

# The Transnational Governance of Human Trafficking in Japan

Ben Chapman-Schmidt

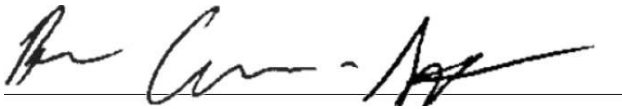
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A handwritten signature in black ink, appearing to read "Ben Chapman-Schmidt", written over a horizontal line.

Ben Chapman-Schmidt

November 27, 2017



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## ABSTRACT

Over the last two decades, governments and civil society groups have increasingly sought to govern human trafficking around the world, including by passing a major international Trafficking Protocol. Although the rise of human trafficking governance has been well-researched, much of this research has focussed on countries with weak economies and governance institutions. In these countries, foreign governments and NGOs can exert direct economic pressure to achieve policy changes, making it difficult to see how this governance works at an ideological level. For this dissertation, I therefore look at Japan—a country whose advanced economy and strong legal institutions make it easier to resist international pressure—in order to ask how transnational actors, ideas and networks influence the local governance of human trafficking.

To answer this question, I spent over a year in Japan researching Japan’s response to human trafficking in sites across the country. The bulk of this fieldwork was semi-structured interviews with officials from government agencies, local police officers, the staff of NGOs and IGOs, and officials at foreign embassies. I also analysed a wide range of documentary evidence on Japan’s human trafficking situation and anti-trafficking policies. These included legal documents, policy directives, NGO reports, government pamphlets, media articles, international treaties and the US State Department’s Trafficking in Persons Report.

Drawing on a Foucauldian conception of “governance,” this dissertation begins with a genealogy of human trafficking discourses. Internationally, I trace the evolution of human trafficking discourses from the anti-slavery campaigns of the 19<sup>th</sup> century through the battles over the legitimacy of sex work in mid-20<sup>th</sup> century, the securitisation of migration in the late-20<sup>th</sup> century and the shift back to “modern day slavery” in the 21<sup>st</sup> century. In Japan, I trace these discourses from caste slavery in the 7<sup>th</sup> century, bonded labourers in the medieval period, indentured sex workers in the early modern period, and child exploitation and migrant labour abuses in the 20<sup>th</sup> century. I use these histories both to explain the evolution of human trafficking governance in Japan and to show how this governance has been influenced by transnational actors. Finally, this dissertation looks at more recent

attempts at domestic and transnational human trafficking governance in Japan, and explores why these attempts have (and have not) been successful.

Based on this analysis, I argue that efforts at transnational human trafficking governance in Japan have been effective only when they were aligned with the priorities of local actors. As such, they have largely operated to magnify the influence of these actors, and contemporary human trafficking governance in Japan continues to reflect local ideas about migration and the legitimacy of sex work. However, I also note that when transnational actors have been successful in pushing their own anti-trafficking policies, these policies have sometimes harmed the very people they claimed to protect. This suggests that governments like Japan should work more closely with local civil society, rather than allowing transnational actors to be the ones defining human trafficking and how best to govern it.

*All Japanese names given in order of family name first in the body text and when citing Japan language sources. When citing English-language sources (including those written by Japanese authors), these names are given in the order of family name last.*



## LIST OF ACRONYMS

- ❖ ASI (Anti-Slavery International)
- ❖ AV (Adult Video)
- ❖ CATW (Coalition Against Trafficking in Women)
- ❖ CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)
- ❖ COYOTE (Call Off Your Old Tired Ethics)
- ❖ CTW (League of Nations Advisory Committee on the Traffic of Women and Children)
- ❖ ECPAT (originally End Child Prostitution in Asian Tourism, changed in 1996 to End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes)
- ❖ FFSTA (Freedom From Sexual Trafficking Act)
- ❖ FFW (Foundation for Women)
- ❖ GAATW (Global Alliance Against Trafficking in Women)
- ❖ GPA (Global Programme on AIDS)
- ❖ HELP (House in Emergency of Love and Peace)
- ❖ HRW (Human Rights Watch)
- ❖ IAF (International Abolitionist Federation)
- ❖ IBSTWC (International Bureau for the Suppression of Traffic in Women and Children)
- ❖ ICPR (International Committee for Prostitute's Rights)
- ❖ IGO (Intergovernmental Organisation)
- ❖ IHRLG (International Human Rights Law Group)
- ❖ IJM (International Justice Mission)
- ❖ ILO (International Labour Organisation)
- ❖ IOM (International Organization for Migration)
- ❖ JITCO (Japan International Training Cooperation Organization)
- ❖ JTA (Japan Tourism Association)
- ❖ JLTC (Japanese Law Translation Council)
- ❖ JK (*joshi kōsei* [female high school student])
- ❖ JNATIP (Japan Network Against Trafficking in Persons)
- ❖ JWCTU (Japanese Women's Christian Temperance Union)
- ❖ KWWU (Korean Church Women United)

- ❖ LNA (The Ladies' National Association for the Repeal of the Contagious Diseases Acts)
- ❖ METI (Ministry of Economy, Trade and Industry)
- ❖ MITI (Ministry of International Trade and Industry)<sup>1</sup>
- ❖ MHLW (Ministry of Health, Labour, and Welfare)
- ❖ MOFA (Ministry of Foreign Affairs)
- ❖ MOJ (Ministry of Justice)
- ❖ MOL (Ministry of Labour)<sup>2</sup>
- ❖ NGO (Non-Governmental Organisation)
- ❖ NSWP (Network for Sex Work Projects)
- ❖ NCCJ (National Council of Churches in Japan)
- ❖ NCKK (National Council of Churches in Korea)
- ❖ NPA (National Police Agency)
- ❖ NVA (National Vigilance Association)
- ❖ RAA (Recreation and Amusement Association)
- ❖ STV (Dutch Foundation Against Trafficking in Women)
- ❖ TIP Report (the US Department of State's Trafficking in Persons Report)
- ❖ TITP (Technical Intern Training Program)
- ❖ TVPA (Trafficking Victims Protection Act)
- ❖ UNESCO (United Nations Educational, Scientific and Cultural Organization)
- ❖ UNHCR (United Nations Commission on Human Rights)
- ❖ UNODC (United Nations Office on Drugs and Crime)
- ❖ UNTOC (United Nations Convention Against Transnational Organised Crime)
- ❖ WAP (Women Against Pornography)
- ❖ WAVPM (Women Against Violence in Pornography and the Media)
- ❖ WHO (World Health Organisation)

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<sup>1</sup> Merged into the METI in 2001

<sup>2</sup> Merged into the MHLW in 2001.

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## CHAPTER 1: INTRODUCTION

On June 4, 2015, civil society groups, politicians and academics gathered in the Diet—Japan’s legislature—to discuss an upcoming amendment that would increase the number of migrants admitted on technical internship and trainee visas. Those in the room not present on behalf of the ruling Liberal Democratic Party were almost unanimously against the amendment. However, their opposition put them in a difficult spot, as these were not isolationists intent on closing the country to all but Japanese, but rather migrants’ rights groups, human rights lawyers and other civil society actors who worked closely with migrants or had themselves come from other countries. In principle, they were nearly all in favour of increased migration as a way of combatting the labour shortage brought on by Japan’s aging population. However, their more immediate concern was that increasing the number of technical internship visas without implementing new protections for migrants would lead to an increase in abuses that they described as “human trafficking.”

I myself was there as an academic, observing and taking notes on the proceedings. Previously I had spent a year in Japan as a visiting PhD scholar at Keio University in Tokyo, interviewing government officials, senior police officers, and anti-trafficking civil society groups across Japan. Some of these conversations were formal interviews, which became a primary data source for this dissertation. Others were off-the-record conversations that helped shape my understanding of the aims, concerns and frustrations of those responsible for regulating human trafficking in Japan. That summer I had returned for one last month of fieldwork when by chance one of my research participants mentioned the meeting at the Diet. I had by then been researching Japan’s response to human trafficking for more than two years; now I was watching this response being shaped in real time.

I began researching human trafficking in February 2013, as the result of a convergence of interests. While working on a Master’s degree, I had become increasingly interested in the role of non-state actors, in particular criminal organisations, in global and regional governance. As a Japan specialist, I also had an ongoing interest in gender in Japan and its impact on Japan’s demography and economy. Researching human trafficking in Japan seemed to offer an opportunity to continue both of these lines of research at once, as

existing sources suggested it was a heavily gendered phenomenon driven largely by organised crime. I also had enough familiarity with the topic after having interned at the United Nations Office of Drugs and Crime's regional office in Southeast Asia (although my work focussed primarily on terrorism) to know that the existing literature was light on empirical data—particularly when it came to Japan.

It was clear from the onset that this would be a challenging research project. Criminal actors by nature do their best to keep their activities hidden, making data hard to come by. Across the world arrest rates for human trafficking tend to be low, and an oft-heard refrain is that the true scope of the phenomenon is much greater than these arrest rates would indicate. As a result, studies of human trafficking in the past have often relied on questionable methodologies or data to present wildly-varying conclusions with seemingly little grounding in reality. Faced with these obstacles, however, my initial (naïve) assumption was that if I could develop a clever methodological workaround to the problem of data-collection, I could deliver the substantive empirical findings that other researchers had not.

Once I had begun my research, though, it became clear that this initial appraisal of the challenges to human trafficking research had been wildly optimistic. The biggest problem was that there was a lack of agreement on just what the words “human trafficking” meant. This was made clear during my scoping study (and subsequent field work) when, after introducing my research topic to participants, many of them asked, “So what definition of human trafficking are you using?”

The “ideal type” of human trafficking—cases where only a contrarian would withhold the label of “human trafficking”—would be a case where a female victim is forcibly relocated from one point to another for the purpose of profit-oriented sexual exploitation. However, the research consistently indicates that these “ideal type” cases are relatively rare—and that the more we try to expand the definition beyond this ideal type, the more this definition becomes contested: Should men be included? What about non-sexual exploitation? Is slavery a form of human trafficking? What about practices “similar to slavery”—and what practices does that phrase include? What if the relocation is achieved by deception, rather than force? What if the relocation is undertaken knowingly but for



reasons of financial hardship? What if there is no relocation? And how do the answers to these questions change when the individual in question is a minor?

The problem here is not just that different actors have different answers to these questions, but that their answers to these questions are informed by deeply held ideological positions and moral principles. As such, not only can different actors' definitions of human trafficking differ wildly, but they often do so irreconcilably. Moreover, some of these actors believe that definitions of human trafficking which conflict with their own are not only wrong but inherently harmful. It was this definitional conflict that ultimately shelved any hope I had of undertaking a quantitative study of human trafficking in Japan. After all, how could I research a clandestine criminal activity if I could not even define it?

Part of what had drawn me to this topic initially was an interest in the alleged involvement of the yakuza, Japan's most well-known organised crime groups, in human trafficking. I also hoped, at first, that focussing on the activities of these organisations would help me sidestep these definitional issues. However, this approach also fell apart after preliminary discussions with members of Japan's National Police Agency (NPA) indicated that these groups had little direct involvement with human trafficking. For example, while they often collect money from and provide protection for the sorts of business that are frequently linked to human trafficking—including venues for sex work such as brothels, escort services, nightclubs, but also labour brokering services and industries that employ migrant day labourers—they are generally not involved directly in the management of these businesses or the procurement of labour for them. Human trafficking in Japan, it seemed, was typically the product of *disorganised* crime.

With these avenues thus closed to me, I began reconsidering my epistemological framework as I looked for something I *could* research, and I realised that the ambiguity raised its own set of potential research questions. For example, why were these different definitions so contested? Which definitions were actually being implemented on the ground, and why? How did different actors try to challenge, reinforce, work around or accommodate those definitions? What made this line of research particularly intriguing was that this most academic of questions—"How do we define the problem?"—was having a profound impact

on people's lives. These definitions determined who was arrested and who was protected; who was deported forever and who was repatriated with the possibility of return; who could get a visa; who could get funding; and any number of similar questions. From these questions, I began to develop a new focus for my research: "human trafficking governance."

"Governance" here refers to all efforts to regulate human conduct. "Human trafficking governance," then, refers to all efforts to regulate activities that are defined as "human trafficking." This governance thus includes a wide range of customs and practices: criminal laws, but also the way in which those laws are enforced; border controls and visa regulations; support provided to those defined as victims of human trafficking; domestic and international prevention programs; media reporting and documentary film-making; NGO activities; gossip, shaming and stigma; and cooperation between the Japanese police and their foreign counterparts—among many others. Human trafficking governance also includes all the efforts to shape how "human trafficking" is defined, since controlling the definition has a direct impact on the formation and implementation of all other regulations. These definitions, in turn, shape actors' "human trafficking governmentality": how they understand human trafficking as a problem in need of governance, how they understand the world that produced this problem, and what techniques they believe are best suited for solving it. Chapter 2 explores the terms "governance" and "governmentality," in greater detail—in particular with reference to the works of Michel Foucault—as well as reviewing some of the existing academic social-legal literature on the idea of governance. This chapter also discusses the role that organised crime groups can play in human trafficking governance.

With "human trafficking governance" as the focus of this dissertation, I no longer needed to operationalise any one particular definition of human trafficking. Instead, I could focus on various human trafficking "discourses"—ways of talking about human trafficking—and explore the consequences of those discourses for human trafficking governance. However, many of the discourses that have impacted the governance of human trafficking in Japan originated from outside Japan. These discourses entered Japan as a result of both Japanese and non-Japanese actors using these discourses to reshape governance of human trafficking

in Japan. Chapter 3 thus explores the emergence of these modern human trafficking discourses from a historical perspective, building up to the passage of the UN's Trafficking Protocol in 2000. In doing this, this chapter both analyses a number of primary sources—particularly UN reports and treaty texts—and reviews some of the broader academic literature on human trafficking.

This reshaping of human trafficking governance in Japan by actors working across international borders is itself a form of “transnational governance,” and understanding how this transnational governance has shaped policies in Japan has implications for how we understand transnational governance more generally. As such, this dissertation looks at Japan as a case study in transnational governance, arguing that Japan's status as a highly developed non-Anglo-European country that never experienced a prolonged period of being colonised makes it uniquely suited as a pathway case. The primary research questions of this dissertation thus became: How do transnational ideas, actors and networks influence the local governance and governmentality of human trafficking in a given country (if at all)? And how does a given country's historical understanding of human trafficking impact the transnational governance of human trafficking in that country? These questions are presented and explored more fully in Chapter 4, which focusses on the methods and methodology employed in this dissertation. This chapter also includes an overview of my fieldwork, including details regarding where I went and whom I spoke with, as well as discussing of some of the ethical issues around researching human trafficking and the measures I took to mitigate them.

However, exploring how transnational governance has reshaped human trafficking governance in Japan requires an understanding of how human trafficking has traditionally been viewed and regulated in Japan. Chapter 5 thus presents a genealogy of human trafficking discourses in Japan, looking at terms that have been subsequently translated into English as “human trafficking,” and examining how the practices they refer to have been regulated across Japan's history. It begins with the earliest records of human trafficking in Japan, and then explores how discourses on human trafficking evolved across the ancient and medieval period before emerging as something close to their modern form in the Edo

Period (1603–1868). At the same time, it looks at how these discourses were shaped by transnational forces, including the arrival of the first Europeans in the 16<sup>th</sup> century, the “opening” of Japan in the 19<sup>th</sup> century, and Japan’s participation in the international system in the 20<sup>th</sup> century. It concludes by looking at the way both the Second World War and the occupation of Japan that followed set the stage for Japan’s post-war governance of human trafficking. In doing this, this chapter reviews some of the English and Japanese literature on human trafficking in historical Japan.

Chapter 6 focuses on the emergence of the contemporary system of human trafficking governance in Japan, including areas such sex work regulation, child protection, anti-organised crime laws, and immigration controls. As many of these legal instruments were developed in the early post-War period, this chapter picks up chronologically where Chapter 5 left off, looking at changes to the governance of human trafficking from the early post-war period up until the drafting of the Trafficking Protocol in 2000. In doing this, this chapter draws heavily on my own archival research, as well as the secondary literature on these specific areas of Japanese regulation. This chapter provides an overview of some of the shifting media coverage of human trafficking in Japan, focussing on specific Japanese translations of “human trafficking.” It also provides a socio-legal analysis of some of the relevant Japanese anti-trafficking legal instruments, including laws regulating sex work, local child protection ordinances, and visa regulations.

Chapter 7 then looks at the actions the Japanese government has taken on human trafficking during the 2000–2014 period, and explores, drawing from my fieldwork interviews, how these actions have reshaped human trafficking governance in Japan. It also considers how transnational actors have (or have not) governed the governance of human trafficking in Japan. This chapter argues that the two most significant transnational influences on Japan’s governance of human trafficking have been the UN’s Trafficking Protocol and the American Trafficking in Persons (TIP) Report. As such, this chapter also includes a detailed overview of the history of the TIP Report, a summary of its coverage of Japan, and an analysis of its effectiveness in shaping Japan’s human trafficking governance.

Finally, Chapter 8 discusses the findings of this dissertation in the context of more recent events—specifically, Japan’s accession to the UN’s Transnational Organised Crime Convention and Trafficking Protocol this year. Drawing on everything presented up until this point in the dissertation, this chapter argues that efforts at transnational governance were a significant contributor to Japan’s long-delayed accession. However, it also argues that this transnational governance was made possible largely by the actions of local Japanese civil society groups, who have used these instruments of transnational governance as part of their own efforts to influence how the Japanese government understands and responds to human trafficking. This means that what has appeared to be transnational governance in Japan largely reflects the human trafficking governmentality of these groups, rather than transnational actors like the UN or the American TIP Office. At the same time, this chapter argues that these processes have nevertheless empowered transnational actors in Japan, and notes that these actors—whether acting as simple moral entrepreneurs or guided by an Orientalist neo-colonial mentality—have often had a negative impact in the countries they have been involved in. As such, this chapter advises caution for Japanese groups in cooperating with these actors, and suggests that the Japanese government improve its own cooperation with civil society groups in order to make those transnational actors unnecessary.

This dissertation concludes by arguing that, in Japan, transnational ideas, actors and networks influence the local governance and governmentality of human trafficking only with the complicity and cooperation of local actors. Since these actors’ understanding of “human trafficking” is contingent on the history of human trafficking and anti-trafficking in Japan, local historical trafficking discourses will always play a much greater role in Japan’s response to human trafficking than transnational discourses. Moreover, while these conclusions are framed to be Japan specific, this dissertation is also using Japan as a pathway case on the transnational governance of human trafficking. As such, this dissertation argues that these findings will be true of the transnational governance of human trafficking more broadly, as well as potentially transnational governance in general.

On a final note, this research straddles three distinct areas of study: a socio-legal study of global governance; a historical study of Japan; and a criminological study of human trafficking. This means that this dissertation covers a relatively wide and inter-disciplinary range of academic literature; as a result, rather than including a single, dedicated “literature review,” the literature is instead discussed within specific subject-focussed chapters. In doing this, my hope is that this dissertation will advance research in each of these three fields, rather than being only of interest to the narrow subsection of scholars interested in all three.

## CHAPTER 2: HUMAN TRAFFICKING GOVERNANCE

### INTRODUCTION

This chapter discusses the theoretical framework behind this dissertation by exploring what is meant by the term “human trafficking governance.” It begins by providing a definition for the term “governance,” drawing from the works of Michel Foucault, as well as the related term “governmentality.” In doing this, it also explains why this dissertation does not provide its own definition for “human trafficking,” but instead analyses different “human trafficking discourses.” This section also touches on alternative theories of transnational governance—specifically “global governance” and “networked governance”—and explains why this dissertation favours Foucault’s approach.

This chapter also explores some specific techniques of governance that actors have applied to the problem of human trafficking. By “governing through crime,” actors present human trafficking as a criminal problem, which in turn suggests criminal justice solutions such as police raids, increased prosecution rates, longer prison sentences. On the other hand, by “governing through security,” actors present human trafficking as a security problem, which in turn suggests security solutions such as sanctions, tighter border restrictions, and humanitarian intervention. Both of these examples rely on necropolitics, or “governing death,” where actors—typically agents of the state—govern human trafficking through the threat of or the use of force.<sup>3</sup> However, actors can also govern human trafficking through biopolitics, or “governing life.” This might include, for example, providing assistance to human trafficking victims or regulating the sale of sex.

While many of the examples described above are techniques of governance practiced primarily by agents of the state, governance can be practiced by a wide range of actors. These can include non-governmental organisations (NGOs) such as the Salvation Army, intergovernmental organisations (IGOs) such as the United Nations, or even agents of foreign governments. When this governance is targeted at actors or organisations in other

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<sup>3</sup> See Achille Mbembe, “Necropolitics,” in *Foucault in an Age of Terror*, ed. Stephen Morton and Stephen Bygrave (London: Palgrave Macmillan UK, 2008), 152–82, [https://doi.org/10.1057/9780230584334\\_9](https://doi.org/10.1057/9780230584334_9).

states—including foreign governments—it then becomes “transnational governance.” One prominent contemporary technique of transnational governance is the use of “indicators,” like the United States’ State Department’s Trafficking in Persons (TIP) Report.<sup>4</sup> These indicators take complex information about a country and transform it into a score or ranking, with the countries so ranked being then pushed in various ways to take actions that will improve their rankings.

Finally, not all governance is sanctioned by the law, and organised crime groups can also engage in governance. In fact, this chapter argues that mafia-type organisations’ primary function is the governance of people or activities that are not governed by the agents of the state—including activities that might be described as human trafficking. As such, this chapter argues that we need to focus on the activities of organised crime groups not only as targets, but also as agents of human trafficking governance.

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<sup>4</sup> The TIP Report (all years) is available online at: <https://www.state.gov/j/tip/rls/tiprpt/>  
On the TIP Report as an indicator, see for example Sally Engle Merry, “Measuring the Unmeasurable: The US Trafficking in Persons Reports,” in *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (Chicago, IL: University of Chicago Press, 2016), 112–39.



## DEFINING HUMAN TRAFFICKING GOVERNANCE

My usage of the term “governance” is derived from Foucault’s understanding of “government,” which he describes as:

Much more operational than the notion of power, “government” being understood, of course, not in the narrow and current sense of the supreme instance of executive and administrative decisions in State systems, but in the broad sense, and old sense moreover, of mechanisms and procedures intended to conduct men, to direct their conduct, to conduct their conduct.<sup>5</sup>

Thus, “government” here does not refer to the simple concept of executive power, but rather to the “micro-powers” that directly shape the conduct of individuals.<sup>6</sup> It is also distinct from sovereignty and not a property exclusive to the State.<sup>7</sup> But to avoid confusion with the common understanding of “government” as the “supreme instance of executive and administrative decisions in State systems,” I follow other socio-legal scholars in using the term “governance” to refer to those micro-powers.<sup>8</sup> According to this definition, a wide range of actors—not all of whom are formally or even informally affiliated with the state—can be involved with “governance.” These can include individual government ministries (or

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<sup>5</sup> Michel Foucault, *On the Government of the Living: Lectures at the Collège de France, 1979–1980*, ed. Michel Senellart, trans. Graham Burchell (London: Palgrave Macmillan UK, 2014), 12.

<sup>6</sup> Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, trans. Graham Burchell (New York, NY: Picador, 2008), 186.

<sup>7</sup> Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978*, ed. Michel Senellart, François Ewald, and Alessandro Fontana, trans. Graham Burchell (Basingstoke, Hampshire: Palgrave Macmillan, 2009), 105–6.

<sup>8</sup> See for example R. A. W. Rhodes, “The New Governance: Governing without Government,” *Political Studies* 44, no. 4 (September 1, 1996): 652–67, <https://doi.org/10.1111/j.1467-9248.1996.tb01747.x>; B. Guy Peters and John Pierre, “Governance Without Government? Rethinking Public Administration,” *Journal of Public Administration Research and Theory* 8, no. 2 (April 1, 1998): 223–43, <https://doi.org/10.1093/oxfordjournals.jpart.a024379>; Pauline M. McGuirk, “Power and Policy Networks in Urban Governance: Local Government and Property-Led Regeneration in Dublin,” *Urban Studies* 37, no. 4 (April 1, 2000): 651–72, <https://doi.org/10.1080/00420980050003955>; Andrew Jordan, Rüdiger K. W. Wurzel, and Anthony Zito, “The Rise of ‘New’ Policy Instruments in Comparative Perspective: Has Governance Eclipsed Government?,” *Political Studies* 53, no. 3 (October 1, 2005): 477–96, <https://doi.org/10.1111/j.1467-9248.2005.00540.x>; Kalevi Holsti, “Governance Without Government: Polyarchy in Nineteenth-Century European International Politics,” in *Kalevi Holsti: Major Texts on War, the State, Peace, and International Order*, 42 (New York, NY: Springer, 2016), 149–71, [https://doi.org/10.1007/978-3-319-28818-5\\_11](https://doi.org/10.1007/978-3-319-28818-5_11).

departments within ministries), the police (or units within the police), NGOs, churches, or the media. It can even, as argued below, include organised crime.

Based on the above definition of “governance,” the act of defining human trafficking itself becomes a form of governance. Therefore, because my interest lies in how others have engaged in human trafficking governance, I have tried to focus on their definitions of human trafficking without defining it myself. For these different ways of conceptualising and defining human trafficking, I use the term “human trafficking discourses,” meaning—again following Foucault—ways of constituting knowledge about human trafficking. These discourses establish what human trafficking is and is not, who can or cannot be a victim (or perpetrator) of human trafficking, and what can and cannot be said more generally about human trafficking.<sup>9</sup>

These discourses are not fixed, and their boundaries are redefined as actors engage with them, challenge them and implement them. Combined with beliefs about the world that produces human trafficking, these discourses can also suggest appropriate responses to human trafficking. These discourses thus provide those actors who want to “do something” about human trafficking with a grounding logic for how best to govern human trafficking. To this “logic of governance,” Foucault gave the name “governmentality.”<sup>10</sup> Foucault himself was not always consistent in how he used this term, and it has subsequently become a “somewhat [...] ambiguous and problematic term” that has been used in “loose and somewhat contradictory ways.”<sup>11</sup> Here I follow the interpretation used by socio-legal theorists such as Rabinow, Rose, Valverde and O’Malley.<sup>12</sup> As summarised by O’Malley and Valverde, “governmentality” can be viewed as:

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<sup>9</sup> See *Archaeology of Knowledge*, trans. Alan Sheridan (1969; repr., London: Routledge, 2002), 23–33; “Politics and the Study of Discourse,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago, IL: University of Chicago Press, 1991), 53–72.

<sup>10</sup> Michel Foucault, “Governmentality,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller, trans. Pasquale Pasquino (Chicago, IL: University of Chicago Press, 1991), 87–104.

<sup>11</sup> Mariana Valverde, “Beyond Discipline and Punish: Foucault’s Challenge to Criminology,” *Carceral Notebooks* 4 (2008): 206.

<sup>12</sup> See for example Paul Rabinow and Nikolas Rose, “Foucault Today,” in *The Essential Foucault: Selections from Essential Works of Foucault, 1954–1984*, ed. Paul Rabinow and Nikolas Rose (New

what government understood as the problem to be fixed and the nature of the world that had produced it (the “problematic”); the technologies and techniques that were to be applied to the problem in order to change things for the better; and the ideal outcomes that were intended to be produced by this program of governance.<sup>13</sup>

In practical terms, this means that even if there is universal agreement that human trafficking is a problem, different understandings of the nature of human trafficking and the nature of the world that produced it will lead to different actors pursuing disparate—and at times opposing—anti-trafficking efforts for the purpose of achieving potentially wildly different end goals.

The discourses I discuss in this dissertation are not limited to discourses specifically about human trafficking. Also of importance are discourses on related topics, such as sex work and slavery, as well as discourses about Japan itself. Of these latter, perhaps the most important are those fall under the category Said referred to as “Orientalism.” Drawing explicitly on Foucault, Said, along with those scholars who subsequently took up his theories, argues that academic and literary discourses on the “Orient” (an imaginary geographic entity itself created by these discourses) have depicted the countries and cultures of the Orient as static and underdeveloped, Oriental men as effeminate and deviant, Oriental women as aggressively sexual and perpetually victimised, and Oriental people in general as emotional rather than rational. These discourses also serve to define the “Occident” as the binary opposite of the Orient: dynamic and modern, and inhabited by rational people who follow appropriate gender norms; a “West” whose morality is established by means of a contrast with an immoral “East.”<sup>14</sup>

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York, NY: New Press, 2003), vii–xxxv; Nikolas Rose, Pat O’Malley, and Mariana Valverde, “Governmentality,” *Annual Review of Law and Social Science* 2, no. 1 (December 2006): 83–104, <https://doi.org/10.1146/annurev.lawsocsci.2.081805.105900>.

<sup>13</sup> Pat O’Malley and Mariana Valverde, “Foucault, Criminal Law, and the Governmentalization of the State,” in *Foundational Texts in Modern Criminal Law*, ed. Markus Dirk Dubber (Oxford: Oxford University Press, 2014), 320.

<sup>14</sup> Edward W. Said, *Orientalism: Western Conceptions of the Orient* (1978; repr., London: Penguin Books, 2003), 3, 141–42, 166–67, 180–90, 206–8, 314–16; Meyda Yegenoglu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge: Cambridge University Press, 1998), 95–120; Reina Lewis, *Gendering Orientalism: Race, Femininity and Representation* (Abingdon, Oxon: Routledge, 1996), 127–90; Robert G. Lee, *Orientalists: Asian Americans in Popular Culture* (Philadelphia:

Within the context of the academic discipline of “Orientalism” (which has been largely been replaced by “Area Studies” since the publication of *Orientalism*), these discourses also reflect an underlying episteme in the scientific study and knowledge of the non-Anglo-European “other.” Per Foucault, an “episteme” is:

The strategic apparatus which permits of separating out from among all the statements which are possible those that will be acceptable within [...] a field of scientificity, and, which it is possible to say are true or false. The episteme is the 'apparatus' which makes possible the separation, not of the true from the false, but of what may from what may not be characterised as scientific.<sup>15</sup>

Thus, at an epistemic level, Orientalism makes it possible for certain claims made about “the East,” as well as claims about “the West” (which, as noted above, can only be constituted by the existence of an “East”), to be accepted as, if not truths, then as least reasonable scientific arguments.

Said, along with other theorists concerned with (de-)colonisation, further argues that Orientalist discourses, and in particular the discourse of the moral superiority of “the West” over “the East” (and the rest of the world more generally), subsequently justified (and were in turn justified by) colonial projects in Asia and elsewhere.<sup>16</sup> This idea aligns with Münkler’s argument that the notion of “superiority” is the key element in the “logic of empire,” as

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Temple University Press, 1999), 83–105; Yen Le Espiritu, *Asian American Women and Men: Labor, Laws, and Love*, 2nd ed. (Plymouth, UK: Rowman & Littlefield, 2008), 97–122; Minjeong Kim and Angie Y. Chung, “Consuming Orientalism: Images of Asian/American Women in Multicultural Advertising,” *Qualitative Sociology* 28, no. 1 (March 2005): 67–91, <https://doi.org/10.1007/s11133-005-2631-1>; Christina Ho, “Responding to Orientalist Feminism,” *Australian Feminist Studies* 25, no. 66 (2010): 433–39, <https://doi.org/10.1080/08164649.2010.525211>; Caron E. Gentry and Kathryn Whitworth, “The Discourse of Desperation: The Intersections of Neo-Orientalism, Gender and Islam in the Chechen Struggle,” *Critical Studies on Terrorism* 4, no. 2 (August 1, 2011): 145–61, <https://doi.org/10.1080/17539153.2011.586202>.

<sup>15</sup> Michel Foucault, “The Confession of the Flesh,” in *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, ed. and trans. Colin Gordon (1977; repr., New York, NY: Pantheon Books, 1980), 197. See also Michel Foucault, *The Order of Things*, trans. Alan Sheridan (1966; repr., London: Routledge, 2005); Foucault, *Archaeology of Knowledge*, 211–12.

<sup>16</sup> Edward W. Said, *Culture and Imperialism* (New York, NY: Vintage Books, 1994), 3–18. See also, for example, Homi K. Bhabha, “The Other Question...,” *Screen* 24, no. 6 (November 1, 1983): 18–36, <https://doi.org/10.1093/screen/24.6.18>; Amar Acheraïou, *Rethinking Postcolonialism: Colonialist Discourse in Modern Literatures and the Legacy of Classical Writers* (Palgrave Macmillan, 2008), 55–69.

empires do not recognise the subjects of their governance as their equals on the world stage.<sup>17</sup> Venn likewise notes that this “imperial governmentality” requires Occidentalism: “the idea of the West as the superior centre of world historical development.”<sup>18</sup> Scott, meanwhile, argues that reforming the perceived moral deficiency of colonised peoples was one of the core elements of “colonial governmentality,” noting that:

This gave to the legislator of colonial reform a responsibility far greater than would be the case in Europe, simply because the stakes of moral improvement were greater. Unlike Europe, where the moral disposition was such as did not require so many artificial constraints, in Ceylon the natives had to be met at every turn with devices and measures which constrained them against immoral conduct.<sup>19</sup>

Here Scott, like many of the other writers above, look at the role of Orientalist discourses in shaping historical European imperial projects. However, these discourses also continue to play a significant role in shaping the modern American imperial project.<sup>20</sup> As Tyrell notes, “morally uplifting” the colonised was a primary goal for the evangelicals involved in America’s empire pre-WWI.<sup>21</sup> And as Go notes, wielding power through a position of imagined cultural and moral superiority rather than overt military control became an explicit American policy position in the 1950s, as “colonialism” came to be a dirty word.<sup>22</sup> And as Ignatieff, Barnett, Bernstein, and others have noted, morally positioned efforts to improve the lives of peoples around the world (i.e. “humanitarianism”) and American military interventions continue to be closely intertwined, with the former providing a justification

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<sup>17</sup> Herfried Münkler, *Empires: The Logic of World Domination from Ancient Rome to the United States*, trans. Patrick Camiller (Cambridge: Polity, 2007), 1–17.

<sup>18</sup> Couze Venn, “Narrating the Postcolonial,” in *Spaces of Culture: City, Nation, World*, ed. Mike Featherstone and Scott Lash (London: Sage, 1999), 265. See also Couze Venn, *Occidentalism: Modernity and Subjectivity*, Theory, Culture & Society (London: SAGE Publications, 2000).

<sup>19</sup> David Scott, “Colonial Governmentality,” *Social Text*, no. 43 (1995): 212, <https://doi.org/10.2307/466631>.

<sup>20</sup> Said makes this point specifically in, for example, Edward W. Said, “Orientalism Reconsidered,” *Cultural Critique*, no. 1 (October 1, 1985): 89–107, <https://doi.org/10.2307/1354282>, and the new preface to the 2003 edition of *Orientalism*.

<sup>21</sup> Ian R. Tyrrell, *Reforming the World: The Creation of America’s Moral Empire*, America in the World (Princeton, NJ: Princeton University Press, 2010).

<sup>22</sup> Julian Go, *Patterns of Empire: The British and American Empires, 1688 to the Present* (Cambridge: Cambridge University Press, 2011), 154–55.

for the latter and the latter providing a means to implement the former.<sup>23</sup> This leads Morefield to observe that this humanitarian impulse, combined with a belief in American moral superiority, has led in the post-9/11 world to a liberal consensus in favour of an increased American imperial footprint.<sup>24</sup> And finally, as authors such as Weitzer and Doezema have noted, human trafficking (and in particular what the TVPA defines as “sex trafficking”) has replaced previous subjects of American moral opprobrium such as opium and alcohol use to become a prime target of American moral reform—whether this comes from civil society actors, government actors, or actors who move between both.<sup>25</sup>

Importantly, this process of defining an issue as a “moral problem” in need of governance—imperial or otherwise—is itself an act of governance. This specific type of governance is often driven by what Becker referred to “moral entrepreneurs”: “crusading reformer[s]” who are not satisfied with existing rules “because there is some evil which profoundly disturbs [them].”<sup>26</sup> These discourses can also propagate through the mass media as a result of what Cohen calls “moral panics”: events where a “condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests” and “its nature is presented in a stylized and stereotypical fashion by the mass media.”<sup>27</sup> “Moral

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<sup>23</sup> Michael Ignatieff, *Empire Lite: Nation Building in Bosnia Kosovo Afghanistan* (London: Vintage, 2003); Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca, NY: Cornell University Press, 2011), 1–18; Elizabeth Bernstein, “Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns,” *Signs* 36, no. 1 (September 1, 2010): 45–71, <https://doi.org/10.1086/651184>.

<sup>24</sup> Jeanne Morefield, *Covenants without Swords: Idealist Liberalism and the Spirit of Empire* (Princeton, N.J.: Princeton University Press, 2005), 221–30.

<sup>25</sup> Jo Doezema, “Ouch!: Western Feminists’ ‘Wounded Attachment’ to the ‘Third World Prostitute,’” *Feminist Review*, no. 67 (April 1, 2001): 16–38, <https://doi.org/10.2307/1395529>; Ronald Weitzer, “The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade,” *Politics & Society* 35, no. 3 (September 1, 2007): 447–75.

<sup>26</sup> See Howard S. Becker, *Outsiders* (New York, NY: Simon & Schuster, 1963), 147.

<sup>27</sup> Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd ed. (New York: Routledge, 2002), 1. The term was first coined by Young, but as Goode and Ben-Yehuda and others (including Young himself) have noted, it was Cohen’s work that led to the popularisation and subsequent widespread use of the term. See Jock Young, *The Drugtakers: The Social Meaning of Drug Use* (London: MacGibbon and Kee, 1971), 182; Jock Young, “Slipping Away – Moral Panics Each Side of ‘the Golden Age,’” in *Crime, Social Control and Human Rights: From Moral Panics to States of Denial, Essays in Honour of Stanley Cohen*, ed. David Downes et al. (Cullompton, Devon: Willan Publishing, 2007), 53–65; Jock Young, “Moral Panics and the Transgressive Other,” *Crime, Media, Culture* 7, no. 3 (December 1, 2011): 245–58, <https://doi.org/10.1177/1741659011417604>; Erich

panic” is the rare sociological term that entered the general lexicon, and it subsequently came to be overused to the extent that some scholars questioned its continued utility—a point Cohen himself emphasises in the third edition of the book that helped popularise the term.<sup>28</sup> However, there is now a considerable body of scholarship that argues that moral panics, as Cohen originally conceived them, have heavily influenced anti-trafficking policies.<sup>29</sup>

The definitions described above are not implemented in a vacuum, but that they must compete with pre-existing definitions that can cover similar actions and behaviours. For example, the terms “prostitution,” “sex work,” and “sex trafficking”—which I will discuss in more detail below—jockey with each other for conceptual space. For Foucault, this “multiplicity of force relations” was crucial to understanding the actual operations of power,

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Goode and Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance*, 2nd ed. (Chichester, West Sussex: Wiley-Blackwell, 2009), 22–33; David Garland, “On the Concept of Moral Panic,” *Crime, Media, Culture* 4, no. 1 (April 1, 2008): 9–30, <https://doi.org/10.1177/1741659007087270>; Sean P. Hier, “Tightening the Focus: Moral Panic, Moral Regulation and Liberal Government,” *The British Journal of Sociology* 62, no. 3 (September 7, 2011): 523–41, <https://doi.org/10.1111/j.1468-4446.2011.01377.x>.

<sup>28</sup> Cohen, *Folk Devils and Moral Panics*, xxxix–xliv. See also, for example, Sean P. Hier, “Conceptualizing Moral Panic through a Moral Economy of Harm,” *Critical Sociology* 28, no. 3 (May 1, 2002): 311–34, <https://doi.org/10.1177/08969205020280030301>; Chas Critcher, *Moral Panics And The Media* (Buckingham, PA: Open Univ. Press, 2003), 1–2; Martin Innes, “A Short History of the Idea of Moral Panic,” *Crime, Media, Culture: An International Journal* 1, no. 1 (March 2005): 106–11, <https://doi.org/10.1177/1741659005050263>; Amanda Rohloff and Sarah Wright, “Moral Panic and Social Theory: Beyond the Heuristic,” *Current Sociology* 58, no. 3 (May 1, 2010): 403–19, <https://doi.org/10.1177/0011392110364039>.

<sup>29</sup> See for example Chenda Keo et al., “Human Trafficking and Moral Panic in Cambodia,” *The ANNALS of the American Academy of Political and Social Science* 653, no. 1 (May 1, 2014): 202–24, <https://doi.org/10.1177/0002716214521376>; Wendy Chapkis, “Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants,” *Gender and Society* 17, no. 6 (December 1, 2003): 923–37, <https://doi.org/10.2307/3594677>; Selda Dagistanli and Sanja Milivojevic, “Appropriating the Rights of Women: Moral Panics, Victims and Exclusionary Agendas in Domestic and Cross-Borders Sex Crimes,” *Women’s Studies International Forum* 40 (September 2013): 230–42, <https://doi.org/10.1016/j.wsif.2013.09.001>; Jo Doezema, “Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women,” *Gender Issues* 18, no. 1 (December 1, 1999): 23–50, <https://doi.org/10.1007/s12147-999-0021-9>; Kamala Kempadoo, “The War on Human Trafficking in the Caribbean,” *Race & Class* 49, no. 2 (October 1, 2007): 79–85, <https://doi.org/10.1177/03063968070490020602>; Weitzer, “The Social Construction of Sex Trafficking”; Gretchen Soderlund, “Covering Urban Vice: The New York Times, ‘White Slavery,’ and the Construction of Journalistic Knowledge,” *Critical Studies in Media Communication* 19, no. 4 (December 1, 2002): 438–60, <https://doi.org/10.1080/07393180216567>.

which he perceived as relational and always multi-directional.<sup>30</sup> The competition, however, can lead to imported foreign discourses displacing or erasing pre-existing local discourses. Spivak, drawing on Said's conception of orientalism, as well as both Foucault's use of the term "episteme" and his discussion of the epistemic change that accompanied the redefinition of sanity in Europe at the end of the eighteenth century, coins the term "epistemic violence" to refer to "a complete overhaul of the episteme [i.e. in a colonised space]."<sup>31</sup> Spivak is interested in whether the subaltern subject—which is to say, subjects who are both colonised and non-elite, and who are thus fully cut off from access to hegemonic culture<sup>32</sup>—can "speak," even through the language of an elite academic interpreter. Spivak argues that they cannot, as the epistemic violence of imperialism (or orientalism) have deprived them of the tools they need to express themselves, even to their own elites.<sup>33</sup> More broadly, this can be read as a reminder that this sort of epistemic violence—forcing changes to the episteme, leading to changes in what statements are accepted as "scientific"—can effectively silence large groups of people. This silencing too, can be a form of governance, and perhaps the one with the potential for the most enduring effect.

