphasis on murder. This is demonstrated in the six trafficking episodes analyzed, all of which open with a murder scene. Four of them depict the murder of a trafficking victim, or the discovery of a victim's body, carrying signs of violence and torture. For example, an autopsy performed on the body of a young girl in the *Law and Order* episode “Merchandise” (Leto 2010), was depicted as exhibiting signs of severe physical abuse and starvation. Furthermore, an investigator in *CSI: NY* episode “She's Not There” (McCormick 2009) claims that trafficked girls live in nightmare, slave-like conditions, getting beaten, drugged and who knows what else.

A significant amount of physical violence and gruesomeness in the form of torture, beatings, mutilation, and even the removal of the victim's organs is exhibited in all episodes. In a *CSI: Miami* episode "Bone Voyage" (Hill 2010) trafficking victims are maimed, sometimes while alive, upon which their limbs are abandoned in deserted areas. A *CSI: NY* episode "She's Not There" (McCormick 2009) and *CSI* episode "Lost Girls" (Smight 2010) both display a significant amount of violence towards female victims of trafficking, including violent beatings, sexual assault, physical confinement, and even murder. According to a *Law and Order* episode "Merchandise" (Leto 2010), traffickers burn their underage victims and make them drink "cool-aid", which is a poisonous mixture of cyanide and grapefruit juice.

A number of the episodes also depict the overt commodification of victims' bodies. For example in *CSI: Miami* episode "Bone Voyage" (Hill 2010) women's bodies are mutilated and dismembered in a butcher shop. An NYPD officer in the *CSI* episode "Lost Girls" (Smight 2010) asserts that trafficked women are treated like livestock, associating it with the process of buying and selling of farm animals, which is accompanied by branding of the owner's logo on the animal's body. The officer makes a comparison between the procedure carried out on animals and the signature tattoos branded on girls belonging to a particular pimp. A change in "owners" would result in a painful removal of the previous tattoo and re-branding of the woman's body with a new tattoo.

Thus, an extreme level of violence is depicted in trafficking scenarios on crime shows. According to Doezema the greater the violence involved in trafficking, the more helpless the victims seem (2000: 35). Therefore, the severe levels of violence prove the complete victimization of trafficked women, and may create a sense of urgency and horror which results in public support for anti-trafficking campaigns.

The Construction of Race & Ethnicity

The race and ethnicity of victims, traffickers, and detectives plays an important role in constructions of human trafficking (Doezema 2000). In television shows on trafficking, racial and ethnic discrimination finds its expression in the construction of the non-Western trafficker. Despite the fact that blacks, Asians, Latin Americans and Eastern Europeans play seemingly small roles in trafficking related activities, they are constructed as most ruthless and cruel. For instance, in *CSI: Miami* episode “Bone Voyage” (Hill 2010), a black man suspected of trafficking in humans turns out to be hired by the traffickers due to his profession as a butcher, in order to dismember the bodies of the young women. Eastern European trafficking links also play a significant role in three out of seven episodes, all of these portrayals depicting negative imagery. For example, in a *CSI* episode “Lost Girls” (Smight 2010), a Russian trafficker is labelled by victims as “the scary Russian”. The trafficker’s nationality is used to ridicule him, through references to him as a “Soviet” and mocking suggestions that he came to America with only a hat in

his hand. Such constructions of foreign nationals tie in with the perspective of the receiving country as a “white knight”, whose generosity is misused by those immigrating (Jeffrey 2005). Use of ethnicity to mock the suspected trafficker is also demonstrated in *NCIS: Los Angeles* episode “Human Traffic” where a law enforcement official states that, “one cannot live outside of the law in California because it is not Mexico” (Whitmore 2010). This demonstrates a stereotypical view of Mexico, as a country characterized by lawlessness and disorder.

Furthermore, although detectives in the shows often work in groups, the lead detectives are overwhelmingly white males. Two out of six shows feature a black man as a lead detective, however, in both cases he is partnered with a white male. Moreover, in both cases the black detective is working outside his own jurisdiction, which may be symbolic for his position outside of racial boundaries.

It is also important to note that in five out of six cases, the lead traffickers are constructed as U.S. citizens. This is significant since it is contradictory to the stereotypical portrayal of a trafficker as a racial minority, and/or a foreign national. However, such portrayals may be a part of the ongoing shift towards domestic trafficking, evident in both newspaper articles as well as television shows.

Rescue Paradigm

The placement of white males into authoritarian and paternal position of rescuing trafficked women is present in all six episodes, with three out of six episodes ending in a victim's rescue. This construction speaks to the colonial discourses of white men as heroes whose goal is to protect white women from the racialized "other". Pleas for help from desperate parents is a theme that crosses through five out of six episodes. An example is the arrival of a trafficked girl's father from Ukraine in a *CSI: NY* episode "She's Not There" (McCormick 2009). An investigator in the episode claims that the Ukrainian father did not come to U.S. to find his daughter; he came to *rescue* her (ibid). In *CSI: NY* episode "Hammer Down" (Lautanen 2010), and *CSI* episode "Lost Girls" (Smight 2010), the continuous updating and consoling of a trafficked girl's mother, emphasizes the need for the young girl's rescue and requested interference by police, despite contrary statements from the victims themselves. This speaks to the consent factor in definitions of human trafficking, and the idea that victims of trafficking need rescuing even if they do not ask for help (*infra.* p. 94-97). Furthermore, a detective on *Law and Order: SVU* episode "Merchandise" (Leto 2010) suggests that children who prostitute their bodies cannot be treated like criminals, since they are not doing it voluntary. The episode features a young boy who resists police involvement and must be forcefully rescued. Creation of such trafficking scenarios justifies the need for law enforcement officials to interfere with trafficking victim's agency, since they are psychologically, emotionally, and

physically abused, coerced, and forced to comply with the demands of traffickers (ibid). The rescue paradigm can also be evidenced in *CSI* episode “Lost Girls” (Smight 2010), where a prostitute sympathized with her pimp, despite the physical and emotional abuse – the attachment of a “prisoner” to his or her “captor” is a psychological state that has come to be known as the Stockholm Syndrome (RCMP 2010). The development of this syndrome, a psychological illness then justifies her forced rescue as necessary to ensure her safety. Therefore, crime shows overwhelmingly present the police and the justice system, as “the successful protectors of victims against serious harm and violence” (Reiner: 2002: 314). Reiner (2002) adds that the increasing prevalence of police heroes in crime shows demonstrates that crime is prevalent enough to justify the employment of a large police force.

Organized Crime

Television shows, just as newspaper articles, construct human trafficking as a highly organized operation, divided into hierarchical fragmentations, where traffickers are moved up through the hierarchy based on their record of accomplishments and contributions to the organization. Each trafficker is only made aware of their own task, in order to ensure the safety of the operation and the organization, thus posing a challenge for law enforcement officials. References to organized crime are made in all six episodes analyzed. In a *Law and Order: SVU* episode “Merchandise” (Leto 2010), the detectives suggest that the case is linked to “another well-organized

trafficking ring”. The trafficking trilogy episodes in *CSI: Miami* (Hill 2009), *CSI: NY* (Lautanen 2009; McCormick 2009) and *CSI* (Smight 2009) deal with a criminal organization called Zetas, which traffic young women and girls across U.S. states for the purpose of sexual exploitation, organ harvesting, surrogacy and so on. Despite the continuous emphasis on human trafficking as an organized crime by the media, evidence to substantiate these constructions is lacking. Human trafficking cases that have arisen in Canada have overwhelmingly been one-man “pimping” operations, with no evidence to show connections to organized crime.

Conclusion

Although the media cannot imprint messages on the public, it does have “an integrative, clarifying, and legitimizing power to shape and define political reality” (Hall 1993: 72). Therefore, it is important to examine media representations in order to understand how an issue is being constructed. The analysis demonstrates the prevalence of unverified estimates, construction of the issue as a “modern day slave trade” through horrific depictions of young women’s victimization, and calls for harsher punishments, stricter border controls, greater intervention, as well as rescue of victimized women and girls. However, there is evidence of a shift taking place from a focus on the international component of human trafficking - a perspective which still prevails in newspaper articles - to domestic trafficking, which may be attributed to a fear mongering strategy. The creation of sympathy for the

victim and outrage against the perpetrators may help create an environment where “tough on crime” or “tougher border control” approaches are more likely to gain public support. Thus, the media analysis demonstrates the presence of all hallmarks of a moral panic. What is particularly striking, however, is the extent to which the modern day construction of human trafficking is similar to the 19th century “white slavery” campaign, as well as the 1980s construction of juvenile prostitution, both of which are argued to be largely mythical (Brock 1998; Doezema 2007; Soderlund 2005). This demonstrates that the construction of human trafficking as a social “crisis” has a long history, emerging in waves, during particular social, political, and economic times.

Chapter 3: The Construction of Human Trafficking in Official Reports

Although the mass media is a primary vehicle in the creation of moral panics, its success, and credibility relies on the support and endorsement of respected social institutions or officials. According to Stanley Cohen, the dramatization of events by social control agents, such as the police, is crucial in the development of a moral panic (1972: 95). Police agencies, generally understood as apolitical crime experts, are central in supplying media with the required credibility (Sacco 1995). Thus, official texts and documents, usually provided by police agencies, occupy a space of privilege in the construction of an issue, shaping and supporting social perceptions and legal practices that result in social regulation (Brock 1998: 115). According to Brock (1998), official reports organize and present large amounts of data in ways that construct issues according to the pre-existing patterns. Broad data classification, use of specific vocabulary and abstract formation of stats, files, and case studies allows official reports to shape the information in a way that supports the dominant standpoint (ibid).

In this chapter, I examine the construction of human trafficking in official reports produced by various Canadian government organizations, as well as the U.S Department of State, the United Nations and various non-government agencies. I specifically analyze the construction of human trafficking in correlation with prostitution, migration, smuggling, race, and ethnicity as well as border control. I examine the broad interpretation and specific organization of data in order to construction the issue as “social

crisis”. The endorsement of the issue’s magnitude by authority figures through official reports demonstrates yet another step in Ronald Weitzer’s previously discussed process of institutionalizing Canada’s human trafficking issue.

Prevalence of Human Trafficking

As demonstrated in chapter two, claims regarding the prevalent and growing nature of human trafficking are common in media representations of the crime. Official reports on trafficking take a more subtle, but similar approach, citing unverified and widely ranging estimates to demonstrate the extent of the problem. For example, *Trafficking in Persons* report suggests that current numbers on trafficking greatly underestimate the prevalence of the issue (Barnett 2008). The report demonstrates this by claiming that the U.N. estimates of 700,000 people being trafficked worldwide each year greatly undermine the extent of the issue, since other sources provide much higher approximations. According to the United Nations Development Fund for Women (UNIFEM), “estimates of the number of trafficked persons range from 500 000 to 2 million per year” (2009).

Meanwhile, the International Organization for Migration (IOM) and the U.S. Department of State claim that data on human trafficking is scarce (Raaflaub 2006). The lack of knowledge on the true extent of the problem is further demonstrated by a collection of reports on trafficking (West Coast Legal Education and Action Fund 2009; United Nations Office of Drugs and Crime 2009; Barnett 2008). The RCMP admits that trafficking related,

“statistics and evidence-based facts are scarce”, and that the widely distributed estimates on the extent of Canada’s human trafficking issue have since turned out to be inaccurate (2010: 4). However, instead of interpreting the lack of information as an indicator that human trafficking may not be as prevalent as previously thought, official reports insist that the information gap is instead a result of the clandestine and highly organized nature of human trafficking.

Fortunately, there are organizations that challenge the existing claims of prevalence. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO 2011) analyzes existing statements on trafficking “by tracing the origin of numbers cited by various sources, attempting to ascertain the methodology by which these numbers are being calculated, and evaluating their validity”, with the aim of separating the trafficking myths from realities. UNESCO suggests that most of the statistics being circulated on human trafficking are “false” or “spurious”, and explains that statistics on trafficking of girls and women are saturated with emotion, which overtake critical faculties (as cited in Weitzer 2007: 455). According to UNESCO, “numbers take on a life of their own, gaining acceptance through repetition, often with little inquiry into their derivations” (2011 *Trafficking in Statistics Project*). Unfortunately, the existence of organizations such as UNESCO and their work to debunk unsubstantiated data is not widely known, therefore unverified claims continue to rule the stage of human trafficking debates.

Ronald Weitzer (2007) argues that exaggerating the magnitude of the problem through unverifiable, elastic, and wide-ranging figures, is a staple of the anti-trafficking crusade. According to Weitzer (2007), there is an interest in over-estimating the extent of the issue, since exaggerating a social problem works to attract media consideration, increase funding and gain consideration from policy makers – all of which is currently taking place with respect to human trafficking in Canada. However, the growing emphasis on the issue also serves a variety of other purposes. For instance, since trafficking in persons is equated with slavery and grave violations of human rights, the importance of this problem is seldom questioned. Thus, affiliating an assortment of sub-issues, such as migration and border control, people smuggling, sexual exploitation, prostitution, as well as illegal migrant labour with human trafficking raises the importance of those issues. As well as raising importance, the “horror” aspect of trafficking is piggy-backed onto issues that do not have serious group or individual harm dimensions, such as illegal migration. This constitutes a part of what Philip Jenkin calls “symbolic politics” or the “politics of substitution”, whereby politicians and claims makers draw attention to specific issues that represent other concerns (as cited in Killingbeck 2001: 195). While simultaneously reducing potential challenges due to the affiliation of issues such as border security with extreme violations of human rights in human trafficking, potential challenges to the problems of increased border security are sidestepped. The importance of sub-issues can, and often is debated outside of the trafficking framework.

However, when presented from the anti-trafficking perspective, they assume a new level of importance -- one that is much more difficult to challenge.