Finally, it is important to note that this view of transnational governance as something practiced by a range of local actors, including both state and non-state actors, stands in contrast to theories of "global governance" that proliferated with the end of the Cold War. Global governance theorists tend to view governance as a top down procedure practiced by international, cooperative, rule making institutions.<sup>34</sup> For the global governance of human

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<sup>30</sup> Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (1976; repr., New York, NY: Random House, 1978), 92.

<sup>31</sup> Spivak cites this term as coming from *Madness and Civilisation*, but it does not appear there as such. See Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Urbana, IL: University of Illinois Press, 1988), 281, 310; Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. Richard Howard (1961; repr., New York, NY: Vintage Books, 1965).

<sup>32</sup> The term comes from Gramsci. See Spivak, "Can the Subaltern Speak?," 283; Leon de Kock, "Interview with Gayatri Chakravorty Spivak: New Nation Writers Conference in South Africa," *ARIEL: A Review of International English* 23, no. 3 (July 1992): 45–47.

<sup>33</sup> Spivak, "Can the Subaltern Speak?," 285–308.

<sup>34</sup> The literature on global governance is extensive, but see for example Robert O. Keohane, "Introduction: From Interdependence and Institutions to Globalization and Governance," in *Power*



trafficking, for example, these organisations can include the International Labour Office (ILO), the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHR).<sup>35</sup> However, for the purposes of this dissertation, this approach to governance focusses too narrowly on top-down forms of governance and risks overlooking the power of the actors on the ground: the police officers who have to make practical decisions about who qualifies as a victim of trafficking, or the civil society actors who might decide that a given government policy is or is not in compliance with the Trafficking Protocol. In Japan in particular, according to my research participants, these major international governance institutions play only a very limited role in human trafficking governance. It is true that some of the work included in the global governance scholarship does focus on non-state actors.<sup>36</sup> However, the majority of the scholarship focuses on major multilateral institutions like the United Nations or cooperative bodies like the G20, and it is this approach with which I am drawing a distinction.

Another recent trend on governance scholarship has been to focus on “networked governance.” These theories often draw on actor-network theory,<sup>37</sup> and focus on public-private partnerships, civil society alliances or cooperation between corporations and civil society groups.<sup>38</sup> Thus for the governance of human trafficking in Japan, networked

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*and Governance in a Partially Globalized World*, ed. Robert O. Keohane (London: Routledge, 2002), 1–24; Michael Barnett and Raymond Duvall, “Power in Global Governance,” in *Power in Global Governance*, ed. Michael Barnett and Raymond Duvall (Cambridge: Cambridge University Press, 2005), 1–32; Timothy J. Sinclair, ed., *Global Governance* (Malden, MA: Polity Press, 2012); Thomas G. Weiss, *Global Governance: Why? What? Whither?* (Malden, MA: Polity Press, 2013).

<sup>35</sup> See for example A. Pécout, *Depoliticising Migration: Global Governance and International Migration Narratives* (Basingstoke, Hampshire: Palgrave Macmillan, 2014).

<sup>36</sup> See for example Rodney Bruce Hall and Thomas J. Biersteker, eds., *The Emergence of Private Authority in Global Governance* (Cambridge: Cambridge University Press, 2002).

<sup>37</sup> Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2005).

<sup>38</sup> See for example Miles Kahler, “Networked Politics: Agency, Power, and Governance,” in *Networked Politics: Agency, Power, and Governance*, ed. Miles Kahler (Ithaca, NY: Cornell University Press, 2015), 1–20; Mark Fenwick, Steven Van Uytsel, and Stefan Wrba, eds., *Networked Governance, Transnational Business and the Law* (Berlin: Springer Berlin Heidelberg, 2014), <https://doi.org/10.1007/978-3-642-41212-7>; Betina Hollstein, Wenzel Matiaske, and Kai-Uwe Schnapp, eds., *Networked Governance: New Research Perspectives* (Cham: Springer International Publishing, 2017), <https://doi.org/10.1007/978-3-319-50386-8>; Andrew Jordan and Adriaan Schout,

governance research might focus on JNATIP (Japan Network Against Trafficking in Persons)<sup>39</sup> or the partnership between ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) and the Body Shop.<sup>40</sup> However, for this dissertation I wanted to focus more widely than a network-centred approach would permit, and thus have adopted the Foucauldian approach to governance in order to look at the full range of actors involved in governing human trafficking in Japan.

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*The Coordination of the European Union: Exploring the Capacities of Networked Governance* (Oxford: Oxford University Press, 2006).

<sup>39</sup> Ayako Nakamura and Sebastian Maslow, “‘Networking’ Against Human Trafficking in Japan: The Japan Network Against Trafficking in Persons (JNATIP) and the Polaris Project Japan,” *Asian Politics & Policy* 2, no. 3 (July 1, 2010): 491–94, <https://doi.org/10.1111/j.1943-0787.2010.01205.x>.

<sup>40</sup> Caroline Dale Ditlev-Simonsen, “Beyond Sponsorship: Exploring the Impact of Cooperation between Corporations and NGOs,” *International Journal of Corporate Social Responsibility* 2, no. 1 (December 1, 2017): 6, <https://doi.org/10.1186/s40991-017-0017-9>.

## GOVERNING THROUGH CRIME AND THROUGH SECURITY

There are syndicates that are involved in Japan that facilitate and do business in trafficking, and that's something that we are looking at--that's something we cooperate with the Japanese government. [...] I think these are criminal issues that need to be addressed, and we are addressing it with them.

(Interview with Consul General Tirol-Ignacio, Embassy of the Philippines)

The United Nations' Trafficking Protocol (discussed in the next chapter) is a protocol to the United National Convention against Transnational Organised Crime, with the United Nations Office on Drugs and Crime acting as its guardian. The Protocol requires ratifying states to criminalise human trafficking, but even in non-ratifying states human trafficking is almost always a crime.<sup>41</sup> In general, the idea that human trafficking should be a crime is uncontroversial.

Where there is contention, however, is over exactly what should be criminalised.

Researchers such as Agustín and Segrave are highly critical of some of the more common human trafficking discourses, arguing that they are part of a deliberate policy of criminalising the conduct of migrants, sex workers, and minorities more generally.<sup>42</sup> This would make it part of a broader major trend in governance during the post-war era, which has seen governments, the press and the citizenry conceptualise an ever-widening range of problems as problems of "crime."<sup>43</sup> Simon called this "governing through crime," writing that:

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<sup>41</sup> UNODC, "Global Report on Trafficking in Persons 2014" (Vienna: United Nations, 2014), 51–54.

<sup>42</sup> Laura M. Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry* (London: Zed Books, 2007), 22–30; Marie Segrave, "Order at the Border: The Repatriation of Victims of Trafficking," *Women's Studies International Forum* 32, no. 4 (July 2009): 251–60, <https://doi.org/10.1016/j.wsif.2009.05.006>.

<sup>43</sup> See for example Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge: Polity Press, 1985); Malcolm M. Feeley and Jonathan Simon, "The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications," *Criminology* 30, no. 4 (November 1, 1992): 449–74, <https://doi.org/10.1111/j.1745-9125.1992.tb01112.x>; David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001); Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham, NC: Duke University Press, 2009).

When we govern through crime, we make crime and the forms of knowledge historically associated with it—criminal law, popular crime narrative, and criminology—available outside their limited original subject domains as powerful tools with which to interpret and frame all forms of social action as a problem for governance.<sup>44</sup>

Governing through crime, then, is a governmentality where the object of governance is positioned as a problem of crime, which thus allows for or even requires a criminal justice solution. For example, faced with an influx of refugees, Canada and Sweden chose to treat this as a humanitarian or social problem, requiring humanitarian or social solutions. For these countries, solving the “refugee problem” is a matter of finding homes and jobs for refugees, arranging schooling and medical care for their children, and similar activities.<sup>45</sup> Australia, on the other hand, argues that those seeking asylum within its borders are illegal migrants and that those who help them are alternatively “human smugglers” and “human traffickers”—with the government seeming to see little distinction between the two.<sup>46</sup> For countries that follow Australia’s approach, the appropriate solution for refugees is not social assistance, but rather border surveillance, interception, and incarceration in detention centers whose very conditions become a form of bodily punishment.

These mechanisms have a deterrent characteristic, where they encourage prospective migrants not to enter the country by promising enough prospective pain if they are caught

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<sup>44</sup> Jonathan Simon, *Governing Through Crime : How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007).

<sup>45</sup> J. A. Sandy Irvine, “Canadian Refugee Policy: Understanding the Role of International Bureaucratic Networks in Domestic Paradigm Change,” in *Policy Paradigms, Transnationalism, and Domestic Politics*, ed. Grace Darlene Skogstad (Toronto: University of Toronto Press, 2011), 171–201; Rebecca Stern, “‘Our Refugee Policy Is Generous’: Reflections on the Importance of a State’s Self-Image,” *Refugee Survey Quarterly* 33, no. 1 (March 1, 2014): 25–43, <https://doi.org/10.1093/rsq/hdt020>; Gustav Lidén and Jon Nyhlén, “Explaining Local Swedish Refugee Policy,” *Journal of International Migration and Integration* 15, no. 3 (August 1, 2014): 547–65, <https://doi.org/10.1007/s12134-013-0294-4>.

<sup>46</sup> Scott Watson, “The Criminalization of Human and Humanitarian Smuggling,” *Migration, Mobility, & Displacement* 1, no. 1 (May 25, 2015), <https://journals.uvic.ca/index.php/mmd/article/view/13273>; Daphna Canetti et al., “Threatened or Threatening? How Ideology Shapes Asylum Seekers’ Immigration Policy Attitudes in Israel and Australia,” *Journal of Refugee Studies* 29, no. 4 (December 1, 2016): 583–606, <https://doi.org/10.1093/jrs/few012>.

to the potential rewards of entering the country.<sup>47</sup> However, these mechanisms also have a characteristic of what Foucault called “disciplinary power,”<sup>48</sup> as they attempt to reform potential illicit migrants into law abiding migrants who submit to the proper procedures for entry, patiently await response from Australia’s backlogged immigration bureaucracy and then accept rejection with grace.<sup>49</sup> Surveillance also plays an important role here, as states endeavour to create what Foucault—using a famous prison designed by Bentham as a metaphor—referred to as a panopticon: an entity that could be surveilling one at any time but where one never knew if one was being surveilled or not. This would lead those under its (potential) gaze to conduct their lives as if they were being watched all the time, without the state having to expend the resources to actually surveil everyone all the time.<sup>50</sup> The metaphor of the panopticon has subsequently been widely deployed; Yea, for example, uses it to describe the surveillance apparatus of women working in “U.S. Military-oriented clubs” in South Korea.<sup>51</sup>

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<sup>47</sup> For more on deterrence theory, see for example Ronald L. Akers, “Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path Not Taken Criminology,” *Journal of Criminal Law and Criminology* 81 (1991 1990): 653–76; Bruce A. Jacobs, “Deterrence and Deterrability,” *Criminology* 48, no. 2 (May 1, 2010): 417–41, <https://doi.org/10.1111/j.1745-9125.2010.00191.x>; Daniel S. Nagin and Greg Pogarsky, “Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence,” *Criminology* 39, no. 4 (November 1, 2001): 865–92, <https://doi.org/10.1111/j.1745-9125.2001.tb00943.x>.

<sup>48</sup> Michel Foucault, *Discipline and Punish*, trans. Alan Sheridan (1975; repr., New York, NY: Vintage, 1995).

<sup>49</sup> Thomas Gammeltoft-Hansen, “International Refugee Law and Refugee Policy: The Case of Deterrence Policies,” *Journal of Refugee Studies* 27, no. 4 (December 1, 2014): 574–95, <https://doi.org/10.1093/jrs/feu030>; David Berger and Steven H. Miles, “Should Doctors Boycott Working in Australia’s Immigration Detention Centres?,” *BMJ : British Medical Journal (Online); London* 352 (March 22, 2016), <http://dx.doi.org.virtual.anu.edu.au/10.1136/bmj.i1600>; Anagha Killedar and Patrick Harris, “Australia’s Refugee Policies and Their Health Impact: A Review of the Evidence and Recommendations for the Australian Government,” *Australian and New Zealand Journal of Public Health*, March 1, 2017, 1–3, <https://doi.org/10.1111/1753-6405.12663>.

<sup>50</sup> Foucault, *Discipline and Punish*, 195–230. See also, for example, Thomas Mathiesen, “The Viewer Society Michel Foucault’s ‘Panopticon’ Revisited,” *Theoretical Criminology* 1, no. 2 (May 1, 1997): 215–34, <https://doi.org/10.1177/1362480697001002003>; Kevin D. Haggerty and Richard V. Ericson, “The Surveillant Assemblage,” *The British Journal of Sociology* 51, no. 4 (2000): 605–622, <https://doi.org/10.1080/00071310020015280>; Torin Monahan, *Surveillance in the Time of Insecurity* (New Brunswick, NJ: Rutgers University Press, 2010).

<sup>51</sup> Sallie Yea, “Everyday Spaces of Human Trafficking: (In)Visibility and Agency Among Trafficked Women in U.S. Military-Oriented Clubs in South Korea,” *Annals of the American Association of Geographers* 106, no. 4 (July 3, 2016): 957–73, <https://doi.org/10.1080/24694452.2016.1157012>.

As these efforts to govern through crime have gone transnational, they have also contributed to what Nadelmann referred to as the “internationalization of U.S. criminal law enforcement,”<sup>52</sup> and what Bowling has referred to alternatively as “transnational policing” and “global policing.”<sup>53</sup> Interestingly, the anti-slavery campaign, which provided the genesis of the modern anti-trafficking movement, was, according to Andreas and Nadelmann, one of the earliest cases of transnational policing, building on a framework originally established to fight piracy.<sup>54</sup> However, as will be discussed in the next chapter, states largely lost interest in the fight against slavery following World War II, and during the second half of the 20<sup>th</sup> century global policing efforts were primarily concentrated at drug interdiction.<sup>55</sup>

More recently, much of the global policing infrastructure has been directed at anti-terrorism efforts.<sup>56</sup> This, however, moves beyond “governing through” crime to a related technique that Valverde calls “governing through security”: “the governance of other areas of public life from the standpoint of a Hobbes-defined notion of security.”<sup>57</sup> The global “War on Terror” provides us with the most clear-cut example of the governing through security, and it has taken instruments traditionally intended to govern crime, such as the Financial Action Task Force on Money Laundering (FATF), and strengthened and repurposed them as tools to govern perceived threats to state security.<sup>58</sup> And there have been some efforts to link

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<sup>52</sup> Ethan Nadelmann, *Cops across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA: Pennsylvania State University Press, 1993).

<sup>53</sup> Ben Bowling, “Transnational Policing: The Globalization Thesis, a Typology and a Research Agenda,” *Policing: A Journal of Policy and Practice* 3, no. 2 (January 1, 2009): 149–60, <https://doi.org/10.1093/police/pap001>; Ben Bowling and James Sheptycki, *Global Policing* (Thousand Oaks, CA: SAGE, 2012).

<sup>54</sup> Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford: Oxford University Press, 2006), 17–36, 110.

<sup>55</sup> Nadelmann, *Cops across Borders*, 1–14.

<sup>56</sup> Andreas and Nadelmann, *Policing the Globe*, 189–222; Bowling and Sheptycki, *Global Policing*, 113–27.

<sup>57</sup> Mariana Valverde, “Governing Security, Governing Through Security,” in *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill*, ed. Ronald J. Daniels, Patrick Macklem, and Kent Roach (Toronto: University of Toronto Press, 2001), 89. See also Thomas Hobbes, *Leviathan*, ed. J. C. A. Gaskin (Oxford: Oxford University Press, 1998).

<sup>58</sup> The FATF had “combatting the financing of terrorism” added to its mandate in 2001. See Edward J. Krauland and Aaron R. Hutman, “Money Laundering Enforcement and Policy International Legal Developments in Review: 2003: Public International Law,” *International Lawyer (ABA)* 38 (2004): 509–

human trafficking to terrorism, such as this passage in the US State Department’s Trafficking in Persons (TIP) Report:

Traffickers may force adults and children to commit crimes in the course of their victimization, including theft, illicit drug production and transport, prostitution, terrorism, and murder. [...] In Afghanistan, insurgent groups force older Afghan children to serve as suicide bombers. Non-state militant groups in Pakistan force children—some as young as 9 years old—to serve as suicide bombers in both Pakistan and Afghanistan.<sup>59</sup>

The examples in that quote may well be outliers: human trafficking is rarely presented as a traditional security concern, and correspondingly anti-trafficking instruments do not come with the same powers of enforcement as anti-terrorist financing instruments—the TIP Report does not have the same punitive power as the FATF’s blacklist.<sup>60</sup> On the other hand, many human trafficking discourses link human trafficking to practices of migration, positioning human trafficking as the “dark side” of migration,<sup>61</sup> or arguing that increased restrictions on migration lead to increases in human trafficking.<sup>62</sup> And migration has very much been positioned as a traditional security concern—consider, for example, the recent case of the then-President-elect of the United States calling for a ban on immigration from majority-Muslim countries on the grounds that Muslims are an inherent security risk to the United States.<sup>63</sup> This governance can both overlap and coincide with the discourse of migrants as crime threat: the same President who called for banning Muslims to prevent

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20; Kathryn L. Gardner, “Fighting Terrorism the FATF Way,” *Global Governance* 13, no. 3 (2007): 325–45, <https://doi.org/10.2307/27800665>.

<sup>59</sup> US Department of State, “2014 Trafficking in Persons Report,” June 2014, 14.

<sup>60</sup> Guy Stessens, “The FATF ‘Black List’ of Non-Cooperative Countries or Territories,” *Leiden Journal of International Law* 14, no. 1 (March 2001): 199–207, <https://doi.org/10.1017/S0922156501000097>.

<sup>61</sup> Shahidul Md. Haque, “Ambiguities and Confusions in Migration-Trafficking Nexus: A Development Challenge,” in *Trafficking & the Global Sex Industry*, ed. Karen D. Beeks and Delila Amir (Oxford: Lexington Books, 2006), 3–20.

<sup>62</sup> Jennifer M. Chacón, “Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement,” *University of Pennsylvania Law Review* 158, no. 6 (May 1, 2010): 1609–53.

<sup>63</sup> Donald J. Trump, “Donald J. Trump Statement on Preventing Muslim Immigration,” Donald J Trump for President, December 7, 2015, <https://web.archive.org/web/20170508054010/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

terrorism, for example, has also called for the deportation of migrants from Latin American countries on the grounds that they are rapists and murders.<sup>64</sup> The difference, then, is that presenting a problem of governance as a matter of national security can allow regulators to apply a wider range of techniques than simply criminalising those problems.

However, governing through security is not limited to linking apparently unrelated issues to traditional security concerns like terrorism, and over the past several decades, there has been a trend towards describing an ever-widening range of “security” issues. Wæver refers to this process as “securitisation”: “[when an issue is] presented and addressed as a security issue—when it is phrased as existential, and extraordinary measures should be taken to protect it accordingly.”<sup>65</sup> This gives rise to what textbooks refer to as “non-traditional security threats”: terrorism, the proliferation of weapons of mass destruction, cybercrimes, and transnational organised crime.<sup>66</sup> Within Europe, transnational organised crime came to be increasingly securitised—transformed from threats to the well-being of the citizens of a state to a threat to the state itself—in the aftermath of the assassination of the Italian judges Giovanni Falcone and Paolo Borsellino in 1992 and the Irish journalist Veronica Guerin in 1996.<sup>67</sup> Including human trafficking as one of the activities of “transnational

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<sup>64</sup> Amanda Holpuch, “Fact-Checking Donald Trump’s Recent Claims, from Mexico to San Francisco,” *The Guardian*, July 7, 2015, <https://www.theguardian.com/us-news/reality-check/2015/jul/07/fact-checking-donald-trump>.

<sup>65</sup> Ole Wæver, “Identity, Integration and Security: Solving the Sovereignty Puzzle in E.U. Studies,” *Journal of International Affairs* 48, no. 2 (1995): 405. See more recently Barry Buzan, Ole Wæver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner Publishers, 1998); Holger Stritzel, “Towards a Theory of Securitization: Copenhagen and Beyond,” *European Journal of International Relations* 13, no. 3 (September 1, 2007): 357–83, <https://doi.org/10.1177/1354066107080128>; Ole Wæver, “Politics, Security, Theory,” *Security Dialogue* 42, no. 4–5 (August 1, 2011): 465–80, <https://doi.org/10.1177/0967010611418718>.

<sup>66</sup> See for example, Alan Collins, “Introduction: What Is Security Studies?,” in *Contemporary Security Studies*, ed. Alan Collins, 4th ed. (Oxford: Oxford University Press, 2016), 1–10. It also term of art in Chinese and ASEAN documents. See David Arase, “Non-Traditional Security in China-ASEAN Cooperation: The Institutionalization of Regional Security Cooperation and the Evolution of East Asian Regionalism,” *Asian Survey* 50, no. 4 (2010): 808–833.

<sup>67</sup> Cyrille Fijnaut and Letizia Paoli, “Introduction to Part III: The Initiatives of the European Union and the Council of Europe,” in *Organised Crime in Europe: Concepts, Patterns, and Control Policies in the European Union and Beyond*, ed. Cyrille Fijnaut and Letizia Paoli (Dordrecht: Springer Netherlands, 2004), 625–40; Helena Carrapico, “Analysing the European Union’s Responses to Organized Crime through Different Securitization Lenses,” *European Security* 23, no. 4 (October 2, 2014): 601–17, <https://doi.org/10.1080/09662839.2014.949248>.



organised crime groups,” as the Trafficking Protocol does, completes the cycle, allowing researchers and policy makers—by virtue of the transitive property of security—to now present human trafficking itself as a “security threat.”<sup>68</sup>

The past several decades have also seen the development of the discourse of “human security,” most notably in the UN’s 1994 Human Development Report, which described human security as “a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced”<sup>69</sup> The discourse of human security is thus one that takes traditional humanitarian concerns such as access to food or healthcare and reframes them as what Buzan calls “objects of security.”<sup>70</sup> This can lead to an impulse to respond to human trafficking with what Bernstein calls “militarised humanitarianism,”<sup>71</sup> And we can see this dynamic, for example, with the trafficking in Yazidi women by the Islamic State, an incident that has become an important part of the discourse about why extreme measures should be taken for the Islamic State’s destruction.<sup>72</sup>

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<sup>68</sup> Ralf Emmers, “Globalization and Non-Traditional Security Issues : A Study of Human and Drug Trafficking in East Asia,” Working Paper, 2004, <https://dr.ntu.edu.sg/handle/10220/4461>; Jennifer K. Lobasz, “Beyond Border Security: Feminist Approaches to Human Trafficking,” *Security Studies* 18, no. 2 (2009): 319–44, <https://doi.org/10.1080/09636410902900020>; Cornelius Friesendorf, “Pathologies of Security Governance: Efforts Against Human Trafficking in Europe,” *Security Dialogue* 38, no. 3 (September 1, 2007): 379–402, <https://doi.org/10.1177/0967010607081518>.

<sup>69</sup> United Nations Development Programme, ed., *Human Development Report 1994* (Oxford: Oxford University Press, 1994), 3, 22.

<sup>70</sup> Barry Buzan, *People, States, and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, 2nd ed. (Brighton: Wheatsheaf Books, 1991), 13. Note that Buzan does not care for the concept of human security. See “What Is Human Security? A Reductionist, Idealistic Notion That Adds Little Analytical Value,” *Security Dialogue* 35, no. 3 (2004): 369–370.

<sup>71</sup> Bernstein, “Militarized Humanitarianism Meets Carceral Feminism.”

<sup>72</sup> Associated Press, “Roughly 3,000 Women and Girls Are Sold on ISIS Sex Slave Market,” *NY Daily News*, July 6, 2016, <http://www.nydailynews.com/news/world/roughly-3-000-women-girls-sold-isis-sex-slave-market-article-1.2700156>; George Sandeman, “Western Women Wanted: Escaped ISIS Sex Slave Says ‘Blonde, Blue-Eyed Girls Are Particularly Popular’ amongst Jihadis,” *The Sun*, August 13, 2016, <https://www.thesun.co.uk/news/1604988/escaped-isis-sex-slave-says-blonde-blue-eyed-girls-are-particularly-popular-amongst-jihadis/>.

## GOVERNING DEATH AND GOVERNING LIFE

We need special shelters for children who are victims of commercial sexual exploitation. These children are victims of abuse, but don't have visible bruises. They need special emotional care, which the general shelters can't provide.

(Interview with Fujiwara Shihoko, Lighthouse)

And then we just learn that they develop some illnesses, they get sick, they're not well fed, they're not given medical help, so they get very sick and who knows what. So that's as much as the government can do.

(Interview with Consul General Tirol-Ignacio, Embassy of the Philippines)

HELP provides them with the shelters, food and supplies. It is like a triangle of cooperation, the Thai Embassy, Japanese authorities and HELP.

(Interview with participant from the Royal Thai Embassy)

Governing through crime and governing through security ultimately rests on the implied threat of violence. Controlling borders and running a conventional criminal justice system are made possible by the ability of the agents of the state to apply legalised violence in cases of non-compliance, often up to and including lethal violence. This is what Mbembe referred to as "necropolitics," writing that: "To kill or to allow to live constitutes the limits of sovereignty, its fundamental attributes. To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power."<sup>73</sup> The idea that sovereignty rests ultimately on the ability of the state to govern through death is a constant theme in Anglo-European writing on the state. In Hobbes' *Leviathan*, the sovereign's power came from "the powers of most men, united by consent, in one person, natural, or civil, that has the use of all their powers depending on his will,"<sup>74</sup> while Weber writes in "Politics as Vocation" that: "The state is the only human *Gemeinschaft* which lays claim to the monopoly on the legitimated use of physical force [...]The state is seen [today] as the sole grantor of the "right" to physical force."<sup>75</sup> And indeed, if we consider the conventional "3

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<sup>73</sup> Mbembe, "Necropolitics," 152.

<sup>74</sup> Hobbes, *Leviathan* X. 3.

<sup>75</sup> Max Weber, "Politics as Vocation," in *Weber's Rationalism and Modern Society*, ed. and trans. Tony Waters and Dagmar Waters (1919; repr., New York, NY: Palgrave Macmillan US, 2015), 133–98.

Ps” (Prosecution, Protection, Prevention) approach to human trafficking, all three of these Ps rest on the state’s monopoly of force.<sup>76</sup>

However, most of my research participants from NGOs and embassies emphasised that what those they identified as victims of human trafficking wanted from the Japanese state could not be achieved with violence. Rather, those who had left dangerous environments wanted subsidised housing while they searched for new work; those who had suffered abuse, had contracted illnesses or were pregnant wanted health care; and those who wanted to stay in the country wanted a safe working environment.<sup>77</sup> The provision of these services goes beyond necropolitics and instead falls under what Foucault called “biopower” and “biopolitics.”<sup>78</sup> Following Rose and Rabinow, biopower includes interventions affecting the vital characteristics of both “human beings, as living creatures who are born, mature, inhabit a body that can be trained and augmented, and then sicken and die,” as well as “collectivities or populations composed of such living beings.”<sup>79</sup> Biopolitics, then, are:

All the specific strategies and contestations over problematizations of collective human vitality, morbidity and mortality; over the forms of knowledge, regimes of authority and practices of intervention that are desirable, legitimate and efficacious.<sup>80</sup>

When it comes to the governance of human trafficking, the techniques of biopower can include the provision of services to those who are identified as victims—for example, the

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<sup>76</sup> An oft-repeated phrase whose precise provenance is unclear. Ryf, writing in 2002, sources it to a 2000 Clinton speech, which in turn references a 1998 memorandum. Neither of the latter actually uses the “3P” designator, though. Kara C. Ryf, “The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000,” *Case Western Reserve Journal of International Law* 34 (2002): 45–72; William J. Clinton, “Statement on Signing the Victims of Trafficking and Violence Protection Act of 2000,” October 28, 2000, <http://www.presidency.ucsb.edu/ws/?pid=1105>; William J. Clinton, “Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls,” March 11, 1998, <https://www.gpo.gov/fdsys/pkg/WCPD-1998-03-16/pdf/WCPD-1998-03-16-Pg412.pdf>.

<sup>77</sup> Research notes and interview transcripts.

<sup>78</sup> Foucault, *The Birth of Biopolitics*, 317.

<sup>79</sup> Paul Rabinow and Nikolas Rose, “Biopower Today,” *BioSocieties* 1, no. 02 (2006): 197, <https://doi.org/10.1017/S1745855206040014>. Their inclusion of the individual of a target for biopower is drawn from *A History of Sexuality*. However, see also contra Fassin, who argues, based on the *Birth of Biopolitics* lectures, for a reading of biopower that includes only techniques targeting populations. Didier Fassin, “Another Politics of Life Is Possible,” *Theory, Culture & Society* 26, no. 5 (September 1, 2009): 44–60, <https://doi.org/10.1177/0263276409106349>.

<sup>80</sup> Rabinow and Rose, “Biopower Today,” 197.

provision of medical care or temporary housing. In these cases victim identification becomes an important element of biopolitics. However, other activities that fall under the rubric of biopolitics can also impact the governance of human trafficking. These might include allowing the entry of (female) migrant sex workers so as to cater to the perceived sexual needs of the (heterosexual male) population, controlling sex worker populations for sexually transmitted infections (STIs), or making continued lawful residency for foreign workers contingent on non-pregnancy.<sup>81</sup> In some of these cases, the government's efforts to govern the lives of their citizens can even open the door to activities some actors describe as human trafficking.

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<sup>81</sup> Singapore offers interesting examples of all these dynamics. See Ben Chapman-Schmidt, "Sex in the Shadow of the Law: Regulating Sex Work and Human Trafficking in Singapore," *Asian Journal of Comparative Law* 10, no. 1 (2015): 1–21, <https://doi.org/10.1017/asjcl.2015.1>.

## GOVERNING THROUGH INDICATORS

For me, I think that international influence sometimes is needed in order to encourage the agencies or the actors in this issue to move forward or to do something more aggressively, positively. If it is used constructively, I mean the international pressure, not to be used as a diplomatic tool for another aim.

(Interview with participant from the Royal Thai Embassy)

In theory, the modern, Weberian state violence enjoys a monopoly on violence, meaning that it is only the organs of the state—such as the police, or the Immigration Bureau—that have recourse to necropolitics. In practice, as will be discussed below, there are exceptions, with criminal groups sometimes breaking this monopoly. However, even for groups denied recourse to necropolitics, there remain a range of techniques of governance at their disposal, and some of these techniques can even act on those organs of state. For example, in countries where the state is responsive to public opinion, the press can effectively govern the conduct of state actors simply by monitoring and reporting on their activities. This creates what Mathiesen calls a “synopticon,” wherein rather than the few watching the many, the many watch the few.<sup>82</sup>

Transnational civil society groups like Human Rights Watch and Transparency International also practice a similar form of governance. Lacking any power to discipline and punish nation states, they instead research and publish, with the aim that this reporting—a form of surveillance—will lead to state agents disciplining their conduct in accordance with global human rights standards, press freedom standards, corruption standards, labour standards, or human trafficking standards. These observations are often condensed into what Davis, Kingsbury & Merry call an “indicator”:

A named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units

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<sup>82</sup> Mathiesen, “The Viewer Society Michel Foucault’s ‘Panopticon’ Revisited.”

of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.<sup>83</sup>

As Davis, Kingsbury & Merry note, these indicators are “both a form of knowledge and a technology for governance,” and are produced by “a political process [that is] shaped by the power to categorize, count, analyze, and promote a system of knowledge that has effects beyond the producers.”<sup>84</sup>

For human trafficking, the most important set of indicators is produced not by an IGO or an international NGO, but by the United States’ Department of State, in the form of their Trafficking in Persons (TIP) Report.<sup>85</sup> The TIP Report is unusual as an indicator because it is not limited to “naming and shaming” but can actually trigger far-reaching sanctions on low-scoring countries. Other human trafficking indicators include the Walk Free Foundation’s Global Slavery Index, which “provides a map, country by country, of the estimated prevalence of modern slavery, together with information about the steps each government has taken to respond to this issue,”<sup>86</sup> and Cho’s 3P Anti-trafficking Policy Index, which “evaluates governmental anti-trafficking efforts in the three main policy dimensions (3Ps),

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<sup>83</sup> Kevin E. Davis, Benedict Kingsbury, and Sally Engle Merry, “Global Governance by Indicators,” in *Governance by Indicators: Global Power through Quantification and Rankings*, ed. Kevin E. Davis et al. (Oxford: Oxford University Press, 2012), 3–29.

<sup>84</sup> Kevin E. Davis, Benedict Kingsbury, and Sally Engle Merry, “The Local-Global Life of Indicators: Law, Power, and Resistance,” in *The Quiet Power of Indicators: Measuring Governance, Corruption, and the Rule of Law*, ed. Sally Engle Merry, Kevin E. Davis, and Benedict Kingsbury (Cambridge: Cambridge University Press, 2015), 1–2.

<sup>85</sup> Merry, “Measuring the Unmeasurable: The US Trafficking in Persons Reports”; Sally Engle Merry, “Knowledge Effects and Governance Effects in the Trafficking in Persons Reports,” in *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (Chicago, IL: University of Chicago Press, 2016), 140–60.

<sup>86</sup> Walk Free Foundation, “About - Global Slavery Index 2016,” Global Slavery Index, 2016, <http://www.globalslaveryindex.org/about/>. For critical discussions of the index, see Andrew Guth et al., “Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index,” *Social Inclusion; Lisbon 2*, no. 4 (2014): 14–22, <http://dx.doi.org.virtual.anu.edu.au/10.17645/si.v2i4.195>; Anne T. Gallagher, “The Global Slavery Index Is Based on Flawed Data – Why Does No One Say So?,” *The Guardian*, November 28, 2014, <http://www.theguardian.com/global-development/poverty-matters/2014/nov/28/global-slavery-index-walk-free-human-trafficking-anne-gallagher>.

based on the requirements prescribed by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000).”<sup>87</sup>

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<sup>87</sup> Seo-Young Cho, “Anti-Trafficking/3P,” *The Economics of Human Trafficking*, 2016, <http://www.economics-human-trafficking.org/anti-trafficking-3p.html>. The index is not widely used and there has thus been little critical discussion of it, but for the author’s own description of the index, see Seo-Young Cho, “Evaluating Policies Against Human Trafficking Worldwide: An Overview and Review of the 3P Index,” *Journal of Human Trafficking* 1, no. 1 (January 2, 2015): 86–99, <https://doi.org/10.1080/23322705.2015.1014660>.

## ORGANISED CRIME AND GOVERNANCE

Yakuza in Japan have their own territory. So if a foreign group illegally works in the yakuza's territory, the yakuza will check and say, "Oh, you have to pay something, and I will protect you." That's the usual case for how the yakuza get money and are in contact with these criminal groups. So for example there used to be in the Kabukichō area, in Shinjuku, many foreigners' groups running pubs or sexual service shops. So [that's] the kind of relationship between Yakuza and foreigners' criminal groups.

(Interview with participant from the National Police Agency)

Now it's a mixture of everything. At the beginning, [it was mostly] through the mafias, you know. And of course recruitment agencies—NPOs can be one of them. And also even relatives. And friends. So they can invite someone that they know, and they can also pair up with someone here, by getting married for example. But that person is paying for that relative or friend. So it has expanded. Not only groups like syndicates or agencies, but even personal friends and relatives are also kind of ... traffickers, in some way.

(Interview with Leny Tolentino, ENCOM)

An oft-repeated mantra is that human trafficking is a major business dominated by transnational organised crime.<sup>88</sup> As discussed above, this claim is an important part of governing human trafficking through mechanisms set up to deal with crime and security. However, discussing the role that organised crime groups play in the governance of human trafficking is complicated by the ambiguity of the term "organised crime" itself; as with human trafficking, there exists a considerable debate over what exactly the term "organised

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<sup>88</sup> For examples of this claim being made with explicit reference to Japan, see Jake Adelstein, *Tokyo Vice: An American Reporter on the Police Beat in Japan* (New York, NY: Pantheon Books, 2009); Loring Jones et al., "Human Trafficking between Thailand and Japan: Lessons in Recruitment, Transit and Control," *International Journal of Social Welfare* 20, no. 2 (June 15, 2009): 203–11, <https://doi.org/10.1111/j.1468-2397.2009.00669.x>; Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge: Cambridge University Press, 2010), 152–57; Kinsey Alden Dinan, "Trafficking in Women from Thailand to Japan: The Role of Organized Crime and Governmental Response," *Harvard Asia Quarterly* 6, no. 3 (2002): 4–13.



crime” means.<sup>89</sup> For example, according to the United Nations Convention against Transnational Organised Crime:

‘Organized criminal group’ shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.<sup>90</sup>

However, as Schelling notes, this definition is far broader than the conventional understanding of the term “organised crime,” which is more commonly associated with mafia-like organisations than with, say, a three-person counterfeiting ring. Schelling argues that when we use the term “organised crime,” we are referring to groups that are actively organising spheres of criminal activity—groups that created monopolies over certain criminal activities so that they can extract monopoly profits.<sup>91</sup> Cressey, one of his contemporaries, likewise argued against a broad understanding of the term “organised crime” and instead suggested the term be used to designate groups that were highly organised and hierarchical in character.<sup>92</sup>

Other scholars, though, have disputed these characterisations. McIlwain and Morselli argue against the hierarchical model of organised crime in favour of a network approach.<sup>93</sup> Levi, reminding us that much of this semantic difficulty comes from the instrumental nature of the term, argues that the true “social definition of ‘organised criminals’” would be “a set of people whom the police and other agencies of the state, regard or wish us to regard as

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<sup>89</sup> For a more detailed analysis of this debate, see Federico Varese, “General Introduction: What Is Organized Crime?,” in *Organized Crime: Critical Concepts in Criminology*, ed. Federico Varese, vol. 1, 4 vols. (London: Routledge, 2010), 1–35.

<sup>90</sup> UN General Assembly, “United Nations Convention against Transnational Organized Crime,” A/RES/55/25 § (2001), 5.

<sup>91</sup> Thomas C. Schelling, “What Is the Business of Organized Crime?,” *The American Scholar* 40, no. 4 (1971): 643–52.

<sup>92</sup> Donald Ray Cressey, *Criminal Organization: Its Elementary Forms* (London: Heinemann Educational, 1972).

<sup>93</sup> Jeffrey Scott McIlwain, “Organized Crime: A Social Network Approach,” *Crime, Law and Social Change* 32, no. 4 (December 1, 1999): 301–23, <https://doi.org/10.1023/A:1008354713842>; Carlo Morselli, *Inside Criminal Networks* (New York, NY: Springer New York, 2009), 5–11.

‘really dangerous’ to its essential integrity.”<sup>94</sup> And Reuter argues that the illegal character of these activities tends to preclude any single group of actors from growing large enough to create a monopoly,<sup>95</sup> with one notable exception: dispute settlement and contract enforcement for markets where the state is unable or unwilling to provide these services.<sup>96</sup> This can include legal markets where the character of the contract or dispute makes it unamenable to normal legal proceedings—for example, the price fixing and customer allocation in the sector dealing with transportation of solid waste<sup>97</sup>—as well as illegal markets such as the market for illegal drugs.

While these activities can be managed by the types of organisations we most often associate with organised crime—i.e., mafia-type groups—Reuter acknowledges that other groups with suitable sanctioning powers (such as industry associations and cartels) have achieved similar arrangements in areas that lack major mafia-type organisations.<sup>98</sup> Thus for both Schelling and Reuter, organised crime groups are defined not as groups that have organised for the purpose of committing a crime, but rather groups that seek to govern criminal actors. These are the types of “organised crime” groups relevant here: the groups that are taking on the role of the “regulatory state”—enforcing contracts, mediating disputes, mitigating risk<sup>99</sup>—for areas of economic activity that the state will not—or cannot—regulate.

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<sup>94</sup> Michael Levi, “Perspectives on ‘Organised Crime’: An Overview,” *The Howard Journal of Criminal Justice* 37, no. 4 (November 1, 1998): 335, <https://doi.org/10.1111/1468-2311.00104>.

<sup>95</sup> Peter Reuter, *Disorganized Crime: The Economics of the Visible Hand* (Cambridge, MA: MIT Press, 1983).

<sup>96</sup> Peter Reuter, “Social Control in Illegal Markets,” in *Toward a General Theory of Social Control, Volume 2: Selected Problems*, ed. Donald J. Black (New York: Academic Press, 1984), 29–58.

<sup>97</sup> Peter Reuter, “Racketeering in Legitimate Industries: A Study in the Economics of Intimidation” (Santa Monica, CA: RAND, January 1, 1987).

<sup>98</sup> Peter Reuter, “The Cartage Industry in New York,” *Crime and Justice: A Review of Research* 18 (1993): 149–202.

<sup>99</sup> See for example Peter N. Grabosky, “Beyond the Regulatory State,” *Australian & New Zealand Journal of Criminology* 27, no. 2 (1994): 192–197; Colin Scott, “Regulation in the Age of Governance: The Rise of the Post-Regulatory State,” in *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, ed. Jordana Jacint and David Levi-Faur (Cheltenham: Edward Elgar, 2004), 145–74; John Braithwaite, “The Regulatory State?,” in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin (Oxford: Oxford University Press, 2009), 217–39; Colin Scott, “The

Gambetta, who along with Reuter is one of the foremost writers on Italian organised crime, argues that the driving force behind the creation of the Mafia in Sicily is a lack of trust, first and foremost in the state, but subsequently also in one's fellow Sicilians.<sup>100</sup> Gambetta builds upon Reuter's framework to argue that as a result of this lack of trust, it is *protection* that the Mafia are providing and seeking to monopolise. By cultivating a reputation for violence, the Mafia are then able to not only enforce contracts and resolve disputes, but also, for example, to enforce property rights, to distribute and enforce licences to engage in particular economic activities in specific locations, and to punish anti-social behaviour with the aim of general and specific deterrence. Predatory behaviour is largely an outgrowth of this protective function—such as, for example, the use of violence to protect a monopoly or oligopoly whose rents they are extracting. Even in cases of “protection” originally sold simply as protection from the Mafia itself (i.e., extortion), Gambetta argues that Mafiosi are often forced to follow through and provide genuine protection when called upon, since otherwise they risk losing legitimacy and being displaced by a new provider of protection.<sup>101</sup>

Gambetta also notes that members of a mafia group may engage in criminal activities unrelated to the business of protection, such as trafficking in narcotics or counterfeit goods. However, he classifies these peddlers in contraband as internal consumers of the primary service provided by the Mafia: protection.<sup>102</sup> Gambetta further argues that despite our association of the Mafia with various illicit activities, Mafiosi stick to the business of protection—partly because it is all they are good at, but also because their reputation for violence means that other criminals may not want to buy or sell from them for fear of being cheated.<sup>103</sup> More recently, Cockayne has argued that mafias draw upon this latent potential for violence to create a complex system of power relationships based rules and authority

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Regulatory State and Beyond,” in *Regulation, Institutions and Networks*, ed. Peter Drahos (Canberra, ACT: ANU Press, 2015), <http://hdl.handle.net/10197/6786>.

<sup>100</sup> Diego Gambetta, “Mafia: The Price of Distrust,” in *Trust: Making and Breaking Cooperative Relations*, ed. Diego Gambetta (Oxford: Blackwell, 1988), 158–75.

<sup>101</sup> Here drawing upon Howard Abadinsky, *The Criminal Elite: Professional and Organized Crime* (Westport, CT: Greenwood Press, 1983).

<sup>102</sup> Diego Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge, MA: Harvard University Press, 1996).

<sup>103</sup> Diego Gambetta, *Codes of the Underworld: How Criminals Communicate* (Princeton, NJ: Princeton University Press, 2009), 31–53.

and whose legitimacy is frequently internalised by those subjected to it.<sup>104</sup> In other words, organised crime engages in necropolitics in much the same way as the state.

Gambetta and Cockayne focus primarily on mafias in the most traditional sense of the word: Italian (or Italian-American) organised crime groups. However, subsequent scholars such as Varese and Hill argue that the essential characteristics Gambetta ascribes to the Mafia—groups which specialise in the selling and monopolising of protection in areas, markets or communities where it is otherwise absent—could also be found in criminal organisations in other communities, and they took to calling these groups “mafias” as well.<sup>105</sup> Varese, whose research focussed on the Russian Mafia, further makes the following observation:

The mafia differs from organized crime in its relation to the state. The mafia and the state are both agencies that deal in protection. While the mafia *directly* impinges on the state's jurisdiction, organized crime does not. Furthermore, the mafia is willing to offer protection both to *legal* (but poorly protected by the state) and *illegal* transactions.<sup>106</sup>

Hill's work on the yakuza, which he calls “the Japanese Mafia,” is of particular relevance to this dissertation, and I will return to some of his findings in more detail in subsequent chapters. For this chapter, what is important is that Hill finds that the yakuza also meets the criteria of a mafia, deriving much of their income from *mikajimeryō* (protection fees). Much of these are drawn from the *mizu shōbai* (nightlife entertainment industry, including bars, restaurants and sex shops) and construction industry, with a smaller portion coming from street sex workers—all of which are industries where human trafficking has been alleged to occur. While the payment of these fees is not strictly voluntary—different yakuza groups have their own *nawabari* (turf), and businesses operating in that *nawabari* that do not pay are likely to suffer a variety of disruptions to their business—it is nevertheless accompanied

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<sup>104</sup> James Cockayne, *Hidden Power: The Strategic Logic of Organized Crime* (Oxford: Oxford University Press, 2016), 15–44.

<sup>105</sup> Federico Varese, *The Russian Mafia: Private Protection in a New Market Economy: Private Protection in a New Market Economy* (Oxford: Oxford University Press, 2001), 1–14; Peter Hill, *The Japanese Mafia: Yakuza, Law, and the State* (Oxford: Oxford University Press, 2003), 6–35.

<sup>106</sup> Varese, *The Russian Mafia*, 5.

by genuine protection services, such as the removal of unruly customers, collection of unpaid debts, and even a smoothing of relationships with the police.<sup>107</sup>

For those establishments that operate on the edge of the law, normal channels of protection may be unavailable to them. The drug trade is the classic example of this phenomenon, since drug traffickers cannot turn to the police when they are robbed or when their clients refuse to honour debts.<sup>108</sup> And unsurprisingly, in Japan the business in “shabu” (methamphetamine hydrochloride) is dominated by the yakuza. According to Tamura, amateurs who enter the drug market without yakuza connection or membership are seldom successful, since they risk being cheated by the customers or intermediaries.<sup>109</sup>

However, even businesses that stay within the confines of the law may find it difficult to turn to the police. As conflict criminologists have noted, policing resources are not distributed evenly, and marginalised communities can find that the police are either indifferent to their needs or actively hostile towards them.<sup>110</sup> This helps explain why organised crime groups are so often established in immigrant communities. In the United States, the most famous example of this phenomenon is the Cosa Nostra in Italian-American communities,<sup>111</sup> although we can also see it in a range of marginalised or once-

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<sup>107</sup> Hill, *The Japanese Mafia*.

<sup>108</sup> Bruce A. Jacobs, *Robbing Drug Dealers* (New York, NY: Aldine de Gruyter, 2000); Volkan Topalli, Richard Wright, and Robert Fornango, “Drug Dealers, Robbery and Retaliation. Vulnerability, Deterrence and the Contagion of Violence,” *British Journal of Criminology* 42, no. 2 (March 1, 2002): 337–51, <https://doi.org/10.1093/bjc/42.2.337>; Barbara Denton and Pat O’Malley, “Gender, Trust and Business: Women Drug Dealers in the Illicit Economy,” *British Journal of Criminology* 39, no. 4 (September 1, 1999): 513–30, <https://doi.org/10.1093/bjc/39.4.513>.

<sup>109</sup> Masayuki Tamura, “The Yakuza and Amphetamine Abuse in Japan,” in *Drugs, Law, and the State*, ed. Harold Traver and Mark Gaylord (Hong Kong: Hong Kong University Press, 1992), 99–118.

<sup>110</sup> David F. Greenberg, Ronald C. Kessler, and Colin Loftin, “Social Inequality and Crime Control,” *The Journal of Criminal Law and Criminology* 76, no. 3 (1985): 684–704; Allen E. Liska, “Introduction to the Study of Social Control,” in *Social Threat and Social Control*, ed. Allen E. Liska (New York, NY: SUNY Press, 1992), 1–32; Stephanie L. Kent and David Jacobs, “Minority Threat and Police Strength from 1980 to 2000: A Fixed-Effects Analysis of Nonlinear and Interactive Effects in Large U.S. Cities An Interdisciplinary Journal: The Official Publication of the American Society of Criminology,” *Criminology* 43 (2005): 731–60; Malcolm D. Holmes et al., “Minority Threat, Crime Control, and Police Resource Allocation in the Southwestern United States,” *Crime & Delinquency* 54, no. 1 (January 2008): 128–52, <https://doi.org/10.1177/0011128707309718>.

<sup>111</sup> Letizia Paoli, *Mafia Brotherhoods : Organized Crime, Italian Style* (Oxford: Oxford University Press, 2003).

marginalised communities including Chinese-Americans,<sup>112</sup> Russian-Americans,<sup>113</sup> and Jewish-Americans.<sup>114</sup> In Japan, an equivalent example can be found with the Korean organised crime groups that rose up in the aftermath of the Second World War.<sup>115</sup>

Thus if we define governance as “the conduct of conduct,” it is clear here that organised crime groups have governance functions. This can be a form of disciplinary governance similar to that exercised by criminal justice organisations, where actors in spaces governed by mafia groups refrain from certain forms of anti-social conduct out of fear of reprisals from those groups, out of respect for those groups, or simply because they no longer see those forms of anti-social conduct as an appropriate means to realise their goals in those spaces. It can also be a form of commercial governance, where a business refrains from engaging in certain practices, operating in certain spaces, or else taking measures it might otherwise have taken on account of their understanding that they are operating within the territory of a mafia group. For human trafficking, this means that a business might, for example, decide not to employ underage sex workers because the local organised crime group has forbidden it. Or it could mean that an exploited worker chooses not to escape when given the opportunity because they fear retaliation from a mafia group.

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<sup>112</sup> Ko-lin Chin, *Chinatown Gangs: Extortion, Enterprise, and Ethnicity* (Oxford: Oxford University Press, 2000).

<sup>113</sup> James O. Finckenauer and Elin J. Waring, *Russian Mafia in America: Immigration, Culture, and Crime* (Boston, MA: Northeastern University Press, 1998).

<sup>114</sup> Charles Van Onselen, “Jewish Marginality in the Atlantic World: Organised Crime in the Era of the Great Migrations, 1880–1914,” *South African Historical Journal* 43, no. 1 (November 2000): 96–137, <https://doi.org/10.1080/02582470008671909>.

<sup>115</sup> David E. Kaplan and Alec Dubro, *Yakuza: Japan’s Criminal Underworld* (Berkeley, CA: University of California Press, 2003), 35–38, 73–92; H. Richard Friman, “Informal Economies, Immigrant Entrepreneurship and Drug Crime in Japan,” *Journal of Ethnic and Migration Studies* 27, no. 2 (April 1, 2001): 313–33, <https://doi.org/10.1080/13691830020041633>; Jeffrey W. Alexander, “Japan’s Hiropon Panic: Resident Non-Japanese and the 1950s Meth Crisis,” *International Journal of Drug Policy* 24, no. 3 (May 2013): 238–43, <https://doi.org/10.1016/j.drugpo.2012.12.001>.

## CHAPTER 3: A GENEALOGY OF HUMAN TRAFFICKING GOVERNANCE

### INTRODUCTION

The Ministry of Justice defines human trafficking according to Japan's criminal law, specifically Penal Code, Article 24. There is no strict definition there, but the Ministry of Justice uses the definition in the Palermo Protocol.

(Interview with participants from the Ministry of Justice)

For us, as people who is working on this issue, this is a grey area, if we can define this as human trafficking or not—because sometimes both sides mutually benefit, and they agree in some sort of way that, okay, one person pays for the transport for job seeking and the person will bring the person who paid to another country. And they don't think that this is human trafficking. This is just helping a friend or helping a person you know.

(Interview with participant from the Royal Thai Embassy of Thailand)

I always have this image when I say or hear the word “trafficking” ... I always connect it with movements on the road. I mean cars with a certain destination to reach but that cannot go because of the traffic jam. So this is the basic image that comes into my mind when I say this word, “trafficking of people.”

(Interview with Leny Tolentino, ENCOM)

During my fieldwork, I opened my interviews by asking the participant how they defined human trafficking. Very often these participants told me that they defined human trafficking according to the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol). According to the Trafficking Protocol:

- a) “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;

- b) 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 of the means set forth in subparagraph (a) have been used;
- c) 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;
- d) “Child” shall mean any person under eighteen years of age.<sup>116</sup>

My respondents were far from alone in defining trafficking according to the Trafficking Protocol. Signed in December 2000, the Trafficking Protocol’s definition has become *the* international definition of “human trafficking.” As Gallagher puts it in her comprehensive overview of the state on anti-trafficking laws:

The Protocol’s understanding of trafficking has been adopted, explicitly or implicitly, by all relevant UN organs and agencies, as well as by other intergovernmental organizations working on this issue. [...] The core elements of that definition have been equally embraced by nongovernmental organizations working on trafficking and related issues. Since 2000, the majority of States have enacted comprehensive anti-trafficking laws that generally reflect the internationally agreed definition.<sup>117</sup>

However, this description conceals more than it reveals. For a number of my respondents, the Trafficking Protocol was not mentioned at all. For others, particularly in government, it was only part of a broader definition—one that also took into account various national laws. Moreover, even among those that emphasised the importance of the Trafficking Protocol, there was often disagreement over who were really “victims of trafficking.”

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<sup>116</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“Trafficking Protocol”), New York, 15 Nov 2000, 319 U.N.T.S. 2237, *entered into force* 25 Dec 2003, art. 3.

<sup>117</sup> Anne T. Gallagher, *The International Law of Human Trafficking* (New York, NY: Cambridge University Press, 2010), 42.



Thus despite common nominal adherence to the definition in the Trafficking Protocol, anti-trafficking practitioners still define human trafficking according to a range of different human trafficking discourses. This is possible because the above definition of “human trafficking” is undermined by its own vague terminology. For example, nowhere does the protocol define “position of vulnerability”—which could mean people who were legally not fully independent even though they are of all full age, but could also potentially mean people who are economically vulnerable (i.e., who are poor), or even people who are vulnerable on account of being born female in patriarchal society. Moreover, nowhere does the protocol define “exploitation of the prostitution of others,” making it unclear whether simply running a brothel or charging sex workers for protection would qualify. This vagueness is not an accident, but a deliberate attempt at compromise. During the negotiations over the wording of the Protocol, the two main NGO blocks could not come to an agreement over the fundamental question of whether or not sex work could ever be voluntary. As a result, one of the members of the group broke the stalemate by suggesting they simply leave key terms such as “the exploitation of the prostitution of others” and “other forms of sexual exploitation”—terms that were known to be contentious—undefined.<sup>118</sup>

This chapter thus explores the genealogy of human trafficking, by exploring the competing human trafficking discourses that shaped modern human trafficking governmentalities in general and the Trafficking Protocol in particular. This genealogy is crucial to discussing the transnational governance of human trafficking in Japan, since in order to assess the influence of this transnational governance we must first know what those actors are aiming to achieve in Japan. This chapter begins by looking at the moral crusade against the slave trade, and by explaining how the Anglo-European conception of “trafficking” is intrinsically linked to a history of human bondage on a massive scale. I then focus on the moral crusade against the “White Slave trade,” in order to show how human trafficking governance has often been both racialised and sexualised. Next, I address the rise and fall of the discourse

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<sup>118</sup> Melissa Hope Ditmore and Marjan Wijers, “Crime, Sex, Money and Migration: The Negotiations on the United Nations Protocol on Trafficking in Persons (2003),” in *Encyclopedia of Prostitution and Sex Work*, ed. Melissa Hope Ditmore (Westport, CT: Greenwood Press, 2006), 693.

of “trafficking in women and children” during the late 19<sup>th</sup> and early 20<sup>th</sup> century, to show how male victims have been historically excluded from human trafficking discourses. I then look at the resurrection of these discourses in the post-War years, and the broader social movements that helped create divergent—and often directly opposing—modern human trafficking governmentalities. This chapter concludes by taking a deeper look at the Trafficking Protocol to explore its drafting, passage and interpretation, as well as by discussing the more recent trend towards using the term “modern day slavery” as a synonym or replacement for “human trafficking.”

## HUMAN TRAFFICKING BEFORE THE WAR

### *ABOLITION AND THE BIRTH OF ANTI-TRAFFICKING*

The earliest usage of the word “trafficking” to describe something that is done to people can be found in old documents on slavery. Bosman’s 1705 treatise on Guinea, for example, uses the “slave-traffick,” as a synonym for “slave trade.”<sup>119</sup> This follows the older meaning of the word “traffic,” which, according to the OED, was originally a neutral term for “the transportation of merchandise for the purpose of trade.” However, during the 18<sup>th</sup> century the word “traffick” took on a more sinister tone, and began to mean “dealing or bargaining in something which should not be made the subject of trade.”<sup>120</sup> This linguistic shift happened in parallel to the rise of the anti-slavery movement in the United States and Britain, as what began as a sectarian religious movement transformed into a popular secular cause with the formation of the Society for Effecting the Abolition of the Slave Trade in 1787.<sup>121</sup> The Society and the other abolitionists were classic examples of Becker’s “moral entrepreneurs”—specifically, they were what Becker called “rule creators”: those for whom “existing rules do not satisfy [...] because there is some evil which profoundly disturbs [them].”<sup>122</sup> In the language of governmentality, these groups aimed to redefine “the slave trade” as a “problem in need of governance.” As such, it was not uncommon for these abolitionists to describe the slave trade as a “traffick” in the more sinister sense of the word.<sup>123</sup>

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<sup>119</sup> Willem Bosman, *A New and Accurate Description of the Coast of Guinea, Divided into the Gold, the Slave and the Ivory Coasts* (London: J. Knapton, A. Fell, R. Smith, D. Midwinter, W. Haws, W. Davis, G. Strahan, B. Lintott, J. Round, and J. Wale, 1705), 96.

<sup>120</sup> “Traffic, N.,” *OED Online* (Oxford University Press), accessed November 17, 2016, <http://www.oed.com/view/Entry/204333>. “Traffick” is an archaic spelling of “traffic.”

<sup>121</sup> Simon Morgan, “The Political as Personal: Transatlantic Abolitionism c. 1833–67,” in *A Global History of Anti-Slavery Politics in the Nineteenth Century*, ed. William Mulligan and Maurice Bric (Basingstoke, Hampshire: Palgrave Macmillan, 2013), 78–96; David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Oxford: Oxford University Press, 1999), 39–49.

<sup>122</sup> Becker, *Outsiders*, 147.

<sup>123</sup> See for example William Pitt, *The Speech of the Right Honourable William Pitt, on a Motion for the Abolition of the Slave Trade, in the House of Commons, on Monday the Second of April, 1792* (London: James Phillips, 1792), 30; James Ramsay, *Objections to the Abolition of the Slave Trade, with Answers* (London: James Phillips, 1788), 10, <http://archive.org/details/objectionstoabol00ramsiala>.

Thanks in large part to the efforts of these moral entrepreneurs, the British government outlawed this “traffick” with the Abolition of the Slave Trade Act in 1807—an order that was to be enforced by the Royal Navy.<sup>124</sup> As Becker notes, “when a man has been successful in the enterprise of getting a new rule established [...] he may generalize his interest and discover something new to view with alarm, a new evil about which something ought to be done.”<sup>125</sup> However, in this case such a generalisation was unnecessary, as the original evil—slavery itself—remained in place. As a result, in 1823, abolitionists created a new group: the Society for Mitigation and Gradual Abolition of Slavery Throughout the British Dominions. This group was able to build on the momentum of the earlier effort to abolish the slave trade, and following their lobbying the British parliament outlawed slavery itself in the British Empire with the 1833 Abolition of Slavery Act.<sup>126</sup> Again, moral entrepreneurs reached for a new target rather than disbanding, and in 1839 abolitionists formed the British and Foreign Anti-Slavery Society—more commonly known simply as the Anti-Slavery Society—with the goal of eradicating slavery throughout the world.<sup>127</sup>

Spurred on by the Anti-Slavery Society, the British government began what would be a long push to end the slave trade internationally, a push which culminated in the General Act of the Brussels Conference that forbade slavery internationally in 1890.<sup>128</sup> In order to comply with this new international legal order, European colonies followed Britain’s example by replacing African slaves with Asian “coolies”—indentured labourers who, in practice, faced similar working conditions to the slaves and were often abducted or deceived into signing coercive contracts.<sup>129</sup> In fact, many European countries had already made the shift to

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<sup>124</sup> Seymour Drescher, *Econocide: British Slavery in the Era of Abolition*, 2nd ed. (Chapel Hill, NC: University of North Carolina Press, 2010).

<sup>125</sup> Becker, *Outsiders*, 153.

<sup>126</sup> Seymour Drescher, *Abolition: A History of Slavery and Antislavery* (Cambridge: Cambridge University Press, 2009), 245–66.

<sup>127</sup> Anti-Slavery International, “What Is Modern Slavery?,” Anti-Slavery International, accessed July 8, 2017, <https://www.antislavery.org/slavery-today/modern-slavery/>.

<sup>128</sup> Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Leiden: Martinus Nijhoff, 2013), 54–73.

<sup>129</sup> Lisa Yun, *The Coolie Speaks: Chinese Indentured Laborers and African Slaves in Cuba* (Philadelphia, PA: Temple University Press, 2008), 1–35; Ei Murakami, “Two Bonded Labour Emigration Patterns in Mid-Nineteenth-Century Southern China: The Coolie Trade and Emigration to Southeast Asia,” in

indentured coolie labour even before the campaign for abolition went global, and following the American Civil War, the American South embraced coolies to replace the slave labour that they had lost along with the war.<sup>130</sup> Thus, viewed through the lens of modern human trafficking discourses, the British-led “abolition” during the 19<sup>th</sup> century was largely a shift from one form of human trafficking to another. Nevertheless, 19<sup>th</sup> century abolitionist campaigns provided the basic logic that underpins contemporary human trafficking governmentalities: the idea that certain labour practices constitute an international problem that requires a transnational governance solution.

As the abolitionist movement spread, other socio-political movements sought to tap into its power by co-opting its language for their own causes. In the antebellum American South slave holders attempted to co-opt anti-slavery rhetoric by arguing that, in fact, all labour was slavery—and that the “wage slavery” of Caucasians (“White slavery”) was worse than the “plantation slavery” of African Americans (“Black slavery”).<sup>131</sup> And in 1880s, politicians in California argued that the use of Chinese indentured labourers constituted a form of slavery—and that all Chinese immigration should therefore be banned.<sup>132</sup> John Miller, the California senator who wrote a bill to prohibit Chinese immigration, even argued in 1882 that this immigration was a form of “trafficking.”<sup>133</sup>

But it would be the movement against the British Contagious Disease Acts (CDAs) that would ultimately prove to be the most effective at co-opting the language of abolition. The CDAs were a set of laws passed in the 1860s that regulated brothels and (alleged) sex

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*Bonded Labour and Debt in the Indian Ocean World*, ed. Gwyn Campbell and Alessandro Stanziani (London: Pickering & Chatto, 2013), 153–64.

<sup>130</sup> Moon-Ho Jung, *Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation* (Baltimore, MD: Johns Hopkins University Press, 2006), 73–106; Joost Coté, “Slaves, Coolies, and Garrison Whores: A Colonial Discourse of ‘Unfreedom’ in the Dutch East Indies,” in *Sex, Power, and Slavery*, ed. Gwyn Campbell and Elizabeth Elbourne (Athens, OH: Ohio University Press, 2014), 561–82.

<sup>131</sup> Marcus Cunliffe, *Chattel Slavery and Wage Slavery: The Anglo-American Context, 1830-1860* (Athens, GA: University of Georgia Press, 1979), 1–31.

<sup>132</sup> Jung, *Coolies and Cane*, 12.

<sup>133</sup> John F. Miller, “Abstracts from the Text of Senator Miller’s Speech On His Bill to Prohibit Chinese Immigration,” in *Campaign of ’84: Biographies of S. Grover Cleveland and Thomas A. Hendricks*, ed. Benjamin La Fevre, Thomas Valentine Cooper, and Hector Tyndale Fenton (Chicago, IL: Baird & Dillon, 1884), 283.

workers, nominally with the aim of preventing outbreaks of sexually transmitted infections (STIs) in the military. In practice, however, this meant that women alleged to be selling sex were forced to undergo highly intrusive, painful, and often unnecessary medical exams, with those who tested positive for STIs frequently forcibly confined in “lock hospitals.”<sup>134</sup> In response to reports of these and other abuses, Josephine Butler and Elizabeth Wolstenholme founded the Ladies' National Association for the Repeal of the Contagious Diseases Acts (LNA) in 1869. This group and their allies not only highlighted the abuses perpetuated by the CDA, but also argued that the state regulation of sex work amounted to the state's participation in the enslavement of women. By referring to the regulations as “slavery” and themselves as “abolitionists,” activists were able to link their fight against the CDAs to the popular movement to abolish the Atlantic slave trade, which in turn helped them build significant political traction for the repeal movement.<sup>135</sup>

Then in 1875, Butler founded what would later be called the International Abolitionist Federation (IAF), an umbrella organisation whose purpose was to end the state regulation of sex work worldwide.<sup>136</sup> As a result, well before the last of the Contagious Disease Acts was repealed in 1886, the movement against the state regulation of sex work had already gone international.<sup>137</sup> And it was in the context of this international movement that the IAF began referring to the procurement of women for brothel prostitution, particularly when

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<sup>134</sup> Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge: Cambridge University Press, 1982), 11–70; Philippa Levine, *Prostitution, Race and Politics: Policing Venereal Disease in the British Empire* (New York: Routledge, 2003), 37–175.

<sup>135</sup> Walkowitz, *Prostitution and Victorian Society*, 93–136; Kathleen Barry, *Female Sexual Slavery* (New York, NY: NYU Press, 1979), 14–38.

<sup>136</sup> Anne Summers, “Which Women? What Europe? Josephine Butler and the International Abolitionist Federation,” *History Workshop Journal* 62, no. 1 (October 1, 2006): 214–31, <https://doi.org/10.1093/hwj/dbl005>.

<sup>137</sup> Walkowitz, *Prostitution and Victorian Society*, 90–99; Anne Summers, “Introduction: The International Abolitionist Federation,” *Women's History Review* 17, no. 2 (April 1, 2008): 149–52, <https://doi.org/10.1080/09612020701706961>; Petra de Vries, “Josephine Butler and the Making of Feminism: International Abolitionism in the Netherlands (1870–1914),” *Women's History Review* 17, no. 2 (April 1, 2008): 257–77, <https://doi.org/10.1080/09612020701707274>; Bruno P. F. Wanrooij, “Josephine Butler and Regulated Prostitution in Italy,” *Women's History Review* 17, no. 2 (April 1, 2008): 153–71, <https://doi.org/10.1080/09612020701707092>.

this crossed national borders, as “trafficking”—a word drawn directly from the earlier fight to abolish the slave trade.<sup>138</sup>

However, during the 1880s, the movement against brothel prostitution came to be increasingly dominated by moral puritans primarily interested not in protecting the rights of women but in putting an end to activities they perceived as “vices.” Following years of dubiously sourced exposés of young British girls being moved to brothels in Belgium and W.T. Stead’s 1885 salacious (though largely fabricated) best-selling serial “The Maiden Tribute of Modern Babylon,” these actors pushed for a new law against brothel keeping.<sup>139</sup> This led to the passage of the Criminal Law Amendment (CLA) Act, 1885, an “An Act to make further provision for the Protection of Women and Girls, the suppression of brothels, and other purposes.”<sup>140</sup>

The CLA Act altered the governance of sexuality in a number of ways: for example, it raised the age of consent for girls from thirteen to sixteen and made procuring women for prostitution a crime. However, the CLA’s most significant provision was that which turned brothel keeping into a summary offense.<sup>141</sup> This allowed courts to indict brothel keepers without the need for a trial, which in turn made it easy for the police to shut down both brothels and any lodging alleged to be a brothel. For sex workers, this meant they would either be forced to live and work on the street—where they could be arrested for annoyance and vagrancy offenses—or else to live with a pimp.<sup>142</sup> The CLA thus appeared to

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<sup>138</sup> Stephanie A. Limoncelli, *The Politics of Trafficking: The First International Movement to Combat the Sexual Exploitation of Women* (Stanford, CA: Stanford University Press, 2010), 44–47.

<sup>139</sup> Jo Doezema, *Sex Slaves and Discourse Masters: The Construction of Trafficking* (London: Zed Books, 2010), 55–64; Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago, IL: University of Chicago Press, 1992), 121–34; Gretchen Soderlund, *Sex Trafficking, Scandal, and the Transformation of Journalism, 1885-1917* (Chicago, IL: University of Chicago Press, 2013), 24–66..

<sup>140</sup> Criminal Law Amendment Act, 1885, (Eng.). Text of law from Frederick Mead and A. H. Bodkin, eds., *The Criminal Law Amendment Act, 1885: With Introduction, Notes, and Index* (London: Shaw & Sons, 1885), <http://archive.org/details/criminallawamen00bodkgoog>.

<sup>141</sup> Criminal Law Amendment Act, 1885, §13 (Eng.).

<sup>142</sup> Walkowitz, *Prostitution and Victorian Society*, 210–13.

reflect an understanding that all those involved in the sex trade—including the sex workers themselves—were amoral deviants, and needed to be labeled and punished as such.<sup>143</sup>

Though Butler and many of her colleagues were alarmed at these developments, most major women's groups and religious organisations supported or even adopted the moral puritan position. These included both the British branches of the Women's Christian Temperance Union (WCTU) and the Salvation Army—groups that were actively pursuing a sex work prohibitionist agenda across the world, including in Japan.<sup>144</sup> Likewise, outside of Britain many of the national chapters of the IAF had adopted the social purity movement's positions. These groups now pushed not only for an abolition of the state regulation of sex work, but also a prohibition on women to engage in such work at all—a prohibition premised on the notion that sex work was deleterious to a nation's moral and physiological health.<sup>145</sup>

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<sup>143</sup> See Becker, *Outsiders*, 147–63, 177–208.

<sup>144</sup> Lucy Bland, "'Purifying' the Public World: Feminist Vigilantes in Late Victorian England," *Women's History Review* 1, no. 3 (September 1, 1992): 402–3, <https://doi.org/10.1080/09612029200200013>; Kazuhiro Oharazeki, "Anti-Prostitution Campaigns in Japan and the American West, 1890–1920," *Pacific Historical Review* 82, no. 2 (May 1, 2013): 175–214, <https://doi.org/10.1525/phr.2013.82.2.175>.

<sup>145</sup> Summers, "Which Women?," 222–27.



The passage of the CLA also led to the creation of a new, male-led group, the National Vigilance Association (NVA). Unlike groups like the LNA and the IAF, the NVA focussed not on the state regulation of brothels but instead on recruiters who forced or deceived women into sex work—practices they termed “White slavery.”<sup>146</sup> Again, the subtext here was that those women who had not been forced or deceived were abetting an immoral system and should be subject to state sanction. This new group of moral entrepreneurs were also very broad in their understanding of “prostitution,” and using the CLA Act’s anti-brothel provisions and their own connections with the police, they not only monitored women’s employment agencies, but also prosecuted “vendors of ‘questionable books and photographs’, owners of theatres staging ‘improper productions’, and exhibitors of ‘immodest works of art’ for their ‘assault on public decency.’”<sup>147</sup> Thus even as the British “abolitionist” campaign was becoming increasingly international at the dawn of the 20<sup>th</sup> century, it was also splintering into what would be long-lasting, competing movements with their own governmentalities: one which held that any state regulation of sex work was an abuse of the rights of women and needed to be abolished; one which held that state regulation was the best way to prevent exploitative practices of sex work; and one which held that sex work itself was immoral and needed to be prohibited.<sup>148</sup>

In 1899, after a year spent in preparatory work, the NVA hosted the first International Congress on the White Slave Trade in London.<sup>149</sup> This Congress led to the creation of the

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<sup>146</sup> Rachael Attwood, “Stopping the Traffic: The National Vigilance Association and the International Fight against the ‘White Slave’ Trade (1899–c.1909),” *Women’s History Review* 24, no. 3 (May 4, 2015): 325–50, <https://doi.org/10.1080/09612025.2014.964064>; Rachael Attwood, “Lock Up Your Daughters! Male Activists, ‘Patriotic Domesticity’ and the Fight Against Sex Trafficking in England, 1880–1912,” *Gender & History* 27, no. 3 (October 28, 2015): 611–27, <https://doi.org/10.1111/1468-0424.12153>; Frederick K. Grittner, “White Slavery: Myth, Ideology, and American Law” (University of Minnesota, 1986), 55–58; Daniel Gorman, “Empire, Internationalism, and the Campaign against the Traffic in Women and Children in the 1920s,” *Twentieth Century British History* 19, no. 2 (January 1, 2008): 186–216, <https://doi.org/10.1093/tcbh/hwm030>.

<sup>147</sup> Attwood, “Stopping the Traffic,” 327.

<sup>148</sup> Limoncelli, *The Politics of Trafficking*, 42–43.

<sup>149</sup> Barbara Metzger, “Towards an International Human Rights Regime during the Inter-War Years: The League of Nations’ Combat of Traffic in Women and Children,” in *Beyond Sovereignty: Britain, Empire and Transnationalism, c. 1880–1950*, ed. Kevin Grant, Philippa Levine, and Frank Trentmann

International Bureau for the Suppression of White Slavery, an international organisation which, though composed of a number of individual national committees, was effectively run by the British NVA.<sup>150</sup> Unlike the IAF, the International Bureau was state-centred and ideologically flexible. Its primary aim was the suppression of sex work, and as such it was perfectly willing to work with regulationist states to cut back on unlicensed sex work.<sup>151</sup> At the same time, medical advances in STI tests and treatment combined with the fading social influence of Christian moral purity movements in the early 20<sup>th</sup> century made the old abolitionism seem to many to be dated and out of touch. These factors led to the International Bureau displacing the IAF to become the pre-eminent international “anti-trafficking” organisation pre-WWII.<sup>152</sup>

In 1902, the French government convened an International Conference on the White Slave Traffic at the International Bureau’s behest. This seems to be the first use of the word “traffic” to refer to practices related to sex work at the international institutional level, a practice which continues to this day. However, the French and many other European states were still operating systems of state-regulated brothels, and wanted to avoid the creation of international laws and norms that called for the curtailment of those systems. As a result, the conference focussed only on problems related to involuntary sex workers—i.e., “White slaves.”<sup>153</sup> This led to the conference giving the following recommendations for states:

1. Severely punished will be any person who, to satisfy the passions of another, shall have procured, enticed or led astray, even with her consent, an underage girl, with immoral intent.
2. Equally will be punished any person who by violence, threats, abuse of authority, compulsion or fraud will have procured, enticed, or led astray a woman or a girl over age, with immoral intent.<sup>154</sup>

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(Basingstoke, Hampshire: Palgrave Macmillan, 2007), 56–57,

[https://doi.org/10.1057/9780230626522\\_4](https://doi.org/10.1057/9780230626522_4).

<sup>150</sup> Attwood, “Stopping the Traffic,” 327–33.

<sup>151</sup> Limoncelli, *The Politics of Trafficking*, 112–23.

<sup>152</sup> Levine, *Prostitution, Race and Politics*, 141–43; Daniel Gorman, *The Emergence of International Society in the 1920s* (Cambridge: Cambridge University Press, 2012), 53.

<sup>153</sup> Limoncelli, *The Politics of Trafficking*, 7–9, 112–32.

<sup>154</sup> Commission Législative, Rapport présenté par Mr. Ferdinand-Dreyfus, Annexe au Procès-

This gives us a definition of “White slave trafficking” with three components: an act (procuring, enticing and leading astray), a means (violence, threats, abuse of authority, compulsion and fraud) and a purpose (immoral intent). The need for a specific means is waved if the victim is underage. Overall, then, this 1902 understanding of “White slave trafficking” shares many features with the definition of “trafficking in persons” in the 2001 Trafficking Protocol. However, there are two key differences between those definitions: “trafficking” in the 1902 definition is limited to sex, and “trafficking victims” are limited to women and female children. These limitations mark a sharp break from earlier gender-neutral anti-slavery treaties, and not until 1949 would adult men be recognizable as victims of trafficking in international law. It would take a further fifty years for definitions of “trafficking” in international law to include acts other than prostitution.

The 1902 definition would form the basis of the 1904 International Agreement for the Suppression of the “White Slave Traffic” and the more widely-signed 1910 International Convention for the Suppression of the White Slave Traffic.<sup>155</sup> Though non-binding, these treaties still led countries to tighten border controls, monitor employment agencies for women, increase information sharing and arrest alleged trafficking.<sup>156</sup> Together, these treaties marked the beginning of the movement against “trafficking” at the international level. They also set off a fresh moral panic over white slavery, one initially based largely on myths propagated to advance specific policy goals and to increase sales of news media, but that became self-perpetuating over time.<sup>157</sup> Figure 1 (below) looks at the frequency of mentions of “white slave” and “white slavery” to show just how quickly they caught on:

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Verbal de la Quatrième Séance, 123. In Jean Allain, “White Slave Traffic in International Law,” *Journal of Trafficking and Human Exploitation* 1, no. 1 (February 14, 2017): 9–10, <https://doi.org/10.7590/24522775111>.

<sup>155</sup> International Agreement for the Suppression of the “White Slave Traffic” (1904 White Slavery Agreement) Paris, 18 May 1904, *League of Nations Treaty Series* vol. 1, 83, entered into force 18 July 1905. International Convention for the suppression of the “White Slave Traffic” (1910 White Slavery Convention), Paris, 4 May 1910, *League of Nations Treaty Series* vol. 3, 278, entered into force 18 Aug. 1912.

<sup>156</sup> Metzger, “Towards an International Human Rights Regime during the Inter-War Years,” 56–57; Allain, “White Slave Traffic in International Law.”

<sup>157</sup> See for example Mary Ann Irwin, “‘White Slavery’ as Metaphor Anatomy of a Moral Panic,” *Ex Post Facto* 5 (1996), <http://www.walnet.org/csis/papers/irwin-wslavery.html>; Mary Ting Yi Lui, “Saving

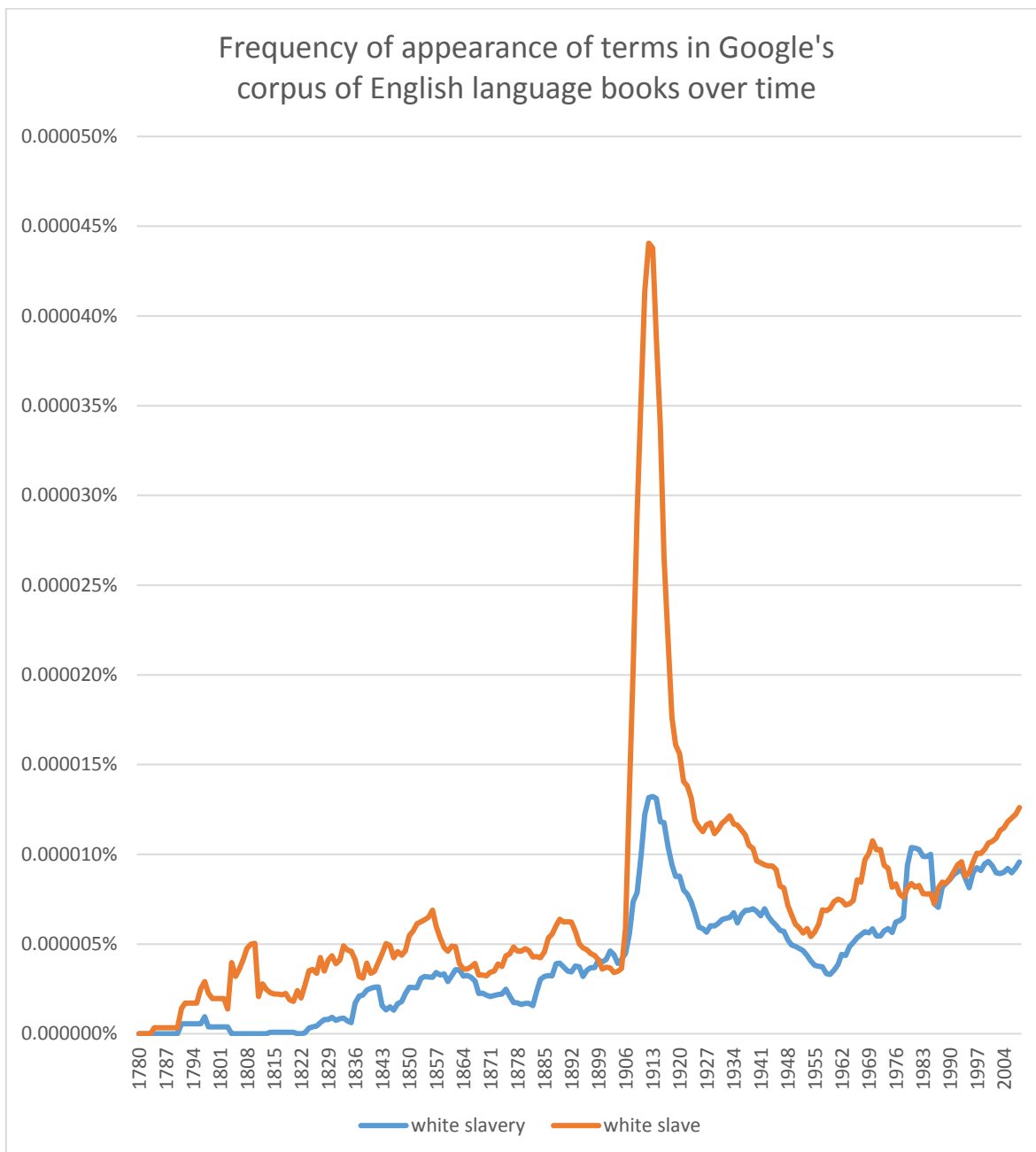


Figure 1: Frequency of appearance of terms in Google's corpus of English language books over time<sup>158</sup>

Young Girls from Chinatown: White Slavery and Woman Suffrage, 1910–1920,” *Journal of the History of Sexuality* 18, no. 3 (August 8, 2009): 393–417, <https://doi.org/10.1353/sex.0.0069>; Soderlund, *Sex Trafficking, Scandal, and the Transformation of Journalism, 1885-1917*.