International & Domestic Trafficking

Human trafficking has been predominantly known as a transnational crime. The emphasis on domestic trafficking as a concern surfaced only a few short years ago. This pattern is also present in reports on trafficking, with accounts prior to 2008 demonstrating a concern for the lack of attention towards domestic trafficking, while the ones after focus significantly on the prevalence of domestic trafficking. According to a 2008 trafficking report by the Canadian government, intranational trafficking has been largely neglected, particularly in the context of the sex trade (Barnett). A report by Springtide Resources, commissioned by the government of Ontario and the Ministry of the Attorney General, also published in 2008, argued that the primary focus within human trafficking is the movement of people and goods across international borders, thus ignoring the existence of domestic trafficking.

Domestic human trafficking is “a phenomenon in which all stages of trafficking occur within Canada regardless of victim’s legal status” (RCMP 2010: 8). Since 2008, there has been an increasing emphasis on domestic human trafficking, particularly for the purpose of sexual exploitation. This is demonstrated in media representations, emerging Canadian court cases dealing with domestic human trafficking, as well as in official reports on trafficking. According to the RCMP, “while human trafficking is often

associated with foreign victims crossing international borders, recent convictions may indicate that domestic trafficking is as likely to occur in Canada” (2010: 20). The report further states that, based on the identified cases, most victims of human trafficking in Canada have thus far been Canadian citizens, female, and between the ages of fourteen and twenty-five. According to the RCMP (2010), trafficking can even take place within the same city and include those who migrated to Canada voluntarily, but became trafficked once in the country. In a brief entitled *Human Trafficking*, Raaflaub (2006), claims that when accounting for domestic human trafficking, the global estimates increase from a maximum of 800,000 to millions, revealing not only the prevalence of domestic trafficking, but also its hidden nature. What emerges from these reports is a pattern of recent change in focus from international human trafficking to domestic trafficking. The motivations for this change may stem from the perceived need to increase public support for anti-trafficking strategies, fuelled by an array of motivations discussed in chapter five. There is no better way to obtain support for anti-trafficking strategies than public fear, which is created by the emphasis on domestic trafficking.

Smuggling versus Trafficking

Smuggling has received an enormous amount of public attention, especially since the arrival of five hundred Tamil refugees in the summer of 2010. It is also frequently confused with human trafficking by politicians,

media personnel, law enforcement officials and so on. There are two possible reasons for this frequent confusion. As discussed in chapter one, human trafficking is a complex issue involving a multi-stage process, which may at times involve smuggling. This complexity, combined with the involvement of border crossing in the case of international trafficking may result in confusions regarding the distinction between the two offences. This is demonstrated through estimates released by the RCMP (2010) on the extent of human trafficking in Canada, which have since proven to be faulty, due to the inclusion of both trafficking and smuggling cases under the category of trafficking.

The other possible reason for the conflation between trafficking and smuggling is the government's need to justify stricter border control. Correlating smuggling with human trafficking changes the perception of the illegal activity, making it appear significantly more exploitive and dangerous. The possibility that smuggling can lead to trafficking is considerably more effective in gaining legitimacy and public support for government mandates to tighten border control. However, this connection works to further confuse the two issues, and construct border control as a necessity in order to ensure the safety of the nation. This is conveyed in an RCMP report, which suggests that migrants, who consent to being smuggled, are at risk for becoming victims of trafficking (2010: 8). The report insinuates that in order to prevent trafficking, it is necessary to target instances of both trafficking and smuggling. Furthermore, *Trafficking in Persons* report emphasizes the importance of

Canada's border control in identifying victims of trafficking (Barnett 2008). According to this report, one of the gaps in Canada's approach to combating human trafficking is the need for a more effective strategy at the border, including the ability of immigration officials to identify victims of trafficking (ibid). Given that there are widely varying opinions about what constitutes human trafficking amongst policy makers, politicians and academics, it may be unreasonable to place such a burden on the shoulders of border guards and immigration officials. This expectation of border guards and immigration officials may result in increased suspicion of migrants and unnecessary violations of human rights. Nevertheless, such recommendations are effective in constructing increased border control as a necessity to combat human trafficking.

Race and Ethnicity

Benjamin Perrin argues that race and ethnicity are not as important in modern day trafficking as they were during transatlantic slavery, since "slavery has become an 'equal opportunity' form of exploitation" (2010a: 7). This statement is presumably based on the assumption that victims of human trafficking involve (mostly) women and girls from all racial and ethnic backgrounds. Yet race and ethnicity still matter. Report after report list the various ethnicities of people most commonly trafficked into Canada. The *Trafficking in Persons Report* claims that in Canada victims of trafficking are mainly from Asia and Eastern Europe (U.S. Department of State 2010). An

RCMP (2010) report suggests that criminal organizations from Eastern Europe are responsible for trafficking women from the former Soviet Union, while Asian migrant women are most commonly recruited for sex work once they are in Canada. Women from various African countries are also identified as victims of sex trafficking in Canada (ibid), and the *Global Trafficking in Persons Report* (U.S Department of State 2010) adds Latin Americans to the list of foreign “others” often victimized by traffickers in Canada. Furthermore, reports refer to victims of transnational trafficking as “foreign nationals”, “foreign victims”, “illegal migrants”, and “migrant sex workers”, demonstrating the use of language to create a division between “us” and “them”, which is embedded with racial and ethnic undertones.

According to Stanley (2009), construction of the “us” versus “them” dichotomy results in a division between the “ingroup” and the “outgroup”, whereby those in the preferred “ingroup” want to distinguish themselves from the “outgroup”. In an effort to do so, the “ingroup” often manufactures boundaries and exaggerates perceptions of difference (ibid: 6). When it comes to a horrific issue such as human trafficking, the “ingroup” is particularly motivated to draw a distinction between themselves and the “outgroup” to ensure their immunity from becoming victims of trafficking. The social boundary between the “ingroup” and the “outgroup” is therefore a symbolic safety blanket which removes the “ingroup” from the dangers of trafficking (ibid). Consequently, the construction of trafficking victims as “foreign nationals” in government reports works to create a distinction between the

Western society, or the “ingroup”, and the “others”. This, according to Stanley (2009), is due to Westerners’ fears of being trafficked, which is symbolically avoided through “othering”.

The relevance of race and ethnicity is also demonstrated in the construction of domestic trafficking victims as white, young, naive, and vulnerable women and girls – the symbolic daughters of the typically middle class families. Although it is well known that Aboriginal women and girls are frequently exploited in Canada, their victimization has not received nearly the amount of attention by the media, and law enforcement officials as the potential victimization of white women and girls. According to the *Trafficking in Persons Report*, Aboriginal women and girls are especially vulnerable to domestic trafficking, often being found in conditions of commercial sexual exploitation (U.S. Department of State 2010: 105). Another report suggests that the majority of Canada’s domestic trafficking victims are Aboriginal women and girls, who are lured by offers of employment, education, or other opportunities (Barnett 2008). Although reliable statistics on human trafficking do not exist, individual studies in Canada’s urban centres show disproportionate numbers of Aboriginal women involved in prostitution. According to these studies, fifty percent of adult sex workers in Winnipeg are of Aboriginal descent, while only ten percent of the total population consists of Aboriginals (Sikka 2009: 10). Historically, stereotypes of Aboriginal women as sexually available and morally inferior to the Europeans, led to their commodification by white settlers (ibid: 7). This notion perseveres with

Aboriginal women being constructed as “natural” prostitutes, whose social position makes their treatment as commodities more acceptable (ibid).

Thus, Canada’s fight against domestic trafficking has for the large part ignored Aboriginal women’s victimization. According to Springtide Resources (2008), a large number of Aboriginal women are reported missing every year, but a serious undertaking to investigate this issue has yet to be initiated. It is slightly ironic and highly problematic that Canada’s law enforcement officials are resorting to labelling sex work related offences as human trafficking in order to prove their efforts, when the potentially true cases of trafficking nearby remain unexplored.

Consent

The issue of consent is a fiercely debated one in discussions of prostitution and human trafficking. Consent is the international standard implemented in the *Palermo Protocol* to distinguish between trafficking and other forms of exploitation (Doezema 2007). The consent provision specifies that one cannot consent to being trafficked, since this decision would be based on deception, coercion, control, threats, force, or abduction (UN 2000: 2). Consent was a highly contested topic during the development of the *Palermo Protocol* (Doezema 2007). Arguments were mainly presented from two sides: one side represented the view that sex work is a legitimate form of employment, while the other side saw all forms of sex work as a violation of women’s human rights (ibid). Advocates of the latter perspective argued that

all forms of recruitment and transportation for the purpose of prostitution should be considered trafficking, regardless of the presence or absence of consent (ibid). This position has its roots in the view that women's decision to participate in the sex trade is meaningless, since sex work is inherently exploitive (ibid). This viewpoint was reflected in the 1933 *International Convention for the Suppression of the Traffic in Women*, and again in the 1949 *UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, which remained in effect until 2000, and deemed all prostitution as incompatible with human dignity (ibid). However, instead of protecting sex workers, as had been the goal of the legislation, they were instead used to increase surveillance over prostitutes, as well as their partners, who were targeted for pimping (ibid). The opposing side of the debate was concerned about the oppressive outcome of such legislation on the lives of sex workers, and argued that the *Protocol* should avoid adopting a patronizing stance in the name of "protecting" women especially because "such a stance historically has 'protected' women from the ability to exercise their 'rights'" to engage in sex work (ibid: 21).

The implementation of the consent factor into the definition of human trafficking is therefore a significant deviation from the 1949 anti-trafficking convention (Doezema 2007). Unlike the previous two conventions, the *Palermo Protocol* distinguishes between voluntary prostitution and trafficking, allowing each state the freedom to recognize sex work as legitimate labour. However, there are still a number of significant shortcomings in the anti-

trafficking legislation, and some argue that the difference between the current and historical approaches to human trafficking is merely symbolic. Even though the international legislation no longer criminalizes prostitution, it offers trafficking victims limited human rights protection, despite contrary allegations of more protections, and none for those voluntarily migrating for the purpose of sex work (ibid). It furthermore provides governments with a justification for violating sex workers' rights to equal protection of the law in the name of fighting trafficking, as evidenced from the numerous human trafficking investigations outlined by the RCMP (2010) report (*infra* p. 76-78). Thus, despite the re-construction of prostitutes as potential victims, as opposed to perpetrators of crime, the outcome of the paradigm remains unchanged, removing women's agency over their bodies, and constructing them as incapable of proper decision making, consequently requiring the intervention of the law.

The concept of consent as the determining factor of trafficking is further problematized by the introduction of psychological methods of exploitation, which are not evident initially. Psychological methods of exploitation, such as manipulation, deception, and threats of violence are argued to be even more powerful and less obvious than physical methods, thus being more commonly used by traffickers (Perrin 2010a). The use of psychological methods results in victims being aware of the exploitation, but makes them unable to leave the situation as a result of manipulation (ibid). Benjamin Perrin (2010a) suggests that physical violence is often used as a last

resort, while the more sophisticated traffickers never use physical violence since there is no need.

However, this creates a “catch 22” situation. If we take the appearance of consent for face value, we may overlook a human trafficking situation. Yet if we assume the presence of psychological manipulation in every suspected case of trafficking, we may violate the agency and human rights of both voluntary sex workers and migrant workers, creating a situation of oppression. Furthermore, the ambiguous idea of consent leaves a significant amount of discretionary power in the hands of law enforcement officials to evaluate the situation based on their own moral compass and subjective understanding of human trafficking. Therefore, although the implementation of the consent factor into the existing definition of human trafficking was seen as a victory by those concerned for the rights of sex workers, it may nonetheless be largely a symbolic change.

The lack of consideration for the consent factor was painfully clear in official reports on trafficking. For instance, a report on trafficking by the RCMP (2010) claims that trafficking victims are found amongst sex workers, and admits that the police often question the reliability of migrant workers’ statements. This implies not only that police surveillance of sex workers is justified in order to “rescue” trafficking victims, but also that the consent factor is treated as a triviality (ibid). This is evident in the RCMP’s admission of their futile, repeated attempts to get confessions from sex workers suspected of being trafficking victims. U.S Department of State’s *Trafficking*

in Persons Report (2010) claims prostituted women to be among the most vulnerable to trafficking, demonstrating once again the expectation of a concealed lack of consent to participate in the sex trade.

This “rescue paradigm” is a paternalistic ideology, which assumes the need for protection, even if this takes place against the wishes of the “victim”. The consent factor even appears to be used to suggest that trafficking is more prevalent than currently thought, since victims do not often admit to being trafficked. This is evident in an RCMP report on trafficking, which claims the extent of human trafficking in Canada to be unknown due to the reluctance of victims to come forward (2010: 8). This approach assumes sex workers’ victimization, even when sex workers themselves do not make such assertions. The disregard for the important distinction between sex work and sex trafficking bears striking resemblance to the “social purity movement”, which allowed special detention orders to be issued for sex workers and female adolescents who were determined as being at risk for prostitution. The consequent legislation implemented to “rehabilitate” prostitutes and prevent children from joining the sex trade was highly oppressive for those deemed to be at-risk (*Bedford v. Canada* 2010: 57). The historical context brings forth the importance of attending to this distinction between sex work and trafficking by reminding us of the potential consequences for neglecting it.

Migrant Worker or Trafficking Victim?

The chance for a better life or employment opportunity in another country, even illegally, is one that many would be willing to take. However, “the space for the migrant is being eroded through the discourse of trafficking and through the discourse of terrorism”, both of which limit migration and emphasize border control (Kapur 2005: 35). As a result, many migrants have to resort to smuggling in order to cross international borders (ibid). Although this form of migration makes people vulnerable to trafficking, it is problematic to assume that all migrants are victims of trafficking. Despite their interrelation, trafficking and migration are distinguished by the presence of force or coercion in trafficking (Haque 2006). This is a central distinction, which is largely absent in dominant views on trafficking.