<sup>158</sup> Data from <https://books.google.com/ngrams>. Google’s Ngram viewer allows users to query its database for the frequency of specific terms in a given corpus of books it has digitised. See Jean-

And yet many of the policies implemented in the name of fighting “White slavery” often did very little to protect women, and instead frequently became instruments of repression. The American Mann Act—which was primarily used by the police to arrest and control men and women of colour—is a particularly infamous example,<sup>159</sup> but others can be found across Anglo-European countries, from Greece’s 1912 law restricting women under 21 from travelling without a special permit<sup>160</sup> to Brazil’s efforts to stamp out its red light districts.<sup>161</sup> Moreover, the explicitly racist framing of “White slavery” meant the phrase could not survive in an international system which, following the First World War, was increasingly multiracial. The French and Italians were already expressing reservations about the term’s exclusion of non-Whites—Japan, which was in the midst of a period of modernisation and Europeanisation was given as an explicit example—as well as the fact that the term “slave traffic” did not capture all the aspects of the set of problems they aimed to govern.<sup>162</sup> Thus in 1919, the International Bureau for the Suppression of the White Slave Traffic rebranded as the International Bureau for the Suppression of the Traffic in Women and Children—although aside from being explicitly race-neutral, the acts described by this label remained largely unchanged.<sup>163</sup>

1919 also saw the creation of the League of Nations, whose founding document, the Covenant of the League of Nations, states that:

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League will entrust the League

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Baptiste Michel et al., “Quantitative Analysis of Culture Using Millions of Digitized Books,” *Science* 331, no. 6014 (January 14, 2011): 176–82, <https://doi.org/10.1126/science.1199644>.

<sup>159</sup> See for example Grittner, “White Slavery”; David J. Langum, *Crossing Over the Line: Legislating Morality and the Mann Act* (Chicago, IL: University of Chicago Press, 2006); Jessica R. Pliley, *Policing Sexuality: The Mann Act and the Making of the FBI* (Cambridge, MA: Harvard University Press, 2014).

<sup>160</sup> Edward J. Bristow, *Vice and Vigilance: Purity Movements in Britain since 1700* (Gill and Macmillan, 1977), 178.

<sup>161</sup> Ana Paula da Silva, Thaddeus Gregory Blanchette, and Andressa Raylane Bento, “Cinderella Deceived: Analyzing a Brazilian Myth Regarding Trafficking in Persons,” *Vibrant: Virtual Brazilian Anthropology* 10, no. 2 (December 2013): 377–419, <https://doi.org/10.1590/S1809-43412013000200012>.

<sup>162</sup> Allain, “White Slave Traffic in International Law,” 6–9.

<sup>163</sup> Gorman, *The Emergence of International Society in the 1920s*, 54; Attwood, “Stopping the Traffic.”

with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs.<sup>164</sup>

In 1921, the League followed up on this responsibility by passing the International Convention for the Suppression of the Traffic in Women and Children. The 1921 Treaty broke no new ground, simply calling on signatories to sign the 1904 and the 1910 agreements, while making some minor changes to those agreements.<sup>165</sup> But along with this treaty, the League also established the Advisory Committee on the Traffic of Women and Children (CTW), overseen by the Social Section of the League's Secretariat.<sup>166</sup> And the CTW would in turn put out a major report on the trafficking of women and girls in 1927 that concluded that state systems of regulating sex work were the primary drivers of this traffic. The report also attacked brothels for employing underage girls (the age of consent was 21 under the League regime), and suggested that these brothels were avoiding sanction by claiming that these women had misrepresented their own ages.<sup>167</sup>

While the report made it clear that a new convention was needed, states that were in favour of maintaining systems of sex work regulation were able to ensure that the negotiation for this convention focussed narrowly on the issue of underage sex work. The result was the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, a convention which removed the "means" portion of the three-part test established in 1904, so that now any woman "procured, enticed or led away" for the purpose of sex-related work was considered a victim of trafficking. In essence, the 1933 Convention was declaring that any woman crossing a border to engage in sex work was

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<sup>164</sup> Covenant of the League of Nations, Paris, 28 April 1919, entered into force 10 January 1920, art. 23, <http://www.refworld.org/docid/3dd8b9854.html>

<sup>165</sup> International Convention for the Suppression of the Traffic in Women and Children (1921 Trafficking Convention), Geneva, 30 September 1921, *League of Nations Treaty Series* vol. 9, 415, entered into force 15 June 1922.

<sup>166</sup> Jessica R. Pliley, "Claims to Protection: The Rise and Fall of Feminist Abolitionism in the League of Nations' Committee on the Traffic in Women and Children, 1919–1936," *Journal of Women's History* 22, no. 4 (December 16, 2010): 93–94.

<sup>167</sup> Julia Ann Laite, "The Association for Moral and Social Hygiene: Abolitionism and Prostitution Law in Britain (1915–1959)," *Women's History Review* 17, no. 2 (April 1, 2008): 208–10, <https://doi.org/10.1080/09612020701707209>; Pliley, "Claims to Protection"; Gorman, *The Emergence of International Society in the 1920s*, 69–108; Limoncelli, *The Politics of Trafficking*, 95–111.

being trafficked, while still leaving in place the possibility of state regulation of domestic sex work.<sup>168</sup>

While this was a setback for the anti-regulation groups, they still seemed to have momentum on their side, with even the previously staunchly pro-regulation International Bureau changing their position in the aftermath of the 1927 report.<sup>169</sup> This meant that effectively all the major anti-trafficking civil society groups were united against the state regulation of sex work. Building on this momentum, the CTW proposed a Draft Convention for the Suppression of the Exploitation of the Prostitution of Others in 1937. This Draft Convention defined all recruitment of both men and women of any age for the purpose of sex work as “trafficking,” and if passed it would have required signatories to end any systems of state regulation of sex work. However, the outbreak that year of the Sino-Japanese war brought the League-centred international system to a standstill, effectively putting those plans on hold until after the Second World War.<sup>170</sup>

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<sup>168</sup> International Convention for the Suppression of the Traffic in Women of Full Age, Geneva, 11 October 1933, *League of Nations Treaty Series*, vol. 150, 431, entered into force 24 August 1934.

<sup>169</sup> Limoncelli, *The Politics of Trafficking*, 89–92; Gorman, “Empire, Internationalism, and the Campaign against the Traffic in Women and Children in the 1920s,” 212–13.

<sup>170</sup> Metzger, “Towards an International Human Rights Regime during the Inter-War Years,” 66–74.

At the same time as “trafficking” was being defined away from “slavery” and towards becoming a euphemism for “sex work,” states and civil society actors were still working to define and prohibit slavery itself in international law.<sup>171</sup> In 1926, an international legal definition of slavery and the slave trade was established for the first time with the League of Nations’ Convention to Suppress the Slave Trade and Slavery:

- 1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- 2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.<sup>172</sup>

This definition focusses specifically on actions that treat human beings as literal property, actions are also referred to as “chattel slavery.” This definition further requires actual ownership of human beings, otherwise known as “*de jure* slavery.” It does not cover “*de facto* slavery,” i.e., the treatment human beings *as if* they were owned, or forced labour without the idea of ownership.<sup>173</sup> This narrowness was in response to demands by the colonial powers, who had already responded to domestic and international anti-slavery movements by outlawing *de jure* slavery. However, they had generally left untouched the underlying economic systems in their colonies, with the result that in many cases nominally freed slaves did not see significant changes to their lives or working conditions post-abolition. They remained, in effect, *de facto* slaves.<sup>174</sup> In fact, the 1926 Slavery Convention

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<sup>171</sup> Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (Leiden: Martinus Nijhoff, 2008), 6–17.

<sup>172</sup> Convention to Suppress the Slave Trade and Slavery (1926 Slavery Convention), Geneva, 25 September 1926, *League of Nations Treaty Series* vol. 60, 254, entered into force 9 March 1927.

<sup>173</sup> Jean Allain, “Introduction,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012), 1–8.

<sup>174</sup> Suzanne Miers, “Slavery and Abolition in the 20th Century,” in *Slavery in the Modern World: A History of Political, Social, and Economic Oppression*, ed. Junius P. Rodriguez (Santa Barbara, CA: ABC-CLIO, 2011), 3–5.



ultimately ended up so weak that even Ethiopia—where *de jure* slavery continued to be practiced—was able to sign.<sup>175</sup>

Despite these weaknesses, the 1926 Slavery Convention’s definition of slavery remains the only definition of slavery in international law even today. Thus, abolitionist groups, as moral entrepreneurs whose continued existence was contingent on pursuing the fight against slavery, have had to either to find ways to expand the definition of slavery or to find alternative paths to pursue their abolitionist objectives. The Anti-Slavery Society—whose identity was explicitly tied to “slavery”—eventually followed the former approach by expanding their focus to include “modern slavery,” discussed in more detail at the end of this chapter. However, other activists focussed on practices that could be described as *de facto* slavery—specifically, “forced labour.”<sup>176</sup>

Here, the most important actor in the 20<sup>th</sup> century was the International Labour Organisation (ILO), a tripartite body with representatives from governments, workers and employers. The ILO was originally inspired by the international union workers’ movements at the beginning of the 20<sup>th</sup> century, and was established by the 1919 Treaty of Versailles. Unlike the anti-slavery regimes that were deliberately crafted to avoid infringing on the ability of the colonial powers to exploit local and imported labour, from its early years the ILO actively investigated labour conditions in the colonies—although they were prevented by the state representatives from doing anything about them.

When the 1926 Slavery Convention was passed, the ILO were empowered to “prevent compulsory labour or forced labour from developing into conditions analogous to slavery.”<sup>177</sup> In theory, this statement acknowledges and condemns the possibility of *de facto*

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<sup>175</sup> Though Ethiopia was one of the original signatories of the 1926 Convention, it did not ratify it until 1969. See Jean Allain, “Slavery and the League of Nations: Ethiopia as a Civilised Nation,” in *The Law and Slavery Prohibiting Human Exploitation*, ed. Jean Allain (Leiden: Brill Nijhoff, 2015), 121–58.

<sup>176</sup> Olga Hidalgo-Weber, “Social and Political Networks and the Creation of the ILO: The Role of British Actors,” in *Globalizing Social Rights: The International Labour Organization and Beyond*, ed. Sandrine Kott and Joëlle Droux (Basingstoke, Hampshire: International Labour Office and Palgrave Macmillan, 2013), 17–31; Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (Lanham, MD: AltaMira Press, 2003), 62.

<sup>177</sup> Daniel Maul, *Human Rights, Development and Decolonization* (London: Palgrave Macmillan UK, 2012), 22.

slavery. However, this statement also implies that forced labour was permissible provided it was not “analogous to slavery.” The 1926 Convention itself did little to clarify what this meant in practice, noting only that, subject to transitional provisions, “Compulsory or forced labour may only be exacted for public purposes.”<sup>178</sup> Here it is helpful to follow Steinfeld in acknowledging that labour practices exist along a continuum between more coercive and more free, and that whatever line we draw along that continuum to separate “free” and “coerced” labour will be arbitrary, since even the choice between working in a non-pleasurable job and subsisting on welfare involves a certain level of coercion.<sup>179</sup> The fight against labour exploitation, then, should not be seen as only a fight to prohibit coercive labour practices. We also should see it as an effort to slowly move the line that distinguishes “free” and “coerced” labour practices further along Steinfeld’s continuum.

The empowerment of the ILO following the 1926 Slavery Convention represented one shift along that continuum. Another shift came with the 1930 Convention Concerning Forced or Compulsory Labour.<sup>180</sup> This convention called for ratifying states to “suppress the use of forced or compulsory labour in all its forms within the shortest possible period,” defining “forced and compulsory labour” as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>181</sup> But along with this new prohibition on forced labour, the 1930 Convention also carved out wide exceptions for military service, civic obligations, penal punishment, emergencies and community service, stating that for the purpose of this convention none of those practices would be considered “forced or compulsory labour.” As a result, the 1930 Convention marked only a slight shift along Steinfeld’s continuum.

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<sup>178</sup> Slavery Convention, Geneva, 25 September 1926, *League of Nations Treaty Series* vol. 60, 254, entered into force 9 March 1927.

<sup>179</sup> Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press, 2001), 14–15.

<sup>180</sup> J. P. Daughton, “ILO Expertise and Colonial Violence in the Interwar Years,” in *Globalizing Social Rights: The International Labour Organization and Beyond*, ed. Sandrine Kott and Joëlle Droux (Basingstoke, Hampshire: International Labour Office and Palgrave Macmillan, 2013), 85–97.

<sup>181</sup> Convention concerning Forced or Compulsory Labour, Geneva, 28 Jun 1930, entered into force 1 May 1932, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029)

## ANTI-TRAFFICKING FROM 1945 TO THE 1990S

### *ANTI-TRAFFICKING AT THE UNITED NATIONS*

After the Second World War, the United Nations became a primary forum for transnationally-oriented moral entrepreneurs, in particular during the early decades as the UN worked to codify and advance international norms. From its inception, both the International Bureau and IAF lobbied to have the UN advance the 1937 Draft Convention for the Suppression of the Exploitation of the Prostitution of Others.<sup>182</sup> Following these efforts, in 1946 the UN's Economic and Social Council requested that the Secretary General take measures to review, revise and submit a draft of the 1937 Draft Convention.<sup>183</sup> This led to the UN General Assembly approving the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949, making it one of the earliest treaties of the United Nations.<sup>184</sup>

The title of the Convention highlights an important change that accompanied the new anti-trafficking regime, one earlier attempted by the 1937 Draft Convention: "the traffic in women and children" had at last become "the traffic in persons." However, despite this shift to gender-neutral terminology, the Convention still understood trafficking to be an offense intrinsically linked to sex work, which it continued to describe using the language of the moral purity movement:

Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.<sup>185</sup>

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<sup>182</sup> Limoncelli, *The Politics of Trafficking*, 92.

<sup>183</sup> United Nations Economic and Social Council, 4th session. Resolution E/412 (1946). *Suppression of the Traffic of Women and Children*. Available:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/437](http://www.un.org/en/ga/search/view_doc.asp?symbol=E/437)

<sup>184</sup> Susan Jeanne Toepfer and Bryan Stuart Wells, "The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women," *Michigan Journal of Gender & Law* 2 (1994): 95.

<sup>185</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Trafficking Convention), New York, 2 December 1949, *United Nations Treaty Series* vol. 96, 271, entered into force 25 July 1951.

Following the 1937 Draft Convention, the 1949 wording excludes the possibility of consensual sex work regardless of whether international borders were crossed in the process, requiring parties to punish anyone who “procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person,” or who “exploits the prostitution of another person, even with the consent of that person.”<sup>186</sup> The Convention also explicitly required parties to:

Take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.<sup>187</sup>

This Convention thus effectively marked the end of support for regulated systems of sex work at the international level.

Following the 1949 Trafficking Convention, there were also new conventions on slavery and forced labour as the United Nations sought to define and assert authority over moral issues in the context of the new international order. However, unlike the Trafficking Convention, these conventions did not seek to redefine the issue at hand, and instead sought to build on earlier definitions. For example, the United Nations’ 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery reiterated the 1926 Slavery Convention’s definition of “slavery” rather than advancing a new one, despite that definition’s perceived shortcomings.<sup>188</sup> But at the same time, this convention also added a new category of practices whose “complete abolition or abandonment” states were to “bring about progressively and as soon as possible”:

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<sup>186</sup> 1949 Trafficking Convention, art. 1.

<sup>187</sup> 1949 Trafficking Convention, art. 6.

<sup>188</sup> Allain, *Slavery in International Law*, 82; Kevin Bales and Peter T. Robbins, “‘No One Shall Be Held in Slavery or Servitude’: A Critical Analysis of International Slavery Agreements and Concepts of Slavery,” *Human Rights Review* 2, no. 2 (January 2001): 24–25, <https://doi.org/10.1007/s12142-001-1022-6>.

“institutions and practices similar to slavery.”<sup>189</sup> Specifically, these “institutions and practices” were debt bondage, serfdom, forced marriage of women or the transfer of a wife to another party, or the transfer of a child for the exploitation of labour.<sup>190</sup> These practices—in particular debt bondage and child exploitation—would later form the core of the expanded definition of trafficking in the 2000 Trafficking Protocol, suggesting an ongoing conceptual linkage between “trafficking” and “slavery.” They would also lay the groundwork for the more recent shift to the use of the term “modern slavery.”

Like the 1956 Supplementary Convention on the Abolition of Slavery, the 1957 Abolition of Forced Labour Convention was largely informed by an earlier treaty—in this case, the 1930 Forced Labour Convention.<sup>191</sup> The 1957 Convention reduced the scope of the exemptions of that earlier convention, calling on states to suppress the use of forced or compulsory labour as a means of political coercion, for economic development, for labour discipline, as a punishment for striking, or as a means of discrimination.<sup>192</sup> Here again we can see the line between forced and free labour being shifted further so that more practices would fall under the rubric of forced labour. The ILO, meanwhile, became the first specialised body of the UN, and in this capacity moved beyond drafting and monitoring conventions to providing technical assistance to newly decolonised countries.<sup>193</sup>

However, for all of these apparent innovations in international norms, the reality of the post-WWII world order meant that in practice these conventions were difficult to implement on the ground. Hostility from the USSR prevented the ILO from carrying out its broader mission of enforcing labour rights, and after the initial technical assistance missions

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<sup>189</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956, 226 U.N.T.S. 3, *entered into force* April 30, 1957.

<sup>190</sup> The legislation was gendered, and the forced marriage or spousal transfer of men was not forbidden.

<sup>191</sup> Allain, *Slavery in International Law*, 218–19.

<sup>192</sup> Abolition of Forced Labour Convention, Geneva, 25 Jun 1957, entered into force 17 Jan 1959, available:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105)

<sup>193</sup> Antony Alcock, *History of the International Labour Organisation* (London: Palgrave Macmillan, 1971), 188–251.

ended, it faced the problem of apparent declining relevance.<sup>194</sup> The International Bureau faced a similar problem: the 1949 Trafficking Convention's requirement that states abolish their systems of regulation both at home and in their colonies meant that many of the colonial powers, including major anti-trafficking supporters such as the UK and the Netherlands, would not sign the treaty. The International Bureau (now renamed the International Bureau for the Suppression of Traffic in Persons), having abandoned its support for state regulation, lost its major financial and diplomatic supporters. Its role was reduced to advocating for the ratification of the 1949 Trafficking Convention, and it finally disbanded altogether in the early 1970s.<sup>195</sup>

Other groups of moral entrepreneurs survived the tensions and suspicions of the Cold War by broadening their spheres of activities. The IAF, for example, was involved not only in drafting the 1949 Trafficking Convention, but also the drafting of the 1956 Supplementary Convention on Slavery, focussing in particular on the gendered aspects of slavery.<sup>196</sup> By this point, the organisation had moved away from their origins as a group that supported the rights of sex workers, and had instead come to favour the moral purity movements' position that sex work was inherently harmful and should never be permitted. These two areas of interest meant that they would come to be early supporters of the idea that sex work was a form of "female sexual slavery."<sup>197</sup> The Anti-Slavery Society, meanwhile, had likewise been heavily involved in the drafting the 1956 Supplementary Convention on Slavery.<sup>198</sup> They managed to remain relevant by broadening their conception of slavery, such as by pushing for the inclusion "institutions and practices similar to slavery" in that convention.<sup>199</sup>

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<sup>194</sup> Gerry Rodgers et al., *The International Labour Organization and the Quest for Social Justice, 1919-2009* (Geneva: International Labour Office, 2009), 1–25; Alcock, *History of the International Labour Organisation*, 1–46; Stephen Hughes and Nigel Haworth, *The International Labour Organization (ILO): Coming in from the Cold* (London: Routledge, 2011), 14–19.

<sup>195</sup> Attwood, "Stopping the Traffic," 346–47; Limoncelli, *The Politics of Trafficking*, 92.

<sup>196</sup> Allain, *The Slavery Conventions*, 251–307.

<sup>197</sup> Kathleen Barry, "'International Politics of Female Sexual Slavery,' Opening Paper," in *International Feminism: Networking Against Female Sexual Slavery*, ed. Kathleen Barry, Charlotte Bunch, and Shirley Castley (New York, NY: International Women's Tribune Centre, 1984), 25.

<sup>198</sup> Allain, *The Slavery Conventions*, 207–780.

<sup>199</sup> Miers, *Slavery in the Twentieth Century*, 392–418.

The hostile international atmosphere of the Cold War also meant that that these new conventions lacked any formal body for monitoring and enforcement. Thus while there nominally existed an international rule against slavery, there was no mechanism for generating knowledge about who was violating that norm or any way to cause norm violators to change their behaviour. This would not be remedied until 1975, when the UN—at the urging of the Anti-Slavery Society—established the Working Group on Slavery as part of the United Nations Commission on Human Rights’ Sub-Commission on Prevention of Discrimination and Protection of Minorities.<sup>200</sup> Notably, this group focused not only on the 1926 Slavery Convention and the 1956 Supplementary Convention, but also the 1949 Trafficking in Persons Convention—again showing a continued linkage between trafficking and slavery. As a result of this linkage, the IAF also came to be involved in the Working Group from almost the beginning.<sup>201</sup>

Because of this wider focus (which also came to include apartheid), the Working Group decided that the existing definition of slavery in international law—that is, the actual ownership of human beings—was too narrow. However, it was unable to develop a coherent definition of its own, with proposals ranging from slavery as “any form of dealing with human beings leading to the forced exploitation of their labour” to slavery as “all institutions and practices which by restricting the freedom of the individual, are susceptible of causing severe hardship and serious deprivations of liberty.”<sup>202</sup> Moreover, there was little interest or money in anti-slavery efforts following the apparent disappearance of *de jure* slavery in the aftermath of decolonisation. As a result, the Anti-Slavery Society shrunk down to a rump organisation and the Working Group accomplished little while labouring in obscurity.<sup>203</sup>

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<sup>200</sup> Miers, 392–418.

<sup>201</sup> Carol Harrington, *Politicization of Sexual Violence: From Abolitionism to Peacekeeping* (Farnham, Surrey: Ashgate, 2010), 32–36.

<sup>202</sup> Working Group on Slavery, “Report of the Working Group on Slavery on Its First Session” (United Nations Economic and Social Council, August 28, 1975), 4.

<sup>203</sup> Kevin Bales, *Disposable People: New Slavery in the Global Economy*, 2nd ed. (Berkeley, CA: University of California Press, 2012), xvii–xxi; Robin M. Maher and David Weissbrodt, “The 41st Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities,” *Human Rights Quarterly* 12, no. 2 (1990): 324.

Initially, there was little interest in fighting “human trafficking” as defined by the 1949 Trafficking Convention. This changed in the aftermath of a testimony at the International Women’s Year Conference in Mexico City, 1975, which alleged that torture was being practiced on sex workers in French brothels.<sup>204</sup> This conference came in the midst of growing concern among a sub-group of feminists that commercialised sexuality was abetting violence towards women.<sup>205</sup> Some of these women launched campaigns against pornography, such as that of the Women Against Violence in Pornography and the Media in San Francisco starting in 1977, that of the Women Against Pornography in New York starting in 1978, and the various efforts to pass anti-pornography ordinances in a number of American cities in the 1980s.<sup>206</sup> It was in the midst of these movements that Kathleen Barry, inspired by the Mexico City Conference, published a book in 1979 that argued prostitution amounted to sexual slavery, and that it perpetuated “the traffic in women.”<sup>207</sup>

Barry worked to spread the association between sex work, slavery and trafficking not only in the United States but across the world. In 1983, Barry helped convene the Global Feminist Workshop to Organize Against Traffic in Women in Rotterdam, where, among others, members of the Japan-based Asian Women’s Association presented on what they argued was the exploitation of Korean sex workers by Japanese sex tourists.<sup>208</sup> That same year, Jean

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<sup>204</sup> Barry, *Female Sexual Slavery*, 4.

<sup>205</sup> For some of the theoretical underpinnings of this movement, see Helen E. Longino, “Pornography, Oppression, and Freedom: A Closer Look,” in *Take Back the Night: Women on Pornography*, ed. Laura Lederer (New York: William Morrow and Company, 1980), 40–54; Andrea Dworkin, *Pornography: Men Possessing Women* (New York: Plume, 1981); Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987).

<sup>206</sup> Nan D. Hunter, “Contextualizing the Sexuality Debates: A Chronology 1966–2005,” in *Sex Wars: Sexual Dissent and Political Culture*, by Lisa Duggan and Nan D. Hunter, 10th anniversary ed. (New York: Routledge, 2006), 20–24.

<sup>207</sup> Barry, *Female Sexual Slavery*, 3–3, 83–85.

<sup>208</sup> See Kathleen Barry, “The Network Defines Its Issues: Theory, Evidence and Analysis of Female Sexual Slavery,” in *International Feminism: Networking Against Female Sexual Slavery*, ed. Kathleen Barry, Charlotte Bunch, and Shirley Castley (New York, NY: International Women’s Tribune Centre, 1984), 32–47. Barry’s book on the conference proceedings also includes a 1974 paper by the prominent journalist and activist Matsui Yayori, “Watashi wa naze kisen kankō o hantai suru no ka” (“Why I Oppose Kisaeng Tours”), translated by Lora Sharnoff. A version of this translation had also been earlier published in *Frontiers: A Journal of Women Studies* (Univ. of Nebraska Press), under the title “Korean Sexual Slavery.” However, the only time the (translated) article uses the term “slavery”



Fernand-Laurent—the UN Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others—wrote in a report that “we [...] consider prostitution to be a form of slavery.”<sup>209</sup> By 1986, Barry was co-convening UNESCO’s International Meeting of Experts on the Social and Cultural Causes of Prostitution and Strategies against Procuring and Sexual Exploitation of Women.<sup>210</sup>

Finally, in 1988, Barry helped found the Coalition Against Trafficking in Women (CATW), which would become one of the most influential anti-trafficking NGOs of the modern era. CATW, in addition to providing services to “victims of sex trafficking and commercial sexual exploitation,” has also been active in pushing countries to reform their legal codes to make the purchase of sex illegal.<sup>211</sup> At an international level, they also repeatedly attempted to pass a Convention on the Elimination of All Forms of Sexual Exploitation of Women. This proposed convention defined sexual exploitation as including female infanticide, murder, torture, temporary marriage, sex predetermination, and:

Subjection to cruel, inhuman and degrading treatment through the following: battering, pornography, prostitution, genital mutilation, female seclusion, dowry and bride price, forced sterilization and forced child-bearing, sexual harassment, rape, incest, sexual abuse, and trafficking.<sup>212</sup>

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is in quoting an article by Korean activists, and Matsui does not appear to believe that “slavery” is the appropriate term for the *gisaeng* (discussed in more detail below). The earliest version of this translation, as well as this later one, both use a literal translation of the Japanese title, and it is unclear who decided on the title for the *Frontiers* version. See Yayori Matsui, *Why I Oppose Kisaeng Tours*, trans. Lora Sharnoff (1974; repr., Tokyo: Femintern Press, 1975); Yayori Matsui, “Sexual Slavery in Korea,” trans. Lora Sharnoff, *Frontiers: A Journal of Women Studies* 2, no. 1 (1977): 22–30, <https://doi.org/10.2307/3346104>; Yayori Matsui, “Why I Oppose Kisaeng Tours,” in *International Feminism: Networking Against Female Sexual Slavery*, ed. Kathleen Barry, Charlotte Bunch, and Shirley Castley, trans. Lora Sharnoff (1974; repr., New York, NY: International Women’s Tribune Centre, 1984), 64–72.

<sup>209</sup> Jean Fernand-Laurent, “Report of Mr. Jean Fernand-Laurent, Special Rapporteur on the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others” (United Nations Economic and Social Council, 1983), 6.

<sup>210</sup> UNESCO, “International Meeting of Experts on the Social and Cultural Causes of Prostitution and Strategies against Procuring and Sexual Exploitation of Women, Madrid, Spain, 18-21 March 1986: Final Report” (Paris: Division of Human Rights and Peace, 1986).

<sup>211</sup> CATW, “Projects and Campaigns,” Coalition Against Trafficking in Women, 2011, <http://www.catwinternational.org/ProjectsCampaigns/Projects>.

<sup>212</sup> Kathleen Barry, “Appendix: Proposed Convention Against Sexual Exploitation: Draft of January 1994,” in *The Prostitution of Sexuality* (New York, NY: NYU Press, 1996), 326.

As Barry describes it:

Rejecting distinctions between "free" and "forced" prostitution as legitimizing prostitution [...] the Convention calls upon states to penalize the customers, recognizing them as perpetrators to be criminalized while rejecting any form of penalization of the prostitute. Therefore States Parties would be required to agree to reject any policy or law that legitimizes prostitution of any person, [...] or that in any way legalizes or regulates prostitution as a profession or occupation.<sup>213</sup>

The purpose of this convention, then, is to fill what CATW sees as gaps in the 1949 Trafficking Convention: a lack of any provision explicitly calling for the criminalisation of the purchase of sex, an excessive focus on brothels and a lack of attention to casual sex work, and insufficient monitoring mechanisms.<sup>214</sup> Interestingly, the word "trafficking" is not defined in the model convention, although the context suggests that CATW is referring to "trafficking" as defined in the 1949 Trafficking Convention.

The rise of CATW, however, was also paralleled by the rise of the groups that would come to serve as its counter-force: sex workers' rights organisations. Such organisations had existed before the 1970s—for example, sex workers in Japan briefly unionising in the 1950s in an attempt to prevent the passage of an anti-prostitution ordinance, which they argued would deprive them of their right to earn a living.<sup>215</sup> However, the start of the modern sex workers' rights movement is generally traced to 1973, with the founding of the sex workers' union COYOTE (a backronym for Call Off Your Old Tired Ethics) in San Francisco.<sup>216</sup> Additional sex workers' unions were formed in the following years in Europe, Canada and Australia, and in 1979, the North American Task Force on Prostitution (NTFP) was formed as an umbrella

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<sup>213</sup> Kathleen Barry, *The Prostitution of Sexuality* (New York, NY: NYU Press, 1996), 306.

<sup>214</sup> UNESCO and CATW, "Penn State Report" (Philadelphia, PA: Coalition Against Trafficking in Women, 1992), 8–10.

<sup>215</sup> Yuki Fujime, "The Prostitutes' Union and the Impact of the 1956 Anti-Prostitution Law in Japan," trans. Beverly L. Findlay-Kaneko, *U.S.-Japan Women's Journal. English Supplement*, no. 5 (1993): 3–27.

<sup>216</sup> See for example Valerie Jenness, *Making It Work: The Prostitute's Rights Movement in Perspective* (New York, NY: Aldine de Gruyter, 1993); Kamala Kempadoo, "Globalizing Sex Worker Rights," in *Global Sex Workers: Rights, Resistance and Redefinition*, ed. Kamala Kempadoo and Jo Doezema (London: Routledge, 1998), 1–28; Gail Pheterson, *A Vindication of the Rights of Whores* (Berkeley, CA: Seal Press, 1989); Jill Nagle, *Whores and Other Feminists* (London: Routledge, 1997).

organisation for the American and Canadian groups. Over the next couple of decades, these groups spread across the world, with the founding of groups such as EMPOWER in Thailand in 1985, SANGRAM in India in 1992, SWEAT in South Africa in 1994 and SWEETLY in Japan in the late 1990s.<sup>217</sup> The goals of these organisations generally followed the from the principle that sexual labour should be treated like other forms of labour—decriminalised, destigmatised, taxed at standard rates, and granted standard benefits such as the assistance from law enforcement when necessary.<sup>218</sup> These groups were also the first actors to deploy the now-widely used terms “sex work” and “sex worker”—terms that were themselves coined by sex worker and activist Carol Leigh in 1980.<sup>219</sup>

Part of the impetus for the sex-workers’ rights movement came from the HIV epidemic, which hit sex workers particularly hard. In 1987, as the epidemic was reaching crisis levels, the World Health Organisation (WHO) formed the Global Programme on AIDS (GPA); by 1989, the GPA was already the WHO’s largest program.<sup>220</sup> The urgency of the crisis meant that not only did the GPA have an unprecedentedly large budget, but it also operated with an unusual degree of independence. This allowed the GPA to work with groups such as the NTFP to review projects affecting sex workers, and the GPA’s own subsequent adoption of the term “sex worker” made this the health sector’s standard term for providers of commercial sexual labour in multiple languages.<sup>221</sup> AIDS conferences also provided important organising opportunities for sex workers’ rights groups. At the Second International Conference for NGOs working on AIDS in Paris in 1991, activists in attendance

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<sup>217</sup> NSWP, “History of the NSWP and the Sex Worker Rights Movement,” Global Network of Sex Work Projects, 2014, <http://www.nswp.org/timeline>; Kamala Kempadoo, “Sex Workers’ Organizations: Introduction,” in *Global Sex Workers: Rights, Resistance and Redefinition*, ed. Kamala Kempadoo and Jo Doezema (London: Routledge, 1998), 167–77; SANGRAM, “Home,” SANGRAM: Sampada Gramin Mahila Sanstha, 2009, <http://www.sangram.org>.

<sup>218</sup> Pheterson, *A Vindication of the Rights of Whores*, 3–42.

<sup>219</sup> Carol Leigh, “Inventing Sex Work,” in *Whores and Other Feminists*, ed. Jill Nagle (New York: Routledge, 1997), 225–32; Kempadoo, “Globalizing Sex Worker Rights,” 8; Frédérique Delacoste and Priscilla Alexander, *Sex Work: Writings by Women in the Sex Industry* (Minneapolis, MN: Cleis Press, 1987).

<sup>220</sup> World Health Organisation, “Global Programme on AIDS, 1987–1995: Final Report” (Geneva: WHO, 1997).

<sup>221</sup> Melissa Hope Ditmore, ed., *Encyclopedia of Prostitution and Sex Work* (Westport, CT: Greenwood Press, 2006), 208–9, 547.

formed the Network for Sex Work Projects (NSWP), a global umbrella group for sex worker rights activists.<sup>222</sup> And at the 1994 International AIDS Conference in Yokohama, groups including EMPOWER, SWEETLY, Pink Triangle Malaysia, the Scarlet Alliance Australia and Sonagachi (India) formed, with the assistance of the NSWP, the Asia-Pacific Network of Sex Workers.<sup>223</sup>

Though the sex workers' rights movement and prohibitionist feminism have clearly contrary final goals (the normalisation vs. the extinction of sex work), they initially rose parallel to, rather than in confrontation with, each other. Both emerged out of the second-wave of feminism<sup>224</sup> in the United States with the aim of fighting sexual violence and violence against women.<sup>225</sup> And in the short term, their goals aligned. COYOTE's immediate goals were to end police harassment of sex workers and the disproportionate rate of arrest and prosecution for (female) sex workers relative to (male) clients.<sup>226</sup> Barry likewise decried the law's criminal sanctions against sex workers as part of the "socio-sexual objectification of women that permeates every patriarchal society in the world,"<sup>227</sup> while CATW itself

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<sup>222</sup> Ditmore, 209.

<sup>223</sup> APNSW, "1994 – Asia Pacific Network of Sex Workers (APNSW) Formed," Asia Pacific Network of Sex Workers, August 30, 1994, <https://apnsw.info/1994/08/30/1994-asia-pacific-network-of-sex-workers-apnsw-formed/>.

<sup>224</sup> The major feminist movement that began in the United States in the 1960s and that focussed heavily on sexuality, sexual abuse and domestic violence. The term can be highly contentious; here, I use it only to indicate that these movements shared a time period and political context. See for example Jane Gerhard, *Desiring Revolution: Second-Wave Feminism and the Rewriting of American Sexual Thought, 1920 to 1982* (New York, NY: Columbia University Press, 2001); Benita Roth, *Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America's Second Wave* (Cambridge: Cambridge University Press, 2004); Stephanie Gilmore, "Thinking about Feminist Coalitions," in *Feminist Coalitions: Historical Perspectives on Second-Wave Feminism in the United States*, ed. Stephanie Gilmore (Urbana, IL: University of Illinois Press, 2008), 1–18; Angie Maxwell and Todd Shields, "Introduction: Toward a New Understanding of Second-Wave Feminism," in *The Legacy of Second-Wave Feminism in American Politics*, ed. Angie Maxwell and Todd Shields (Palgrave Macmillan, 2017), 1–20, <https://doi.org/10.1007/978-3-319-62117-3>.

<sup>225</sup> Carolyn Bronstein, *Battling Pornography: The American Feminist Anti-Pornography Movement, 1976–1986* (Cambridge: Cambridge University Press, 2011), 25–62; Pheterson, *A Vindication of the Rights of Whores*, 40; NSWP, "What We Do," Text, Global Network of Sex Work Projects, October 1, 2010, <http://www.nswp.org/what-we-do>. See more generally Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Ballantine Books, 1975); Andrea Dworkin, *Intercourse* (New York, NY: Free Press, 1987).

<sup>226</sup> Jenness, *Making It Work*, 49–56.

<sup>227</sup> Barry, *Female Sexual Slavery*, 121.

currently favours the “Nordic model” of criminalising the purchasing of sex rather than the selling.<sup>228</sup> They even invoked the same historical reference points, with Barry and Gail Pheterson (Co-Director of the International Committee for Prostitutes’ Rights) both praising Butler’s fight against the CDAs in the 19<sup>th</sup> century and condemning the moral puritans who subsequently hijacked her campaign—although Barry presents Butler’s fight as one against sex work per se, while Pheterson presents it as a fight against the state control of sex work.<sup>229</sup>

However, the ultimate goals of the sex workers’ rights groups—destigmatisation of sex work and decriminalization of all related practices, including purchasing sex and brothel owning—were anathema to the prohibitionists,<sup>230</sup> who rejected the term “sex work” in favour of the passive construction “prostituted women.”<sup>231</sup> By the 1980s, these two movements were working at cross-purposes. Prohibitionist feminist scholars worked with the clergy in New York to establish WHISPER as a counter to COYOTE; like COYOTE, WHISPER advocated decriminalising the selling of sex, but it did so under the premise that all women were victims and so should not be the ones targeted for arrest and prosecution.<sup>232</sup> By the 1990s, the NTFP was being labelled a “pro-prostitution” organisation,<sup>233</sup> a front group for theorists who had never been sex workers or even done any research,<sup>234</sup> which was being propped up by the sexual services industry to disguise their exploitative activities.<sup>235</sup> The battle between these two movements came to be one of the major fronts of what were later termed the

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<sup>228</sup> CATW, “Ending the Demand,” Coalition Against Trafficking in Women, 2011, <http://www.catwinternational.org/BestPractices/EndingDemand>.

<sup>229</sup> Barry, *Female Sexual Slavery*, 14–32; Pheterson, *A Vindication of the Rights of Whores*, 10–12.

<sup>230</sup> “Prohibitionist” here is used as a functional label for those aiming to prohibit sex work in place of “abolitionist,” a term more generally used to refer to those aiming to end slavery.

<sup>231</sup> Susan Kay Hunter, “Prostitution Is Cruelty and Abuse to Women and Children,” *Michigan Journal of Gender & Law* 1 (1993): 91.

<sup>232</sup> Jenness, *Making It Work*, 77.

<sup>233</sup> Kathleen A. Lahey, “Women and Civil Liberties,” in *The Sexual Liberals and the Attack on Feminism*, ed. Dorchen Leidholdt and Janice G Raymond (New York, NY: Pergamon Press, 1990), 198–208.

<sup>234</sup> Evelina Giobbe, “Confronting the Liberal Lies About Prostitution,” in *The Sexual Liberals and the Attack on Feminism*, ed. Dorchen Leidholdt and Janice G Raymond (New York, NY: Pergamon Press, 1990), 67–82.

<sup>235</sup> Janice G. Raymond, “Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere,” *Women’s Studies International Forum* 21, no. 1 (January 1998): 1–9, [https://doi.org/10.1016/S0277-5395\(96\)00102-1](https://doi.org/10.1016/S0277-5395(96)00102-1).

“feminist sex wars,”<sup>236</sup> and it would subsequently help shape both the UN’s Trafficking Protocol and the American Trafficking in Persons Report.

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<sup>236</sup> See for example Lisa Duggan and Nan D. Hunter, *Sex Wars: Sexual Dissent and Political Culture*, 10th anniversary ed. (New York: Routledge, 2006); Kathryn Abrams, “Sex Wars Redux: Agency and Coercion in Feminist Legal Theory,” *Columbia Law Review* 95, no. 2 (1995): 304–76, <https://doi.org/10.2307/1123232>; Jenna Basiliere, “Political Is Personal: Scholarly Manifestations of the Feminist Sex Wars,” *Michigan Feminist Studies*; 22 (Fall 2009): 1–22.

*BIRTH OF THE “MODERN” ANTI-TRAFFICKING MOVEMENT IN THAILAND*

While the battle between the sex workers’ rights groups and the prohibitionist feminists was heating up during the 1980s, the issue of “human trafficking” itself remained largely outside of the broader public consciousness until the early 1990s. Moreover, it would not be American groups but rather Thai and Dutch NGOs that made this change.

In 1982, Thai activist Siriporn Skrobanek and Dutch activist Lin Chew organised protests in the Netherlands against Dutch sex tours to Thailand.<sup>237</sup> Then in 1984, Skrobanek created the Women’s Information Center in Thailand, which worked on both issues of violence against women in Thailand and on the transnational sexual exploitation of Thai women; this was expanded under the name “the Foundation for Women” (FFW) in 1987.<sup>238</sup> Also in 1987, Chew was involved with the creation of the Dutch Foundation Against Trafficking in Women (STV) in the Netherlands, an organisation that focussed on providing shelter and legal assistance to migrant sex workers in the Netherlands, whom it argued were victims of trafficking.<sup>239</sup> The alliance between these groups brought the FFW access to funding from international sources, in particular the Dutch government, allowing it to pursue research that would not have been funded by the Thai government—for example, into the treatment of sex workers by agents of the state.<sup>240</sup>

This research, in turn, was used by Human Rights Watch (HRW) as the basis of their 1993 report, “A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in

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<sup>237</sup> Lin Chew, “Reflections by an Anti-Trafficking Activist,” in *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, ed. Kamala Kempadoo, Jyoti Sanghera, and Bandana Pattanaik, 2nd ed. (Boulder, CO: Paradigm Publishers, 2012), 66.

<sup>238</sup> Center for Women’s Global Leadership, “1991 Women’s Leadership Institute Report: Women, Violence And Human Rights” (New Brunswick, NJ: Douglass College, Rutgers University, 1992), 72; Siriporn Skrobanek and Jyoti Sanghera, “Sex Trade and Globalized Traffic in Women,” *Atlantis: Critical Studies in Gender, Culture & Social Justice* 21, no. 1 (1996): 99.

<sup>239</sup> Susan Dewey, *Hollow Bodies: Institutional Responses to Sex Trafficking in Armenia, Bosnia, and India* (Sterling, VA: Kumarian Press, 2008), 45; Chew, “Reflections by an Anti-Trafficking Activist,” 67–69.

<sup>240</sup> Edith Celine Marie Kinney, “Stuck in Traffic: Sexual Politics and Criminal Injustice in Social Movements Against Human Trafficking” (University of California, Berkeley, 2011), 145–56; Siriporn Skrobanek, Nattaya Boonpakdi, and Chutimā Čhanthathirō, *The Traffic in Women: Human Realities of the International Sex Trade* (Basingstoke, Hampshire: Palgrave Macmillan, 1997), vi–10.

Thailand.”<sup>241</sup> The report, which alleged horrific working conditions along with coercion and violence directed at frequently underage migrant sex workers in Thai brothels, would have likely been a powerful document no matter when it was released. However, its impact was magnified by a pre-existing moral panic over the sexual exploitation of minors in Southeast Asia, in particular by foreign tourists, which had emerged during the 1980s following the earlier renewal of interest in sex work by feminist and religious groups. Thailand in particular was described as a “hotspot” for this exploitation, as both Thai and foreign newspapers reported lurid stories of abuses suffered by underage sex workers and of Europeans escaping to their non-extraditing countries to escape prosecution.<sup>242</sup>

As a consequence, there is general agreement that this HRW report served as both an early milestone and a catalyzing event in the anti-trafficking movement.<sup>243</sup> The report was a major influence on the 1994 Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, whose calls for a new anti-trafficking treaty brought “trafficking” onto the agenda for the 1995 UN World Conference on Women in Beijing and onto the international agenda more broadly.<sup>244</sup> It was followed by similarly dire and widely read reports on Nepal, also from HRW,<sup>245</sup> and on Europe, from the International Organization for Migration (IOM).<sup>246</sup> The reason these reports were so influential was that the problem they

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<sup>241</sup> Asia Watch and the Women’s Rights Project, “A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand” (New York, NY: Human Rights Watch, 1993), 19–20.

<sup>242</sup> Heather Montgomery, “Prevailing Voices in Debates over Child Prostitution,” in *Policing Pleasure: Sex Work, Policy, and the State in Global Perspective*, ed. Susan Dewey and Patty Kelly (New York, NY: New York University Press, 2011), 146–58.

<sup>243</sup> See for example Gallagher, *The International Law of Human Trafficking*, 16; GAATW, ed., *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok: Global Alliance Against Trafficking in Women, 2007), 175.

<sup>244</sup> Radhika Coomaraswamy, “Preliminary Report Submitted by the Special Rapporteur on Violence against Women, Its Causes and Consequences” (United Nations Economic and Social Council, November 22, 1994).

<sup>245</sup> Human Rights Watch/Asia, “Rape for Profit: Trafficking of Nepali Girls and Women to India’s Brothels” (New York: Human Rights Watch, 1995).

<sup>246</sup> International Organization for Migration, *Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe*. (Budapest, Hungary: Migration Information Programme, 1995); International Organization for Migration, ed., *Trafficking in Women to Austria for Sexual Exploitation* (Geneva: International Organization for Migration, 1996); International Organization for Migration, *Trafficking in Women to Italy for Sexual Exploitation* (Geneva: International Organization for Migration, 1996).



described cut across the ideological movements: sex work prohibitionists, sex workers' rights activists, child labour activists, migrants' rights activists, and anti-slavery activists all considered the phenomena described in the report as a problem in need of governance—even if they fundamentally disagreed on the nature of the world that had produced this problem and on what solutions were needed to address it.

In the aftermath of the HRW report, the FFW organised an International Workshop on International Migration and Traffic in Women in Chang Mai in 1994. Twenty-two countries and forty organisations were represented at the Chang Mai conference, including women identified as victims of trafficking, migrant sex workers in Thailand illegally, and a member of the Asia-Pacific Branch of CATW. Though there was disagreement here, too, on the legitimacy of sex work as an occupation, the conference settled on an understanding of human trafficking as being based on violations of human rights, as well as an expanded definition of human trafficking that included forced domestic labor, clandestine employment, and false adoptions and marriages.<sup>247</sup>

This conference led to the formation of the Global Alliance Against Traffic in Women (GAATW) and a further transformation of trafficking discourses. Their “Draft of Standard Minimum Rules for the Treatment of Victims of Trafficking in Persons and Forced Labour and Slavery-Like Practices” (drafted by GAATW and the FFW in cooperation with the STV) uses the gender neutral “trafficking in persons” over CATW’s preferred “trafficking in women,” and avoids any gendering of victims throughout the document. Furthermore, the Draft Standard defines “trafficking in persons” as:

All acts involved in the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion.<sup>248</sup>

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<sup>247</sup> Kinney, “Stuck in Traffic: Sexual Politics and Criminal Injustice in Social Movements Against Human Trafficking,” 187–94.

<sup>248</sup> Skrobaneck, Boonpakdi, and Čhantathirō, *The Traffic in Women*, 111.

Strikingly, this definition does not include any mention of sex work. Instead, it presents human trafficking as a violation of migrant rights, with sexual and reproductive labour listed elsewhere in the document as valid forms of labour a migrant might engage in and in turn be exploited for. The document describes obligations for countries vis-à-vis victims of trafficking, but also of “forced labour and slavery-like practices.” In both cases, these include the right to strictly voluntary HIV testing, the right to legal protection regardless of previous occupation (with “prostitute” given as an example) and immunity from prosecution in their own country.<sup>249</sup> Thus with GAATW we have for the first time an anti-trafficking organisation whose definition of trafficking is gender neutral, fully incorporates the discourse of sex worker rights, and links human trafficking to “slavery-like practices.”

As with CATW, GAATW’s objective now was to spread their human trafficking governmentality: to have their definition of “trafficking” become *the* definition of trafficking in major international institutions, and for these institutions to follow their understanding of the role of consent in sex work. An early success in this endeavour came in 1994, when the newly-appointed Special Rapporteur on Violence against Women Radhika Coomaraswamy followed GAATW and the NSWP in using the term “commercial sex worker.”

Coomaraswamy also acknowledged that women can become sex workers via “rational choice,” highlighted the role of prohibition in magnifying the risks of abuse, and noted that the goals of feminist organisations do not always align with the needs of the sex workers.<sup>250</sup>

Another victory came in 1998, with the ILO’s report *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*. The ILO had experienced a resurgence following the end of the Cold War, with renewed demands for them to investigate labour practices in developing countries.<sup>251</sup> And as moral entrepreneurs, treating sex work as a form of labour clearly appealed to the ILO, since this allowed them to easily extend their own mandate to sexual labour. Thus, in the 1998 report the ILO used the terms “sex work” and “sex worker”

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<sup>249</sup> Skrobaneck, Boonpakdi, and Čhantathirō, 112–14.

<sup>250</sup> Coomaraswamy, “Preliminary Report Submitted by the Special Rapporteur on Violence against Women, Its Causes and Consequences,” 48–51.

<sup>251</sup> Lin Lean Lim, ed., *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia* (Geneva: International Labour Office, 1998); Laura M. Agustín and Jo Weldon, “The Sex Sector: A Victory for Diversity,” *Global Reproductive Rights Newsletter*, 1999.

and argued that, where sex work was legal, sex workers were entitled to the same protections as other workers and thus fell under the ILO's mandate.<sup>252</sup> More recently, the ILO has written that: "informal sector work and sex work are within the scope of the definition of forced labour, if persons are coerced to work"<sup>253</sup>—a recognition of sex workers as labourers entitled to the protections of the 1930 and 1957 conventions.<sup>254</sup>

CATW, meanwhile, had been working at pursuing prohibitionism through some of the existing international anti-slavery institutions. As noted above, the international anti-slavery cause had largely fallen apart at the international level during the early days of the Cold War. While the United Nations Working Group On Slavery continued to meet, by the 1970s it was heavily focused on apartheid and colonialism, and even there it failed to have a noticeable impact.<sup>255</sup> Initially, CATW's Kathleen Barry also criticised the Working Group as being uninterested in what she termed "sexual slavery."<sup>256</sup> However, in 1988 the Working Group's leadership changed, and NGOs such as the IAF—who had taken on board Barry's framing of sex work as sexual slavery—became much more involved. Subsequently, the Working Group changed its name to the Working Group on Contemporary Forms of Slavery and became both more active generally and more focused on sexual exploitation in particular.<sup>257</sup> These changes in turn led to the Working Group being the first UN body that CATW sought to use to implement their model convention, in 1991.<sup>258</sup>

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<sup>252</sup> Lim, *The Sex Sector*.

<sup>253</sup> Vu Tien Loc, "Preventing Forced Labour in the Textile and Garment Supply Chains in Viet Nam: Guide for Employers" (Hanoi: ILO & the Viet Nam Chamber of Commerce and Industry, 2016), 18.

<sup>254</sup> International Labour Office, "Fighting Human Trafficking: The Forced Labour Dimensions" (Vienna Forum on Human Trafficking, 13-15 February 2008, Vienna, 2008), [http://www.ilo.org/global/docs/WCMS\\_090236/lang--en/index.htm](http://www.ilo.org/global/docs/WCMS_090236/lang--en/index.htm).

<sup>255</sup> Allain, *Slavery in International Law*, 153–58.

<sup>256</sup> Barry, *Female Sexual Slavery*, 64.

<sup>257</sup> Maher and Weissbrodt, "The 41st Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities," 324–27.

<sup>258</sup> Kathleen Barry, "Abolishing Prostitution: A Feminist Human Rights Treaty," Women's Media Center, August 28, 2012, <http://www.womensmediacenter.com/feature/entry/abolishing-prostitution-a-feminist-human-rights-treaty>.

Though member organisations of the Working Group, including the IAF, expressed support for CATW’s model convention, it was never transmitted to the General Assembly.<sup>259</sup>

However, it did contribute to the growing influence of these groups within the Working Group. Thus, while some participating groups followed the Anti-Slavery Society—the only NGO present since the Working Group’s founding—in continuing to distinguish between forced and voluntary sex work, the Working Group itself formally adopted the position of the IAF in 1993: that sex work is “incompatible with the dignity and worth of the human person” and that it should be prohibited at both a national and international level.<sup>260</sup>

CATW also lobbied hard for the 1993 Declaration on the Elimination of Violence against Women to follow their ideological preferences, by labelling all pornography and prostitution as violence against women. To their disappointment, the final document made no mention of pornography or voluntary sex work—although it did define “trafficking in women and *forced* prostitution [italics mine]”<sup>261</sup> as violence against women. CATW also pressed for their model convention to be taken up at the Fourth World Conference on Women in Beijing, 1995. However, although the conference report condemned pornography in several sections, as well as calling for the elimination of the “trafficking in women and children, including trafficking for the purposes of sexual exploitation, pornography, prostitution and sex tourism,” and to “provide legal and social services to the victims,”<sup>262</sup> when it came to prostitution the final document only called for the elimination of forced and child prostitution.

CATW blamed these defeats on the advocacy of a coalition of NGOs, including the STV, GAATW, COYOTE and even Human Rights Watch. Still, they held out hope that the

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<sup>259</sup> Working Group on Contemporary Forms of Slavery, “Report of the Working Group on Contemporary Forms of Slavery on Its Sixteenth Session” (United Nations Economic and Social Council, July 29, 1991).

<sup>260</sup> Working Group on Contemporary Forms of Slavery, “Report of the Working Group on Contemporary Forms of Slavery on Its Eighteenth Session” (United Nations Economic and Social Council, June 23, 1993), 10–11, 36.

<sup>261</sup> UN General Assembly, “Declaration on the Elimination of Violence against Women,” A/RES/48/104 § (1993), 3.

<sup>262</sup> “Report of the Fourth World Conference on Women: Beijing, 4 - 15 September 1995” (New York: United Nations, 1996), 94.

convention would pass.<sup>263</sup> Meanwhile, CATW also started participating in the Working Group on Contemporary Forms of Slavery regularly in 1997.<sup>264</sup> In this, they became closely aligned with the IAF in both defining prostitution as a form of slavery and arguing that it was the most common—and therefore pressing—form of slavery.<sup>265</sup>

However, although this new alliance of sex worker rights-oriented NGOs had prevented CAATW and their allies from advancing their agenda, they themselves were as yet unable to achieve their own goal of enshrining gender-neutral minimum standards for the treatment of victims of trafficking in domestic or international law. Though Coomaraswamy's 1994 report adopted the language of the GATW, it also called upon the Commission on Human Rights to consider a draft program by the UN Working Group on Contemporary Forms of Slavery—one which was based on CATW's model convention and called for states to ban sex work and pornography.<sup>266</sup> Likewise, the Beijing Conference's recommendation regarding human trafficking was that more countries ratify the 1949 Trafficking Convention, an instrument favoured by CATW because it did not distinguish between coerced and voluntary sex work.<sup>267</sup> And while the ILO's 1998 report had called for labour rights to be recognised for sex workers in jurisdictions where selling sex was legal, it explicitly avoided calling for sex work to be legalised where it was not.<sup>268</sup>

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<sup>263</sup> Raymond, "Prostitution as Violence against Women."

<sup>264</sup> Working Group on Contemporary Forms of Slavery, "Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-Second Session" (United Nations Economic and Social Council, July 11, 1997), 7.

<sup>265</sup> Dimore and Wijers, "Crime, Sex, Money and Migration: The Negotiations on the United Nations Protocol on Trafficking in Persons (2003)," 689.

<sup>266</sup> Coomaraswamy, "Preliminary Report Submitted by the Special Rapporteur on Violence against Women, Its Causes and Consequences," 52; Commission on Human Rights, "Draft Programme of Action for the Prevention of Traffic in Persons and the Exploitation of the Prostitution of Others" (New York: UN, 1993), Annex; Kinney, "Stuck in Traffic: Sexual Politics and Criminal Injustice in Social Movements Against Human Trafficking," 195.

<sup>267</sup> "Report of the Fourth World Conference on Women," 50.; *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 271, Malka Marcovich, *Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (Coalition Against Trafficking in Women, 2007), <http://catwinternational.org/Content/Images/Article/88/attachment.pdf>.

<sup>268</sup> Lim, *The Sex Sector*, v.

Thus for both CATW and the other prohibitionist groups and GAATW and the various sex workers' rights organisations, the 1990s looked likely to close with a stalemate, with neither group able to effectively advance their agenda within existing international institutions. For both groups, then, the path forward lay in crafting a new international anti-trafficking agreement. For CATW, this would be a version of their model convention, designed to supplement the 1949 Trafficking Convention. For GAATW, this would be an entirely new agreement, one that would supplant the 1949 Trafficking Convention and give international legal force to protections for migrants and sex workers.<sup>269</sup> This thus set the stage for a showdown during the drafting of the next major anti-trafficking agreement.

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<sup>269</sup> Marjan Wijers and Lin Chew, *Trafficking in Women, Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution*, 2nd ed. (Utrecht and Bangkok: The Foundation Against Trafficking in Women (STV)/The Global Alliance Against Trafficking in Women (GAATW), 1999), 23.

## THE TRAFFICKING PROTOCOL AND BEYOND

### *DRAFTING THE TRAFFICKING PROTOCOL*

As suggested above, the various discourses on human trafficking were headed towards a collision at the end of the 1990s. However, despite the pressure from groups like CATW and GAATW, this would come not in the form of a new convention. The end of the Cold War had been followed by the discovery of a whole new set of problems in need of transnational governance, with human trafficking only one among them. Another was “transnational organised crime.” And while NGOs like GAATW and CATW argued that their causes were the most pressing human rights problems of the day, transnational organised crime had become securitised, with state representatives declaring at the 1994 World Ministerial Conference on Organized Transnational Crime in Naples that the “dramatic growth of organized crime” constituted “a threat to the internal security and stability of sovereign States” and that it was having deleterious “effects on national economies, the global financial system, and the rule of law and fundamental social values.”<sup>270</sup> And with state actors now seeing organised crime as threat to the very security of their states, addressing this issue came to be prioritised over non-securitised issues such as human trafficking.<sup>271</sup>

As with human trafficking, there is no single event to which we can point to as the origin of the securitisation of organised crime, since the precise shape of the “organised crime threat” could vary considerably from country to country. The United States was preoccupied with what was being described as a “crack epidemic,” with panic over the nexus between free-base cocaine and urban violence—linked by much of the political and media establishments to people of colour—reaching feverish levels.<sup>272</sup> Meanwhile, at the other end of the cocaine supply chain, FARC and government-linked paramilitaries were using

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<sup>270</sup> “Report of the World Ministerial Conference on Organized Transnational Crime” (UN General Assembly, December 2, 1994), 7.

<sup>271</sup> For the dynamics of securitisation, see Wæver, “Identity, Integration and Security”; Buzan, Wæver, and Wilde, *Security*, 21–48; Wæver, “Politics, Security, Theory.”

<sup>272</sup> See for example Craig Reinerman and Harry Gene Levine, eds., *Crack in America: Demon Drugs and Social Justice* (Berkeley, CA: University of California Press, 1997); Steve Macek, *Urban Nightmares: The Media, the Right, And the Moral Panic Over the City* (Minneapolis, MN: University of Minnesota Press, 2006).

drug proceeds to engage in a brutal civil war in Colombia, undermining regional security.<sup>273</sup> In Japan, the collapse of the Bubble Economy had exposed the widespread involvement of organised crime groups in the legitimate economy, leading to sweeping new set of anti-organised crime laws.<sup>274</sup> In Russia and Eastern Europe, the collapse of the Soviet Union and the rapid transition to capitalism led to a boom in the market for private protection, with organised crime groups rushing to meet the demand.<sup>275</sup> And in Italy, not only did Judges Giovanni Falcone and Paolo Borsellino's campaign against the Mafia finally expose the inner workings of previously secret societies and lead to new anti-organised crime laws,<sup>276</sup> but it was also Falcone who first suggested the 1994 conference.<sup>277</sup> Falcone and Borsellino's assassinations in 1992, followed by that of the journalist Veronica Guerin in Ireland in 1996, only further convinced states that organised crime posed a threat not only to their economies but to their very security.<sup>278</sup>

However, these events on their own are not enough to explain the trend towards securitisation, as similar examples of transnational criminality can be found in earlier decades. Part of the reason that these problems became a target for transnational governance in the 1990s, then, may have simply been opportunism, since as with human trafficking the Cold War had previously made such cooperation difficult at best.<sup>279</sup> The end of the Cold War may also have contributed to this process of securitisation, though, by

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<sup>273</sup> Francisco E. Thoumi, "From Drug Lords to Warlords: Illegal Drugs and the 'Unintended' Consequences of Drug Policies in Colombia," in *Government of the Shadows: Parapolitics and Criminal Sovereignty*, ed. Eric Wilson (London: Pluto Press, 2009), 205–25.

<sup>274</sup> Kaplan and Dubro, *Yakuza*, 2003, 196–220; Hill, *The Japanese Mafia*, 177–247.

<sup>275</sup> Varese, *The Russian Mafia*.

<sup>276</sup> Gambetta, *The Sicilian Mafia*, 9; Jane Schneider and Peter Schneider, "Mafia, Antimafia, and the Question of Sicilian Culture," *Politics & Society* 22, no. 2 (1994): 237–258.

<sup>277</sup> Dae H. Chang, "World Ministerial Conference on Organized Transnational Crime," *International Journal of Comparative and Applied Criminal Justice* 23, no. 2 (September 1, 1999): 141–80, <https://doi.org/10.1080/01924036.1999.9678638>.

<sup>278</sup> Carrapico, "Analysing the European Union's Responses to Organized Crime through Different Securitization Lenses"; Cyrille Fijnaut, "Twenty Years Ago: The Assassinations of Giovanni Falcone and Paolo Borsellino," *European Journal of Crime, Criminal Law and Criminal Justice* 20 (2012): 131–36.

<sup>279</sup> See for example Robert O. Keohane, Joseph S. Nye, and Stanley Hoffmann, eds., *After the Cold War: International Institutions and State Strategies in Europe, 1989-1991* (Cambridge, MA: Harvard University Press, 1993); Paul Francis Diehl, ed., *The Politics of Global Governance: International Organizations in an Interdependent World*, 3rd ed. (Boulder, CO: Lynne Rienner Publishers, 2010).



depriving NATO states and their allies of their more traditional adversary. Since the existence of the state as a collective security agreement is ultimately predicated on the presence of an external security threat, organised crime may have been used to fill this role following the end of the Cold War's system of persistent mutual enmity.<sup>280</sup>

Regardless of the reason, following the 1994 World Ministerial Conference, a first draft of an organised crime convention was proposed by Poland in 1996. This draft included a list of crimes to be covered by the convention, among which was the "traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949."<sup>281</sup> To this list was later added "illicit trafficking in children" and "trafficking in illegal migrants."<sup>282</sup> This would be the beginning of a process of indirectly securitising human trafficking, by positioning human trafficking as something that was carried out by "organised crime" while at the same time positioning "organised crime" itself as a threat to state security. It is interesting too that "trafficking in children" and "trafficking in illegal migrants" were added as separate items. On the one hand, this wording suggests that these forms are distinct from "trafficking in persons," thus suggesting that "children" and "migrants" are not included within the concept of "persons." However, the focus on migrants was also reflective of the increasing securitisation of migration. This is a phenomenon that would become increasingly pronounced in the decades following the end of the Cold War, and one that continues even until this very day.<sup>283</sup>

Starting in January 1999, the UN Crime Commission organised a series of meetings for an intergovernmental Ad-hoc Committee in Vienna to negotiate the content of a new Convention Against Transnational Organized Crime, as well as three optional protocols: one on the illicit trafficking of women and children, one on the illicit trafficking of migrants, and

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<sup>280</sup> Buzan, *People, States, and Fear*, 1–11.

<sup>281</sup> The Republic of Poland, "Draft United Nations Framework Convention against Organized Crime" (UN General Assembly, October 1, 1996), 3.

<sup>282</sup> John David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and Its Protocols* (Oxford: Oxford University Press, 2007), 8.

<sup>283</sup> See generally Gabriella Lazaridis, ed., *Security, Insecurity, and Migration in Europe* (Farnham, Surrey: Ashgate, 2010); Alexander Betts, ed., *Global Migration Governance* (Oxford: Oxford University Press, 2010); James Frank Hollifield, Philip L. Martin, and Pia M. Orrenius, eds., *Controlling Immigration: A Global Perspective*, 3rd ed. (Stanford, CA: Stanford University Press, 2014).

one on the illicit trafficking of firearms.<sup>284</sup> GAATW and the STV joined with the human rights NGO the International Human Rights Law Group (IHRLG) and a number of other NGOs, including sex workers' rights groups, to form what they called the "Human Rights Caucus," whose purpose was to lobby the Ad-hoc Committee to take an approach based what they referred to as the "Human Rights Standard for the Treatment of Trafficked Persons." Based on GAATW and STV's earlier Draft Standard, this Human Rights Standard used a definition of human trafficking that was gender neutral and labour oriented, with sex work assumed to be another type of labour. They also called for regulations to be geared towards protecting migrants rather than prosecuting "traffickers."<sup>285</sup>

The Human Rights Caucus worked closely with the United States to prepare an initial draft of the optional trafficking protocol. This draft followed the lead of earlier trafficking agreements in focussing on women and children. However, following the Human Rights Standard, it rejected the inclusion of non-coerced sex work in the definition of trafficking. In this, they had the support of a range of UN representatives and agencies, including the UN Special Rapporteur on Violence against Women, the Office of the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees, the United Nations Children's Programme and the International Organization for Migration (IOM).<sup>286</sup>

CATW, who were already satisfied with the 1949 Trafficking Convention's understanding of trafficking<sup>287</sup> and were still trying to advance their own draft convention, had not been present at the first meeting of the Ad-hoc Committee. However, when they discovered that those they dubbed the "pro-prostitution lobby"<sup>288</sup> were trying to shape the trafficking protocol around their own trafficking discourses, they quickly put together their own coalition of NGOs. In addition to CATW, this coalition included the IAF and the European

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<sup>284</sup> Venla Roth, *Defining Human Trafficking and Identifying Its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Leiden: Martinus Nijhoff, 2012), 80.

<sup>285</sup> Ditmore and Wijers, "Crime, Sex, Money and Migration: The Negotiations on the United Nations Protocol on Trafficking in Persons (2003)," 688–89; Chew, "Reflections by an Anti-Trafficking Activist."

<sup>286</sup> Gallagher, *The International Law of Human Trafficking*, 26.

<sup>287</sup> UNESCO and CATW, "Penn State Report," 8–11.

<sup>288</sup> Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths about Prostitution and the Global Sex Trade* (North Melbourne, Vic.: Spinifex, 2013), 4.

Women’s Lobby, and they took on the name “the Human Rights Network.” The similarity between this name and the Human Rights Caucus was not, according to members of the STV in attendance, a coincidence, but rather a deliberate attempt to confuse participants. Attempts to sow confusion also allegedly included using similar fonts and formatting in their documents, and then replacing Caucus documents with their own during breaks.<sup>289</sup> The Network aimed for an outcome similar to CATW’s model convention, or at the very least a reiteration of the 1949 Trafficking Convention. This set the stage for a confrontation between the two NGO blocs, focussed around two main points of contention: whether voluntary migration for sex would be defined as human trafficking (Network for, Caucus against) and whether “use in prostitution” would be included as a separate end purpose for human trafficking (Network for, Caucus against).<sup>290</sup>

But in the end, these debates were never resolved. Each NGO bloc had their own state champions—the United States for the Caucus, Argentina and the Philippines for the Network—leading to a stalemate in the committee. Eventually, the states decided on a compromise position wherein they dropped the phrase “irrespective of the consent of the person,” present in both the 1933 and 1949 conventions, from the trafficking definition. The drafters did keep “exploitation of the prostitution of others” as a separate purpose, but they left the definition of “exploitation of prostitution” up to individual states.<sup>291</sup>

With the main points of contention effectively set aside, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, an optional protocol to the United Nations Convention against Transnational Organised Crime (UNTOC), was drafted on November 15, 2000. The Trafficking Protocol has subsequently become the defining document on human trafficking, with Japan, for example, basing their domestic laws on the protocol even before having ratified it. In total, there are now 171 parties to the 2000 Trafficking Protocol, well over double the 82 parties to the 1949 Trafficking Convention despite the latter’s 51-year head start (see Figure 2 below).

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<sup>289</sup> Ditmore and Wijers, “Crime, Sex, Money and Migration: The Negotiations on the United Nations Protocol on Trafficking in Persons (2003),” 689–94.

<sup>290</sup> Gallagher, *The International Law of Human Trafficking*, 27–29.

<sup>291</sup> Gallagher, 25–29.

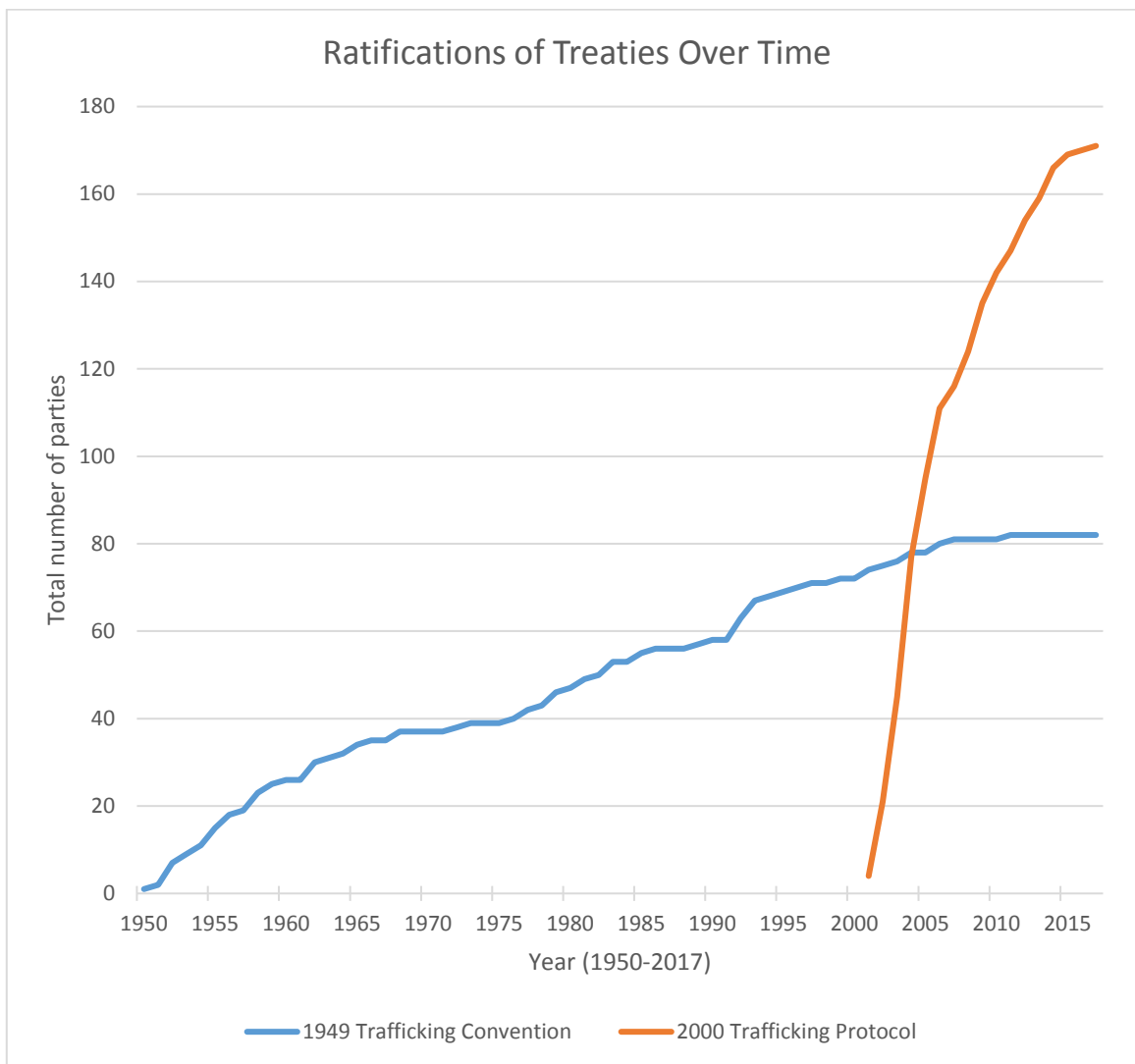


Figure 2: Ratifications of Treaties Over Time<sup>292</sup>

<sup>292</sup> Total number of state parties refers only to states who have ratified, acceded or succeeded and who remain parties to the convention; does not include simple signatures. Historical states such as Yugoslavia are omitted, while their successor states are included based on date of succession. Data from United Nations, “Chapter VII: Traffic in Persons: 11. a Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,” United Nations Treaty Collection, July 17, 2017, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=VII-11-a&chapter=7&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VII-11-a&chapter=7&clang=_en); United Nations, “Chapter XVIII: Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,” United Nations Treaty Collection, July 17, 2017, [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=xviii-12-a&chapter=18](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18).

The Trafficking Protocol's status as the dominant international instrument on human trafficking has, in turn, made its definition of human trafficking the authoritative international legal definition, what Gallagher called "the final word in the long-standing impasse over an international legal definition of trafficking."<sup>293</sup> In a certain sense, however, the Trafficking Protocol marked a shift back to the pre-1933 definition of "trafficking." This is because, having abandoned the "irrespective of the consent of the person" clause, human trafficking once again requires three separate elements: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"), a means ("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") and a purpose ("exploitation," including "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"). The primary change, then, is not the three-part definition of trafficking, but the inclusion of non-sexual forms of exploitation as potential purposes for trafficking.

Also similarly to previous anti-trafficking agreements, the means portion of the protocol becomes irrelevant if the victim is underage. However, while previous treaties had defined "underage" as either below twenty (the 1910 White Slavery Convention)<sup>294</sup> or twenty-one (the 1921 Trafficking Convention),<sup>295</sup> here the line was fixed at eighteen. The age change was hardly surprising: the early higher minimum ages had been set arbitrarily and for the purpose of controlling young women,<sup>296</sup> while eighteen aligns the protocol with the definition of "child" in other UN conventions such as the Convention on the Rights of the Child.<sup>297</sup> Nor is the inclusion of the age-based provision surprising, given that the protocol emerged following the "discovery" of sexual exploitation of children in Southeast Asia.

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<sup>293</sup> Gallagher, *The International Law of Human Trafficking*, 42.

<sup>294</sup> International Convention for the suppression of the "White Slave Traffic", Note A.

<sup>295</sup> International Convention for the Suppression of the Traffic in Women and Children, art. 5.

<sup>296</sup> Walkowitz, *City of Dreadful Delight*, 284.

<sup>297</sup> Convention on the Rights of the Child, New York, 20 November 1989, *entered into force* 2 September 1990, available: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, art. 1.

Importantly, the Trafficking Protocol is an optional protocol to the United Nations Convention against Transnational Organized Crime (UNTOC). As such, the protocol's Article 4 suggests limits for the application of some provisions to cases that are "transnational in nature and involve an organized criminal group,"<sup>298</sup> with "organised crime" defined by UNTOC as:

A structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.<sup>299</sup>

However, the protocol's Article 5 requires all ratifying states to make all the different forms of human trafficking (as defined in the protocol) criminal offenses, along with criminalising attempted trafficking, being an accomplice to trafficking, and planning and organising trafficking.<sup>300</sup> Thus being an optional protocol to UNTOC does not directly prevent the application of the Trafficking Protocol's definition of trafficking to individuals or to purely domestic cases; in fact, the Trafficking Protocol requires such an application.<sup>301</sup>

The bigger problem is that, as an optional protocol to UNTOC, the Trafficking Protocol is only open to ratification by states that have ratified UNTOC, and ratifying UNTOC requires states to criminalise other, non-trafficking phenomena. Ratifying UNTOC with reservations against the application of its major provisions—i.e., ratifying UNTOC only as a stepping stone to ratifying the Trafficking Protocol without intending to be bound by UNTOC itself—is not an option, since the Vienna Convention on the Law of Treaties states that reservations may only be formulated if "the treaty provides that only specified reservations, which do not include the reservation in question, may be made" or if "the reservation is incompatible with the object and purpose of the treaty."<sup>302</sup> In UNTOC's case, only Article 35 ("Settlement

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<sup>298</sup> Trafficking Protocol, art. 4.

<sup>299</sup> United Nations Convention against Transnational Organized Crime ("UNTOC"), New York, 15 Nov 2000, 209 U.N.T.S. 2225, *entered into force* 29 September 2003, art. 2.

<sup>300</sup> Trafficking Protocol, art. 5.

<sup>301</sup> Anne T. Gallagher, "Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway," *Virginia Journal of International Law* 49, no. 4 (May 7, 2009): 789–848.

<sup>302</sup> Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 331 U.N.T.S. 1155, *entered into force* 27 January 1980, art. 19. See also Edward T. Swaine, "Treaty Reservations," in *The Oxford Guide*

of disputes”) explicitly allows for reservations—implying that reservations to other articles may not be permitted.<sup>303</sup> Moreover, in practice nearly every reservation to UNTOC has been for Art. 35, while none have been applied to the main articles.<sup>304</sup> Thus, for a state to ratify the foremost anti-trafficking mechanism it would also need, for example, to pass domestic laws criminalising conspiracy or criminal association. This has caused problems with Japan’s attempts to accede to Trafficking Protocol, as I will explore in later chapters.

Finally, the Trafficking Protocol was one of three Palermo Protocols, which also include the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition (“Firearms Trafficking Protocol”) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (“Migrant Smuggling Protocol”). As all three are optional protocols, states can opt to become parties to any of them with or without joining the others. However, while the Firearms Trafficking Protocol—the least ratified of the three—deals with issues beyond the scope of this research, the Migrant Smuggling Protocol is of some importance because part of its purpose is to distinguish “migrant smuggling” (“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”<sup>305</sup>) from “human trafficking” as defined by the Trafficking Protocol.<sup>306</sup> Thus, in theory, “human trafficking” and “migrant smuggling” should be seen as legally distinct phenomena.

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to *Treaties* (Oxford: Oxford University Press, 2012), 277–303, <http://opil.ouplaw.com.virtual.anu.edu.au/view/10.1093/law/9780199601813.001.0001/law-9780199601813-chapter-12>.

<sup>303</sup> UNTOC, art. 35.

<sup>304</sup> For all the reservations, see United Nations, “Chapter XVIII: Penal Matters: 12. United Nations Convention against Transnational Organized Crime,” United Nations Treaty Collection, July 26, 2017, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en). One of the few reservations to art. 35 comes from the United States and is general in character, noting only that its federal system is such that the convention only applies to federal, rather than state, law enforcement.

<sup>305</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (“Migrant Smuggling Protocol”), New York, 15 Nov 2000, 507 U.N.T.S. 2241, *entered into force* 28 Jan 2004, art. 3.

<sup>306</sup> Anne T. Gallagher and Fiona David, *The International Law of Migrant Smuggling* (New York, NY: Cambridge University Press, 2014), 44–47.

In practice, these two activities can blend together, as what would otherwise be classified as “migrant smuggling” can be reclassified as “human trafficking” if the end purpose of that smuggling is one of the purposes listed in the Trafficking Protocol. This has allowed actors to blur the distinction between “human trafficking” and “migrant smuggling” as a deliberate strategy to govern migration through crime. In Australia, for example, the state has sought to re-label asylum seekers relying on human smugglers to gain entry into the country as victims of human trafficking. This allows the government to argue that, in intercepting migrants and detaining them at concentration camps in Nauru and Papua New Guinea, they are simply following their obligations under the Trafficking Protocol. In this manner repressive measures targeted at migrants can be reframed as being in those migrants’ own best interest.<sup>307</sup>

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<sup>307</sup> Melissa Curley and Kahlia Vandyk, “The Securitisation of Migrant Smuggling in Australia and Its Consequences for the Bali Process,” *Australian Journal of International Affairs* 71, no. 1 (January 2, 2017): 42–62, <https://doi.org/10.1080/10357718.2016.1181149>; Watson, “The Criminalization of Human and Humanitarian Smuggling”; Human Rights Watch, “Australia: Appalling Abuse, Neglect of Refugees on Nauru,” Human Rights Watch, August 2, 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>; Madeline Gleeson, *Offshore: Behind the Wire on Manus and Nauru* (Sydney: NewSouth Publishing, 2016).



*INTERPRETING THE TRAFFICKING PROTOCOL*

The Protocol is quite visibly an awkward compromise. Prostitution was, in the end, included, but in the indirect formulation “the exploitation of prostitution of others.” Moreover, the Protocol breaks with the 1949 Trafficking Convention by not having sex work alone be sufficient grounds to establish trafficking; instead, like the 1910 International Convention for the Suppression of the White Slave Traffic, it also requires both an accompanying means and “exploitation.” Consent, meanwhile, is not held to be irrelevant except in the event of coercion, abduction, etc.—redundantly, given that coercion and force, as a matter of general moral and legal principle, already operate to nullify consent.<sup>308</sup>

Moreover, both of the NGO blocks went home without having achieved their primary goals. The CATW-led Network was able to ensure that sex work was not subsumed under the category of “labour and services,” thus denying its legitimisation. However, by supplanting the prohibitionist definition of the 1949 Trafficking Convention with a newer, more widely accepted definition that does not condemn sex work outright, the Trafficking Protocol struck a blow to prohibitionism. The GAATW-led Caucus, meanwhile, was able to ensure that the new definition of trafficking was mostly<sup>309</sup> gender neutral and included diverse forms of exploitation. They were also able to build certain victim-protection measures into the Protocol. However, their ultimate goal was the development of a human rights-based framework for dealing with human trafficking. The Protocol, as part of UNTOC, instead develops a criminal justice- and security-based framework for dealing with human trafficking. As we will see in later chapters, the focus on governing human trafficking through criminal justice techniques has meant that resources are primarily directed towards labelling and punishing traffickers, rather than protecting and assisting victims.

This outcome allowed CATW’s former director Janice Raymond to claim that the Trafficking Protocol was a victory for CATW because of the inclusion of “abuse of a position of

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<sup>308</sup> See for example John Kleinig, “The Nature of Consent,” in *The Ethics of Consent: Theory and Practice*, ed. Franklin G. Miller and Alan Wertheimer (Oxford: Oxford University Press, 2010); Alan Wertheimer, *Consent to Sexual Relations* (Cambridge: Cambridge University Press, 2003), 163–92.

<sup>309</sup> It is unclear what legal purpose the “especially women and children” line in the title serves. See Roth, *Defining Human Trafficking and Identifying Its Victims*, 85–86.

vulnerability” as a means. Because prohibitionist feminists in general and CATW in particular tend to define sex work both as inherently exploitative and as caused by patriarchal societies placing women in a perpetual position of vulnerability, the fact that a woman is selling sex is thus enough for them to establish an act, means and purpose.<sup>310</sup> MacKinnon has taken this reasoning even further, arguing that under the Trafficking Protocol, pornography constitutes human trafficking—not simply in its production, which is covered by Raymond’s argument, but also in subsequent commercial exchanges—in other words, that all acts of purchasing or consuming of pornography qualify as human trafficking.<sup>311</sup>

GAATW and their allies also claimed victory, with Chew emphasising the inclusion of forced labour and slavery and arguing that when read along with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Trafficking Protocol does establish strong new rights for trafficking victims.<sup>312</sup> Mike Dottridge (a former director of Anti-Slavery International) has likewise argued that a 1999 ruling by the UN’s Human Rights Committee requiring restrictions on freedom of movement to be “the least intrusive instrument amongst those which might achieve the desired result” and “proportionate to the interests to be protected”<sup>313</sup> requires that the Trafficking Protocol not be used as a justification for countries to prevent or dissuade individuals from migrating (even if those individuals are engaged in sex work), or for “anti-trafficking” raids to be used to remove individuals from situations that they do not want to be removed from.<sup>314</sup>

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<sup>310</sup> Janice G. Raymond, “The New UN Trafficking Protocol,” *Women’s Studies International Forum* 25, no. 5 (September 2002): 491–502, [https://doi.org/10.1016/S0277-5395\(02\)00320-5](https://doi.org/10.1016/S0277-5395(02)00320-5); Catharine A. MacKinnon, “Trafficking, Prostitution, and Inequality,” *Harvard Civil Rights-Civil Liberties Law Review* 46 (2011): 271–309.