The understanding of migrant workers as potential human trafficking victims is also apparent in official reports, as evidenced by the RCMP’s (2010) proclamation that migrant sex workers are more vulnerable to trafficking than other sex workers. Furthermore, by discussing migrant workers in the context of human trafficking investigations, official reports are creating a subtle connection between trafficking and migration. For instance, the RCMP found that most migrant workers, who came forward in human trafficking investigations, indicated that they felt deceived about their employment conditions (ibid: 14). The complaints included excessive control, removal of their passports, and receipt of only a portion of their hourly earnings. Yet, complaints of being forced into the sex trade were extremely rare (ibid). In

fact, the main complaints expressed by the women dealt with disagreements about labour contracts, a concern which, despite deception, is far removed from human trafficking. It is undeniable that some migrants work in exploitive conditions of employment, however, it may nevertheless be an improvement from their previous circumstances. Thus, it is problematic to assume that the existence of exploitive work conditions alone is a definite indicator of trafficking. In another investigation conducted by the RCMP, seven Chinese nationals with visitor status were found engaging in prostitution. According to the RCMP, some of the women knew from the outset that they would be engaging in sex work, while others were not sure of their obligations prior to departure (2010: 16). Despite some problematic determinants, substantial evidence to demonstrate the presence of trafficking was lacking. The RCMP admitted that it was unclear whether the women were forced into the sex trade (ibid). Yet, even though this was not a confirmed case of human trafficking, the suspicion of it was evident in the fact that it was included in a human trafficking report.

Furthermore, the RCMP (2010) argues that the victims' reluctance to come forward makes identifying human trafficking cases a challenge.

Although their unwillingness to come forth may be a consequence of various fears, it may also mean that trafficking is not as prevalent as indicated by unverified and emotive headlines in newspapers. As a result of the ongoing emphasis on human trafficking in Canada, cases which display one or more likely indicators, out of the array of possibilities, are automatically suspected

of human trafficking, whether or not the situation as a whole warrants that categorization. This is particularly problematic since the complexity of human trafficking has resulted in a long list of distinguishing features. Thus, such cases are often assumed to be lacking in evidence, as oppose to being falsely labelled by the police.

Prostitution and Human Trafficking

The connection between human trafficking and sex work is long-standing and highly problematic since prostitution is an act that is embedded with various moral dilemmas and issues concerning individual agency and consent. The same dilemmas should not apply to human trafficking, since trafficking is distinguished by the victim's lack of consent. Nevertheless, the prevailing misunderstandings surrounding human trafficking and its correlation with prostitution have resulted in similar issues of moral blameworthiness, consent, and agency being applied in cases of trafficking.

The most palpable construction of this link between prostitution and human trafficking is the consistent assertion that Canada is the source, transit, and destination country for victims of human trafficking, mainly for the purpose of forced prostitution (United States Department of State 2010; RCMP 2010; Barnett 2008; Oxman-Martinez *et al.* 2004; West Coast Legal Education and Action Fund 2009; CISC 2008). Furthermore, an RCMP (2010) report entitled *Human Trafficking in Canada* focuses almost exclusively on prostitution, and migrant sex work, as cases of suspected human trafficking.

The report emphasizes that its findings derive from human trafficking investigations, despite the fact that these investigations seldom discovered actual cases of human trafficking. The language used to correlate human trafficking with prostitution is also evident in the RCMP (2010) report, through descriptions of human trafficking as a “prostitution ring”, and victims as “sex workers”. The report uses anecdotal evidence to generate data on trafficking victims, while silencing the victims’ themselves by reporting only the information deemed as important by authorities. A report on trafficking by the United States Department of State claims that Canada’s “law enforcement officials raid establishments where prostitution or trafficking is suspected” (2010:2). The lack of distinction between the terms demonstrates a clear failure to acknowledge the difference between the two offences, and makes the assumption that prostitution results in trafficking. Thus, the report adheres to several major claims common in constructions of human trafficking: the linking of trafficking and prostitution and the emphasis on the magnitude of the issue.

Prostitution, Human Trafficking, and the Definition Issue

Emerging from these official reports is clear evidence of the numerous problems associated with Canada’s approach to human trafficking, all of which tie back to the lack of concrete definition. Although trafficking is an extremely complex criminal activity, it is important to establish ways in which it can be distinguished from related offences. The problem partly stems from

the fact that the individual components of human trafficking, including recruitment, transportation, and exploitation are each treated as human trafficking in themselves, instead of as a group of components that must be met to demonstrate the presence of trafficking. Treating each individual stage as human trafficking, despite the absence of the other components, results in flawed understandings of the crime, and significant issues with respect to human rights and improper charging.

The other noteworthy issue with distinguishing human trafficking from other criminal offences is its inseparable correlation with prostitution. John Lowman suggests that prostitution in Canada typically takes several forms, ranging from contact sex service trade, and survival sex, to the more bourgeois styles of sex trade that include street prostitution with consenting adults (Standing Committee on Justice and Human Rights, Subcommittee on Solicitation Laws 2006: 20). Contact sex service trade, usually referred to as “prostitution”, includes female *sexual slavery at the hands of a pimp* [emphasis added], to survival sex, which entails the sale of sexual services by disadvantaged individuals, including homeless youth and women in poverty (ibid). My attention is caught by John Lowman’s definition of prostitution as “sexual slavery at the hands of a pimp” – specifically since such wording is often used to describe the victimization of women in situations of trafficking. This makes me question the existence of a real difference between the situation of “sexual slavery” as described by Lowman and the sexual slavery affiliated with human trafficking, particularly since the transportation

component and the involvement of organized crime, which distinguishes the two offences according to the international definition, is not mandatory according to Canada's anti-trafficking legislation.

According to arguments made in *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, it is important to distinguish between sexual slavery and survival sex, and understand that individuals engaged in survival sex do not need rescuing in the same way as sex slaves (Standing Committee on Justice and Human Rights, Subcommittee on Solicitation Laws 2006: 6). The problem with clarifying this difference is that prostitution for the purpose of survival suggests that there are problems within the social structure, which require large-scale social transformation. Sexual slavery, on the other hand, diverts responsibility from the state, and onto the individual. This is a strategy that is much more effective in maintaining the status quo. Therefore, increasing attention toward human trafficking as a way to disguise the state's interest in prostitution is a logical re-direction of responsibility from the social structure to individuals and criminal organizations. However, the indistinguishable correlation between prostitution and human trafficking results in trafficking being bogged down with issues such as morality, social values, and sex workers' rights most commonly associated with prostitution

In light of these challenges, for the purpose of this thesis, I will rely on a definition of human trafficking that takes into consideration the complexity of the issue, its correlation with various sub-topics and its multifaceted nature. This definition is a derivative of the one established in the *Palermo Protocol*,

which defines trafficking as the recruitment, transportation transfer, harbouring or receipt of persons, by means of the threat, use of force or other forms of coercion, abduction, fraud, or deception for the purpose of exploitation (UN 2000: 2). It is applicable to crimes committed by criminal organizations on a transnational or domestic scale, and must involve a clear indication of the victims' lack of consent, instead of subjective interpretations of law enforcement officials.

Exploitation, according to the *Protocol*, includes sexual exploitation, forced labour or services, slavery-like practices, and the removal of organs (ibid). According to Article 4 of the *Protocol*, the definition is applicable to transnational offences which involve criminal organizations (ibid: 3).

Although I agree that the transnational component of human trafficking is central to its understanding, I suggest that trafficking can also take place on a domestic scale. However, unlike the definition set out in the *Criminal Code of Canada*, which disregards the movement factor as subliminal to the understanding of human trafficking, I emphasize the importance of the transportation aspect, as one of the key factors distinguishing the offence from all others. Human trafficking, as I see it, involves the movement of victims at minimum across city borders, since the unfamiliar surroundings decrease the victims' ability to escape or to know where to go for help. Based on my research I found that removing the transportation factor as a requirement of human trafficking results in the application of trafficking laws to procurement, or "pimping" and other related offences. While sex trafficking does exhibit

characteristic similarities to pimping, I suggest that the two offences are of very different calibre, particularly as a result of the transportation component in trafficking.

Furthermore, although there are arguments regarding victims' frequent reluctance to admit to being trafficked due to fears of reprisal by traffickers, such unconfirmed assumptions risk removing agency from those who are not victims of trafficking, and laying false trafficking charges on individuals who may not have been involved in it. As previously discussed, the anti-prostitution advocates take the position that all forms of recruitment and transportation for the purpose of prostitution should be considered trafficking, regardless of the presence or absence of consent (Doezema 2007). This position was rejected by the United Nations Convention for Transnational Organized Crime since it has the potential for oppressive effects on sex workers' lives, especially given the historical precedent. Despite this legislative distinction, the demonstrably invasive practices of the police have failed to follow suit.

The RCMP admits that there are confusions regarding definitions and depictions surrounding human trafficking (2010: 8). Mistaken classification of various sex crimes as human trafficking undermines the gravity of the crime, and disseminates faulty perceptions of trafficking. Consequently, it also averts focus and resources from trafficking cases to situations much more appropriately dealt with under other provisions in the *Criminal Code*.

Conclusion

This chapter has demonstrated the pervasiveness of unverified claims regarding human trafficking in official reports, which subsequently contribute to the creation of trafficking as a “social problem” in Canada. The specific organization of information in official reports demonstrates the construction of the issue from the perspective of authority figures, silencing the voices of the “victims”, and consequently supporting the agenda of the anti-trafficking advocates. According to Stanley Cohen, “successful moral panics owe their appeal to find points of resonance with wider anxieties” (2002: xxx). The effectiveness of the moral panic against human trafficking is demonstrated through its participation in “politics of substitution”³, piggy-backing human trafficking onto an array of sub-issues, including prostitution, smuggling, migration, race, and ethnicity, which are not as serious in their individual or group dimensions as human trafficking. The support provided to media depictions of human trafficking by official reports also demonstrates the “institutionalization”⁴ of the trafficking issue in Canada, and the consequent construction of a moral panic.

³ According to Philip Jenkins, ‘symbolic politics’ or the ‘politics of substitution’ are situations of moral panic used by politicians and claims makers to draw attention to specific issues, which represent other concerns (as cited in Killingbeck 2001: 195).

⁴ According to Ronald Weitzer, “institutionalization” of an issue occurs if the concern has been “accepted by authorities as a bona fide problem” (2007: 458).

Chapter 4: Anti-Trafficking Laws and their Application

Media and official reports play an important role in shaping the boundaries of criminality, creation of fear and consequently the development of moral panics as demonstrated in previous chapters. According to Reiner (2002), the installation of public fear results in people being more dependent, and thus more easily manipulated and controlled. It also results in a public that is “more susceptible to deceptively simple, strong, tough measures and hard-line postures—both political and religious” (ibid: 321). According to Stuart Hall *et al.*, moral panics created by the media and upheld by authority figures often work to legitimize an increase in law and order measures (as cited in Killingbeck 2001). Interestingly, human trafficking related legislative changes preceded the moral panic in Canada. This may be in part explained by the earlier rise in the global concern for human trafficking, which consequently led to international pressure on Canada to increase their anti-trafficking efforts. However, Canada’s moral panic against human trafficking has increased along with the frequency with which the anti-trafficking law is applied as well as police surveillance over the sex trade.

Building on the discussions in previous chapters, this section considers the role of law as well as legal cases and decisions in the social construction of human trafficking in Canada. In this chapter, I examine the differences between Canada’s anti-trafficking law, section 279.01 of the *Criminal Code of Canada*, and section 118(1) of the *Immigration and Refugee Protection Act (IRPA)*, contrasting them with the requirements of the *Palermo Protocol*. I

then compare section 279.01 of the *Criminal Code* with the procurement law in section 212(1) of the *Code*, to demonstrate the lack of concrete legislative definition of human trafficking, exasperated by the numerous versions of the definition. I suggest that this has resulted in the blurring of lines between human trafficking and other offences, such as procurement, or in lay language, pimping. Discussing Canada's trafficking related legal decisions and cases, I illustrate the use of the anti-trafficking legal framework to engage in the "politics of substitution" (*supra*. p. 84), which resonates in the use of human trafficking concerns to increase surveillance of sex workers, pimps, migrants and so on.

The Palermo Protocol

The current international anti-trafficking convention, known as the *Palermo Protocol* was implemented by the U.N. in 2000, and represents the fifth version of the international anti-trafficking convention. The *Protocol* sets out a number of criteria to be met by member countries, including the implementation of domestic legal provisions to ensure the international cooperation of police services, targeting of organized criminal operations, and criminalizing activities associated with human trafficking (Bruckert & Parent 2004). Focusing on the "three P's", prevention of trafficking, protection of victims and the prosecution of offenders (Oxman-Martinez & Jill Hanley 2004), the *Protocol* specifies that in order to uncover trafficking networks, it is crucial to treat trafficked individuals as victims and not perpetrators of

crime (UN 2000). Article 3(a) of the *Palermo Protocol* states,

‘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 (U.N. 2000: 2).

Article 5 of the *Protocol* specifies that the conduct set out in Article 3 must be criminalized in the domestic legislation of participating states (UNODC 2011: *Criminalization of Human Trafficking*). According to the U.N. Global Initiative to Fight Human Trafficking (GIFT), domestic anti-trafficking legislation may depart from the specific language used in the *Protocol*, however, it should criminalize the concepts set out by the United Nations (2008b: 4). Although Article 4 of the *Protocol* states that, the law applies to “offences that are transnational in nature and involve an organized criminal group” (UN 2000: 3), the same requirements do not apply to domestic legislation. The goal of this international definition was to provide a global consistency and consensus on the issue of human trafficking. Yet according to

the U.N., “at the formulation of these normative frameworks, at both the national and the regional level, there is little consistency in the core definition of trafficking in persons and national legislation often falls short of the comprehensive provisions of the *Protocol*” (UN.Gift 2008c: 11). Canada suffers from similar shortcomings, with disparities not only between the legislative definitions of human trafficking outlined in the *Palermo Protocol* and the domestic legislation, but also between the *Criminal Code of Canada* and the *Immigration and Refugee Protection Act (IRPA)*.