<sup>311</sup> Catharine A. MacKinnon, “Pornography as Trafficking,” *Michigan Journal of International Law* 26 (2004): 993–1012. MacKinnon’s argument echoes an earlier argument by Dworkin, updated for the Trafficking Protocol. See Dworkin, *Pornography*.

<sup>312</sup> Chew, “Reflections by an Anti-Trafficking Activist,” 73–76.

<sup>313</sup> Human Rights Committee, “General Comments Adopted by the Human Rights Committee under Article 40, Paragraph 4, Of the International Covenant on Civil and Political Rights: General Comment No. 27” (UN International Covenant on Civil and Political Rights, November 1, 1999), 4.

<sup>314</sup> Mike Dottridge, “Introduction,” in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, ed. Global Alliance Against Trafficking in Women (GAATW) (Bangkok: GAATW, 2007), 1–27.

In essence, each of the major NGO blocs present at Vienna interpreted the Trafficking Protocol according to the trafficking discourse they had ascribed to before Vienna. Though both groups found themselves frustrated in achieving their stated objectives at Vienna, both subsequently found it practical to interpret the Trafficking Protocol in such a way that permitted them to claim that their objectives had been met after all. Subsequently, they have both carried on their fights at the national level across the world, with each group encouraging states to pass “anti-trafficking laws” that conform to their interpretation of the Trafficking Protocol.<sup>315</sup> And state actors can freely choose which of these two versions they find most appealing, based on their own domestic circumstances, since the Trafficking Protocol was deliberately designed to accommodate both versions.

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<sup>315</sup> GAATW, “What We Do,” The Global Alliance Against Traffic in Women, 2015, <http://www.gaatw.org/what-we-do>; CATW, “Projects and Campaigns.”

*HUMAN TRAFFICKING AS (MODERN DAY) SLAVERY*

Although much of the conceptual ambiguity of the trafficking protocol comes from the stalemate between the opposing NGO camps, it is not only terms like “sexual exploitation” that were included without any clear definition. The trafficking protocol also makes reference to both “slavery” and “practices similar to slavery” without additional clarification. Because the definition of slavery from the 1926 Slavery Convention remains current, we can take slavery here to mean, “The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” On the other hand, while the 1956 Supplementary Convention lists “practices similar to slavery” as including debt bondage, serfdom, forced marriage and child exploitation, it is not clear if this list is intended to be exhaustive, particularly given the creative ways in which “slavery” has been interpreted since 1956. The Working Group on Contemporary Forms of Slavery, for example, continued to interpret slavery as being inclusive of all sex work and claimed that the Trafficking Protocol validated this position. As such, the Working Group criticised a report by Special Rapporteur Coomaraswamy that used the term “sex work” as being contrary to the text of the Trafficking Protocol, since the term implies the possibility of consent.<sup>316</sup>

For the Anti-Slavery Society, which changed its name to Anti-Slavery International (ASI) in 1990, the focus of a group nominally dedicated to slavery on sex work was a frustrating turn of events. This was evident when ASI went out of its way back in 1996 to remind the Working Group of the continued existence of debt-bondage and other slavery-like practices and to argue that the lack of contributions to the UN Voluntary Trust Fund on Contemporary Forms of Slavery “was due to the lack of credibility of the Fund and its activities.”<sup>317</sup> However, it was ultimately unable to prevent the group from repeatedly expanding its

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<sup>316</sup> Working Group on Contemporary Forms of Slavery, “Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-Sixth Session” (United Nations Economic and Social Council, July 16, 2001), 2001; Radhika Coomaraswamy, “Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women” (United Nations Economic and Social Council, February 6, 2001).

<sup>317</sup> Working Group on Contemporary Forms of Slavery, “Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-First Session” (United Nations Economic and Social Council, July 19, 1996), 5–7.

focus. By 2007, when it was supplanted by the new UN Special Rapporteur on Contemporary Forms of Slavery, Its Causes and Consequences, the group had expanded its focus to include “female genital mutilation, honor killings, and the illicit sale of organs.”<sup>318</sup> Thus in what appears to be a classic case of mission creep, where “slavery” went from being narrowly defined as ownership practices over human beings to an evocative label that could be applied to almost any human rights violation.<sup>319</sup>

However, this does not mean that the ASI would no longer have influence on trafficking and slavery discourses. It was the advocacy of ASI that inspired Kevin Bales to begin the research that would culminate in his 1999 book *Disposable People: New Slavery in the Global Economy*. This book achieved fame for its grim accounts of the lives of those Bales called “contemporary slaves,” as well as its estimate of 27 million slaves worldwide—a number based on a definition of slavery as, “The total control of one person by another for the purpose of economic exploitation.”<sup>320</sup> Bales refers to contemporary slavery as “new slavery,” which he argues is distinct from old slavery in that ethnic differences are no longer a driving factor, and that a lower price point means that slaves are no longer a significant capital investment, can be held for shorter times (they are “disposable”) and generate higher profits.<sup>321</sup>

These arguments have subsequently come under considerable criticism for relying on an imprecise or overly broad definition of slavery and presenting an estimate for the number of slaves without providing any underlying data or methodology.<sup>322</sup> One particularly

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<sup>318</sup> Joel Quirk, *The Anti-Slavery Project: From the Slave Trade to Human Trafficking* (Philadelphia, PA: University of Pennsylvania Press, 2011), 154.

<sup>319</sup> Quirk, 152–57.

<sup>320</sup> Bales, *Disposable People*, 4.

<sup>321</sup> Bales, 14–19.

<sup>322</sup> See for example Elizabeth Bernstein, “The Sexual Politics of the ‘New Abolitionism,’” *Differences* 18, no. 3 (January 1, 2007): 129, <https://doi.org/10.1215/10407391-2007-013>; Quirk, *The Anti-Slavery Project*, 159–62; Orlando Patterson, “Trafficking, Gender and Slavery: Past and Present,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012), 329–34; Ronald Weitzer, “New Directions in Research on Human Trafficking,” *The ANNALS of the American Academy of Political and Social Science* 653, no. 1 (May 1, 2014): 11, <https://doi.org/10.1177/0002716214521562>; Jens Lerche, “A Global Alliance against Forced Labour? Unfree Labour, Neo-Liberal Globalization and the International Labour Organization,” *Journal of*

devastating critique was that Bales' dichotomy between "old slavery" and "new slavery" betrays a lack of understanding of both the history and sociology of slavery. Quirk and Patterson—both experts of slavery—argue that Bales' understanding of slavery is limited to the Atlantic slave trade, that the "new slavery" practices Bales describes all existed historically alongside institutional chattel slavery, and that historically both the relative cost and potential profit from slavery have varied considerably depending on time and place.<sup>323</sup> Even his proposed solutions have come under fire, with immigration and "modern slavery" scholar O'Connell Davidson arguing that Bales' criteria for modern slavery are not actually workable in practice, and that the migration restrictions he has proposed have actually worsened migration outcomes.<sup>324</sup> In newer editions of the book Bales himself acknowledges these criticisms and expresses regret over having drawn a distinction between "old" and "new" slavery. However, he stands by his statements regarding trends in prices and profits, as well as his calls for migration restrictions.<sup>325</sup>

Despite the rejection of Bales' work by academics, there is little doubt that Bales and *Disposable People* have had an influence on contemporary discourses of human trafficking.<sup>326</sup> Deliberately written for a non-academic audience, the book was nominated for a Pulitzer Prize, turned into an award-winning documentary, and led to the creation of the NGO Free the Slaves as the American sister organisation of the UK-based ASI. Bales

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*Agrarian Change* 7, no. 4 (October 1, 2007): 5–11, <https://doi.org/10.1111/j.1471-0366.2007.00152.x>.

<sup>323</sup> Quirk, *The Anti-Slavery Project*, 159–62; Patterson, "Trafficking, Gender and Slavery: Past and Present," 329–34.

<sup>324</sup> Julia O'Connell Davidson, "New Slavery, Old Binaries: Human Trafficking and the Borders of 'Freedom,'" *Global Networks* 10, no. 2 (2010): 244–261, <https://doi.org/10.1111/j.1471-0374.2010.00284.x>.

<sup>325</sup> Bales, *Disposable People*, xxiv–xxxii, 244–52.

<sup>326</sup> This is readily acknowledged by his critics; Quirk calls him "most influential advocate of the concept of new slavery" and *Disposable People* "seminal;" Patterson writes that "Professor Bales is a good man who does valuable work as a leading figure in the campaign against modern forms of forced labor;" and O'Connell Davidson refers to him as one of the "anti-slavery activists who have played an important role in promulgating the 'trafficking as modern slavery' discourse." See Quirk, *The Anti-Slavery Project*, 159; Orlando Patterson, "Rejoinder: Professor Orlando Patterson's Response to Professor Kevin Bales," in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012), 373–74; O'Connell Davidson, "New Slavery, Old Binaries," 250.

himself has collected numerous human rights awards and become in many ways the public face of academic research on slavery;<sup>327</sup> his book, meanwhile, has become one of the most frequently cited works on slavery.<sup>328</sup>

The fame of Bales' book, however, has meant that some of the more dubious aspects of the book have become widely propagated and transformed into accepted trafficking lore. For example, Bales' estimate that there are "27 million slaves"—given as a back-of-the-envelope calculation without any supporting evidence of methodology—has become the go-to figure for moral entrepreneurs,<sup>329</sup> such as the US State Department's Trafficking in Persons Office,<sup>330</sup> to cite as the estimated number "trafficking victims." In this capacity, it has become something of a perpetual indicator—an unchanging number that demands ever greater solutions. Even as recently as February 2017, a US Senator was using the "27 million" figure to argue for more funding for anti-trafficking efforts—implicitly suggesting that the previous 18 years of anti-trafficking efforts had had zero impact on the total number of slaves worldwide.<sup>331</sup>

Bales himself never uses the words "human trafficking" in *Disposable People*. Instead, he uses a wider definition of slavery that captures practices that include, for example, coercive or deceptive recruitment of young girls in developing countries for the purpose of sexual exploitation.<sup>332</sup> And in subsequent works, Bales quotes the full text of the trafficking protocol but then treats slavery as if it were the only end purpose of trafficking—suggesting perhaps that Bales defines slavery as inclusive of all the various end purposes described in

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<sup>327</sup> See for example his TED Talk at [https://www.ted.com/talks/kevin\\_bales\\_how\\_to\\_combat\\_modern\\_slavery](https://www.ted.com/talks/kevin_bales_how_to_combat_modern_slavery) (accessed May 12, 2016). The accompanying biography describes him as "one of the world's foremost experts on modern slavery."

<sup>328</sup> Google Scholar counts 1,310 citations; compare with 1,109 for Barry's *Female Sexual Slavery* (1979) or 709 for Kempadoo and Doezema's *Global Sex Workers: Rights, Resistance, and Redefinition* (1998). [scholar.google.com](http://scholar.google.com) (accessed May 12, 2016)

<sup>329</sup> Inferences drawn from Google Scholar search results. Searching for the terms "27 million" and "slaves" yields 3,410 hits. [scholar.google.com](http://scholar.google.com) (accessed May 12, 2016).

<sup>330</sup> US Department of State, "2013 Trafficking in Persons Report," June 2013, 2.

<sup>331</sup> Jon Greenberg, "Are 27 Million People Trapped in Modern Slavery?," Politifact, February 17, 2017, <http://www.politifact.com/global-news/statements/2017/feb/17/bob-corker/are-27-million-people-trapped-modern-slavery/>.

<sup>332</sup> Bales, *Disposable People*, 34–44.

the trafficking protocol.<sup>333</sup> In essence, then, Bales is simply repeating a message that had previously been developed by the Working Group and presenting it to a global audience. However, its effective absorption into the discussion about human trafficking has meant that, over the past decade, there has been a shift towards using the terms “modern slavery” and “human trafficking” interchangeably. Various parts of the American government have said that “human trafficking *is* modern-day slavery [italics mine]”<sup>334</sup>—as have other governments such as the UK, major anti-trafficking NGOs like Polaris, academic institutions like the University of Michigan’s Human Trafficking Clinic, researchers like Baldwin et al., and hundreds of journalists.<sup>335</sup>

More recently, Bales’ work, along with David Batstone’s similarly activist-oriented book *Not For Sale*,<sup>336</sup> has become part of a wider campaign against “modern slavery” operating outside of the UN’s anti-trafficking framework. This has been done largely through the efforts of NGOs, often working in cooperation with (and funded by) for-profit private sector groups such as Google and Nestlé,<sup>337</sup> such as Bales’ Free the Slaves—founded in 2000 and

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<sup>333</sup> Kevin Bales, “What Predicts Human Trafficking?,” *International Journal of Comparative and Applied Criminal Justice* 31, no. 2 (2007): 269–79, <https://doi.org/10.1080/01924036.2007.9678771>. See also *The Slave Next Door*, where “slavery” and “human trafficking” are used mostly interchangeably—though it is unclear whether this Bales’ idea or Soodalter’s. Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today* (Berkeley, CA: University of California Press, 2009).

<sup>334</sup> See for example Alison Behnke, *Up for Sale: Human Trafficking and Modern Slavery* (Minneapolis, MN: Twenty-First Century Books, 2015); Noah Berlatsky, “‘Human Trafficking’ Has Become a Meaningless Term,” *The New Republic*, October 31, 2015, <https://newrepublic.com/article/123302/human-trafficking-has-become-meaningless-term>.

<sup>335</sup> See for example British Home Office and Scottish Executive, “UK Action Plan on Tackling Human Trafficking,” 2007; Polaris, “Human Trafficking,” Polaris Project, October 12, 2015, <https://polarisproject.org/human-trafficking>; “Human Trafficking Clinic,” Michigan Law, University of Michigan, accessed April 26, 2016, <https://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/humantraffickingclinic.aspx>; Susie B. Baldwin et al., “Identification of Human Trafficking Victims in Health Care Settings,” *Health and Human Rights* 13, no. 1 (2011): 36–49.

<sup>336</sup> David Batstone, *Not for Sale: The Return of the Global Slave Trade—and How We Can Fight It* (New York, NY: HarperCollins, 2010).

<sup>337</sup> Nicolas M. Dahan et al., “Corporate-NGO Collaboration: Co-Creating New Business Models for Developing Markets,” *Long Range Planning* 43, no. 2 (April 1, 2010): 326–42, <https://doi.org/10.1016/j.lrp.2009.11.003>; Elizabeth Bernstein, “Redemptive Capitalism and Sexual Instability,” in *Perverse Politics? Feminism, Anti-Imperialism, Multiplicity*, ed. Ann Shola Orloff, Raka



“dedicated to alerting the world about slavery’s global comeback and to catalyze a resurgence of the abolition movement”<sup>338</sup> and Batstone’ Not For Sale—founded in 2001 and which aims to “build an economic wall between the poorest 2 billion and slavery.”<sup>339</sup> More recently the line between donor and activist has been blurred by the Australian mining magnate Andrew “Twiggy” Forrest’s creation in 2013 of the Walk Free Foundation, which:

Focus[es] on a multi-faceted approach to engage a number of stakeholders including faiths, businesses, academics, civil society organisations and governments in global initiatives to drive change and build awareness around the complex and often hidden nature of modern slavery.<sup>340</sup>

The Walk Free Foundation seems to largely do this by publishing the Global Slavery Index, one of the major human trafficking indicators.

Polaris, one of the major international anti-trafficking NGOs and one that has worked closely with the American government,<sup>341</sup> offers an interesting snapshot of the change in focus in NGOs from “trafficking” to “modern slavery.” Founded by Katherine Chon and Derek Ellerman in 2002 as “the Polaris Project,” Polaris’ very name evokes the efforts of escaped black slaves in the United States to seek freedom in the north by the guiding light of the North Star. Nevertheless, it was founded not to address “slavery” but “to address the vital need for grassroots research and organizing to combat trafficking of women and children.”<sup>342</sup> But by 2004 their subtitle had changed from “Combatting Trafficking in Women and Children” to “Combating Sex Trafficking and Modern-day Slavery,”<sup>343</sup> and then in 2007 it

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Ray, and Evren Savci (Emerald Group Publishing Limited, 2016), 45–80, <https://doi.org/10.1108/S0198-871920160000030001>.

<sup>338</sup> Free the Slaves, “About Us,” Free the Slaves, 2017, <https://www.freetheslaves.net/about-us/>.

<sup>339</sup> Not For Sale, “About Us,” Not For Sale, 2016, <https://www.notforsalecampaign.org/about-us/>.

<sup>340</sup> Walk Free Foundation, “Walk Free,” Walk Free Foundation, 2017, <https://www.walkfreefoundation.org/>.

<sup>341</sup> Polaris was even briefly headed by a former head of the US State Department’s TIP Office. See

<sup>342</sup> Polaris, “About,” Polaris Project, December 12, 2002, [https://web.archive.org/web/20021212012558/http://www.polarisproject.org:80/polarisproject/about\\_v2.htm](https://web.archive.org/web/20021212012558/http://www.polarisproject.org:80/polarisproject/about_v2.htm).

<sup>343</sup> Polaris, “Polaris Project: Combating Sex Trafficking and Modern-Day Slavery,” Polaris Project, August 7, 2004, <https://web.archive.org/web/20040807042555/http://www.polarisproject.org:80/polarisproject/>.

changed again to “A World Without Slavery.”<sup>344</sup> While it continued to include mentions of “human trafficking,” these were now secondary to “slavery” or “modern slavery,” and its page on trafficking read: “Trafficking in persons, also known as human trafficking, is the modern practice of slavery.”<sup>345</sup> During this period, Polaris also broadened its focus to include not only “forced prostitution, bride trafficking, child prostitution and child pornography”<sup>346</sup> but also “labor trafficking [...] in situations of domestic servitude and small-scale labor operations, [and] in sweatshops and farms that are subcontracted to major multinational corporations.”<sup>347</sup> And today, Polaris (subtitle: “Freedom happens now”) describes itself simply as “a leader in the global fight to eradicate modern slavery.”<sup>348</sup>

This renewed focus on “modern day slavery” may seem surprising or redundant, given that there already existed a recent, well-established and apparently overlapping movement against “human trafficking.” However, it is important to remember that, as discussed at the beginning of this chapter, “trafficking” first emerged as a term referring to the movement of slaves, and also that it later re-emerged as a race neutral substitute for “white slavery.” In this sense, “trafficking” has always retained a genealogical linkage to “slavery,” and the usage of the term “trafficking” has always been coloured by this genealogy. As such, it was probably inevitable that eventually moral entrepreneurs would realise that “modern day slave” is more evocative than “victim of trafficking” and thus go back to the root of the term.

Moreover, these groups are not alone in working on issues related to “trafficking” outside of the definitional confines of the Palermo Protocol. The ILO, for example, has adopted “forced labour” as their primary reference point, and so for them “sexual exploitation” is a subtype

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<sup>344</sup> Polaris, “Home,” Polaris Project, December 1, 2007, <https://web.archive.org/web/20071201162533/http://www.polarisproject.org:80/>.

<sup>345</sup> Polaris, “What Is Human Trafficking?,” Polaris Project, November 26, 2007, [https://web.archive.org/web/20071126175456/http://www.polarisproject.org:80/index.php?option=com\\_content&task=view&id=26&Itemid=86](https://web.archive.org/web/20071126175456/http://www.polarisproject.org:80/index.php?option=com_content&task=view&id=26&Itemid=86).

<sup>346</sup> Polaris, “Trafficking of Women and Children,” Polaris Project, December 12, 2002, [https://web.archive.org/web/20021212081935/http://www.polarisproject.org:80/polarisproject/trafficking\\_v2.htm](https://web.archive.org/web/20021212081935/http://www.polarisproject.org:80/polarisproject/trafficking_v2.htm).

<sup>347</sup> Polaris, “What Is Human Trafficking?”

<sup>348</sup> Polaris, “About,” Polaris, 2017, <https://polarisproject.org/about>.

of forced labour (along with non-sexual forced labour imposed by the state and non-sexual forced labour imposed by private actors), slavery is yet another a type of forced labour, and “slavery-like practices” is just another name for forced labour. Thus for the ILO, all human trafficking<sup>349</sup> has for its end purpose forced labour, although not all forced labour involves human trafficking.<sup>350</sup> And with the ILO being one of the major organisations actually implementing anti-trafficking programs on the ground, these decisions regarding what “counts” as trafficking have real consequences when it comes to what types of programs are funded and who they are directed at.

What all of these groups—both those discussed here and groups like CATW and GAATW—have in common is that despite nominally using the text of the Trafficking Protocol, they have nevertheless defined “human trafficking” in such a way as to align with their own priorities and worldviews. While a definition that has no fixed and stable meaning is certainly useful for moral entrepreneurs who can then instrumentalise that definition in whatever way they believe will best achieve their policy goals, it is much less useful for researchers wanting to undertake a comparative or historical study. This is not a new observation; the IOM, for example, has struggled with this problem from the early days of the Trafficking Protocol.<sup>351</sup> However, the fact that the problem is not new does not make it any less intractable. The following chapter will thus focus on my own approach to this problem and how I have attempted to navigate the contentious debates surrounding how to define human trafficking.

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<sup>349</sup> Except, presumably, trafficking related to organ theft.

<sup>350</sup> International Labour Office, ed., *A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005*. (Geneva: International Labour Office, 2005), 5–9.

<sup>351</sup> Bridget Anderson and Julia O’Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, IOM Migration Research Series 15 (Geneva: International Organization for Migration, 2003), 7–9; Guri Tyldum and Anette Brunovskis, “Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking,” in *Data and Research on Human Trafficking: A Global Survey*, ed. Frank Laczko and Elzbieta Gozdzia (Geneva: International Organization for Migration, 2005), 17–34, <http://onlinelibrary.wiley.com/doi/10.1111/j.0020-7985.2005.00309.x/abstract>; Cathy Zimmerman, Ligia Kiss, and Nicola Pocock, *Health and Human Trafficking in the Greater Mekong Subregion: Findings from a Survey of Men, Women and Children in Thailand, Cambodia and Viet Nam* (Geneva: International Organization for Migration and London School of Hygiene and Tropical Medicine, 2014), 1.

## CHAPTER 4: METHODS AND METHODOLOGY

### INTRODUCTION

Having explained how this dissertation defines “human trafficking governance” and having explored how this governance has been developed at the international level over the past two centuries, this chapter will now explain how I approached studying this issue in Japan. As noted in the introduction, this dissertation uses Japan as a case study in transnational human trafficking governance. This chapter discusses what case study research is, why the case study approach is appropriate for this research, and why Japan makes a suitable case for a study of transnational human trafficking governance. This chapter will then elaborate on the research questions established in the introduction, as well as looking at the propositions I developed in answer to those questions prior to undertaking my fieldwork.

This chapter will then provide an overview of the fieldwork itself, including a description of the fieldwork sites I visited, the process of selecting research participants, and details regarding the research participants themselves. This chapter provides an overview of the data collection and analysis processes, including a discussion of coding techniques. Finally, this chapter also discusses the ethical considerations that shaped this research process and the writing of this dissertation.

## METHODOLOGY AND RESEARCH QUESTIONS

As discussed in Chapter 1, this dissertation explores responses to human trafficking in Japan as a case study in transnational governance, using a Foucauldian conception of governance. This follows other scholars who have found that the flexibility of qualitative case study research makes it the most suitable approach to Foucauldian governmentality research.<sup>352</sup> More broadly, however, this is also a study in transnational political actors. According to Eckstein:

The argument for case studies as a means for building theories seems strongest in regard to precisely those phenomena with which the subfield of ‘comparative’ politics is most associated: macropolitical phenomena, that is, units of political study of considerable magnitude or complexity, such as nation-states and subjects virtually coterminous with them (party systems or political cultures).<sup>353</sup>

Though following a Foucauldian approach means that my own research narrows in on micro-processes, nonetheless my overall research topic is on a macropolitical phenomenon—transnational governance of human trafficking. This then also, following Eckstein, suggests that the case study approach is the most suitable for this project.

That still leaves the question of what, exactly, case study research entails. According to Yin:

A case study copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result relies on multiple sources of evidence, with data needing to converge in a triangulating fashion, and as

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<sup>352</sup> See for example Éric Darier, “Environmental Governmentality: The Case of Canada’s Green Plan,” *Environmental Politics* 5, no. 4 (December 1, 1996): 585–606, <https://doi.org/10.1080/09644019608414294>; Ole Jacob Sending and Iver B. Neumann, “Governance to Governmentality: Analyzing NGOs, States, and Power,” *International Studies Quarterly* 50, no. 3 (September 1, 2006): 651–72, <https://doi.org/10.1111/j.1468-2478.2006.00418.x>; Laura J. Spence and Leonardo Rinaldi, “Governmentality in Accounting and Accountability: A Case Study of Embedding Sustainability in a Supply Chain,” *Accounting, Organizations and Society* 39, no. 6 (August 2014): 433–52, <https://doi.org/10.1016/j.aos.2012.03.003>.

<sup>353</sup> Harry Eckstein, “Case Study and Theory in Political Science,” in *Case Study Method*, ed. Roger Gomm, Martyn Hammersley, and Peter Foster (London: SAGE, 2009), 118, <https://doi.org/10.4135/9780857024367>.

another result benefits from the prior development of theoretical propositions to guide data collection and analysis.<sup>354</sup>

Creswell, meanwhile, defines a case study as:

[...] a qualitative approach in which the investigator explores a bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information (e.g., observations, interviews, audiovisual material, and documents and reports), and reports a case description and case-based themes.<sup>355</sup>

In both cases, the general idea is clear: case study research involves the use of a variety of sources to describe either a singular case or a small number of cases, in order to make inferences about a larger trend. In both descriptions, the case study is presented as primarily a qualitative project, and importance is given to details and context. Yin further lists five components he argues are vital for a case study: the “study’s questions, its propositions, its unit(s) of analysis, the logic linking the data to its propositions, and the criteria for interpreting the findings.”<sup>356</sup> Following his guidelines, I shall describe these five components below.

As discussed in Chapters 1 and 2, the purpose of this research is to explore how transnational governance can impact both the governance and the governmentality of human trafficking. Translated into a research question, this becomes:

- How do transnational ideas, actors and networks influence the local governance and governmentality of human trafficking in a given country (if at all)?

However, these ideas, actors and networks do not cross borders unchallenged. As such, I must also ask:

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<sup>354</sup> Robert K. Yin, *Case Study Research: Design and Methods*, 4th ed. (Thousand Oaks, CA: SAGE, 2009), 18.

<sup>355</sup> John W. Creswell, *Qualitative Inquiry & Research Design: Choosing among Five Approaches*, 2nd ed. (Thousand Oaks, CA: SAGE, 2007), 73.

<sup>356</sup> Yin, *Case Study Research*, 27.

- How does the historical understanding of human trafficking in a given country impact the transnational governance of human trafficking in that country?

Gerring argues that social science research can either generate or test hypotheses, and that “case studies are more useful for generating new hypotheses, all other things being equal.”<sup>357</sup> Here again, though, I have followed Yin, who argues that research question(s) should be accompanied by propositions in order to provide direction to the research.<sup>358</sup> My initial scoping study and preliminary research suggested to me that the transnational actors had *not* succeeded in changing the Japanese human trafficking governance. Then, based on both a review of the literature and preliminary discussions with relevant actors as part of that scoping study, I developed the following propositions:

- Historical factors will prove decisive in determining human trafficking governmentality; and
- Where transnational governance appears to succeed, this will only reflect superficial “window dressing” put in place to placate the transnational actors and to conceal the true governmentality of local actors.

Because this is a case study, I have framed these research questions and propositions in general terms, rather than in Japan-specific ones. They are designed to meet Eckstein’s criteria for theory, which he argues must, at minimum, “state a presumed regularity in observations that is susceptible to reliability and validity tests, permits the deduction of some unknowns, and is parsimonious enough to prevent the deduction of so many that virtually any occurrence can be held to bear it out.”<sup>359</sup> Japan thus serves as what Eckstein calls a “crucial case”: if these propositions are not true for Japan, then they are not good descriptions of how transnational governance works more generally.<sup>360</sup>

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<sup>357</sup> John Gerring, *Case Study Research: Principles and Practices* (Cambridge: Cambridge University Press, 2007), 38.

<sup>358</sup> Yin, *Case Study Research*, 28.

<sup>359</sup> Eckstein, “Case Study and Theory in Political Science,” 127.

<sup>360</sup> Eckstein, 148–58.

Answering these broad research questions and exploring this proposition will thus also require answering several specific ones related to Japan, namely:

- How has “human trafficking” been governed historically in Japan?
- How does Japan govern human trafficking now?
- What are the sources of transnational human trafficking governance in Japan? And,
- How have Japanese regulators responded to this transnational governance?

These intermediate sub-questions must be answered before I can answer the two main research questions, and it is on answering these questions that I will focus over the following three chapters, before returning to my primary research questions in the conclusion.

Given these research questions, my unit of analysis is “a country”—or rather, the human trafficking governance that takes place within a country. By this I mean a clearly defined national territory, and not the political entity of “the state.” This is because the idea of “governance” in governmentality research is not limited to the state, and civil society actors, foreign governments and even organised crime can all play a role in this governance.

The “logic linking the data to the propositions” here is a “time-series analysis,” meaning that I am looking at how responses to human trafficking in Japan have changed over time to assess how transnational governance has impacted these responses. Specifically, I am looking at a “complex time series,” since the governance of human trafficking cannot be captured by a single variable or a small number of variables that would allow for a quantitative analysis.<sup>361</sup> To answer my research questions, I focus particularly on the years 2000–2014, which is the period from the signing of the Trafficking Protocol until the initial year of my fieldwork. However, as noted above, one of my questions focusses on the role that the history of human trafficking and human trafficking in Japan has had on shaping Japanese responses to human trafficking in that 2000–2014 period. As such, my literature review and document analysis covers a much wider time range.

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<sup>361</sup> Yin, *Case Study Research*, 144–49.



Finally, for “the criteria for interpreting the findings,” I am looking to causal factors that might be indicated by interruptions in the time series. As Yin notes:

Whatever the stipulated nature of the time series, the important case study objective is to examine some relevant “how” and “why” questions about the relationship of events over time, not merely to observe the time trends alone. An interruption in a time series will be the occasion for postulating potential causal relationships; similarly, a chronological sequence should contain causal postulates.<sup>362</sup>

Thus in that 2000–2014 period, I will be looking for sudden changes in Japan’s human trafficking governance. When these changes are identified, I assess the likelihood of two competing explanations for these changes. One: these changes have been caused by transnational actors, operating in accordance with one of the various human trafficking governmentalities identified in the previous chapter. Or, two: these changes reflect the actions of Japanese actors responding to conditions on the ground, and follow the Japanese trends in human trafficking governance that will be discussed in the next two chapters. In the former case, we would expect the change in governance to map neatly onto the existing trends discussed in Chapter 3, but to represent a sharp break from existing Japanese regulatory trends. In the latter case, we would expect to see a greater divergence from the international trends, and minimal divergence from the existing Japanese regulations discussed in Chapters 5 and 6.

Finally, there is the question of, “Why Japan?” This is something I have been asked repeatedly, both by Japanese and non-Japanese individuals, since I began my research. Often their assumption is that my selection of Japan must mean that Japan has a particularly significant human trafficking problem. However, this is not the case. Rather, in this study, “Japan” is being used as the specific country I am analysing on the basis of being what Gerring calls a “pathway case.” According to Gerring:

Although all case studies presumably shed light on causal mechanisms, not all cases are equally transparent. In situations where a causal hypothesis is clear and has already been confirmed by cross-case analysis, researchers are well advised to focus on a case where the causal effect of one factor can be isolated from other potentially

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<sup>362</sup> Yin, 148.

confounding factors. I shall call this a pathway case to indicate its uniquely penetrating insight into causal mechanisms.<sup>363</sup>

As noted above, my primary interest here is in causal factors: specifically, whether historical influences or transnational actors exert greater control over the formation of anti-trafficking policies. As such, I need a case where these two strands of influence can be separated, at least to a certain extent. Since many of these transnational actors are Anglo-European, this means I needed to focus my study on a non-Anglo-European country. Even if I observed, for example, that Australian anti-trafficking policies seemed to follow American policy preferences, it would be difficult to say whether this was actually an example of the influence of transnational American actors or the result of their shared history as English settlements. For the same reason, I want to avoid countries with a strong history of colonialism, which might also make it difficult to separate historical and contemporary transnational influences. I also wanted to avoid countries with strong neo-colonial influences: countries where a perceived need of investment allows foreign donors, investors or NGOs to override local governmentalities and essentially implement their own policy preferences. Finally, because my research design requires me to observe changes in governance over time, I need a country that has had reasonably stable political institutions over time that I can observe and analyse.

As such, my pathway case needs to be a non-Anglo-European country that has not been colonised, and has experienced long-term economic and political stability. Of the countries that meet this description, I have selected Japan as my case on the basis of my own familiarity with the country, my ability to read and speak the language, and my existing network of contacts who can facilitate access to research participants.

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<sup>363</sup> Gerring, *Case Study Research*, 122.

## FIELDWORK OVERVIEW



Figure 3: Map of Japan with Fieldwork Sites Indicated<sup>364</sup>

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<sup>364</sup> Base map from <https://www.amcharts.com/svg-maps/> and used under a Creative Commons Attribution-NonCommercial 4.0 International License. Modified using Inkscape 0.92.

My fieldwork was conducted during three phases. First, I undertook a month-long scoping study in Japan in September 2013. The goal of this study was to conduct some preliminary interviews and informal discussions with local experts in Tokyo and Osaka. This allowed me to assess the basic feasibility of the research project and to identify any obstacles that might require changes to my research plan. It also allowed me to begin building up the network of contacts that would be necessary for carrying out interviews during the next stages of my fieldwork.

The second phase occurred from February 2014 to February 2015, when I was based in Tokyo as a visiting research fellow at Keio University. It was during this period that I conducted the majority of my interviews, gathered documents and conducted archival research. I also engaged in informal conversations with individuals involved in human trafficking governance, attended events sponsored by universities and NGOs related to human trafficking, and conducted site visits to areas described to me by research participants as experiencing high rates of human trafficking. This research was conducted primarily in Tokyo, with additional formal site visits and interviews conducted in Yokohama, Sapporo and Morioka. This phase also included informal site visits and discussions with experts in Osaka, Kobe, Nagoya, Chiba and Mito (not included in Figure 3).

By coincidence, 2014 was the year that Japan revised its National Action Plan on Human Trafficking. However, while the Action Plan itself has proven to be a valuable source of documentary evidence, this did mean that scheduling interviews with key anti-trafficking officials in 2014 was often quite difficult. In some cases, officials who were willing to be interviewed requested these interviews wait until after the release of the Action Plan, which came near the end of the year. Fortunately, I was able to schedule interviews with these officials during the third phase of my fieldwork, a follow-up visit to Japan in June 2015. This visit coincided with a major review of Japan's trainee visa program, which gave me an opportunity to speak with NGOs on this issue and attend meetings on the subject. Finally, I was also able to expand my research sites to include Kyushu during this final period of field work.

Most of my research took place in Tokyo and its surrounding suburbs. This is because, as the administrative heart of Japan, Tokyo is where all my primary research participants were located: the major ministries and the National Police Agency (NPA, itself a ministerial-level body) are all clustered in Kasumigaseki, while the foreign embassies are located a little further south in Minato Ward. Many of the civil society groups are also headquartered in Tokyo, making it the easiest place to arrange interviews. Being in Tokyo also gave me easy access to nearby cities such as Yokohama.

Potential additional research sites were identified in advance, but the ones I visited were ultimately selected opportunistically, based on where I could find willing research participants. For major cities, I had identified Sapporo, Nagoya, Osaka (and the surrounding area), Fukuoka and Naha as potential secondary research sites; of these, I ultimately visited Sapporo, Osaka and Fukuoka. Likewise, while I had wanted to speak with police officers working in more rural areas, my selection of Morioka as an additional research site was based purely on the access I was granted through existing connections in the NPA. These locations were visited only briefly, and for the purpose of adding geographic diversity to my case study rather than as detailed cases in their own right. Nevertheless, I will describe some of the features of these cities below, after first discussing some of the issues related to population figures.

The data used below for numbers of foreign residents come from individual cities, which generally only provide data on the number, nationality, age groups and official sex of registered Japanese and foreign nationals. The latter group excludes ethnically non-Japanese short term visitors (who do not have residency status and thus do not need to register with the municipal government), irregular migrants (such as short-term visitors who have overstayed their visa), and naturalised Japanese citizens (included instead in the former group). As such, these figures overstate the level of ethnic homogeneity.

However, these overestimates are likely marginal. Japan has a very low rate of naturalisation: according to data from the OECD, in 2015 only 0.4% of the “foreign population” (defined as foreign citizens with residency status in Japan) naturalised, placing it in a tie with Estonia for the lowest rate of naturalisation in the OECD. This compares with

rates of 1.3% in South Korea and Germany, and rates of 3.3% in the United States, the Netherlands, and Iceland. No rate is given for Canada past 2007, but then it was 11.4%—fifteen times the rate for Japan in the same year (0.7%).<sup>365</sup> The result of this low rate of naturalisation is that, according to the Ministry of Justice (MOJ), since 1952 only 550,715 foreigner citizens total have become naturalised Japanese citizens. Moreover, this naturalisation process has been dominated by citizens of the two Koreas<sup>366</sup> and China, many of whom are the descendants of labourers forcibly brought to Japan prior to 1945. Even in 2015, of the 9,469 successful applications for naturalisation, 5,247 were previously citizens of the two Koreas and 2,813 were citizens of China—leaving only 1,409 from other countries.<sup>367</sup> Kondo suggests that these low numbers are the result of naturalisation in Japan requiring the renunciation of all other citizenships.<sup>368</sup> Regardless of the reason why, these numbers suggest that the number of foreign residents in a given city will be within rounding distance of the number of non-ethnic Japanese residents as well.

Short term visitors are a separate matter, and so to supplement these figures I have provided data from the Japan Tourism Agency (JTA), which is part of the Ministry of Land, Infrastructure, Transport and Tourism. Unfortunately, as this data is at the prefectural level, the number of tourists visiting the cities I discuss will be lower than the figures given here—although the cities presented here do all contain some of the primary tourist attractions for their respective prefectures. For this data, I will use “number of foreigners staying at least one night” as my metric to determine the popularity of the prefecture. This is because “number of foreigners making daytrips” (JTA’s other figure) can include “trips to the airport”—which would make Chiba Prefecture (where Narita International Airport is located) Japan’s most popular tourist destination.<sup>369</sup>

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<sup>365</sup> Data from the OECD, available at: <https://www.oecd.org/els/mig/keystat.htm>

<sup>366</sup> Treated as a single category in this data.

<sup>367</sup> Data from the MOJ, available at: [http://www.moj.go.jp/MINJI/toukei\\_t\\_minj03.html](http://www.moj.go.jp/MINJI/toukei_t_minj03.html)

<sup>368</sup> Atsushi Kondo, “Migration and Law in Japan,” *Asia & the Pacific Policy Studies* 2, no. 1 (January 1, 2015): 155–68, <https://doi.org/10.1002/app5.67>; Atsushi Kondo, “Report on Citizenship Law: Japan” (Florence: EUDO Citizenship Observatory, October 2016), [http://cadmus.eui.eu/bitstream/handle/1814/43625/EudoCit\\_2016\\_11Japan%20.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/43625/EudoCit_2016_11Japan%20.pdf?sequence=1).

<sup>369</sup> Data from the Japan Tourism Agency (JTA), available at: [http://www.mlit.go.jp/kankocho/page02\\_000089.html](http://www.mlit.go.jp/kankocho/page02_000089.html)

Sapporo is the fifth largest city in Japan, though with a population of less than two million, it is only midsized compared to Tokyo and Osaka. It is also the capital of Hokkaido Prefecture, which includes the entirety of Hokkaido—the northernmost of Japan’s four main islands. I visited in January, when the weather hovered below -10 degrees Celsius and the snow was high enough to bury bicycles; still, touts outside of the sex clubs that lined certain sections of the downtown area would try to draw me in to nondescript multistory commercial buildings in the late afternoon. Sapporo is likely the most ethnically homogenous of Japan’s major cities, with non-Japanese citizens making up a little more than 0.5% of the population.<sup>370</sup> It is also, however, a relatively popular tourist destination, particularly—according to my research participants from the NPA—for visitors from China. Hokkaido Prefecture was the 9<sup>th</sup> most popular of Japan’s 47 prefectures for foreigner tourists, with approximately 1,417,000 foreign visitors staying at least one night in 2015.<sup>371</sup>

Osaka, the capital of Osaka Prefecture, is the second largest city in Japan and *the* major metropolis of the eastern half of the country. The city is connected seamlessly to the neighbouring city of Kobe (another of Japan’s largest) to the west, and is a short train ride to the former capital of Kyoto to the east. Foreigners make up a more significant proportion of the population, though even here that figure is below 5%, with nearly 60% of that being Korean.<sup>372</sup> According to some of my research participants from the NPA, Osaka’s Nishinari ward is infamous for its organised crime presence and illegal sex workers; it also happens to be where the cheapest hotels are, and so is where I stayed on most of my visits. Osaka Prefecture is the second most popular prefecture for foreign tourists (after Tokyo), with approximately 6,038,000 foreign visitors staying at least one night in 2015.<sup>373</sup>

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<sup>370</sup> Data from the City of Sapporo, available at:

<http://www.city.sapporo.jp/toukei/jinko/juuki/juuki.html>.

<sup>371</sup> Data from the Japan Tourism Agency (JTA), available at:

[http://www.mlit.go.jp/kankocho/page02\\_000089.html](http://www.mlit.go.jp/kankocho/page02_000089.html)

<sup>372</sup> Data from the City of Osaka, available at:

<http://www.city.osaka.lg.jp/shimin/page/0000006893.html>.

<sup>373</sup> Data from the Japan Tourism Agency (JTA), available at:

[http://www.mlit.go.jp/kankocho/page02\\_000089.html](http://www.mlit.go.jp/kankocho/page02_000089.html)

Fukuoka, the capital of Fukuoka Prefecture, is another midsized city. It is the largest city on Kyushu, the southernmost of Japan's four islands, and has a ferry link to Busan in South Korea. Perhaps because of this, Fukuoka is the only city where I have seen officials from the Immigration Bureau outside of my fieldwork visits and border crossings—during my most recent visit, two agents visited the hostel I was at to ask about what sort of foreigners had been staying there. This might reflect Fukuoka's relative popularity: Fukuoka Prefecture is the eighth most popular prefecture for foreign tourists, with approximately 1,579,000 foreign visitors staying at least one night in 2015.<sup>374</sup> On the other hand, only 2% of Fukuoka's population is non-Japanese, putting it right between Sapporo and Osaka in terms of the number of foreign residents.<sup>375</sup> Being in Fukuoka also allowed me to visit an NGO based in Kumamoto, a small city further south in Kyushu.

Morioka, the capital of Iwate Prefecture, is a smallish city by Japanese standards, with a population just under 300,000. Like Sapporo, it is far to the north of the capital (though still on the main island of Honshu), but it lacks an airport and the tourists, according to local police officers I spoke with, are mostly Japanese who have come for the hot springs. The statistics seem to bear this out: Iwate Prefecture is the 39<sup>th</sup> most popular prefecture for foreign tourists, with approximately 88,000 foreign visitors staying at least one night in 2015.<sup>376</sup> Furthermore, with only 1,388 foreign residents (as of 2016), it is also the most ethnically homogenous of the cities discussed here.<sup>377</sup> While the other cities I visited to explore what officials were doing in geographically dispersed regions, Morioka was included because of its small size, rural character and ethnic homogeneity.

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<sup>374</sup> Data from the Japan Tourism Agency (JTA), available at:  
[http://www.mlit.go.jp/kankocho/page02\\_000089.html](http://www.mlit.go.jp/kankocho/page02_000089.html)

<sup>375</sup> Data from the City of Fukuoka, available at:  
[http://www.city.fukuoka.lg.jp/soki/tokeichosa/shisei/toukei/jinkou/tourokujinkou/TourokuJinko\\_kubetsu.html](http://www.city.fukuoka.lg.jp/soki/tokeichosa/shisei/toukei/jinkou/tourokujinkou/TourokuJinko_kubetsu.html).

<sup>376</sup> Data from the Japan Tourism Agency (JTA), available at:  
[http://www.mlit.go.jp/kankocho/page02\\_000089.html](http://www.mlit.go.jp/kankocho/page02_000089.html)

<sup>377</sup> Data from the City of Morioka, available at:  
<http://www.city.morioka.iwate.jp/moriokagaido/toukei/006691.html>



## METHODS AND ANALYSIS

Though history plays an important role in my analysis, my main focus remains on Japan's contemporary response to human trafficking, and so interviews were my primary research method. Furthermore, given that my research questions focus on human trafficking governance, my research participants were drawn from groups or agencies actively involved in this governance: police agencies, government ministries, civil society groups and NGOs. These participants were selected via purposeful sampling, beginning with what Corbin and Strauss call "theoretical sampling."<sup>378</sup> This means that I identified initial research participants based on a theoretical understanding of the issue drawn from the existing literature. My scoping study in 2013 allowed me to verify that I would be able to access many of the participants I had identified, and also helped me refine my theoretical framework and identify new participants prior to my 2014 period of fieldwork. During my yearlong stay in Japan I was able to continuously revisit and revise my theoretical framework, which allowed me to both identify new potential research participants and to refine my interview questions.

Many of these initial contacts were identified and approached through my own existing connections in Japan and Australia. These connections were all either former professors of mine from the University of Tokyo, senior academics at the Australian National University, or former fellow students from either the Australian National University or the University of Tokyo. Often these friends and acquaintances would refer me to a second intermediary, who could then introduce me to a suitable interview participant. Subsequent to this initial introduction, I would provide prospective participants with information about my research project and we would then discuss whether an interview would be feasible.

Once my fieldwork was underway, I used snowball sampling to expand my pool of participants. As Noy describes it, this is where the researcher "accesses informants through contact information that is provided by other informants. This process is, by necessity, repetitive: informants refer the researcher to other informants, who are contacted by the

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<sup>378</sup> Juliet Corbin and Anselm L. Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Thousand Oaks, CA: SAGE, 2008).

researcher and then refer her or him to yet other informants, and so on.”<sup>379</sup> The primary advantage of snowball sampling is that, by constantly asking for referrals and cross-referencing with earlier referrals, the researcher can both figure out who the most important/knowledgeable figure in the area is and gain access to them. This was particularly important for this project, since it gave participants an opportunity to identify actors who were particularly relevant based on their own understanding of human trafficking, and whom I might have overlooked otherwise. This approach does raise certain ethical concerns, namely that the referral process can lead to disclosure of information about those subjects, and that the act of referral may in some cases compel the referred subject to respond positively to the interview request, creating a situation where the interview is involuntary.<sup>380</sup> I will discuss these issue and strategies taken to mitigate them below.

To a certain extent, my theoretical sampling and snowball sampling went hand-in-hand: as research participants introduced me to potential new avenues of research, they also introduced me to participants who might be able to assist in pursuing those avenues. However, one of the limitations of snowball sampling is that participants are likely to only suggest additional research participants who support their position or whom they know will not be critical of their own efforts. In fact, some participants told me explicitly that this is what they were doing. As such, theoretical sampling independent of my snowball sampling remained important for my research. By continually checking new information that emerged from my interviews and referring back to the existing literature, I was able to identify and approach additional research participants that might have been overlooked by snowball sampling alone.

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<sup>379</sup> Chaim Noy, “Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research,” *International Journal of Social Research Methodology* 11, no. 4 (2008): 330, <https://doi.org/10.1080/13645570701401305>.

<sup>380</sup> Tina Miller and Linda Bell, “Consenting to What? Issues of Access, Gate-Keeping and ‘Informed’ Consent,” in *Ethics in Qualitative Research*, by Tina Miller et al. (London: SAGE, 2012), 61–75; Karen Jacobsen and Loren B. Landau, “The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration,” *Disasters* 27, no. 3 (September 1, 2003): 185–206, <https://doi.org/10.1111/1467-7717.00228>; W. Paul Vogt, Dianne C. Gardner, and Lynne M. Haeffele, *When to Use What Research Design* (New York, NY: Guilford Press, 2012), 260.

Because these were elite interviews dealing with a sensitive topic, gaining access to participants was an ongoing concern. This was compounded by the sensitive nature of my research topic. Some of the individuals or organisations I identified as desirable participants during both theoretical and snowball sampling steps were either unavailable or unwilling to be interviewed. In some cases, I was able to speak to individuals in these organisations only in private conversations. However, while I cannot analyse or quote from these conversations (and they are excluded from Table 1, below), they did point to additional data sources that have allowed me to bring the insights gained from these conversations into this dissertation. In other cases, I was left with gaps that I tried to fill as best I could with the available documentary evidence, discussed in more detail below.

As summarised in Table 1 (below), most of my participants affiliated with Japanese government were from Japanese police, and these came from different units of the NPA and three different prefectural police forces. The Ministry of Foreign Affairs (MOFA) and the MOJ (which also includes the Immigration Bureau) are two of the ministries most involved with Japan's anti-trafficking efforts. Unfortunately, I was unable to arrange an interview with the other significant relevant ministry, the Ministry of Health, Labour, and Welfare (MHLW), although I did receive documents regarding their policies. In addition to these participants from the Japanese government, I also spoke with officials from the embassies of Thailand and the Philippines—the two countries most commonly mentioned as sources of human trafficking victims in Japan during the period I am exploring.

Table 1: Details of Formal Interviews

Organisations	Location	Language	Interviews	Participants
<b>Police</b>			<b>6</b>	<b>13</b>
-National Police Agency (NPA)	Tokyo	Jap./Eng.	3	5
-Iwate Prefectural Police	Morioka	Japanese	1	2
-Hokkaido Prefectural Police	Sapporo	Japanese	1	4
-Fukuoka Prefectural Police	Fukuoka	English	1	2
<b>Government</b>			<b>4</b>	<b>10</b>
-Ministry of Justice (MOJ)	Tokyo	English	1	4
-Ministry of Foreign Affairs (MOFA)	Tokyo	English	1	2
-Immigration Bureau, Tokyo	Tokyo	Japanese	1	2
-Fukuoka Prefectural Immigration Bureau	Fukuoka	Japanese	1	2
<b>Civil Society (NGOs &amp; IGOs)</b>			<b>6</b>	<b>6</b>
-The International Organisation for Migration (IOM) <sup>381</sup>	Tokyo	English	1	1
-Development Action for Women Network (DAWN)	(Online) <sup>382</sup>	English	1	1
-Lighthouse: Center for Human Trafficking Victims, Tokyo	Tokyo	English	1	1
-ENCOM: Yokohama Diocesan Commission on Refugees, Migrants and People on the Move	Yokohama	English	1	1
-Kumustaka: Association for Living Together with Migrants	Kumamoto	Japanese	1	1
-Not For Sale Japan (NFSJ)	Tokyo	English	1	1
<b>Foreign Embassies</b>			<b>2</b>	<b>3</b>
-The Royal Thai Embassy	Tokyo	English	1	1
-Embassy of the Philippines	Tokyo	English	1	2
<b>Total</b>			<b>18</b>	<b>32</b>

<sup>381</sup> At the IOM's request, in the place of an interview questions were emailed to them, and they later provided a detailed written response. These have been otherwise analysed as if they were interview data.

<sup>382</sup> Interview conducted by Skype, with the researcher in Tokyo and the participant in Manila.

The civil society groups included only one IGO: the IOM, which (as discussed in Chapter 2) is one of the major IGOs that deals with human trafficking, and whose Japan office is involved with assisting migrant victims of human trafficking in Japan. Following my use of snowball sampling, I enquired with my participants following my interviews about what other IGOs were active in Japan, but most participants agreed that the IOM was the only IGO active in Japan with relevance to human trafficking research.

Civil society groups included two groups that are members of the Japan Network Against Trafficking in Persons (JNATIP), a coordinating body that brings together a diverse range of NGOs and private sectors groups, ranging from the YWCA to the Body Shop.<sup>383</sup> One of these is Lighthouse, an NGO that “works to eliminate the issue of human trafficking, especially sex trafficking, in Japan.”<sup>384</sup> Lighthouse was founded in 2004 by Fujiwara Shihoko as “Polaris Project Japan,” a branch of the American NGO Polaris (discussed above in Chapter 3). Fujiwara-san had previously worked for Polaris Project in the United States, and formed Polaris Project Japan to bring attention what she saw as Japan’s own unaddressed trafficking issues. However, around the time I began my fieldwork Lighthouse separated from their parent organisation and rebranded in order to operate more independently.

The other member organisation of JNATIP I included is Not For Sale Japan (NFSJ), a group founded in 2011 by Yamaoka Mariko and which “aims to abolish modern-day slavery and human trafficking.” Similarly to Fujiwara-san, Yamaoka-san was inspired by both the American NGO Not For Sale and David Batstone’s book *Not For Sale*,<sup>385</sup> which she translated into Japanese. Similarly to Lighthouse, Not For Sale Japan operates largely autonomously from its American counterpart. Yamaoka-san is also very much involved in the management of JNATIP itself, and it was in reaching out to JNATIP that I came into contact with her.

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<sup>383</sup> JNATIP, “Related Organizations,” JNATIP: Jinshin baibai kinshi nettowāku, accessed August 16, 2017, <http://jnatip.jp/member/>.

<sup>384</sup> Lighthouse, “Lighthouse: Center for Human Trafficking Victims,” June 10, 2017, <http://lhj.jp/english>.

<sup>385</sup> Not For Sale Japan, “About,” Not For Sale Japan, accessed August 16, 2017, <https://www.facebook.com/pg/notforsalejapan/about/>; Batstone, *Not for Sale*.

Other civil society groups included in my research were either affiliated with religious groups or founded in part by church-affiliated individuals. The Development Action for Women Network (DAWN), a Philippines-based NGO “established to assist distressed women migrants from Japan, as well as their Japanese-Filipino children, in the promotion and protection of their rights and welfare,”<sup>386</sup> was founded by individuals that included a pastor and an Immaculati Cordis Mariae sister.<sup>387</sup> ENCOM (Yokohama Diocesan Commission on Refugees, Migrants and People on the Move) is religious non-profit run by the Diocese of Yokohama that provides assistance to migrants living in Japan.<sup>388</sup> And Kumustaka (“How are you?” in Tagalog) is an NGO originally founded by the Tetori Catholic Church in Kumamoto to assist Filipino entertainers, though it has subsequently expanded its focus to migrant assistance more generally.<sup>389</sup>

All participants I formally interviewed either headed their relevant department or organisation, or else acted with the open approval of the leaders of their relevant departments or organisations. As such, all the participants spoke to me in the capacity of representatives of their organisation—which, for this project, was precisely what I was looking for. Where participants granted me permission to use their name, I have used it when quoting from the interviews; in cases where they asked to be cited “by position,” I simply refer to them as, “a participant from [organisation].”

These formal interviews were also accompanied by a roughly equal number of informal talks with the same categories of participants (police, civil servants, civil society groups and foreign embassies) who either preferred to speak on background due to the sensitive nature of this topic or else asked that I cite official documents they provided rather than interview transcripts. Likewise, during some of the formal interviews listed above, participants would

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<sup>386</sup> Development Action for Women Network, “Home,” Development Action for Women Network, accessed August 16, 2017, <http://www.dawnphil.com/index.htm>.

<sup>387</sup> Development Action for Women Network, “About DAWN,” Development Action for Women Network, 2017, <http://www.dawnphil.com/aboutdawn.htm>.

<sup>388</sup> ENCOM, “About ENCOM,” ENCOM Yokohama, accessed August 16, 2017, [http://encomyokohama.jp/about\\_encom\\_en/](http://encomyokohama.jp/about_encom_en/).

<sup>389</sup> Kumustaka, “About Us,” Kumustaka, accessed August 16, 2017, <http://www.geocities.jp/kumustaka85/EngAboutUs.html>.

offer personal comments for the benefit of my own understanding of the issue but which they did not wish attributed to them. These comments helped guide my subsequent research, but they were not included in my analysis and are not quoted here.

These interviews were conducted on either a one-on-one or small group basis. Though my original research plan called only for the former, because I was speaking to individuals in their capacity as representatives of an organization, the interviews were often arranged in such a way that I would be speaking with multiple individuals who had anti-trafficking experience or expertise in the same meeting. This arrangement did not appear to negatively impact the quality of those interviews, and it also provided me with the benefit of a larger participant sample size.

The interviews themselves were semi-structured, following what Patton calls the “general interview guide” approach.<sup>390</sup> This means that, prior to the interview, I would prepare a short list of specific questions (usually five) I wanted to ask, with the idea that each of these questions would lead to a broader discussion around the different areas I was interested in. I would also write out potential follow-up questions, though whether or not these were used would depend on the flow of conversation. These questions and follow-ups would be tailored to the participants I was interviewing, and also changed as my fieldwork progressed and my theoretical understanding of the issue progressed. Nevertheless, because the overall focus of my research remained unchanged, there is still a high level of overlap between the questions. Because these general themes were determined beforehand based on theory and the literature, these interviews fall under what Wengraf calls the “deductivist” approach.<sup>391</sup> However, the broad nature of these questions left room for the conversation to move in unexpected directions.

Though the majority of interviews were conducted in English, five of them were conducted in Japanese. These latter were conducted without the assistance of a translator, though in

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<sup>390</sup> Michael Quinn Patton, *Qualitative Research & Evaluation Methods* (Thousand Oaks, CA: SAGE, 2002), 343.

<sup>391</sup> Tom Wengraf, *Qualitative Research Interviewing: Biographic Narrative and Semi-Structured Methods* (Thousand Oaks, CA: SAGE, 2001).

all cases at least one respondent present spoke some level of English, meaning that I was able to verify areas where the meaning was unclear. Interviews were digitally recorded in cases where this was permitted by subject. The majority of respondents agreed for interviews to be recorded, and this was accomplished using the iPhone app iTalk and, in the case of the one interview conducted over Skype, the Windows program MP3 Skype Recorder. Recordings were subsequently transcribed using the Windows programs Express Scribe and Dragon NaturallySpeaking. In cases where respondents did not wish for interviews to be recorded I took notes concurrently by hand instead; these notes were then written up and expanded upon in Microsoft Word as soon as possible post-interview.

Both notes and transcriptions were then entered into the CAQDAS (Computer Assisted Qualitative Data Analysis Software) NVivo 10—and later, NVivo 11—for coding and analysis. As Bazeley and Jackson highlight, NVivo provides software tools for “reading, reflecting, coding, annotating, memoing, discussing, linking [and] visualizing” the data,<sup>392</sup> but the actual reflective analytic work—making and applying coding choices—is still left entirely in the hands of the researcher. Following Saldaña, the data was coded over multiple cycles: the first cycle I used attributive coding (noting the basic attributes of participants), descriptive coding (attaching descriptive labels to sections of interest for later additional analysis) and provisional coding (using codes previously established by reference to the literature review and research questions and propositions).<sup>393</sup> A second cycle was then used to “reorganise and reanalyse” data where:

more accurate words or phrases were discovered for the original codes; some codes will be merged together because they are conceptually similar; infrequent codes will be assessed for their utility in the overall coding scheme; and some codes that seemed like good ideas during First Cycle coding may be dropped all together because they are later deemed “marginal” or “redundant” after the data corpus has been fully reviewed.<sup>394</sup>

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<sup>392</sup> Patricia Bazeley and Kristi Jackson, *Qualitative Data Analysis with NVivo* (Thousand Oaks, CA: SAGE, 2013), 68.

<sup>393</sup> Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (Thousand Oaks, CA: SAGE, 2009), 55–123.

<sup>394</sup> Saldaña, 149.



In addition to interviews, this research also relies extensively on the use of contemporary and archival documentary sources. Many of these documentary sources are related directly to Japan's regulation of human trafficking: laws that mention human trafficking, or were described by regulators as being used as anti-trafficking tools; border control regulations; police white papers; historical statutes on offenses now described as human trafficking; anti-trafficking action plans; and posters and other materials distributed as part of different anti-trafficking campaigns. Much of this was provided directly by my research participants, with the intention that I use their content to supplement the interviews. Others were included in order to provide necessary context to the interviews or other documents, or else for the purpose of painting a wider historical picture.

Another major source of documentary evidence was the American Trafficking in Persons (TIP) Report. In this case, the TIP Report is not being treated as a source of information about human trafficking, but rather as a source of information about American perspectives on human trafficking. TIP Report descriptions of Japan were thus analysed in NVivo using the same procedures described above. The TIP Report was also analysed more broadly, however, in order to put the American descriptions of human trafficking in Japan in context. This involved both a narrative analysis of the text of the reports, a discussion of the legal instruments the reports are based on, and some basic quantitative analysis of both the rankings included in the reports and the reports' wording over time.

Finally, I also put together a database of Japanese-language newspaper articles for analysis. These included every article on human trafficking from Japan's four most significant national, secular<sup>395</sup> newspapers—the *Asahi Shimbun*, the *Mainichi Shimbun*, the *Yomiuri Shimbun*, and the *Nihon Keizai (Nikkei)*—over a 140-year time period. This database, however, includes far too much text to be analysed in detail. Instead, I performed a basic quantitative analysis using their metadata, supplementing this analysis with sample text where appropriate. Since the data from the *Nikkei* lacked some of the metadata properties of the other publications, it was ultimately dropped from this analysis.

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<sup>395</sup> I.e., excluding the Buddhist religious movement Sōka Gakkai's newspaper, the *Seikyō Shimbun*.

One way I use this data is to look at the frequency of mentions of the Japanese term *jinshin baibai* (often translated as “human trafficking”) in two of those newspapers—the *Asahi Shimbun* and the *Yomiuri Shimbun*—from their earliest archives to the late-1980s and to use this a proxy for media interest in human trafficking. These dates were determined opportunistically, on the basis of when the archives begin until when those newspapers switched from image-based archives to digitised text records (which have different metadata properties). The *Mainichi Shimbun* was excluded from this analysis on account of only returning a single result for the term “*jinshin baibai*” prior to 1973, in 1872.

It is important to note that since the text itself has not been digitised, these results are for articles that have been tagged for references to “*jinshin baibai*” by an archivist. This tagging reflects an analytical decision by the archivist, since it may be applied in cases where the term “*jinshin baibai*” does not appear in the article but the archivist nevertheless believes the activities described in the article could be considered forms of *jinshin baibai*. Take, for example, the 1973 *Asahi Shimbun* article, “*Ryoken nitsū tsukaiwake: Tamamoto, Shutsunyū kaisū gomakasu* [Using two passports: Tamamoto, concealing the frequency of his entering and exiting the country].” The “Tamamoto” in the title refers to Tamamoto Toshio, who while living in Chiang Mai had “purchased” thirteen women between the ages of thirteen and seventeen to be his wives, subsequently paying for their schooling and building houses for their parents. The case was widely covered in Japan,<sup>396</sup> leading to a spike of articles on *jinshin baibai* in 1973. However, though this article has a clear link to the buying and selling of people, the words “*jinshin baibai*” do not appear in its text, nor is *jinshin baibai* itself the direct focus of the article. Instead, the article focusses on a then-recent discovery: Tamamoto’s use of dual passports to disguise how often he was passing through customs.<sup>397</sup> Since the *Yomiuri Shimbun* also allows searches by title, I thus also supplemented this data with a search for article titles in the *Yomiuri Shimbun* that include *jinshin baibai* over the

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<sup>396</sup> And outside of Japan. See for example “Thailand: Paradise Lost,” *Newsweek*, February 5, 1973. In Ryan Bishop and Lillian S. Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* (New York: Routledge, 1998), 36–37; Associated Press, “10 Wives to Wait,” *Tucson Daily Citizen*, May 23, 1975.

<sup>397</sup> “Ryoken Nitsū Tsukaiwake: Tamamoto, Shutsunyū Kaisū Gomakasu,” *Asahi Shimbun*, January 18, 1973.

same period. This was to provide additional data that does not reflect the above type of archivist decision-making.

In addition to looking at the frequency of articles tagged for *jinshin baibai* prior to the 1990s, I also look at the frequency of appearance of two terms—*jinshin baibai* and the newer term *jinshin torihiki*—in digitised articles from the *Asahi Shimbun*, the *Mainichi Shimbun* and the *Yomiuri Shimbun* over 1999–2014. This analysis comes as part of a broader exploration of the emergence of a new human trafficking terminology in the aftermath of the Trafficking Protocol. Note that as my focus here was on how specific Japanese translations for “trafficking” (*jinshin baibai* and *jinshin torihiki*) were being deployed by the media, I did not perform any searches on practices something grouped within these terms, such as those related to sex work, slavery or human smuggling.

## RESEARCH ETHICS

Data gathering and retention procedures (including the use of snowball sampling), potential participant categories, participant information sheets, consent forms, and the oral consent script were all pre-approved by the Australian National University's Human Research Ethics Committee.<sup>398</sup> This process involved a prior research ethics training session, a submitting an online application for to the human research ethics committee, and then addressing initial questions and concerns raised by the ethics committee in the form of a resubmitted application. Because I was conducting interviews outside of Australia, but was "engag[ing] participants who are fully competent and not vulnerable in research settings that are relatively benign," this ethics protocol was classified as a "Low-Risk Expedited 2 Protocol."<sup>399</sup> This protocol was also subject to ongoing monitoring, including mandatory updates where any unforeseen circumstances that caused a deviation from the original protocol were to be reported.

Per this protocol, prior to all formal interviews, participants were provided with project information sheets and consent forms. Time was allotted for us to go over both of these together and for me to answer any questions about the consent sheet, the use of the data, attribution, and any other concerns they might have. During this process, I asked participants whether or not they wished for the interview to be recorded, making it clear that all recording was strictly voluntary. Participants were also asked about attribution: whether they wished to be quoted by name, quoted as an unnamed officials representing their organisation, quoted under a pseudonym, or quoted anonymously. In some cases, respondents requested additional time to review the information and consent sheets. In four cases, the interviews proceeded under conditional consent, and the signed sheets were later scanned and sent to me by email; in one of these cases, consent to use the data was not granted, and as a result that interview was removed from the data set and list of participants. Participants were also offered the opportunity to consent orally, in which case

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<sup>398</sup> Ethics protocol 2014/015, "The Regulation of Human Trafficking in Japan."

<sup>399</sup> Research Services, "Ethics & Integrity: Before You Begin," Australian National University, accessed May 25, 2018, <https://services.anu.edu.au/research-support/ethics-integrity/before-you-begin>.

a separate consent script was read to them and questions were asked to verify their consent was in fact informed. Two participants chose this option over written consent.

I also informed participants that they could withdraw at any time, or request that certain portions of the interview not be quoted. In some case, participants agreed to speak with me only on the condition of not being quoted at all; these individuals are not included in the above participant list. Due to the sensitive nature of the topic, some respondents only agreed to the interview on the condition that they be granted copies of transcripts so that they might make corrections or request certain segments be deleted. These were sent as the transcripts were completed. Of these, only once did a participant request changes, and these were largely cosmetic in nature.

These interviews took place at a location of the participants' choosing. Most of the time the location was the office of their organization, but some of the participants asked to meet me in public locations, including a café, an Italian restaurant, and a Japanese-style bar. One of the interviews (with the Philippines-based DAWN) was conducted by Skype, and another (with the IOM) by email. In no cases were locations used that put either the researcher or the participants at risk. Per university policies, no payment or compensation was offered or given for these interviews.

In some cases, participants were introduced to me via gate-keepers. This would typically be the result of my contacting a senior official at a particular agency, who would then ask their subordinates or juniors with subject expertise related to my research to speak with me on behalf of the agency. In some of these cases, the senior official was also present during the interview. As Miller and Bell point out, the use of gate-keepers in this way can raise ethical concerns, specifically as to whether consent can actually be freely given in these circumstances.<sup>400</sup> However, in these cases, the participants in question were speaking not of their own life stories, but only in terms of the organisations they represented, in a professional capacity about purely professional matters. The only participants who ever provided personal anecdotes were those accessed directly, without recourse to gate-

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<sup>400</sup> Miller and Bell, "Consenting to What?"

keepers. As such, I do not believe the use of gate-keepers here violated the principles of informed consent.

There is also a concern that the use of snowball sampling means that participants will generally be aware of who else is speaking to me, compromising their anonymity.<sup>401</sup> However, while this approach can pose genuine risks to vulnerable populations, here I was able to mitigate these risks by speaking to participants in a professional capacity who all consented to some form of identification, and by never divulging either the questions asked or the answers given by other interview subjects. In this way, the only identifying information revealed by the sampling process was information that participants had consented to be revealed (i.e., that they had participated in the interview). Furthermore, by speaking with heads of departments or organisations or else conducting interviews with the consent of those figures, I was able to avoid the risk of professional retaliation that can come with interviewing junior employees.<sup>402</sup>

This still leaves the question as to why gate-keepers enabled me to conduct these interviews, or why individuals who spoke to me on their own terms agreed to do so. The answer that was often given to me, explicitly, was that participants were genuinely interested in having what they knew about human trafficking and anti-trafficking in Japan spread to a wider audience. This was both because they wanted their organisation's position on the issue represented more broadly, and because they were hoping that this research could positively impact victims or potential victims of human trafficking. Participants were thus granting interviews both "to gain favorable publicity for their political or social concerns" and "because they want[ed] to be helpful in solving a problem."<sup>403</sup>

Another important ethical consideration for this project was how I was to accommodate my own standpoint as an outsider. By this I refer to my being a Caucasian male originally from Canada and working towards a PhD in Australia, interviewing participants who were mostly

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<sup>401</sup> Jacobsen and Landau, "The Dual Imperative in Refugee Research."

<sup>402</sup> Vogt, Gardner, and Haeffele, *When to Use What Research Design*, 260.

<sup>403</sup> Herbert Rubin and Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data*, 2nd ed. (Thousand Oaks, CA: SAGE, 2005), 78–79, <http://methods.sagepub.com/book/qualitative-interviewing>.

Japanese nationals, along with a small number of Thais and Filipinos. This created a complex social dynamic between me and my research subjects. Most of them were older than me and in occupations that came with high social standing. Had I been a Japanese national, hierarchal social norms might have complicated the interview dynamic; as a foreigner, however, my assumed (and, to a great degree, real) ignorance of these social norms provided me with leeway that may not have been granted to Japanese nationals.

At the same time, I benefited from both connections to senior officials who helped facilitate interviews, and to Keio University, one of the most prestigious educational institutions in Japan. These connections were obtained either through networking at the Australian National University, or else through previous contacts I had made while at the University of Tokyo as an exchange student in 2007–2008. These personal and institutional connections proved instrumental in gaining access to participants; in some cases, a letter sent on official Keio letterhead was necessary to secure an interview. In speaking with Japanese researchers pursuing similar topics I discovered that gaining this level of access could be quite challenging.

The language difference also created its own challenges for this research. As shown by Table 1 (above), the majority of my interviews were conducted in English, despite it being the non-native language of all of my formal participants. Both Tsang and Andrews argue that this is inferior to an interview conducted in the participants' native language, by a native speaker fully conversant not only in that language but in the culture norms surrounding the language.<sup>404</sup> Certainly if my own levels of competency in Japanese and English had been switched, some the interviews would have been easier for me. However, this research also included non-Japanese participants, and those interviews would have been much more difficult without a native-level proficiency in English.

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<sup>404</sup> Eric W. K. Tsang, "Inside Story: Mind Your Identity When Conducting Cross National Research," *Organization Studies* 19, no. 3 (May 1, 1998): 511–15, <https://doi.org/10.1177/017084069801900307>; Molly Andrews, "Against Good Advice: Reflections on Conducting Research in a Country Where You Don't Speak the Language," *The Oral History Review* 22, no. 2 (1995): 75–86.

Moreover, to argue that the interviews I did conduct (either in English or in Japanese) are necessarily inferior than those that would have been conducted by a native speaker would be to adopt a “neopositivist” position on the interview process. It would involve taking the position that the interview is an instrumental process for obtaining external information from participants using a standardised and repeatable process. Following what Alvesson calls a “localist” position, though, these interviews can be seen as documentary evidence in and of themselves, rather than as a means of accessing truths external to the interview.<sup>405</sup> Thus, while an interview conducted by a native speaker would certainly have produced a different interview, this would not necessarily have been a “better” interview. The participant might have omitted certain details in an explanation or used a less explicit wording, for example, assuming (perhaps incorrectly) that a native speaker would be able to fill in the gaps.

And contrary to Tsang, I do not believe that a shared identity always means that participants will be more willing to speak with you.<sup>406</sup> During my scoping project, a number of Japanese scholars suggested that it would be easier for me to pursue this research as a (white) foreigner than if I were (ethnically) Japanese. This is because, on the one hand, I could provide an avenue for potentially positive dissemination of their work in English. On the other hand, even if I did take a more critical stance, the Japanese language press would be unlikely to repeat it on account of my research being published in English. As a result, my research was less likely to negatively impact the participant than a similar project conducted in Japanese. Subsequent conversations with Japanese researchers working on similar projects suggested that this appraisal was accurate: being Japanese did not make their research less challenging, but rather made it challenging in different ways.

Finally, I want to address the issue of “standpoint” more specifically. Standpoint theory suggests that research on topics that touch on the lives of marginalised subjects (which in this case can include sex workers, regular and irregular migrants, and victimised children)

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<sup>405</sup> Mats Alvesson, “Beyond Neopositivists, Romantics, and Localists: A Reflexive Approach to Interviews in Organizational Research,” *The Academy of Management Review* 28, no. 1 (2003): 13–33, <https://doi.org/10.2307/30040687>.

<sup>406</sup> Tsang, “Inside Story.”



should start with the lives of those subjects, as they will be positioned to understand their own marginalisation in a way fundamentally inaccessible to the non-marginalised.<sup>407</sup> This is especially true for me, since as a white male Anglo-European researcher, I have no personal basis for approaching or understanding the lived experiences of those individuals.

However, these groups have been deliberately excluded as research participants from this project for several reasons. First, I decided to avoid interviewing vulnerable individuals out of ethical concerns. While it is possible to conduct ethically sound research with vulnerable populations, this would require additional resources and safeguards, and it would also entail additional risks, including re-victimisation of victims, secondary victimisation of the researcher, physical harm, and accidentally obtaining incriminating evidence. Second, even if I were able to carry out these interviews ethically, my sampling methods would not work for vulnerable groups. Approaching these individuals in a way that would meet these ethical criteria would require me to work through gatekeepers such as government agencies or NGOs. This would in turn give those gatekeepers control over who I would speak to, allowing them to select participants who would be more likely to give an interview reflecting discourses favoured by those gatekeepers—thus defeating the purpose of approaching them in the first place.

As such, I decided to forgo interviews with vulnerable populations. To compensate for the absence of these viewpoints, I have turned instead to secondary sources, particular ethnographic work by researchers whose own standpoints—as women, migrants, or workers in sexually charged spaces such as hostess clubs—makes them much better situated than I to speak on these subjects.

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<sup>407</sup> See for example Sandra Harding, “Rethinking Standpoint Epistemology: What Is ‘Strong Objectivity?’,” *The Centennial Review* 36, no. 3 (1992): 437–70; Nancy C. M. Hartsock, “The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism,” in *Discovering Reality*, ed. Sandra Harding and Merrill B. Hintikka, 161 (Dordrecht: Springer Netherlands, 2004), 283–310; Donna Haraway, “Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective,” *Feminist Studies* 14, no. 3 (1988): 575–99, <https://doi.org/10.2307/3178066>.

## CHAPTER 5: GENEALOGY OF HUMAN TRAFFICKING (GOVERNANCE) IN JAPAN

### INTRODUCTION

Just as Chapter 3 traced the development of human trafficking governance in Anglo-European countries and international institutions, this chapter explores the development of human trafficking governance throughout the history of Japan. However, while Chapter 3, which focussed on the development of contemporary human trafficking governance, took the abolitionist campaigns of the 19<sup>th</sup> century as its starting point, human trafficking governance can be traced back much further in human history. In fact, if we follow those contemporary human trafficking discourses that hold that slavery is a sub-type of human trafficking, then human trafficking governance is as old as human history itself, as the Code of Ur-Nammu (humankind's oldest surviving code of laws, written circa 2100 B.C.E. in Ur) contains several provisions regulating the treatment of slaves and the rights of slave owners.<sup>408</sup> And while the oldest surviving records of Japan are more than 2,000 years younger than the Code of Ur-Nammu, in these too we can find records of slavery.

This chapter therefor aims to chart a course through Japan's history to explain how Japan's understanding and regulation of human trafficking have evolved over time. In doing this, I focus both on practices that are now labelled as human trafficking and practices that have historically been labelled as Japanese near equivalents to "human trafficking," such as *jinshin baibai*, *jinrin baibai* and *hito no baibai*. The primary purpose of this historical review is to provide historical reference points to ground the discussion of human trafficking governance in contemporary Japan. However, this chapter also aims to dispel the notion that the governance of human trafficking is in any way a "recent" phenomenon in Japan or that this governance was something introduced by foreigners. As such, I have positioned this chapter as a "genealogy"<sup>409</sup> of human trafficking in Japan whose purpose is in part to

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<sup>408</sup> Martha Tobi Roth, *Law Collections from Mesopotamia and Asia Minor*, ed. Piotr Michalowski, 2nd ed. (Atlanta, GA: Scholars Press, 1997), 17–19.

<sup>409</sup> Drawing again from Foucault, in particular Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975–1976*, trans. David Macey (New York, NY: Picador, 2003), 8–11.

challenge and subvert the discourse of the British (and later the Americans) as enlightened emancipators who had to (and continue to have to) teach the world that slavery is bad.

This chapter is divided into three sections, with the first covering the ancient (pre-1185) and medieval (1185–1599) periods, the second covering the pre-modern period (1600–1867) and the last section covering the modern period up until the end of the Allied occupation of Japan (1868–1952). However, for the sake of narrative coherence, sometimes events from one period are discussed along with accompanying events from another. Each section also contains a timeline of major events, with a focus in particular on acts of government that have impacted the governance of human trafficking during that time period.

## HUMAN TRAFFICKING GOVERNANCE IN ANCIENT AND MEDIEVAL JAPAN

Table 2: Timeline of major events and governance related to human trafficking, 297–1599

Year	Event
297	<i>History of the Kingdom of Wei</i> published, includes earliest record of slavery in Japan
645	Taika Reforms (political reforms modelled along Tang Dynasty) introduce <i>ritsuryō</i> system of caste hierarchy, including the <i>nuhi</i> (“slave” caste)
676	Emperor Tenmu refuses permission to Governor of Shimotsuke Province to allow peasants to sell children
1185	Kamakura Bakufu (the first military government) begins, bringing with it shift away from caste-based slavery and toward a system of long-term, lifetime and even hereditary contracts of indenture
1212	Emperor Juntoku calls for the suppression of <i>nakadachi</i> (male intermediaries in the sex industry)
1232	<i>Goseibai Shikimoku</i> (Formulary of Adjudications)’s Art. 41 puts statute of limitations on objecting to cases of kin sold into slavery
1239	Kamakura Bakufu issues edict calling for an end to <i>jinshin baibai</i>
1240	Kamakura Bakufu reiterates ban on <i>jinshin baibai</i>
1242	Governor of Bungo province calls for punishment of those who entice women other than “designated women” into “secret liaisons”
1270	Kamakura Bakufu rules that killing servants is a “private affair”
1338	Kamakura Bakufu replaced by the Muromachi Bakufu, leading to a weaker central government and a decline in the national governance of human trafficking
1467	Outbreak of Ōnin War (1467–1477) marks beginning of Sengoku (Warring States) Period, and the subsequent collapse of the central government and general violentisation leads to widespread slave taking and trading
1528	Earliest record of the existence of the <i>Keisei no Tsubone</i> , the “prostitution bureau,” which taxed and regulated brothels (start and end date both unclear)

1543	The first Europeans arrive in Japan, bringing guns in and possibly bringing a trafficked Japanese woman out
1555	First recorded Japanese arrive in Europe—these are sex slaves bought by the Portuguese
1571	King Sebastian of Portugal prohibits the importing of slaves from Japan
1587	Toyotomi Hideyoshi, on a campaign to reunify Japan, orders an end to <i>jinshin baibai</i> in general, an end to the selling of Japanese slaves to the Portuguese in particular, freedom for those already taken, and the return if possible of Japanese slaves already sent abroad
1589	Japan's first licensed prostitution quarter established in Kyoto by Hara Saburōzaemon, under the express permission of Hideyoshi
1590	Hideyoshi completes reunification of Japan
1592	Hideyoshi invades Korea; invasion force sends 50–100 thousand Korean captives back to Japan as slaves, of whom only 7,500 are ever repatriated
1598	Jesuit authorities issue order prohibiting, under pain of excommunication, any labour from being taken out of Japan
“	Hideyoshi dies, ending the invasion of Korea

SLAVERY IN ANCIENT JAPAN

The earliest record of slavery in Japan comes from the *History of the Kingdom of Wei*. Written in China ca. 297 C.E., it includes the following missive to Himiko, queen of Yamatai<sup>410</sup> in Japan in 283, regarding a delegation dispatched from Yamatai to China:

[Your delegation has] arrived here with your tribute, consisting of four male slaves and six female slaves, together with two pieces of cloth with designs, each twenty feet in length.<sup>411</sup>

A later entry discusses a delegation sent by Queen Iyo, Himiko's successor:

The delegation visited the capital and presented thirty male and female slaves. It also offered [to the court] five thousand white gems and two pieces of carved jade, as well as twenty pieces of brocade with variegated designs.<sup>412</sup>

A still later document, an entry from *History of the Later Han Dynasty* (written ca. 445 C.E.) makes a claim that sending slaves to China goes back to at least 107 C.E.<sup>413</sup> The word used in these histories, *seikō*, means both "slave" and "prisoner of war," and Brown argues that while some prisoners of war were sent to China as slaves in exchange for bronze implements and iron ore, the practice was relatively uncommon.<sup>414</sup> On the other hand, according to *History of the Kingdom of Wei*, slavery was used as a punishment in ancient Japan, indicating that criminals may have been the primary source of slaves sent to China.<sup>415</sup>

Neither these Chinese accounts nor the earliest Japanese historical record—the *Nihon Shoki*, a Japanese text compiled in 720 C.E. that claims to trace Japanese history from the

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<sup>410</sup> Likely located near contemporary Nara. See J. Edward Jr. Kidder, *Himiko and Japan's Elusive Chieftdom of Yamatai: Archaeology, History, and Mythology* (Honolulu, HI: University of Hawai'i Press, 2007), 239–82.

<sup>411</sup> *History of the Kingdom of Wei* available at "Gishi Wajinden," Aozora Bunko, November 18, 2010, <http://www.aozora.gr.jp/cards/001477/card50926.html>. Translation from Ryūsaku Tsunoda and L. Carrington Goodrich, *Japan in the Chinese Dynastic Histories: Later Han through Ming Dynasties*. (South Pasadena: P.D. and I. Perkins, 1951), 14.

<sup>412</sup> *History of the Later Han Dynasty* available at "Gokanjo Waden," Aozora Bunko, November 18, 2010, <http://www.aozora.gr.jp/cards/000348/card51147.html>. Translation from Tsunoda and Goodrich, *Japan in the Chinese Dynastic Histories*, 16.