Canada’s Anti-Trafficking Legislation

Based on requirements of the *Palermo Protocol*, a domestic legislation is required to adopt a definition of trafficking that includes both domestic and transnational trafficking, a variety of purposes for trafficking, and takes place with or without the involvement of criminal organizations (UNODC 2011: *Criminalization of Human Trafficking*). With this in mind, Canada added sections 279.01 to 279.04 into the *Criminal Code of Canada* in 2005. Section 279.01(1) of the *Criminal Code of Canada* states,

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 and liable

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during

the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case (*C.C.C.* 2005).

Another piece of legislation regulating human trafficking in Canada is found in section 118 of the *IRPA* which states,

(1) 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.

(2) For the purpose of subsection (1), “organize”, with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons (*IRPA* 2002).

This section has been in force since the implementation of the *IRPA* in 2002. The definitions in the *Criminal Code* and in *IRPA* are both slightly broader than the one established in the *Palermo Protocol*. The primary distinction between the legislative definition in *IRPA* and the definition established in the *Palermo Protocol* is the ability to apply *IRPA*'s anti-trafficking provision to the activities of any one individual, and not only criminal organizations (Sikka 2009: 4). Furthermore, while the *Palermo Protocol* requires evidence to demonstrate that border crossing is for the purpose of exploitation, all that is needed to establish the crime of human trafficking, according to the *IRPA*, is

transportation of an individual into Canada by means of abduction, fraud or other coercion (ibid: 5). Therefore, the *IRPA*'s criteria for establishing the crime of trafficking is significantly less demanding than that of the *Palermo Protocol*.

Section 279.01 of the *Code*, much like the provision outlined in *IRPA*, is applicable to an individual operating independently, not just criminal organizations, as is the case with the United Nations definition of trafficking. However, unlike the *IRPA* and the *Palermo Protocol*, applying the *Criminal Code*'s anti-trafficking provision is not dependent on the use of fraud, deception, or force in carrying out the act of recruiting, transporting, transferring or controlling the victim's movements (Sikka 2009: 5).

Yet, the most significant factor in distinguishing section 279.01 of the *Criminal Code of Canada*, from section 118(1) of the *IRPA* and the *Palermo Protocol* is the fact that the *actus reus*⁵ in the *Criminal Code* does not have to be physical (ibid). Exploitation of a person may be found when someone exercises "influence" over another, which includes psychological, emotional, and mental influence (ibid). Thus, while the *Palermo Protocol* requires exploitation to have actually taken place, in order to establish the occurrence of an offence⁶, the *Criminal Code* only requires the victim to have had reasonable belief that failure to comply with the demands of the trafficker will

⁵ *Actus Reus* – "The prohibited act in a criminal or regulatory offence. Proof of the *actus reus* may also include the requirement that the prohibited act be voluntarily and consciously committed by the accused" (Irwin Law's Canadian Online Legal Dictionary 2009).

⁶ Article 3(b) of the *Palermo Protocol* states, "*Exploitation shall include, at a minimum, the exploitation [emphasis added] 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*" (UN 2000: 2).

jeopardize their safety⁷ (ibid: 5). There are varying opinions about the effect of this on the ease of human trafficking convictions. Annette Sikka (2009) argues that it is far easier to meet the criteria for exploitation based on its definition in the *Criminal Code*, in contrast with the way it is outlined in the *Protocol*, since the physical proof of exploitation does not have to exist. Yet, Benjamin Perrin (2010a) suggests that focusing on the victim's fear for safety is too limited and fails to criminalize the various ways in which trafficking is often committed, for instance using psychological manipulation. This is demonstrated in the case of Canada's first convicted trafficker, Imani Nakpangi, who was charged with trafficking two young women, but was only convicted of one account, since the second "victim" claimed to have had a romantic relationship with the accused. Because she did not fear for her safety, the court was forced to acquit him of the second trafficking charge. Perrin asserts that the *Criminal Code* is too narrow in its definition of human trafficking, and departs from the definition of the term established by the United Nations "in some very unfortunate ways" (ibid: 137), as demonstrated in the case of Nakpangi above. Although I agree with Perrin that the significant ways in which the *Criminal Code's* definition of trafficking departs from that of the *Palermo Protocol* is problematic, my reasons diverge from those of Benjamin Perrin. I suggest that the legislative definition of trafficking

⁷ Section 279.04 of the *Criminal Code of Canada* states, "Exploitation. For the purpose of sections 279.01 to 279.03, a person exploits another if they (1) *cause them to provide* [emphasis added], 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 that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or services; or (2) cause them by means of deception or the use of threat of force or of any other form of coercion, to have an organ or tissue removed" (C.C.C. 2005).

outlined in *Canada's Criminal Code* may create an atmosphere where police suspicion of sex workers' consent is justified, therefore increasing police surveillance over the sex trade (*infra*. p. 76-78). Furthermore, the fact that the *actus reus* does not have to be physical means that an individual can be found guilty of human trafficking if they have "exercised control, direction or influence over the movements of a person" (*C.C.C.* s. 279.01). Thus, according to the definition outlined in the *Criminal Code*, the offender is "not actually required to *move* a victim" (Sikka 2009: 5). This is a noteworthy difference, since the physical transportation of a victim is often believed to be the central aspect of trafficking (*ibid*). Based on this understanding of human trafficking, there are an array of interlocked offences that may be categorized as trafficking. The language used in the anti-trafficking provision to criminalize the transportation of a victim, is identical to the procurement provision, which prohibits procurement for the purpose of prostitution. Thus, removing the transportation requirement from the law alters the meaning of human trafficking, minimizing it into an offence which is strikingly similar to procurement, also known as "pimping". The procurement provision, section 212(h) of the *Criminal Code*, states,

Every one who: (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,

(b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or

prostitution,

(c) knowingly conceals a person in a common bawdy-house,

(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,

(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,

(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house,

(g) procures a person to enter or leave Canada, for the purpose of prostitution,

(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,

(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or

(j) lives wholly or in part on the avails of prostitution of another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years (*C.C.C.* s. 212(1)).

There are subtle distinctions between the potential role of “consent to be trafficked” in the *Palermo Protocol* and s. 279.01 of the *Criminal Code*. The most obvious difference between section 212(1) and section 279.01 of the *Code* stems from the anti-trafficking provision’s broad definition of “exploitation”, which covers the various purposes for trafficking of humans, including organ harvesting, forced labour and begging, while procurement focuses solely on sexual exploitation.

According to Article 3(b) of the *Palermo Protocol*, “the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any means set forth in subparagraph (a) have been used” (U.N. 2000: 2). According to this provision, consent is irrelevant if it is given under the circumstances outlined in Article 3(a) of the *Protocol*, which describes the recruitment, transportation, and exploitation of an individual by means of threat, coercion, fraud and so on. United Nations asserts that, “consent is only possible and legally recognizable, when all the relevant facts are known and a person is free to consent or not” (UNGift 2008b: 5). Trafficking occurs if consent is dissolved by the application of any improper means by the trafficker (*ibid*). However, the requirement to ignore the “victims” consent has given police the freedom to label a variety of offences as human trafficking, since all that is required is

evidence of exploitation. This ignores the fact that not all forms of exploitation are determinants of human trafficking. Such assumptions are based on the idea that victims of trafficking are unable to recognize, or are reluctant to admit to being exploited due to coercion and threats from their traffickers, psychological manipulation, threats of physical harm to them or their families (RCMP 2010: 39). The consent provision is thus a response to arguments suggesting that victims of human trafficking are at least in part responsible, willing, and consenting, since they have agreed to being transported.

While the procurement provision section 212(1) of the *Criminal Code* does not address the relevance of consent, it does criminalize the “procurer who entices, encourages, or importunes a person to engage in prostitution” (*Bedford v. Canada* 2010: 74). The fragile distinction between trafficking and procurement is further challenged by the fact that pimps have long been associated with exhibiting control over prostituted women through violence, threats, and psychological manipulation. According to arguments made in the Alberta Court of Appeal decision in *R. v. Downey*, a prosecution under the procurement section 212(1) of the *Criminal Code*, “Pimps encourage and enforce often through violence the activities of prostitutes -- a particularly vulnerable segment of society” (1992: 5). Moreover, the assumption that trafficking victims are unwilling to cooperate with the police due to fear of reprisal by the traffickers, also applies to prostitutes. This is demonstrated in a number of provincial court procurement decisions, including *R. v. G.* (2001),

R v. Willis (1997), as well as arguments made in *R. v. Downey*, which confirmed that “Evidence of pimps living on avails is difficult, if not impossible, to obtain without the cooperation of the prostitutes, who are often unwilling to testify for fear of violence against them by their pimps” (1992: 4). Therefore, a belief that a sex worker, just as a trafficking victim, is uncooperative due to psychological manipulation, fear for their life or the lives of their loved ones, makes the difference between procurement and trafficking disappear.

The correlation between procurement and trafficking is evident in the use of the word “pimp” to refer to traffickers in many reports, articles, and discussions on human trafficking *infra*. One study argues that domestic traffickers are “minor (small-scale) pimps” characterized by one or two pimps engaging in the exploitation of teenage runaways and minors in the sex trade (Busch-Armendariz & Nsonwu 2009). The study contrasts the domestic traffickers or “minor pimps” with international traffickers, who engage in the recruitment of women from other parts of the world for prostitution in the U.S. (ibid). Similar arguments are presented by the Canadian HIV/AIDS Legal Network report, which claims that the purpose of sections 212(1)(a),(b),(d),(g),(h),(j) in the *Criminal Code of Canada* is to combat migration and sex trafficking (Betteridge 2005: 16). The report states that, according to sections 212(e)(g) of the *Criminal Code*, “it is illegal to induce a person from outside Canada, or entering Canada, to engage in prostitution”, or “to induce people to leave Canada for the purposes of prostitution and related

activities” (ibid). Therefore, section 212(1) of the *Criminal Code* not only prohibits “pimping”, but does it in a way that captures one of the key elements of trafficking, cross-border transport (ibid). The Strategic Intelligence Brief provided by the Criminal Investigations Services Canada (CISC) on human trafficking confirms this correlation stating that, “traditionally regarded as prostitution, cases of domestic trafficking in persons for sexual exploitation are emerging in Canada due to amendments to the *Criminal Code* of Canada in November 2005” (2008: 1). However, unlike the distinction between “minor pimps” and international traffickers, CISC argues that domestic trafficking parallels international trafficking in its patterns of recruitment, movement, control, and exploitation of victims (ibid).

A study by the Canadian Centre for Justice Statistics found that domestic prostitution is often categorized as human trafficking by the police (Ogrodnick 2010: 13). However, unlike, the other reports and studies, the Canadian Centre for Justice Statistics rejects this, arguing that the recruitment and grooming of young people for prostitution is being *confused* with the geographic movement of involuntary sex trade workers (ibid). The report further states that although the distinction between prostitution and human trafficking is often difficult to make, based on the various definitions of the term in Canadian law, it is nonetheless *crucial* to distinguish between the two actions, since their policy approaches and solutions are not the same (ibid). Thus, the report touches upon many of the same concerns regarding the confusion between sex work and trafficking as are discussed in this thesis.

Canada's Trafficking Cases

According to Jeffrey Victor, “false accusations are a necessary part of a moral panic” (1998:7). Victor argues that in order for a moral panic to be successful, it is necessary to publicly identify an individual as a potential threat, also known as a “scapegoat”, even if this alleged deviance is purely imaginary (ibid). Elliot Currie suggests, that “even when deviant acts are entirely imaginary, such as in the moral panic against witchcraft, people can always be found to fit the required profile of deviants” (as cited in Victor 1998: 6). In such situations, guilt is usually established through ambiguous and easily manoeuvrable tests, which employ faulty investigative techniques. They include the employment of unreliable indicators, false accusations, and false memories, all of which, I would argue, are present in existing cases of human trafficking (Victor 1998).

While the above examination demonstrates the obvious ambivalence of Canada's legislative definition of human trafficking, the next section shows how the use of these ambivalent definitions has resulted in Canada's five convicted traffickers fulfilling the role of a scapegoat, and thus upholding the moral panic against human trafficking. Despite the implementation of Canada's anti-trafficking legislation in 2005, the first three years saw very few charges and no convictions under this law. Since 2008, there has been an increase in the number of trafficking related charges as well as convictions.

Imani Nakpangi – Canada’s First Convicted Human Trafficker

Imani Nakpangi is Canada’s first convicted trafficker under section 279.01 of the *Criminal Code of Canada*. Nakpangi was charged with human trafficking in December of 2007, after an undercover police operation revealed his involvement in prostituting two underage girls. One of the “rescued” girls insisted on her romantic involvement with Nakpangi – a proclamation which, although deemed as a consequence of psychological manipulation by the police and the justice system, had to be considered in determining his guilt. His second victim claimed to have been prostituted and controlled for two and a half years, with the use of violence and threats against her family (Perrin 2010a). Nakpangi pleaded guilty to trafficking his second victim, and was convicted of “living off the avails of juvenile prostitution”, under section 212(2) of the *Criminal Code* when it came to his first “victim”. The court was unable to convict Nakpangi of trafficking his first victim, since she did not fear for her safety. As outlined earlier in this chapter, the definition of “exploitation” in the *Criminal Code* requires the victim to believe that their safety or the safety of their loved ones is in danger if they fail to comply with the demands of the trafficker. Benjamin Perrin (2010a) argues that if Nakpangi was charged under the *Palermo Protocol* he would have also been convicted of trafficking his first victim, since the *Protocol* contains a special provision⁸ which specifies that the proof for

⁸ Article 3(c) states that “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article” (*Palermo Protocol* 2000: 2).

means⁹ of exploitation is not required for child victims of trafficking.

However, since the *Palermo Protocol* only applies to transnational trafficking carried out by criminal organizations, and not independent domestic traffickers, Nakpangi does not meet the requirements of a trafficker under this legislation.

Furthermore, according to the RCMP (2010), Nakpangi *transported* his victims to various hotels to engage in sex acts. Although as previously established, the transportation factor is not necessary to establish trafficking according to the *Criminal Code*, the mention of this fact by the RCMP warrants notice for two reasons: firstly, it may signal that the RCMP is unaware that the transportation factor is not a requirement under Canadian law. Secondly, it inadvertently draws attention to the fact that pimps also engage in transporting prostitutes from one hotel to another. Contrary to existing arguments, this is not an indicator of their sophisticated attempts to avoid detection, but rather an accommodation of the clients' needs. Nakpangi was sentenced to three years imprisonment for human trafficking and two years for living off the avails of juvenile prostitution for a total of five years (RCMP 2010). Nakpangi's two-for-one pre-trial credit of two hundred and two days was converted into four hundred and four days served, resulting in a remaining service of only three years and eleven months (Perrin 2010a).

⁹ The means according to subparagraph (a) are "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 giving of receiving payments or benefits" (ibid).

Jacques Leonard-St. Vil

In April of 2007, Peel Regional Police laid Canada's first human trafficking charge against Jacques Leonard-St. Vil for luring his twenty-year-old girlfriend into prostitution. Leonard-St. Vil met the young woman in 2006 at a work function in Montreal, which led to the development of a relationship (RCMP 2010). The pair eventually relocated to Toronto, where he forced her into stripping and prostitution. When the victim tried to leave, Jacques Leonard-St. Vil threatened and assaulted her, demanding eight hundred dollars for the cost of the move from Montreal to Toronto. Shortly after the victim fled and contacted the police, leading to Leonard-St. Vil's arrest. In addition to human trafficking, the accused was also charged with assault with a weapon, procuring a person to become a prostitute, exercising control of a prostitute and living off the avails of prostitution (ibid). Jacques Leonard-St. Vil plead guilty to trafficking, and was sentenced to three years imprisonment and three years probation for human trafficking and living off the avails of prostitution (RCMP 2010). With two-for-one credit received from pre-trial custody, Jacques Leonard-St. Vil spent only one day in prison (Perrin 2010a).

Vytautas Vilutis

Vytautas Vilutis was convicted of human trafficking in April of 2009. Vilutis was accused of pimping a young woman, who had engaged in sex work and exotic dancing prior to meeting him. Vilutis and the victim met in Toronto, where they remained until his arrest. (Perrin 2010a). According to

the RCMP (2010), Vilutis exerted control over the victim by adhering her to a set of rules, which included restrictions to her movement through threats and physical assault. Vytautas Vilutis pled guilty to human trafficking and was sentenced to two years less a day, serving only fourteen months (Perrin 2010a).

Laura Emerson – Canada’s Only Convicted Female Trafficker

The longest sentence for a human trafficking offence in Canada was handed down on April 9th, 2009 to Canada’s only female trafficker. Laura Emerson pled guilty to three counts of human trafficking, living off the avails of prostitution, assault, and forcible confinement (Perrin 2010a). Emerson was convicted of prostituting three teenage girls from her Gatineau apartment, controlling them with threats, assault, forcible confinement, and drug dependencies. The girls were made to perform sex acts with numerous men in Emerson’s apartment, hotel rooms, and clients’ apartments (ibid). The victims’ reported suffering severe beating at the hands of Emerson, including having their hair ripped out and false fingernails torn off (Perrin 2010a). Emerson pled guilty to human trafficking, receiving a seven-year prison sentence, in addition to the eight months and ten days she had already served in pre-trial custody.

It is interesting to note that the longest human trafficking sentence in Canada was handed to a female perpetrator for a crime that is overwhelmingly committed by men. There may be several possible explanations for this. For

one, studies by the Canadian Centre for Justice Statistics (Shireen 2010), and Canadian HIV/AIDS Legal Network both found an existence of gender discrimination in sentencing patterns of convictions in offences related to prostitution¹⁰ (Betteridge 2005). According to Noblet (2008), this may be linked to the “evil woman hypothesis” which states that female offenders receive harsher court sentences for crimes mainly committed by men¹¹, since they are punished not only for committing the offence, but also for defying gender and social norms, while women who committed crimes traditionally considered as “female”¹² received lesser sentences (ibid). Laura Emerson’s crime of trafficking is considered as primarily a male offence, which may in part explain Emerson’s significantly higher sentence. This is supported by Canadian Centre for Justice Statistics, which found that seventy one percent of individuals charged with procurement offences were male. When females were convicted of procurement offences, their sentences were harsher than those imposed against males (Shireen 2010: 33). Another explanation for Emerson’s higher sentence may be the degree of violence exhibited towards her victims, including severe beatings, ripping out hair and tearing off false fingernails. Emerson also controlled her victims through threats, forcible confinement, and drug dependencies (Perrin 2010a). Based on the available information, these aggravating circumstances may have earned Emerson additional time in prison. Laura Emerson’s partner, Gordon John Kingsbury,

¹⁰ i.e. procuring some one to engage in prostitution, living off the avails of prostitution, communication for the purpose of prostitution

¹¹ i.e. particularly crimes involving violence, such as assault

¹² i.e. shoplifting

was also involved in the offence. Kingsbury pled guilty to living off the avails of prostitution and sexually assaulting one of the victims. He was only sentenced to three years and ten months imprisonment (Perrin 2010a).

Michael Mark Lennox

Michael Mark Lennox pled guilty to human trafficking in 2009 (RCMP 2010). Lennox met his seventeen-year-old victim at a Montreal nightclub. According to the RCMP (2010), Lennox seduced the victim and brought her to Toronto, where he forced her into prostitution, taking control of her earnings. Because of the victim's young age, Lennox was unable to prostitute her in strip clubs, therefore resorting to street-level prostitution. When the victim expressed desire to leave the sex trade, Lennox threatened and intimidated her (RCMP 2010). Michael Mark Lennox was sentenced to two years imprisonment and two years probation. With the two-for-one credit from pre-trial custody, Lennox spent only one week in prison after the trial (Perrin 2010a).

Additional Cases of Trafficking

As of November 15th 2009, there were thirty-three individuals charged with human trafficking (RCMP 2010: 20), with additional charges laid since then. The following cases are only a few examples of the types of situations being categorized as human trafficking in Canada.

In 2009, Marlo Williams was charged with human trafficking, after he

forced a nineteen-year-old woman into stripping and prostitution, while collecting her earnings. During her visit to Toronto from Edmonton, the victim met Williams, who allegedly coaxed her into stripping and prostitution. When she attempted to escape his condominium, the accused beat and choked her. He pled guilty to assault, forcible confinement, resisting arrest, possession of ammunition contrary to prohibition order, and breach of probation and breach of recognizance, but was not convicted of human trafficking (Cherry 2010e). The judge concluded that the woman had exercised “free will” when engaging in stripping, and handing Williams her money (Cherry 2010f). Williams was sentenced to three years imprisonment, of which he served only two, after the credit he received from two-for-one pre-trial custody (Cherry 2010e).

Enoch Johnson was charged with human trafficking in 2009 for luring two women to Mississauga, with promises of modelling careers. Upon arrival, the women were forced into prostitution and told to turn over their earnings. In addition to human trafficking, Johnson was also charged with receiving materials from prostitution, exercising control for the purpose of prostitution and living off the avails of prostitution (Mitchell 2009). On February 4th, 2011 Johnson was acquitted of all charges (Rosella 2011). According to the trial judge, although there was evidence of the women working in a strip club, evidence did not prove beyond a reasonable doubt that they had been forced to do so, nor did it prove that they had to turn their earnings over to Johnson (ibid). In fact, according to the evidence provided at the trial, both of the

“victims” had been engaging in exotic dancing prior to meeting the accused, and continued to do so after they ceased contact with him. Furthermore, both of the “victims” had travelled on their own will from North Bay to Toronto for the purpose of exotic dancing (*R. v Johnson* 2011). The victims also admitted to having kept their earnings, and discussed ways in which they spent their money (ibid). The police had thus charged Johnson with an offence as serious as human trafficking, based on the fact that the women had travelled to Southern Ontario from North Bay, their involvement in exotic dancing, which was voluntary, as evidenced by their testimony in court, as well as the fact that they had been living in apartments belonging to Johnson. The lack of evidence to justify human trafficking from the offset is concerning, especially due to the seriousness of the allegations.

In 2010, Eric Jean Pierre Riendeau was charged with human trafficking, living off the avails of prostitution and assault. Riendeau was previously acquainted with the eighteen-year-old from Quebec who had recently moved to Calgary. He forced her to work as a prostitute for over a month and turn her earnings over to him. According to the police, Riendeau exploited the victim’s labour, therefore justifying the charge of human trafficking (Zickefoose 2010). To date, the outcome of the case is unknown.

In 2007 Anthony Christopher Roberts, Ernest Downey, Spencer Sinclair Thompson and Thomas Junior Downey were charged with human trafficking, gang sexual assault, kidnapping, forcible confinement, assault and withholding documents. The charge stemmed from a brutal sexual assault of a

nineteen-year-old Nova Scotia woman who was visiting her relatives in Mississauga, Ontario. The victim was kidnapped for twenty-four hours, during which she was sexually and physically assaulted. The accused were believed to be apart of North Preston's Finest, a Nova Scotia based gang known for operating a prostitution ring. According to the police, the purpose of the assault was to "instil fear into this girl and force her into illicit sex trade" (Rosella 2010). However, upon investigation, the violent assault turned out to be an act of vengeance against the young woman's boyfriend, who had allegedly stolen a car belonging to one of the assailant's brother (*R. v. Downey and Thompson* 2010¹³). Charges against Anthony Roberts were dropped before the trial, while the outcome of Ernest Downey's (Thomas Downey's brother) case is unknown, as it ceased to be reported shortly after the arrests were made. Spencer Sinclair Thompson and Thomas Junior Downey were acquitted of human trafficking, but convicted of kidnapping, sexual assault, gang sexual assault, and aggravated assault, and sentenced to fifteen years imprisonment (Rosella 2010). Unlike all other cases discussed, this case is particularly noteworthy, due to the extremely vague nature of the connections drawn by police to lay human trafficking charges, since the case did not involve, nor was their any intention on the part of the assailants to prostitute the victim. What this case demonstrates very clearly is the swiftness of the police in laying human trafficking charges, despite the ambiguity of existing evidence.

¹³ Note: the case of *R. v. Downey* (1992) is unrelated to *R. v. Downey and Thompson* (2010).

Discussion of Cases and Judicial Decisions

The most important determinant in the process of claims making is the position from which these claims are made (Stuart & Lanier 2001: 135). Since police are public agents with official authority and monopoly over law enforcement, they not only have the power to define how claims about crime problems are presented, but they also have the attention of the media (ibid). As demonstrated, the statements by the media, the police and other interested parties, allude to the existence of indisputable evidence regarding the horror of human trafficking cases being uncovered in Canada. However, the above outlined cases reveal gaps in police constructions of human trafficking. The cases demonstrate police inclination towards laying human trafficking charges, despite vague evidence. This raises a question of not only the internal requirements for police to charge under the human trafficking provision, but also their knowledge and understanding of the facets of the crime. Furthermore, police enthusiasm in laying these charges, despite weak evidence, suggests the existence of a political mandate to increase trafficking related charges.

A number of common factors emerge from Canada's five convicted cases of human trafficking. All five are cases of domestic trafficking, involve trafficking for the purpose of sexual exploitation and are indistinguishable from procurement offences (under s. 212 of *C.C.C.*), since they were carried out by individuals operating independently, (as opposed to organized criminal groups). Several of the cases also contain a relationship element, which may

indicate a prostitute/pimp dynamic. Finally, all five convictions came about as a result of guilty pleas and were for the most part given very lenient sentences.

Domestic Trafficking and Transportation

To date, all five of Canada's human trafficking convictions and the vast majority of charges involve Canadian citizens as both victims and traffickers (RCMP 2010). The trafficking in all convicted cases took place within Canada, mostly in the same province and often in the same city. For example, one of the convicted traffickers, Vytautas Vilutis met his victim in Toronto, where the exploitation occurred, while Jacques Leonard-St. Vil and Michael Mark Lennox both met their victims in Montreal, but moved to Toronto taking their victims with them. Not only are these cases specific to Canada, but also largely to Ontario, and particularly Toronto. Although Toronto is a metropolis, with seemingly more opportunities for exploitation, the greater number of trafficking charges in the city may also be a result of increased police surveillance of sex workers. Furthermore, in vast majority of the cases (both charged and convicted) the victim had travelled with or to the "trafficker", under their own free will.

The police emphasis on domestic trafficking increases the likelihood of procurement cases being dealt with under human trafficking provisions. This is particularly problematic as a result of the ambivalent requirements outlined in Canada's anti-trafficking laws. In order to satisfy the requirement for human trafficking, Canadian anti-trafficking law only requires one to

exercise control, direction, or influence over the movement of a person (*C.C.C.* s. 279.01(1)). Yet, the same requirements are set out in the procurement provision, section 212(h) of the *Criminal Code*. In fact, a judge in a lower court decision approved of the sentencing guidelines for procurement cases established in the 1997 Alberta Court of Appeal decision *R. v. Tang*, where one of the factors in evaluating the aggravating and mitigating circumstances towards sentencing, is the degree of coercion or control imposed by the pimp over the prostitute's activities (as cited in *R. v. A.R.* 1998).

There are numerous examples of this among convicted procurement cases. For example, in *R. v. Cole* the Municipal Court of Montreal found the accused guilty of "unlawfully exercising influence over a prostitute as to aid her to engage in prostitution" (2004: para 1). The Supreme Court of Newfoundland in *R. v. Martinez* (1994) convicted the accused of controlling, directing and influencing the victim for the purpose of prostitution. Furthermore, the Alberta Court of Appeal in *R. v. A.K.G* found the accused guilty of controlling the movement of the victim in an effort to engage her in prostitution (1998: para 17). Similar examples are provided by the Supreme Court of Nova Scotia decision in *R. v. V.J.S.* (1994), and Superior Court of Ontario decision in *R. v. B* where the "appellant was convicted of controlling her movements with a view to aiding or compelling her to engage in prostitution" (2004: para 2), all of which demonstrate that control by a pimp over the prostitutes' movements and activities is as much a part of procurement offence as it is of human trafficking. It also demonstrates that the

transportation factor is key in distinguishing human trafficking from procurement and other *Criminal Code* offences, and thus should be reflected in Canada's legislative definition of trafficking.

Relationships

All five convicted cases of trafficking took place for sexual exploitation, and in four out of the five cases, the trafficker, and the victim were involved in a romantic relationship prior to the exploitation. For instance, Imani Nakpangi's second "victim" insisted that she had been in a romantic relationship with him, which even resulted in her pregnancy. Jacques Leonard St-Vil., Vytautas Vilutis and Michael Lennox were also romantically involved with their victims to various degrees. Such relationship patterns illustrate the "pimp" and prostitute dynamic, which is not uncommon in procurement cases. This is evident in the Municipal Court of Montreal decision in *R. v. Crishlow*, where "The person who worked as a prostitute for the accused's advantage was his wife Paula Kelley, the mother of his children" (2003: 2). It is also demonstrated by the Ontario Court of Appeal decision in *R. v. B.* where "The appellant doubled as her boyfriend and her pimp" (2004: para 10). Further evidence is provided in the Provincial Court of Quebec decision in *R. v. Tynes* (2010), Alberta Court of Appeal decision in *R. v. Wallace* (2009), and British Columbia Court of Appeal decision in *R. v. Hayes* (1998), where the relationships between the pimp and the prostitute are also romantic in nature.

The targeting of sex workers and pimps during anti-trafficking

campaigns has historical precedence during the “white slavery” crusades of the late 19th and early 20th century. Although the anti-trafficking laws implemented at the time were aimed at protecting sex workers from profiteers and traffickers, they were instead used against prostitutes as well as their husbands and boyfriends, who were targeted as pimps (Doezema 2007). The historical pattern associated with the problematic use of anti-trafficking laws problematizes the current use of the law even further, by demonstrating not only the re-occurrence of this human rights violation, but also the extent to which these violations can be taken.

Organized Crime

According to CISC (2008), human trafficking in Canada is being carried out by *criminal networks* [emphasis added] specializing in the recruitment, transportation and coercion of women into the sex trade. As demonstrated *supra.*, the RCMP (2010) has also identified the involvement of Eastern European and Asian criminal groups in transnational trafficking of women into Canada for the purpose of sexual exploitation. On the domestic front, criminal organizations such as North Preston’s Finest (NPF), operating out of Nova Scotia, as well as Haitian-Canadian gangs called “Bloods” and “Cripps” have been identified as being involved in the trafficking of guns, drugs, and women (Perrin 2010a). Although the police have suspected the involvement of organized crime in a few human trafficking cases, these suspicions have remained unsubstantiated. For example, in *R. v. Downey and*

Thompson (2010) discussed above, several men were charged with offences ranging from kidnapping to gang sexual assault, including human trafficking. The police suspected the men of being involved in a Nova Scotia based street gang called North Preston's Finest, transporting women from Nova Scotia and forcing them to work in the sex trade. However, none of the accused were convicted of human trafficking and no connections to organized crime were confirmed. Despite police suspicions and suggestive statements regarding the connection between human trafficking and organized crime groups, charges and convictions under trafficking laws in Canada do not support these claims.

Aside from police "suspicion" of the involvement of organized crime groups, most identified trafficking cases (both charges and convictions) involve individuals operating independently to carry out sexual exploitation of their victims. This is further demonstrated by the fact that there has not been a single transnational trafficking conviction under the *Criminal Code* or the *IRPA* (RCMP 2010). The RCMP (2010) has admitted that current knowledge on organized crime and transnational sex trafficking into Canada is largely based on anecdotal evidence.

Guilty Pleas

All five of Canada's human trafficking convictions resulted from guilty pleas, rather than judicial decisions. This means that the sentencing decisions are not entered into legal databases that can be accessed by lawyers, judges, and academics (Perrin 2010a). Canada lacks a central database, which

contains records of trafficking charges and convictions across the country (ibid). Since most trafficking prosecutions are carried out on a provincial level, it is “virtually impossible for individual jurisdictions to learn from successful and unsuccessful prosecutions” (ibid: 120). Canada’s decentralized system also reduces the likelihood of problems being identified with the existing trafficking convictions (ibid). As a result of these restrictions, my analysis of convicted cases is based on limited information accessible to the public, through media and official reports. However, guilty pleas to an offence of such gravity are noteworthy, and require further inquiry.

Sentences

The maximum term of imprisonment for violation of human trafficking provisions within the *Criminal Code of Canada* is fourteen years (C.C.C. s. 279.01(1b)). The penalty increases to the possibility of life imprisonment with the involvement of kidnapping, committing aggravated assault or aggravated sexual assault, or causing the death of the victim (C.C.C. s. 279.01(1a)). In contrast, the average sentence for a human trafficking convictions to date in Canada is three years.

As seen *supra* (p. 47), anti-trafficking advocates criticize the sentences imposed in human trafficking cases, arguing that they are far too lenient. Yet, based on the characteristics of the cases labelled as human trafficking in Canada, the sentences in fact appear to be in line with the severity of the crime. A three-year average sentence for a human trafficking offence appears to be

low, since people associate human trafficking with criminal organizations, cross-border transportation, and large-scale exploitation of people. However, as demonstrated, the facts underlying Canada's human trafficking convictions are characteristically similar to procurement offences. Despite the fact that the maximum penalty for a procurement offence under section 212(1) of *Canada's Criminal Code* is ten years imprisonment (slightly lower than the fourteen-year maximum penalty for human trafficking), the sentences imposed in procurement offences are highly comparable to those imposed in trafficking cases.

Procurement convictions attract sentences, ranging from eighteen months to five years imprisonment, as seen in the Supreme Court of Newfoundland decision in *R. v. Martinez* (1994), where the judge sentenced the accused to two years less a day for procurement of the first victim, and one year for the procurement of the second victim. The Supreme Court of Nova Scotia in *R. v. V.J.S.* (1994) sentenced the accused to three years and six months imprisonment for violation of section 212(1) of the *Criminal Code*. In *R. v. Crichlow* (2003), the Municipal Court of Montreal sentenced the accused to eighteen months imprisonment, while the Supreme Court of Ontario in *R. v. B.* sentenced the accused to five years for violating section 212(1) of the *Code* (as cited in *R. v. B.* 2004). Similar sentences were also imposed in *R. v. Wallace* (2009), and the Provincial Court of Quebec decision in *R. v. Tynes* (2010). This clearly shows the similarity between procurement and human trafficking offences in Canada. Those offences labelled as human trafficking

are treated with equal severity to procurement offences, resulting in similar sentencing patterns.

Conclusion

This chapter demonstrates the various ways in which legislative definitions and laws on human trafficking are broad and ambiguous. It also outlines the different ways that international anti-trafficking convention varies from Canada's anti-trafficking laws, demonstrating the considerably broader and more ambiguous legislative definition of trafficking established in Canada in contrast with its international counterpart. This lack of concrete legislative definition makes identifying human trafficking cases extremely problematic, by leaving it open for interpretation, which as I've argued, has resulted in the improper categorization of human trafficking offences. This is demonstrated in the unmistakable parallel between human trafficking provision, section 279.01 of the *Criminal Code*, and section 212(1) of the *Code*, which deals with procurement for the purpose of sexual exploitation. The characteristic pattern of Canada's human trafficking cases also supports this correlation, due to their close resemblance to "pimping" cases. This similarity is a strong indicator of the problematic use of anti-trafficking legislation as anti-prostitution law, a pattern which is well documented throughout history (*supra*. p. 16).

In light of these findings, there are a number of changes required on a policy, and potentially a legislative level in order to clarify the meaning of

human trafficking and distinguish it from other criminal offences. Firstly, transportation, as the key aspect of human trafficking should be centralized in Canada's domestic and transnational trafficking legislation. Secondly, although the idea that one cannot consent to being trafficked is straightforward in theory, the application of this concept does not appear to be as clear-cut. Therefore, it is necessary to clarify the concept of consent in human trafficking policy in order to avoid removal of agency from migrant and domestic sex trade workers. Thirdly, the anti-trafficking provisions in the *IRPA* and *Criminal Code* need to be consistent, in order to avoid selective application of the law. Implementing these changes will help clarify the concept of human trafficking, and distinguish it from other *Criminal Code* offences, particularly procurement or "pimping". It will also prevent the mislabelling of procurement cases as human trafficking, and may assist in redirecting police attention away from willing sex trade workers, and towards uncovering, charging, and prosecuting human trafficking. Finally, Canada's anti-trafficking legislation should be brought more in line with the *Palermo Protocol*, which all of the above outlined suggestions will accomplish.

Chapter 5: Canada's Immigration Policy in the Context of Human Trafficking

Immigration and border control are significant components of the global anti-trafficking strategy. Article 11(1) of the *Palermo Protocol* claims that “State Parties shall strengthen, to the extent possible, such border control as may be necessary to prevent and detect trafficking in persons” (UN 2000: 7). According to Oxman-Martinez *et al.* (2005), international anti-trafficking measures are closely linked with border control strategies employed by Western nations in response to the increased migration of the last few decades. The events of 9/11 have led to an even greater focus on border control, particularly by the U.S. (ibid). As a result, Canada, as a country sharing a border with the U.S., and ironically a nation known for its lenient immigration policies, felt an increasing amount of pressure to increase border control and tighten security. These pressures have led Canada to re-shape its immigration policies, increasing focus on national security and away from human rights as well as labour rights (ibid).

Kamala Kempadoo argues that the “anti-trafficking framework is synonymous with war on international crime and represents an attack on the movement of persons, weapons, or drugs that defy or circumvent legal boundaries” (2005: xiii). The use of anti-trafficking measures to control migration demonstrates the idea of “political symbolism” or the “politics of substitution”¹⁴, where concerns over one issue are used to gain support for

¹⁴ Terms used by Philip Jenkin to describe a situation where politicians and claims makers draw attention to specific issues that represent other concerns (Killingbeck 2001)

another. In the case of human trafficking, concerns over this serious violation of human rights are used to gain support for border control measures. This method of migration control was also seen during the 19th century “white slavery” campaigns, which was a response to the growing number of women travelling abroad for employment and new life opportunities (ibid: x).

Attempts to curb migration led to the construction of ideologies about the entrapment and enslavement of women by profiteers and traffickers (ibid).

In light of the emphasis placed on border control in the context of human trafficking, this chapter explores Canada’s system of immigration, including the application of the anti-trafficking provision, section 118(1) of the *Immigration and Refugee Protection Act (IRPA)*. The chapter also examines the special programs that help facilitate migration into Canada, including the controversial Exotic Dancer Visa program, and considers evidence on the extent of transnational trafficking into Canada, as well as the protection and assistance available to victims of trafficking. Examining the role of the U.S in the global campaign against human trafficking, and its subsequent pressures on Canada to increase national security, I demonstrate Canada’s use of the anti-trafficking paradigm to justify its response to international pressures and its consequent changes in border control measures.

Immigration Law and the Case of Michael Wai Chi Ng

In 2005 Michael Ng was the first person in Canada to be charged with transnational human trafficking under section 118(1) of the *IRPA*. This status

earned Ng a great deal of attention from the media, politicians, academics and other interested parties. In addition to human trafficking, the Vancouver police also charged Michael Wai Chi Ng with twenty-one other *Criminal Code* and *IRPA* offences, accusing him of extending false employment offers, using fraudulent travel documents and a marriage of convenience to recruit and smuggle two Chinese women into Canada, where he allegedly coerced them into prostitution (RCMP 2010). In 2007, Ng was convicted of five charges, including falsifying immigration documents, human smuggling under section 117 of the *IRPA*, as well as procuring sexual intercourse, and operating a common bawdyhouse under section 212(1) of the *Criminal Code* (*R. v. Ng*, 2007). He was acquitted of fifteen charges, including human trafficking, due to unreliable and inconsistent evidence from the “victims”, which called into question the degree of deception (*ibid*). Ng’s acquittal from the human trafficking charge is often used as evidence to demonstrate Canada’s lenient treatment of traffickers, despite the fact that he was not actually convicted under any specific trafficking offences. However, based on the evidence before them, the court found that the case dealt with migrant sex workers, and not victims of trafficking.

R. v. Ng (2007) reveals the dilemma of distinguishing between victims of sex trafficking and migrant sex workers. An examination of the case shows that the evidence to demonstrate human trafficking was indeed problematic. As presented at the trial, Mrs. W (one of the victims) had a bank account containing her earnings, which the accused was aware of. This demonstrates

that the “victim” was not only being compensated for her work, but that she also moved freely in society, and had control over her financial situation – factors that are not compatible with human trafficking. Furthermore, the accused had taken money to Mrs. T’s (second victim) father in China at her request, indicating that Ng did not maintain psychological or financial control over his “victims”, and was in fact obliging to their requests (*R. v. Ng*, 2007). Although the evidence left little doubt to the fact that Ng had recruited the women from China for the purpose of working as prostitutes in Canada, the evidence to demonstrate their lack of consent and exploitation is severely lacking.

The Crown appealed the decision of the trial judge, arguing that Ng did in fact commit human trafficking because he used deception to transport the women to Canada (Perrin 2010a: 133). The Crown suggested that, “the trial judge failed to adequately consider profit motive and sexual exploitation as aggravating factors in the immigration offences” (*R. v. Ng*, 2008: para 16). Although an appeal regarding human trafficking was not permitted, the sentences for prostitution convictions were nevertheless appealed, resulting in an additional twelve months being added to Ng’s sentence (RCMP 2010). The increased sentence was justified through Ng’s involvement in prostitution offences, which according to the appeal judge “involved significant moral turpitude and the two complainants and other women were victims of his greed and opportunism” (*R. v. Ng*, 2008: para 23). With respect to prostitution, the judge went on to suggest that, “Deterrence is a significant factor in

sentencing for these offences. Because of the moral turpitude involved, denunciation is an equally significant factor. The sentences imposed for the prostitution offences do not adequately speak to these factors and are unfit” (ibid: para 31). The appeal judge’s imposition of his personal moralistic values towards prostitution to justify an increase in Ng’s sentence is highly problematic. Although a moralistic component is an inherent part of the law, and reflects the beliefs of the society, it must still be measured in its degree of harm to society (*Bedford v. Canada*. 2010). According to the judge in the *Towne Cinema Theatres Ltd. v. The Queen* decision, the law should focus on the harm to society caused from undue exploitation, “not just lapses in propriety or good taste” (1985: para 30). Because victimization of Mrs. T and Mrs. W was not confirmed by evidence in Ng’s case, the trial judge’s decision was merely based on Ng’s involvement with prostitution, therefore letting his own moral values interject with the application of the law.

Transnational Trafficking and Smuggling

Government reports are contradictory in their discussions of illegal entry into Canada. While the 2008 *Trafficking in Persons Report* (U.S. Department of State) states that most trafficking victims enter Canada illegally, by being smuggled or using a fake passport, the 2010 *Trafficking in Persons Report* (U.S. Department of State) argues that most victims of trafficking enter Canada legally, with legitimate documentation. In reality, neither statement can be confirmed or denied, since not enough cases have been

discovered to form a conclusion either way. Information provided by the Canadian Border Services Agency (CBSA) shows that of the 1717 total charges laid under *IRPA* between 2005 and 2010, there were only four human trafficking charges under section 118(1) of the *Act* – none of which resulted in convictions (CBSA 2010: Exhibit 7). Two of these charges were laid during the 2006 – 2007 fiscal year, and the other two during the 2007 – 2008 fiscal year (*ibid*). Not a single human trafficking charge under section 118(1) *IRPA* was laid during the 2008 – 2009, nor 2009 – 2010 fiscal years (*ibid*). The management of CBSA’s Criminal Investigation Department stated “it is likely that this occurred as a result of applying the ‘deception’ component of this section to a case that was more likely a human smuggling case and not an actual human trafficking case” (*ibid*¹⁵).

Section 117(1) of the *IRPA*, which prohibits human smuggling states that, “No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this *Act*” (2002). Between 2006 and 2010, there were only twenty-nine smuggling charges laid under section 117 of the *IRPA* (CBSA 2010: Exhibit 7). Seven of those charges were laid between 2009 and 2010, representing merely 1.6 percent of all charges under *IRPA* during that time (*ibid*). These statistics demonstrate that neither transnational human trafficking, nor human smuggling are proven to be significant issues in Canada. Moreover, the number of smuggling and especially trafficking

¹⁵ Quote under sub-section: “To what extent has the Criminal Investigations Program enhanced its capacity to respond to offences committed under the IRP?”

charges remained consistently low, even between 2009 and 2010, when the CBSA's Investigation Department Business Plan directed their attention to complex immigration matters, including human smuggling, trafficking and document fraud (ibid). These low numbers are especially significant in contrast with the approximately 240,000 to 265,000 people migrating to Canada every year (CIC 2009b).

Canada's Temporary Migrant Workers

There is a global demand for low-skilled labour that has traditionally been regarded as "women's work" (Macklin 2003: 465). The result has been the migration of women from developing countries into developed ones, filling labour gaps in certain undesirable, devalued, and low wage sector jobs, such as live-in domestic work, exotic dancing, garment industry, and seasonal agricultural work (ibid). Citizenship and Immigration Canada (CIC) has set up numerous programs that facilitate labour migration into Canada, including the Temporary Foreign Worker program, Exotic Dancer Visa program, and Live-in Caregiver program. Employers' use of these programs to obtain migrant labour has caused some concern for the Canadian government, particularly with respect to the safety of the migrant workers (RCMP 2010). This is because the structure of temporary work permits is set up in a way that renders the migrant worker extremely vulnerable to exploitation (Macklin 2003). Linking the permit and subsequently the migrant's ability to stay in Canada to a specific employer may result in migrant workers tolerating wages and

working conditions that Canadian citizens find unacceptable (ibid). Such criteria makes the Exotic Dancer Visa program particularly problematic, since foreign dancers are only allowed to work at the specific club that facilitated their entry, thus making them especially vulnerable to exploitation by club owners (McDonald & Timoshkina 2009: 35). As a result, the Exotic Dancer Visa program created a great deal of controversy regarding its harms and benefits.

Developed in response to a perceived shortage of exotic dancers in Canada, the Exotic Dancer Visa program is a special immigration process, which allows dancers to be brought in from other countries to fill the labour gap (Macklin 2003). However, according to the Adult Entertainment Association of Canada (AEAC), which represents Canada's exotic dance clubs, this alleged shortage resulted from the changing nature of exotic dancing, which involved a move away from burlesque style dancing and towards the sex trade (Timoshkina & McDonald 2009). Consequently, the working conditions of exotic dancers declined drastically since the 1960s, peaking in the 1990s, when dancers were no longer hired and paid by club owners, but instead became seen as freelancer entertainers, who now had to pay the club owners for the use of their space (ibid). In addition to losing control over their deteriorating working conditions, exotic dancers also became fully dependent on customers for income, thus being under constant pressure to offer sexual services (ibid). The result was an increased reluctance of Canadian women to work under such conditions, making it increasingly

difficult for exotic dance club owners to recruit new dancers. Yet, instead of improving the working conditions of exotic dancing, club owners appealed to the federal government to bring in foreign workers. According to Macklin (2002), despite the appearance of political neutrality in border control, Canada's immigration policy is largely motivated by enriching the Canadian economy, and is mediated by the needs of the private industry, as evidenced by the implementation of the Exotic Dancer Visa program in 1998. Eastern Europe was often the source region for candidates of this program, as a result of the breakdown of the U.S.S.R. in 1989, which had a particularly devastating impact on women (Macklin 2003).

The exotic dance industry is associated with the sex trade, since performances expose women to the possibility of unwanted physical contact from their clients. Consequently, exotic dancing is also embedded with concerns regarding immorality. According to a landmark decision in *R. v. Mara*, which set the stage for Canada's exotic dancing practices, "it is unacceptably degrading to women to permit such uses of their bodies in the context of public performances in a tavern. Insofar as the activities were consensual, as the appellants stressed, this does not alter their degrading character" (*R. v. Mara*. 1997 para 35). The court furthermore found that the risk of harm to individual women from these conditions is trivial in contrast with the social harm (*ibid*). The court's decision regarding the importance of social harm over the harm to the individual combined with the foreign nationality of many exotic dancers had a two-fold impact. For one, it created a

distinction between the moral superiority of Canadian women, as demonstrated by their unwillingness to work as exotic dancers in such diminished conditions, and the apparent inferiority of migrant women, due to their willingness to “go further” than their Canadian counterparts (Macklin 2003: 475). This worked to produce a “racialized, ethnicized intragender hierarchy wherein migrant Eastern European, Latin American and Asian women are differentially exoticized and hyperfeminized in contradistinction to Canadian women” (ibid: 476). Secondly, the court decision constructed exotic dancing as harmful to the Canadian society. Combined with foreign nationality of the group, this resulted in a public perception of foreign exotic dancers as sexually promiscuous foreigners corrupting the moral fabric of the Canadian society.

In addition, foreign exotic dancers were also associated with sex trafficking, which led to criticisms of the Exotic Dancer Visa program, as well as the Canadian government, which was accused of endorsing transnational sex trafficking (McDonald & Timoshkina 2009). According to one report, seventy-five percent of exotic dancers in Toronto strip clubs were foreign nationals, many of whom were believed to be trafficked (ibid). Negative public reaction and the association of foreign exotic dancers with human trafficking, led to increased police interference with exotic dance club operations. In response to such public reactions, the federal government placed restrictions on the Exotic Dancer Visa program, limiting its use considerably (ibid). Bill C-57, introduced in 2007, further limited the use of

exotic dance visas in order to “preclude situations in which temporary workers, particularly exotic dancers, may be exploited or become victims of human trafficking” (Barnett 2007: 5). The number of exotic dancer visas declined from 2,834 in 1998 to fourteen in 2008 (U.S Department of State 2009). The AEAC claimed that reducing the number of exotic dancer visas “cleaned up” the exotic dance industry from trafficked women (McDonald & Timoshkina 2009). Yet empirical evidence to support the existence of a problem in the first place is inadequate.

The recount of the implementation and subsequent abstraction of the exotic dancer visas by the Canadian government demonstrates the moral discourses operating in the context of immigration, which construct migrants as sources of physical, cultural and legal corruption (Macklin 2003). Bringing foreign women to Canada in order to engage in sex acts that the local women refuse to partake in suggests the moral superiority of Canadian women -- a discourse which, as I have discussed earlier -- is embedded in both media portrayals and official reports on trafficking (*supra*. p. 41-42; p. 68-69). The focus on Eastern European women as corruptors of social morals is also a historical replicate of the 19th century fears around the metaphorical “white slave trade”, which in Canada focused primarily on Chinese women (*ibid*). According to Macklin (2003), the perceived moral inferiority of Asians justified their objectification, and consequent construction as the “other” against whom the Canadian identity was built. Thus, although the Exotic Dancer Visa program appears on the surface to be a simple move to fill the

positions of exotic dancers left open by Canadian women, it has nonetheless revealed itself as a race and gender discriminatory approach to shoring up Canada's national identity.

This association of European migrant workers, particularly those from Eastern Europe with exotic dance clubs and sex work continues to persist in current discourses on human trafficking. This is evident in RCMP claims that “exotic dance establishments in urban areas have long been suspected of forcing trafficked women, in particularly of Eastern European origin, to dance and prostitute” and further that “most foreign dancers employed by exotic dance clubs originate from countries in the former Yugoslavia or Soviet Union” (2010:19). The RCMP suggests that Canada's human trafficking convictions have “exposed the underside of the exotic dance industry” (2010: 12). What the report fails to specify is that the cases being referred to deal with Canadian women forced to dance at exotic strip clubs by individual pimps, who were neither associated with organized crime nor the operation of the exotic dance clubs. Canada's domestic trafficking victims were not exploited by the management of the exotic dance clubs, and therefore should not reflect on the operations of the exotic dance industry.

The RCMP further suggests that visa exemption policies are being used to facilitate the entry of foreign nationals into the sex trade, and claims to have found consistent evidence in their human trafficking investigations that fraudulent or altered travel documents are being used to facilitate the entry of Eastern European women into Canada (2010: 1). While the use of fraudulent

documents for entry into a country is not in itself sufficient to prove the facilitation of human trafficking, the discussion of it in a human trafficking report may construct unfounded correlations. In fact, to date there have been no human trafficking charges laid for trafficking of Eastern European women into Canada for sexual exploitation. The RCMP admits that their knowledge on the trafficking of Eastern European women into Canada for sexual exploitation is based on anecdotal evidence of migrant workers (2010: 12).

Protection and Assistance

The protection of victims is one of the key goals of the international anti-trafficking strategy expressed in the *Palermo Protocol*. Article 7 of the *Protocol* states, “Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases” (UN 2000: 4). In response, the Citizenship and Immigration Canada (CIC) implemented special temporary resident permits (TRPs) in 2006. TRPs provide suspected victims of international trafficking with legal immigration status for up to 180 days, and may be re-issued at the end of the 180-day period. Victims of trafficking who receive a TRP are eligible for health-care benefits and trauma counselling, and may apply for a work permit. Unlike the U.S., which requires victims of trafficking to cooperate with the police before receiving a T-visa (U.S. equivalent of TRP), Canadian victims of trafficking are not required to testify in order to obtain access to TRPs (CIC 2009a). Longer-term TRPs are

also available for issuance in cases verified by the CIC as dealing with genuine trafficking (Barrett 2010: 6). There is no data on foreign victims of trafficking before 2006 in Canada, however, between May of 2006 and December of 2009, there were fifty-four TRPs issued to forty-three suspected foreign victims of trafficking (ibid).

However, despite the perceived compassionate and humanitarian role of TRPs, the government of Canada does not appear to be encouraging their issuance. According to the instructions given to the staff of CIC, “TRPs are to be used in cases where there are compelling reasons...to allow a person who does not meet the requirements of the *Act* to enter or remain in Canada” (Standing Committee on the Status of Women 2007: 35). Officers are instructed to issue TRPs only if “the need to enter or remain in Canada is compelling and sufficient to overcome the risk; and the risk to Canadians or Canadian society is minimal and the need for the presence in Canada outweighs the risk” (ibid). Based on such instructions, it appears that the Canadian government’s stance is to avoid issuing TRPs whenever possible, only resorting to their use in extreme cases.

U.S. Pressure on Canada

The United Nations is the largest global regulatory institution to declare “war” on human trafficking (Soderlund 2005: 67). The U.S. has become the self-appointed monitor of the international anti-trafficking campaign, a position that allows the U.S. a significant amount of influence

over international politics (Cameron 2008: 89). As the monitor of the global anti-trafficking campaign, U.S. evaluates the efforts of individual countries in their fight against trafficking. This evaluation is based on a Three-Tier ranking system, with Tier One being awarded to countries who have fully complied with the U.S. anti-trafficking recommendations, while Tier Three is attributed to countries who have put forth poor efforts (Soderlund 2005). However, instead of applying the standards of the *Palermo Protocol*, as they should, the U.S. has been notably applying their own anti-trafficking standards in the assessment process (Gallagher 2006). This means that the international policy on human trafficking is not solely based on the *Palermo Protocol* as commonly assumed, but also the U.S. *Trafficking Victims Protection Act* (TVPA)(ibid: 139).

The events of 9/11 re-shaped the landscape of the anti-trafficking approach, exasperating its use by combining it with the “war on terrorism”, and a consequent focus on national security. According to Kapur, “the War on Terror has acquired a supernatural life and existence outside of the international legal order, while simultaneously being pursued in and through the processes and institutions of the international regime” (2005: 33). It has also created a space where stringent approaches to global migration are more readily accepted (ibid). Consequently, discourses of terrorism and trafficking are eroding a space for migrants (ibid). In line with these changes, Canada too felt pressures, particularly from the U.S. to tighten its border controls. Several countries, including the U.S. “accused Canada of being a ‘jumping off point’

for terrorists and of being too lenient in its acceptance of immigrants and refugees” (Oxman-Martinez *et al.* 2005: 12). It was suggested that Canada’s immigration policies facilitate human trafficking, and provide a destination and a transit point for the victims being taken to the U.S. (ibid). According to Collacott “The State Department Trafficking in Persons annual reports suggested that, if anything, the United States was becoming somewhat frustrated by the lack of Canadian action in this area” (2006: 21). A Citizenship and Immigration study also found that, “Canada is the ‘weak link’ in America’s defence against terrorist operations. US security is only as good as Canadian security since the United States has no control over who comes into Canada and since the border is so easily crossed” (as cited in Collacott 2006: 22). Criticisms of Canada’s immigration policies are also evident in these annual *Trafficking in Persons Reports*, which reflect American pressure on Canada to toughen all aspects of its approach to trafficking. Year after year, the reports recommend intensification of Canada’s efforts to investigate and prosecute human trafficking offences, increase proactive investigation techniques, and improve coordination between national, provincial and international law enforcement (Jeffrey 2005). In 2003, the U.S. Department of State ranked Canada at a Tier Two level in their efforts to combat human trafficking, in contrast with its usual Tier One standing (ibid). Canada’s border control strategy was further criticized in the 2003 Department of State Report on Human Rights, which claimed that a number of Canadian cities served as hubs for criminal organizations involved in human trafficking

(Collacott 2006). According to the report, Canada is targeted by various criminal organizations as a result of its lenient immigration laws, benefits available to immigrants, and the proximity to the U.S. border (ibid: 21). The interconnectedness between U.S. and Canada may have resulted in U.S. expectations that Canada put forth greater efforts in the global fight against human trafficking.

Canada's Response to Criticism

According to a *Trafficking in Persons in North America* report, U.S. pressures have led Canada to increase its attention to human trafficking (Global Alliance against Trafficking in Women n.d). Canada began placing greater emphasis on security and renegotiated a number of border control measures with the U.S., including increased security checks for refugee determination processes, extended detention of migrants unable to prove their identity, intensification of deportation and harsher penalties for using false documents, to name a few (Oxman-Martinez *et al.* 2005: 13). Canada also pointed to initiatives underway, such as the Inter-Departmental Working Group on Trafficking in Persons (IWGTIP) composed of seventeen federal departments and agencies, including the Departments of Justice, Foreign Affairs, Immigration and Status of Women, RCMP, CSIS and the Border Agency (Jeffrey 2005). Since then many more steps have been taken to demonstrate Canada's efforts to combat human trafficking, including the implementation of section 279.01 through 279.04 in the *Criminal Code of Canada*, the 2005 establishment of a National Human Trafficking

Coordination Centre, headed by the RCMP, and increases in funding towards anti-trafficking measures.

Negative Effects of Focusing on Border Control

Despite satisfying the international community, particularly the U.S., the negative effects of Canada's stricter border control policies on migrants, particularly the low-skilled (mainly) female migrants, cannot be overlooked. Canada's immigration policies create inequality by favouring those with skilled labour, which many migrants (especially women) fail to possess. Restricting legal entry to migrants with low-skills results in the greater use of third party assistance to cross international borders. ■legal migration not only makes migrants more vulnerable to exploitation and trafficking, but also places their lives at risk (Standing Committee on the Status of Women Canada 2007).

The use of anti-trafficking paradigm in border control strategies has additional negative consequences. For one, the lack of distinction between illegal migration and human trafficking (as outlined in previous chapters) results in suspicion of all migrants as victims of trafficking (Kapur 2008). This in turn leads to views of migrant women as infantile and incapable of decision-making, which results in the deletion of their agency. Consequently, migrant women and their families "are implicated in the trafficking chain and cast as criminals", being excluded from access to legal recognition, rights and benefits, which renders them even more vulnerable (ibid: 112). Equating

trafficking with migration also leads to simple and ineffective solutions, which aim to reduce the global movement of people (Sanghera 2005). The emphasis is particularly on reducing the migration of women and girls, justified by the alleged concern for their safety, and their perceived need for male or state protection (ibid). Such strategies closely resemble the ones employed during the 19th century “white slavery campaigns”, which were also developed in response to concerns with women’s migration.

Conclusion

This chapter demonstrates Canada’s conflicting position as an immigrant friendly country, having to restrict immigration and tighten its border control. Resulting from the aftermath of 9/11, and the consequent international pressures, Canada’s increased security and border controls are justified by the need to “rescue” (mainly) women and girls from the shackles of traffickers. Human trafficking has also been implicated with Canada’s special migration programs, particularly the Exotic Dancer Visa program. Upon closer examination, the innocent appearance of this program reveals a hidden gender, race, and ethnic discrimination used to construct the distinction between “us” and “them”. Despite satisfying the international community and particularly the U.S., Canada’s increased border control and stricter immigration policies have a number of negative effects, particularly on the already vulnerable migrant population, who are now being denied legal immigration to Canada. This results in the increased use of third party

assistance to migrate illegally, making the already vulnerable migrant population even more prone to exploitation by smugglers, traffickers and other profiteers.

Conclusion

“When Irini had answered an ad for a job in a foreign land, she thought she was signing on to work as a waitress. Instead, she was imprisoned in a dark apartment with three other trafficked women – a Moldovan, a Bulgarian and a Ukrainian. Any fool entering her bedroom could tell instantly she didn’t want to be there” (Malarek 2009: xi). Such emotionally commanding images of women’s commodification and suffering are prevalent in media portrayals of human trafficking, enabling the construction of human trafficking as “the modern day slavery” and the consequent creation of a moral panic. These depictions are hard to challenge since, “only the most callous would criticize efforts to free the world’s sex slaves from the clutches of organized and brutal trafficking networks” (Soderlund 2005: 67). It’s precisely this rejection of open dialogue, which is not centred around the horror and suffering of human trafficking, that allows the issue to be advanced without data to support its prevalence. Although I am not denying the existence of human trafficking, nor its potential prevalence in Canada, I believe that the issue would be better dealt with in relation to empirical facts, and not as a response to a moral panic. My argument is in part expressed by Stanley (2009), who suggests that sensationalistic accounts are detrimental to combating human trafficking, delaying the development of a useful combat strategy by simplifying the issue, therefore producing simple and ineffective solutions.

The standard progression of a moral panic starts with media portrayals, followed by support from authority figures, eventually resulting in legislative changes. However, Canada's response to human trafficking has developed in a slightly different order, with legislative changes preceding the moral panic. This is because the concern for human trafficking emerged in the international community before taking hold in Canada. The international anti-trafficking *Protocol* implemented in 2000 required member nations to develop their own domestic anti-trafficking legislation. In response to this, Canada implemented sections 279.01 to 279.04 into its *Criminal Code* in 2005. The development of Canada's domestic anti-trafficking law, and the depictions of the media supported by authority figures, such as the police, has therefore created a belief that human trafficking is a wide-scale problem in Canada. This moral panic against human trafficking in Canada also meets all of the required criteria for what Ronald Weitzer (2007) calls "ultimate institutionalization"¹⁶, which can lead to policy and legal changes, and have wide-ranging and long-lasting effects on society.

Throughout this thesis, I have identified a number of key concerns around Canada's anti-trafficking strategy. Firstly, Canada's legislative definition of human trafficking is based on the broad and ambiguous definition outlined in the *Palermo Protocol*, which distinguishes trafficking from prostitution only by the victims' lack of consent. According to this definition, a crime can be considered trafficking only if the victim has not

¹⁶ According to Ronald Weitzer the "ultimate institutionalization", occurs if a concern has been "accepted by authorities as a bona fide problem" (2007: 458).

consented to participation, due to the presence of negating factors such as coercion, threats, deception and so on. However, such a definition creates a “catch 22” situation whereby a declaration of consent is treated with mistrust by authorities, due to the suspected presence of negating factors. The problem is exasperated by the use of this definition as a guideline for the establishment of domestic legislative definitions by U.N. member nations. As a consequence, there are now numerous definitional and legislative variations on human trafficking, shaped in whatever variety deemed necessary by policy makers, due to the elastic guidelines established by the U.N.

In Canada, this has led to the development of a broad legislative definition under section 279.01 of the *Canadian Criminal Code*. Canada’s legislative definition of trafficking disregards some, what I consider to be, fundamental factors in human trafficking. The fact that transportation is not an explicit requirement for the establishment of human trafficking has resulted in a definition of an offence that closely resembles procurement, also known as “pimping”. As demonstrated by Canada’s existing human trafficking cases, the legislative definition contains undeniable similarities between procurement offences, governed under section 212(1) of the *Criminal Code*, and human trafficking offences. Thus, I have argued that pimps convicted under the human trafficking provision have become the “scapegoats” of Canada’s moral panic against human trafficking (*supra*. p. 98-116). The proactive raids carried out by police to uncover human trafficking victims (*supra*. p. 74) illustrates the consequent increase in police surveillance over the sex

trade, a pattern that has historical roots in the 19th century “white slavery” campaign. Yet, instead of “rescuing” trafficking victims, the raids result in little more than the harassment of voluntary sex trade workers. The issues with Canada’s legislative definition of human trafficking, and the consequent targeting of pimps as human traffickers has resulted in the trivialization of the human trafficking offence through disregard of its significant aggravating factors, including victims’ lack of consent, forced transportation of victims, the involvement of organized crime, and the overall commodification of humans. The broad legislative definition of human trafficking has therefore been used to “scapegoat” pimps as traffickers, creating the belief that human trafficking is a widespread issue in Canada.

In light of these issues, I have proposed a number of policy changes, which are meant to increase consistency between the various definitions of trafficking, and to bring Canada’s anti-trafficking legislation more in line with the *Palermo Protocol*. Most important of these changes is the implementation of the transportation factor as a key component of human trafficking. Establishing the transportation factor as a legislative requirement will distinguish trafficking from the multiplicity of other offences implicated in the crime. It is also necessary to clarify the role of consent in legislative definitions of human trafficking in order to specify that the inability to consent to being trafficked, does not justify the removal of suspected victims’ agency. Implementing these legislative changes will bring Canada’s legislative definition of trafficking closer in line with the *Palermo Protocol*, thus moving

away from its use to target voluntary sex trade workers, and towards addressing human trafficking.

Canada's approach to transnational human trafficking has been greatly influenced by international pressures, especially after the events of 9/11. This resulted in the re-construction of Canada's border control measures, which involved a move away from lenient immigration policies and towards a security focused approach. Based on my findings, I proposed that Canada's anti-trafficking campaign has been used to mediate the contradiction between Canada's immigrant friendly policies and the border control pressures from the U.S., and to justify the amplified security lens, while maintaining its humanitarian and compassionate reputation. Canada's increased emphasis on national security has led to more restrictive immigration policies, and suspicions of migrants as either perpetrators or victims of crime. Yet, instead of reducing human trafficking, restricting legitimate migration has the opposite effect, leading migrants to resort to illegitimate migration, therefore making them more vulnerable to trafficking (Sanghera 2005).

Thus, the lack of concrete legislative definitions has enabled the misuse of this disturbing social issue for the advancement of subtle and overt political agendas, such as increased border control. Yet, the unverified estimates used to support the moral panic against human trafficking cannot be effectively challenged precisely because of this lack of concrete definition, which makes measuring human trafficking impossible. Antonia Maria Costa, the executive director of the United Nations Office of Drugs and Crime

(UNODC) insists that current responses to human trafficking are disjointed as a result of our fragmented knowledge of the crime (U.N. Office of Drugs and Crime 2009: 7). Costa maintains that until proper categorization is established, we will not be able to collect the data required to properly understand human trafficking and the ways in which its components interact with the whole (ibid). Although there are frequent calls for empirical evidence and criticisms regarding the use of secondary sources to research human trafficking, empirical studies are not and *cannot* be conducted until there is a concrete understanding of the offence. Furthermore, the issue must also be removed from the centre of attention which it currently holds due to the moral panic against human trafficking, since sensationalistic accounts work to simplify the offence, and result in tough on crime responses and simple solutions. Such solutions not only fail to combat to problem, but in effect enhance it by veering attention away from trafficking and onto the sex trade, migration and other related issues, which although correlated with trafficking, are not causal of it.

Moreover, I suggest that further research is required into Canada's approach to dealing with human trafficking. In particular, I propose that a more comprehensive study, examining the cases charged and convicted under Canada's human trafficking legislation, section 279.01 of the *Criminal Code*, be conducted. A detailed analysis of the cases is necessary in order to understand whether any real differences exist between offences labelled as human trafficking and those labelled as procurement. Research must also

examine the treatment of the cases by law enforcement officials and the criminal justice system, including conviction rates, sentences, plea bargains, and offence details. Furthermore, I propose that the findings of this analysis be contrasted with a similar analysis of procurement cases, in order to compare the two offences and their treatment by Canada's law enforcement agencies and justice system. As I have demonstrated, the lack of distinction between the two offences has resulted in targeting of sex trade workers as potential victims of trafficking. Such a law enforcement approach furthers the prevailing misunderstandings regarding human trafficking, and leads to misdirection of resources. Establishing a distinction between the two offences is vital in order to properly understand human trafficking, implement effective measures in uncovering existing cases in Canada, and moving away from harassment of sex workers.

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