<sup>413</sup> Tsunoda and Goodrich, *Japan in the Chinese Dynastic Histories*, 8.

<sup>414</sup> Delmer M. Brown, "Introduction," in *The Cambridge History of Japan Volume 1: Ancient Japan*, ed. Delmer M. Brown (New York: Cambridge University Press, 1993), 25.

<sup>415</sup> Kidder, *Himiko and Japan's Elusive Chieftdom of Yamatai*, 16.

time of myths until the reign of Empress Jitō, 645-703 C.E—tell us how extensively slavery was practiced in Japan.<sup>416</sup> However, the *Nihon Shoki* does give us the earliest mention of an effort to regulate the sale of human beings, noting that on the seventh day of the fifth month of the fifth year of the reign of Emperor Tenmu (676):

The Governor of the province of Shimotsuke represented to the Emperor that, owing to a bad year, the peasantry in his domain were starving and wished to sell their children. The Court refused permission.”<sup>417</sup>

This gives us at least 1,300 years of history of “human trafficking governance.” However, as with all regulations, the text of the law tells us little without an understanding of the social world it was designed to govern. For example, in this case, we cannot understand this edict without knowing that a system of slavery existed in Japan before and long after this edict, and that while the edict aims to prohibit the selling of children *into* slavery, the buying and selling of individuals who were already categorised as slaves remained possible.<sup>418</sup>

Moreover, although we have a record here of an anti-trafficking edict, we have no records concerning its enforcement, and it is not clear that the Emperor could have enforced such an edict outside of the areas directly administered by the court. As Wakabayashi notes, the Emperor has been a sovereign “in name only” for most of Japan’s history, lacking the monopoly over violence that is the essence of sovereignty in both Hobbesian conceptions of

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<sup>416</sup> The *Nihon Shoki*, along with the more mythologised *Kojiki*, grew out of the historiographical program begun by the Emperor Tenmu (reigned 673 to 686). Though the level of detail and veracity of the older historical portions of the *Nihon Shoki* are questionable, the scholarly consensus is that the final hundred years are mainly accurate. See Edwin A. Cranston, “Asuka and Nara Culture: Literacy, Literature, and Music,” in *The Cambridge History of Japan Volume 1: Ancient Japan*, ed. Delmer M. Brown (New York: Cambridge University Press, 1993), 453–503; John S. Brownlee, “Translator’s Introduction,” in *The Six National Histories of Japan*, by Tarō Sakamoto (Vancouver : Tokyo: UBC Press ; University of Tokyo Press, 1991), xiv–xv; William Theodore De Bary et al., eds., *Sources of Japanese Tradition, Volume One: From Earliest Times to 1600*, 2nd ed. (New York, NY: Columbia University Press, 2001), 3.

<sup>417</sup> William George Aston, trans., *Nihongi: Chronicles of Japan from the Earliest Times to AD 697* (London: Kegan Paul, Trench, Trübner & Company, 1896), 332.

<sup>418</sup> Kojima Ken, *Bunka No Tokushitsu to Shakai Mondai* (Tokyo: Yūhikaku, 1926), 422–25, <http://dl.ndl.go.jp/info:ndljp/pid/1020728/217>.

the state: commonwealth of institution (a state constituted by mutual agreement) and commonwealth of acquisition (a state constituted by force).<sup>419</sup>

Tenmu's decree came during a period when Japanese political institutions were being remodelled along Tang Dynasty lines, following the Taika Reforms of 645.<sup>420</sup> What emerged from these reforms was what historians now refer to as the *ritsuryō* state, a system of governance based on administrative instructions (*ritsu*) and penal statutes (*ryō*). The *ritsuryō* system included not only a complex ranking system for courtiers, but also a ranking system for the lower classes, who were divided into two broad categories, *ryōmin* ("good people") and *senmin* ("lowly people"). The *senmin* were in turn subdivided into the *goshiki no sen*, "the five lowly castes" of unfree peoples, of which two are of interest here: *kunuhi* and *shinuhi*.

*Kunuhi* and *shinuhi* were, respectively, publically and privately owned *nuhi* (a word commonly translated as "slave"), with the latter being owned primarily by temples, shrines, public officials and wealthy farmers and having a value similar to that of a cow or horse.<sup>421</sup> But though I say that *nuhi* is commonly translated as "slave," this translation is not without problems. As Miers highlights, there is a danger here in that using the English term "slave" evokes in our imaginations images of the extreme abuses of chattel slavery, images which may not match the reality in this case.<sup>422</sup> *Nuhi* could be bought, sold and inherited, and there was a robust set of regulations for these practices.<sup>423</sup> This makes it clear that the prohibition on the "buying and selling of people" only applied to "free people." On the other

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<sup>419</sup> Bob Tadashi Wakabayashi, "In Name Only: Imperial Sovereignty in Early Modern Japan," *Journal of Japanese Studies* 17, no. 1 (1991): 25–57, <https://doi.org/10.2307/132906>; Hobbes, *Leviathan*, 111–246; Peter Vanderschraaf, "Instituting the Hobbesian Commonwealth," *Pacific Philosophical Quarterly* 82, no. 3&4 (September 2001): 383–405, <https://doi.org/10.1111/1468-0114.00133>.

<sup>420</sup> Bruce L. Batten, "Foreign Threat and Domestic Reform: The Emergence of the Ritsuryō State," *Monumenta Nipponica* 41, no. 2 (1986): 199, <https://doi.org/10.2307/2384665>.

<sup>421</sup> Kojima Ken, *Bunka No Tokushitsu to Shakai Mondai*, 421; Toshiya Torao, "Nara Economic and Social Institutions," in *The Cambridge History of Japan Volume 1: Ancient Japan*, ed. Delmer M. Brown, trans. William Wayne Farris (New York: Cambridge University Press, 1993), 425.

<sup>422</sup> Suzanne Miers, "Slavery: A Question of Definition," *Slavery & Abolition* 24, no. 2 (August 2003): 1–16, <https://doi.org/10.1080/01440390308559152>.

<sup>423</sup> Maki Hidemasa, *Nihon hōshi ni okeru jinshin baibai no kenkyū* (Tokyo: Yūhikaku, 1961), 51–69.



hand, they were permitted to own lands and goods and had the right to marry, and could not be legally put to death at will by their owners.<sup>424</sup>

This is not to say that *nuhi* enjoyed full legal personhood. While killing a *nuhi* was a crime, it was not always murder: if an owner killed a *nuhi* who was guilty of some offense rather than reporting the offense and seeking relief, the penalty was only eighty strikes with a heavy cane in public.<sup>425</sup> The sexual violability of *nuhi* was more ambiguous. Farris speculates that female *nuhi* would have been used for sexual as well as physical labour by their owners,<sup>426</sup> but while this seems consistent with both the broader trends in Japanese history and of slavery in general, there are no data that tell us how widespread this may have been. At the very least, the fact that *nuhi* could enter into sexual unions and marry both other *nuhi* and *ryōmin* would indicate owners did not have an exclusive entitlement to the sexual labour of their *nuhi*<sup>427</sup>—in other words, there is no basis for labelling female *nuhi* as “sex slaves.”

It is also important to note that *nuhi* is not the Japanese word used to translate the English word slave—that would be *dorei*, which refers to slaves and slavery more generally. So for example, while “slavery” (either in English or any possible Japanese translations) rarely came up during my interviews, when it did, it was as *dorei*. *Nuhi*, on the other hand, is a Japanese rendering of the Chinese term *núbì* and tends to be used primarily to refer specifically to the slave caste in Chinese-style bureaucratic systems. Thus in Chinese and Korean contexts, we can see the term *núbì* (or *nobi* in Korean) being used to describe a class of people who could be owned as property even as late as the 17<sup>th</sup> century.<sup>428</sup>

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<sup>424</sup> Atsushi Kondo, “Japanese Experience and Response in Combating Trafficking,” in *Human Security, Transnational Crime and Human Trafficking: Asian and Western Perspectives*, ed. Shirō Ōkubo and Louise I. Shelley (Abingdon, Oxon: Routledge, 2011), 228.

<sup>425</sup> Yaheiji Fuse, *Nihon shikeishi* (Tokyo: Seikōkan Shoin, 1939), 72–73, <http://dl.ndl.go.jp/info:ndljp/pid/1268337/45>.

<sup>426</sup> William Wayne Farris, *Japan’s Medieval Population: Famine, Fertility, and Warfare in a Transformative Age* (Honolulu, HI: University of Hawai’i Press, 2006), 90.

<sup>427</sup> See, for example, Thomas Nelson, “Slavery in Medieval Japan,” *Monumenta Nipponica* 59, no. 4 (2004): 482.

<sup>428</sup> Robin DS Yates, “Slavery in Early China: A Socio-Cultural Approach,” *Journal of East Asian Archaeology* 3, no. 1 (2001): 283–331; Bok-Rae Kim, “Nobi: A Korean System of Slavery,” *Slavery & Abolition* 24, no. 2 (August 2003): 155–68, <https://doi.org/10.1080/01440390308559162>.

However, in Japan this system was never so firmly entrenched. Most of the publically owned *nuhi*, as well as many that were owned by temples, were released during the 8<sup>th</sup> century, while private ownership declined gradually over the two centuries that followed along with the *ritsuryō* system in general.<sup>429</sup> By the 12<sup>th</sup> century, the term had been relegated to legal texts, which continued to use historical Chinese terms out of deference to tradition.<sup>430</sup> Thus *nuhi*, unlike more general terms like “slave” and *dorei*, denotes a specific category of people with a defined legal status that existed within a limited period of time. Their existence does, however, provide historical evidence for the existence of slavery in ancient Japan, as well as evidence of government efforts to govern both slaves and the institution of slavery—which is to say, to govern human trafficking.

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<sup>429</sup> Jinno Kiyokazu, “Nihon kodai nuhi no kenkyū” (Nagoya University, 1994), 156–78, 324–32.

<sup>430</sup> Nelson, “Slavery in Medieval Japan,” 473.

The Heian Period, which lasted from 794 to 1185, marked a cultural golden age in Japan, but it also saw the retreat of imperial power and the collapse of the *ritsuryō* state. The 11<sup>th</sup> century brought increased banditry and revolts in the countryside, and ultimately the first military government—a “bakufu,”<sup>431</sup> or “tent government—in Kamakura in 1185.<sup>432</sup> The founding of the Kamakura Bakufu marks the beginning of what scholars call Japan’s “Medieval Period,” which would last until the latter half of the 16<sup>th</sup> century.<sup>433</sup> The rise of the warrior houses meant that the Kamakura Bakufu ruled not by administrative and penal law (*ritsuryō*), but largely by adjudication. The bakufu presented itself as a neutral arbiter of disputes, and in this capacity they relied on custom and local practice rather than codified legal norms.<sup>434</sup> As such, while the government remained nominally committed to governing the trade in human beings, in practice they were willing to bow to conditions on the ground. For an example of this, we can look at the *Goseibai Shikimoku*, the “Formulary of Adjudications.” Originally promulgated in 1232 to adjudicate disputes among the warrior caste, the *Goseibai Shikimoku* (also known in English as the Jōei Formulary) was the first code of laws of the military governments.<sup>435</sup> In Article 41, we see:

Concerning slaves (*nuhi*) and other miscellaneous people [*zōnin*]. In accordance with the precedent set by Yoritomo, if more than ten years have passed without any

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<sup>431</sup> Rizō Takeuchi, “The Rise of the Warriors,” in *The Cambridge History of Japan Volume 2: Heian Japan*, ed. Donald H. Shively and William H. McCullough (New York: Cambridge University Press, 1999), 697. Because the leader of the bakufu was a military leader bearing the title *Sei’i Taishōgun*, or “Shogun,” this form of government is often rendered in English as a “shogunate.” Here, though, I have followed the conventions of English language Japanese studies scholarship in using a direct transliteration of the term *bakufu*.

<sup>432</sup> Takeuchi, 656–94.

<sup>433</sup> John Whitney Hall, “Terms and Concepts in Japanese Medieval History: An Inquiry into the Problems of Translation,” *Journal of Japanese Studies* 9, no. 1 (1983): 1–32, <https://doi.org/10.2307/132259>.

<sup>434</sup> Jeffrey P. Mass, “The Kamakura Bakufu,” in *The Cambridge History of Japan Volume 3: Medieval Japan*, ed. Kozo Yamamura (New York: Cambridge University Press, 1990), 52–54; Jeffrey P. Mass, *Yoritomo and the Founding of the First Bakufu: The Origins of Dual Government in Japan* (Stanford, CA: Stanford University Press, 2000), 65–132.

<sup>435</sup> Sugihashi Takao, “The Origin, Proclamation, and Implementation of the Goseibai Shikimoku,” *The East Asian Library Journal* 7, no. 2 (1994): 33–40; Mass, “The Kamakura Bakufu,” 78.

objection being made, regardless of who is right and wrong, the case will not be heard.<sup>436</sup>

The code was written during the Kangi famine, a disaster that was initiated by a drought in 1229 that was followed by prolonged flooding and cold snaps that continued long past the famine's official end date of 1232. The Kangi famine may have killed upwards of a third of the populace, making it the worst in Japan's history. According to Farris, the rationale behind this article was that, as the Kangi famine receded, families were going to court to argue for the return of kin for the same (low) price initially paid; this provision effectively established a statute of limitations for such claims. Farris gives the example of one particular residence in Aki where, of fifty-six male bonded labourers, only four were listed as *nuhi*; of the rest for whom Farris had records, half had become *genin* ("bonded labourers") during or immediately after the Kangi famine.<sup>437</sup>

Still, this should not suggest that the government was openly permitting the buying and selling of persons. We can see this clearly in 1239, when the government issued the following edict:

Buying and selling one's kin has been strictly proscribed by law. Yet during the famine, in some cases one sold one's wife, children, or attendants; in others, one allowed oneself to be placed at the home of the rich [...] In general, hereafter one ought to stop this buying and selling without exception.<sup>438</sup>

This edict is strikingly similar to Tenmu's pronouncement in 676, in the sense that both are interdictions of human trafficking following a major famine. However, here the wording—"hereafter one ought to stop"—suggests that the government admits to having tacitly allowed the buying and selling of human beings.<sup>439</sup> We can see this more clearly with a pronouncement made in 1240:

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<sup>436</sup> Nelson, "Slavery in Medieval Japan," 476.

<sup>437</sup> Farris, *Japan's Medieval Population*, 33–49, 81.

<sup>438</sup> Shin'ichi Satō and Yoshisuke Ikeuchi, *Chūsei Hōsei Shiryōshū*, vol. 1 (Tokyo: Iwanami Shoten, 1955), 87–89. In Farris, *Japan's Medieval Population*, 47. Translation Farris'.

<sup>439</sup> The term used here is *jinrin baibai* ("the buying and selling of humanity/human relations"), a precursor to the slightly later *jinshin baibai*.

Concerning the prohibition on the buying and selling of human beings: Over the generations, the imperial court has issued innumerable edicts [prohibiting such trade], and these laws have been enforced by the shogunate. During the famine of the Kangi period, however, people [had no choice but to] sell their children and dispose of their servants (*shojū*) in order to maintain their existence. Because [to hold to] the prohibition [in these circumstances] would conversely have caused the people to suffer, it was not enforced. Now, however, things have returned to their former state. Even so, we hear that assorted persons are flouting the law. This is an outrage. Let it be stopped immediately.<sup>440</sup>

Here, then, we can see governance of human trafficking under the bakufu that is broadly similar to that of the Imperial government, and a governmentality that is explicitly linked to that Imperial governance.

However, even if the basic shape of the governance of human trafficking in Japan remained unchanged, the practices regulators were seeking to govern had not—something we can see clearly in the terminology being used in these edicts. In the *Goseibai Shikimoku* we see references not only to *nuhi* but also to people called “*zōnin*.” In his translation of Art. 41 (quoted above) Nelson renders *zōnin* literally as “miscellaneous people.”<sup>441</sup> However, in practice the term refers more specifically to two types of unfree people: *genin* and *shojū*, the latter of which we also saw in the 1240 edict. Unlike *nuhi* (a term which, again, by now was only used in legal documents) these are not legal terms with strictly defined meanings. However, generally speaking, “*genin*”<sup>442</sup> was used to refer to bonded labourers owned by rural landholders (often wealthy peasants) and used for agricultural labour, while “*shojū*”<sup>443</sup> was used to refer to bonded labourers owned by the military caste who were used for domestic labour in their manors.<sup>444</sup>

In theory, the Kamakura Bakufu had inherited the *ritsuryō* legal system, meaning that only those who were legally classified as *nuhi* could be owned. As such, the *zōnin* were, legally

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<sup>440</sup> Shin'ichi Satō and Yoshisuke Ikeuchi, *Chūsei Hōsei Shiryōshū*, 1:121. In Nelson, “Slavery in Medieval Japan,” 486. Translation Nelson’s; brackets in the original.

<sup>441</sup> Nelson, “Slavery in Medieval Japan,” 476.

<sup>442</sup> Literally “low people.”

<sup>443</sup> Made from the characters “place/location” and “to obey.”

<sup>444</sup> Kitazume Masao, “Nihon chūsei ni okeru mibunsei ni tsuite: Genin, shojū o chūshin ni,” *Sapporo Gakuin Daigaku Jinbun Gakubu Kiyō* 41 (October 1987): 1–24.

speaking, free commoners who happened to be bonded as labourers as a result of economic misfortune (either their own or that of a relative) such as indebtedness or severe hardship.<sup>445</sup> However, this distinction can be misleading. Lifetime contracts and inter-generational bondage continued in some parts of Japan until at least the 19<sup>th</sup> century, with individuals so bonded referred to as *eitai genin* (“permanent *genin*”) and *fudai genin* (“hereditary *genin*”).<sup>446</sup> The law did forbid buying and selling of *zōnin*,<sup>447</sup> and we saw in the edicts of 1239 and 1240 that the government condemned not only the sale of family members but also of bonded labourers such as *shojū*. However, in practice these provisions were not enforced, and the *genin* in particular were treated as commodified objects: they “could be bought, sold, or inherited at their master's will.”<sup>448</sup>

Numata argues that with the end of the state’s control of agricultural labour, *genin* also enjoyed a higher level of independence, particularly in non-work-related matters.<sup>449</sup> In fact, the evidence suggests that, far from being seen as dehumanised objects, *genin* and *shojū* were viewed as something close to family members.<sup>450</sup> On the other hand, a legal dispute in 1270 suggests that *genin* were, to an even greater extent than the *nuhi*, *violable* objects. The case was brought by a woman from a warrior house against her adopted younger brother, who had put a bonded female servant of hers to death. The court, however, ruled that this “was a private affair over which the court had no jurisdiction.”<sup>451</sup> Thus while they did not, in this case, explicitly condone the indiscriminate killing of the objectified persons by their owners, they did nevertheless declare that the State itself did not, at this time, have an *a priori* prohibition against the private execution of objectified persons.

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<sup>445</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 134.

<sup>446</sup> Hidemura Senzō, “Kinsei Kyūshū ni Okeru Eitai Genin ni Kansuru Ichi Kōsatsu,” *Kyūshū Bunkashi Kenkyūsho Kiyō*, no. 57 (March 2014): 27–45, <https://doi.org/info:doi/10.15017/1546824>.

<sup>447</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 134.

<sup>448</sup> Keiji Nagahara, “The Medieval Peasant,” in *The Cambridge History of Japan Volume 3: Medieval Japan*, ed. Kozo Yamamura, trans. Suzanne Gay (New York: Cambridge University Press, 1990), 309.

<sup>449</sup> Numata Makoto, “Fudai Genin no Jiritsu to Shounō-teki ‘Ie’ no Seiritsu,” *Keiai Daigaku Kenkyū Ronshū* 44 (1993): 81–103.

<sup>450</sup> Nagahara, “The Medieval Peasant,” 309.

<sup>451</sup> Nelson, “Slavery in Medieval Japan,” 484.

Widespread banditry and political infighting ultimately undermined the authority of the Kamakura Bakufu, and in 1338 a new bakufu was established by Ashikaga Takauji in the Muromachi district of Kyoto. However, this “Muromachi Bakufu” was even weaker than the previous government. As a consequence, not only did banditry continue, but Japan also saw the rise of the pirate groups known as *wakō*: “multiethnic bands of boat people and bandit-traders who plied the coasts of Japan, Korea, China, and Southeast Asia from the thirteenth through the sixteenth centuries.”<sup>452</sup>

The *wakō* were particularly active in raiding coastal settlements in Korea and China, and many of the captives taken on these raids were eventually sold to owners in Japan.<sup>453</sup> The official status of these captives, though, seems to be unclear. Arano notes that according to Chinese records, some of these slaves were used for forced agricultural labour and killed if they attempted to escape.<sup>454</sup> However, there is no evidence that at this time Japan viewed Chinese or Koreans as inherently inferior humans who could be treated as livestock.<sup>455</sup> And indeed, Arano notes that later Korean captives were generally treated the same as Japanese *genin* and *shojū*, which is to say, as closer to dependents than objects. Many were eventually adopted as children, married, or otherwise set free.<sup>456</sup> Still, this offers an early example of transnational human trafficking into Japan, as well as foreshadowing the invasion of Korea in the 16<sup>th</sup> century and the use of colonial labour in the 20<sup>th</sup>.

Along with this change of government, we also see the disappearance of government action taken to enforce the ban on the commodification of persons. Whereas we have extensive records of injunctions made by the Kamakura Bakufu against the buying and selling of human beings, as well as legal challenges brought by people seeking to free relatives from

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<sup>452</sup> Peter D. Shapinsky, “Lords of the Sea: Pirates, Violence, and Exchange in Medieval Japan” (University of Michigan, 2005), 7.

<sup>453</sup> Nelson, “Slavery in Medieval Japan,” 470.

<sup>454</sup> Yasunori Arano, “The Formation of a Japonocentric World Order,” *International Journal of Asian Studies* 2, no. 02 (July 2005): 195, <https://doi.org/10.1017/S1479591405000094>.

<sup>455</sup> Taku Tamaki, *Deconstructing Japan's Image of South Korea: Identity in Foreign Policy* (Basingstoke, Hampshire: Palgrave Macmillan, 2010), 62–90; Kazuhiro Abe, “Japanese Capitalism and the Korean Minority in Japan: Class, Race, and Racism” (University of California, Los Angeles, 1989).

<sup>456</sup> Arano, “The Formation of a Japonocentric World Order,” 200.

bondage, from the Muromachi Bakufu we have almost nothing.<sup>457</sup> It is clear that this lack of documentation is not the result of a decline in the trade in objectified persons: Muromachi cultural and literary works are littered with references to slave traders and slaves,<sup>458</sup> and even Ambassador Pak from Joseon (within contemporary Korea) visiting in the 15<sup>th</sup> century found the level of slavery in Japan shocking.<sup>459</sup> Overall, the available evidence suggests that the Muromachi Period saw an increased rate of both human bondage and commerce of bonded persons, with the acquisition of *genin* playing an important role in the development of feudal estates.<sup>460</sup>

Thus, the lack of enforcement was not a result of decreasing instances of human trafficking. Nor should it be attributed to a changing human trafficking governmentality, as Maki argues that the government continued to share the Kamakura Bakufu's *ritsuryō*-inspired perspective on slavery and slave taking.<sup>461</sup> Rather, it appears to be a direct consequence of the weak sovereignty of the Muromachi Bakufu, as well as the ongoing violence and violentisation in the countryside and at sea—trends that will become even clearer during Japan's period of prolonged civil war.

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<sup>457</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 132–33.

<sup>458</sup> Maki, 151–66.

<sup>459</sup> Farris, *Japan's Medieval Population*, 159.

<sup>460</sup> Mitsuru Miyagawa and Cornelius K. Kiley, "From Shōen to Chigyō: Proprietary Lordship and the Structure of Local Power," in *Japan in the Muromachi Age*, ed. John Whitney Hall and Takeshi Toyoda (Berkeley, CA: University of California Press, 1977), 89–106.

<sup>461</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 170.



According to Goodwin, the earliest records of something we might call “sex work” in Japan are of the *ukareme* in the 8<sup>th</sup> century, travelling entertainers who were hired as performers but who also engaged in sex acts with their patrons, drawn exclusively from the elite. By the 10<sup>th</sup> century, these women were called *asobime*,<sup>462</sup> and they worked in all female bands, travelled by boat and frequented pilgrimage sites. There are also records of male entertainers selling sex to (male) courtiers.<sup>463</sup> At the time, no real stigma seems to have been attached to this work, reflecting a social atmosphere in which men practiced polygyny, marriages were domestic and non-contractual (and so easy to dissolve), and affairs not uncommon.<sup>464</sup> It also reflects a social order in which objectification was more a function of class than of gender,<sup>465</sup> since until the end of the 13<sup>th</sup> century men and women seem to have enjoyed an unusual degree of equality within social classes in areas such as marital and property rights,<sup>466</sup> as well as social and cultural practices.<sup>467</sup>

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<sup>462</sup> *Asobi* (literally “playing” or “being idle”) is Goodwin’s preferred term, but others, such as Wakita, use *asobime* (literally, “*asobi* women”). See Haruko Wakita, *Women in Medieval Japan: Motherhood, Household Management and Sexuality*, trans. Alison Tokita (Clayton, Victoria: Monash University Press, 2006).

<sup>463</sup> Janet R. Goodwin, *Selling Songs and Smiles: The Sex Trade in Heian and Kamakura Japan* (Honolulu, HI: University of Hawai’i Press, 2007), 14–40; William Wayne Farris, *Japan to 1600: A Social and Economic History* (Honolulu, HI: University of Hawai’i Press, 2009), 105–6; Terry Kawashima, *Writing Margins: The Textual Construction of Gender in Heian and Kamakura Japan* (Boston, MA: Harvard University Press, 2001), 36–40.

<sup>464</sup> See William H. McCullough, “The Capital and Its Society,” in *The Cambridge History of Japan Volume 2: Heian Japan*, ed. Donald H. Shively and William H. McCullough (New York: Cambridge University Press, 1999), 127–36; Kojiro Naoki, “The Nara State,” in *The Cambridge History of Japan Volume 1: Ancient Japan*, ed. Delmer M. Brown, trans. Felicia G. Bock (New York: Cambridge University Press, 1993), 429–30; Farris, *Japan’s Medieval Population*, 10–11.

<sup>465</sup> Haruko Wakita, “Women and the Creation of the ‘Ie’ in Japan: An Overview from the Medieval Period to the Present,” trans. David P. Phillips, *U.S.-Japan Women’s Journal. English Supplement*, no. 4 (1993): 83–105.

<sup>466</sup> See for example Farris, *Japan’s Medieval Population*, 153–56; Torao, “Nara Economic and Social Institutions,” 429–30.

<sup>467</sup> See Sanae Fukutō and Takeshi Watanabe, “From Female Sovereign to Mother of the Nation: Women and Government in the Heian Period,” in *Heian Japan: Centers and Peripheries*, ed. Mikael S. Adolphson, Edward Kamens, and Stacie Matsumoto (Honolulu, HI: University of Hawai’i Press, 2007), 15–34; Joan R. Piggott, “Chieftain Pairs and Corulers: Female Sovereignty in Early Japan,” in *Women and Class in Japanese History*, ed. Hitomi Tonomura, Anne Walthall, and Haruko Wakita (Ann Arbor, MI: Center for Japanese Studies, the University of Michigan, 1999), 17–52.

This changed during the medieval era. By the 12<sup>th</sup> century, the word *yūjo* had emerged to describe female entertainers who sold sex, and for the first time we see the government both recognising sex work as an occupation and suggesting that it needed to be governed.<sup>468</sup> These changes followed broader shifts in the Japanese economy. According to Yamamura, during the 13<sup>th</sup> century cultivators were acquiring more non-agricultural goods, leading to increasing commercial practices in the countryside; at the same time, elites in the imperial capital were diversifying their consumption patterns beyond the goods produced by their own estates, which created demand for a new class of producers and merchants. The new elites in Kamakura also required goods and services, and the trade between regions led to an increasing demand for coins to facilitate commercial transactions. Commercialisation and monetisation created a feedback loop, where the increased use of coins reduced transaction costs, which increased the frequency of transactions and in turn the demand for coins.<sup>469</sup> In this environment, coins became one of the many gifts one could give to the *yūjo* in exchange for sexual favours; this, in turn, paved the way for a more direct commodification of sex and transactionalism in its sale.<sup>470</sup>

With the commercialisation of both the economy in general and the sex trade in particular, the activities of the *yūjo* expanded out from Kyoto to the bakufu's capital in Kamakura, along the roads in between, and out into the countryside. With this diffusion, the *yūjo* began selling sex to commoners as well as the upper class, and without an accompanying entertainment component.<sup>471</sup> This period also saw an increasing stigmatisation of sex workers, and with that a decline in their role in court performances. However, it is unclear

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<sup>468</sup> Masajirō Takikawa, *Yūjo no rekishi* (Tokyo: Shibundo, 1965), 70; Goodwin, *Selling Songs and Smiles*, 127.

<sup>469</sup> Kozo Yamamura, "The Growth of Commerce in Medieval Japan," in *The Cambridge History of Japan Volume 3: Medieval Japan*, ed. Kozo Yamamura (New York: Cambridge University Press, 1990), 344–95. See also Ethan Isaac Segal, *Coins, Trade, and the State: Economic Growth in Early Medieval Japan* (Boston, MA: Harvard University Press, 2011).

<sup>470</sup> Hitomi Tonomura, "Re-Envisioning Women in the Post-Kamakura Age," in *The Origins of Japan's Medieval World: Courtiers, Clerics, Warriors, and Peasants in the Fourteenth Century*, ed. Jeffrey P. Mass (Stanford, CA: Stanford University Press, 1997), 159–61; Janet R. Goodwin, "Shadows of Transgression: Heian and Kamakura Constructions of Prostitution," *Monumenta Nipponica* 55, no. 3 (2000): 331, <https://doi.org/10.2307/2668296>.

<sup>471</sup> Farris, *Japan to 1600*, 132.

whether this was a result of the increased diffusion of sex work, or the emergence of new patriarchal norms around household formation and marital fidelity.<sup>472</sup> It may even have been that these norms helped propagate the spread of sex work—Wakita suggests that during this period, women’s identities bifurcated into “mother and household manager” and “the prostitute, who, while violating moral norms, gave pleasure.”<sup>473</sup>

This period also saw the emergence of men who supervised and controlled female sex workers, as well as the emergence of male intermediaries known as *nakadachi*, who may have been involved with the recruitment or even purchase of women for sex work.<sup>474</sup> Even more than the sex workers themselves, these *nakadachi* were a target for governance. The Emperor Juntoku argued in 1212 that they needed to be suppressed because, “They lure women of refinement to cohabit with men of mean status.”<sup>475</sup> And in 1242, the governor of Bungo province issuing the following edict:

Except for designated women, to entice wives and unmarried women into secret liaisons is a basis for disorder and must cease. If violators remain, whatever their status or gender, their offense must be punished.<sup>476</sup>

This invocation of the corruption of “good” women to justify countermeasures against “bad” men has clear parallels not only to the anti-White slavery campaigns of the 19<sup>th</sup> and early 20<sup>th</sup> century, but also more broadly to the historical governance of sexual mores in European history, where changing discourses on female sexual vulnerability led to

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<sup>472</sup> Terry Kawashima, “Performing Sinners: The Asobi and the Buddhist Discourse of Tsumi,” *Women & Performance: A Journal of Feminist Theory* 12, no. 1 (January 2001): 43–57, <https://doi.org/10.1080/07407700108571351>; Goodwin, *Selling Songs and Smiles*, 125–48; Wakita, *Women in Medieval Japan: Motherhood, Household Management and Sexuality*, 91–93; Amino Yoshihiko, *Chūsen no Hinin to Yūjo* (Tokyo: Kodansha, 2005), 237–38.

<sup>473</sup> Haruko Wakita, “The Medieval Household and Gender Roles within the Imperial Family, Nobility, Merchants, and Commoners,” in *Women and Class in Japanese History*, ed. Hitomi Tonomura, Anne Walthall, and Haruko Wakita, trans. Gary P. Leupp (Ann Arbor, MI: Center for Japanese Studies, the University of Michigan, 1999), 92.

<sup>474</sup> Goodwin, *Selling Songs and Smiles*, 125–27.

<sup>475</sup> Rizō Takeuchi, *Kamakura Iibun, Komonjo Hen* (Tokyo: Tōkyōdō Shuppan, 1971), vol. 4, pg. 27. In Goodwin, *Selling Songs and Smiles*, 125. Translation Goodwin’s.

<sup>476</sup> Takeuchi, *Kamakura Iibun, Komonjo Hen*, vol. 8, pg. 328. In Goodwin, *Selling Songs and Smiles*, 126. Translation Goodwin’s.

increasing state and social control of sexual and social practices.<sup>477</sup> However, in Japan this governance did not aim to eradicate the *nakadachi*, but rather to ensure that they acted only as intermediaries for women who fell within the acceptable social categories for sex workers. This suggests that status of sex workers in medieval Japan was shifting closer to how Elias' described medieval European sex workers: "lowly and despised, but entirely public and not surrounded with secrecy."<sup>478</sup>

The Muromachi period saw a continuation of the diffusion of sex work, as well as its continued stigmatisation. Sex workers had previously worked in the hearts of the metropolises, but now they were expelled into peripheral urban districts, fueling the creation of brothels and brothel districts.<sup>479</sup> We also see the emergence of street-walking sex workers referred to as *tsujigimi*, *zushigimi* and *tachigimi*.<sup>480</sup> The independence of sex workers had largely eroded by this point, as they fell increasingly under the control of brothel owners and *nakadachi*, and by the end of the Muromachi period, we can even find the first records of brothels engaging in the buying of women for prostitution.<sup>481</sup> Furthermore, while workers in the sex industry had previously been the subject of various fees and levies, as the finances of the Muromachi Bakufu worsened they turned to taxing the brothels as a source of revenue. This was done through the *Keisei no Tsubone*, the "prostitution bureau,"<sup>482</sup> which was established sometime prior to 1528 (the earliest recorded instance of the agency) and which also regulated the conduct of the brothels and

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<sup>477</sup> See for example Norbert Elias, *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*, trans. Edmund Jephcott, 2nd ed. (1978; repr., Malden, MA: Wiley-Blackwell, 1994), 142–60; Foucault, *The History of Sexuality, Volume 1: An Introduction*.

<sup>478</sup> Elias, *The Civilizing Process*, 149.

<sup>479</sup> Wakita, "The Medieval Household and Gender Roles within the Imperial Family, Nobility, Merchants, and Commoners," 92.

<sup>480</sup> The first two could be translated loosely as "street corner girl," the third as "standing girl." See Amino, *Chūsen no Hinin to Yūjo*, 237–38; Gotō Toshihiko, "Tsujigimi to zushigimi (rakuchūrakugai no byōbu no sekai)," *Bungaku* 52, no. 3 (March 1984): 166–75.

<sup>481</sup> Amino, *Chūsen no Hinin to Yūjo*, 128–233.

<sup>482</sup> *Keisei* can be translated more literally as "castle-topplers" and was a somewhat pejorative word for sex workers or women seen as "promiscuous seducers." See Goodwin, *Selling Songs and Smiles*, 150.

the *nakadachi*. This in turn had the effect of legitimising the sex industry even as the sex workers themselves were being increasingly stigmatised.<sup>483</sup>

One of the factors contributing to this increasing stigmatisation was the introduction into Japan of new STIs. The most prominent among these was syphilis, which likely originated in the Americas before being brought to China by Europeans. Arriving in Japan via Chinese sailors in the early 16<sup>th</sup> century, it spread quickly using the sexually promiscuous male soldiers of the Sengoku period as a vector.<sup>484</sup> Historically speaking, STI infection has been a major contributor to sex worker stigma across the world. For Christian moralists, for example, the diseases functioned as a type of stigmata, providing visible evidence of the sinful nature of their carriers.<sup>485</sup> In Japan it is likely that the diseases helped to reshape the image of the sex worker in the public imagination,<sup>486</sup> associating them less with the artists and aristocracy and more with the *eta-hinin*, the “base” sub-caste that included lepers and those who worked with human and animal corpses.<sup>487</sup>

As to where these sex workers were coming from, according to Wakita, in medieval Japan only a limited number of women married into households as official wives; for the remainder, they might join monasteries or shrines or else become entertainers and sex workers.<sup>488</sup> However, with the frequency of famines in the 15<sup>th</sup> and early 16<sup>th</sup> centuries and the destruction of many of the temples, joining a religious order became less of an option.

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<sup>483</sup> Takikawa, *Yūjo no rekishi*, 70–73.

<sup>484</sup> Farris, *Japan's Medieval Population*, 172–73.

<sup>485</sup> See for example Mary Spongberg, *Feminizing Venereal Disease: The Body of the Prostitute in Nineteenth-Century Medical Discourse* (Basingstoke, Hampshire: Macmillan, 1997); Roger Davidson and Lesley A. Hall, eds., *Sex, Sin and Suffering: Venereal Disease and European Society since 1870* (New York: Routledge, 2001); Laura J. McGough, *Gender, Sexuality, and Syphilis in Early Modern Venice: The Disease That Came to Stay* (London: Palgrave Macmillan UK, 2010).

<sup>486</sup> Takikawa, *Yūjo no rekishi*, 72–73.

<sup>487</sup> See George A. De Vos and Hiroshi Wagatsuma, *Japan's Invisible Race* (Berkeley, CA: University of California Press, 1966); Keiji Nagahara, “The Medieval Origins of the Eta-Hinin,” trans. Kozo Yamamura, *Journal of Japanese Studies* 5, no. 2 (1979): 385–403, <https://doi.org/10.2307/132103>; Mikiso Hane, *Peasants, Rebels, Women, and Outcasts: The Underside of Modern Japan* (Lanham, MD: Rowman & Littlefield, 2003); Nanette Gottlieb, *Linguistic Stereotyping and Minority Groups in Japan* (London: Routledge, 2006); Noah Y. McCormack, *Japan's Outcaste Abolition: The Struggle for National Inclusion and the Making of the Modern State* (Abingdon, Oxon: Routledge, 2012).

<sup>488</sup> Wakita, “Women and the Creation of the ‘le’ in Japan,” 85.

As a result, former shrine maidens and nuns, along with unemployed young men,<sup>489</sup> took on sex work simply in order to survive, thus swelling the sex worker population during this period and furthering the proliferation of the brothels.<sup>490</sup>

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<sup>489</sup> See Gary P. Leupp, *Male Colors: The Construction of Homosexuality in Tokugawa Japan* (Berkeley, CA: University of California Press, 1997), 22–27; Gregory M. Pflugfelder, *Cartographies of Desire: Male-Male Sexuality in Japanese Discourse, 1600-1950* (Berkeley, CA: University of California Press, 1999), 1–22; Goodwin, *Selling Songs and Smiles*, 26.

<sup>490</sup> Farris, *Japan's Medieval Population*, 172.

*HUMAN TRAFFICKING DURING THE SENGOKU PERIOD*

The deterioration of state control ultimately led to outbreak of the Ōnin War in 1467; and though this ended in 1477, by then it had already caused the total collapse of state authority in Japan. The Muromachi Bakufu remained nominally the legitimate government of Japan until 1573, but they exercised only symbolic power.<sup>491</sup> This period of Japanese history (1467–1600) is thus known as the “Sengoku (Warring States) Period.” The wars were accompanied by famines, with Farris counting one major famine every 3.7 years from 1449 until 1540.<sup>492</sup> While droughts, cold weather and insect infestations played their part, these famines were also the product of a vicious cycle, whereby the famines created unrest, which led to revolts and blockades, which in turn helped to perpetuate the famines—accompanied occasionally by plagues. Once the fighting had spread across the country, armies aggravated the situation as they stripped the land for provisions or simply destroyed crops as part of their scorched earth tactics.<sup>493</sup> This led Fujiki to refer to this as a period of “famine and war,” noting that both were major drivers of the buying and selling of human beings.<sup>494</sup>

The depopulation that resulted from these famines meant an increased ratio of land to workers. The work of Domar, Williams and others on the political economy of slavery suggests that we would thus see an increase in human bondage as people, rather than land, became a scarce resource whose control was vital to the prosperity and survival of feudal domains.<sup>495</sup> And indeed this is exactly what we saw during the Sengoku Period: armies taking captives back to their own domains to sell or use as bonded labourers following

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<sup>491</sup> John Whitney Hall, “The Muromachi Bakufu,” in *The Cambridge History of Japan Volume 3: Medieval Japan*, ed. Kozo Yamamura (New York: Cambridge University Press, 1990), 229–30.

<sup>492</sup> For comparison, Farris offers rates of one famine every 7.4 years 1280–1450 and one famine every 20 years 1541–1600

<sup>493</sup> Farris, *Japan’s Medieval Population*, 174–99.

<sup>494</sup> Hisashi Fujiki, *Kiga to Sensō no Sengoku o Iku* (1995; repr., Tokyo: Asahi Shimbunsha, 2001).

<sup>495</sup> Evsey D. Domar, “The Causes of Slavery or Serfdom: A Hypothesis,” *The Journal of Economic History* 30, no. 01 (March 1970): 18–32, <https://doi.org/10.1017/S0022050700078566>; Eric Williams, *Capitalism and Slavery* (Chapel Hill, NC: University of North Carolina Press, 1944). Other scholars have found a similar dynamic at work in shaping the penal system; see Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York, NY: Columbia University Press, 1939); J. Thorsten Sellin, *Slavery and the Penal System* (Amsterdam: Elsevier, 1976); Dario Melossi and Massimo Pavarini, *The Prison and the Factory*, trans. Glynis Cousin (Basingstoke, Hampshire: Macmillan, 1981).

successful military engagements, or else embarking on deliberate slave-taking raids.<sup>496</sup> Many of the Sengoku feudal domains thus became what Santos has termed “capturing societies”: societies whose “relationships with other, less powerful peoples were characterized by permanent raiding, pillaging, and the taking of captives, generally children and young women.”<sup>497</sup> According to Fujiki, even low-born foot soldiers and mercenaries—often former peasants themselves—began to engage in regular *doreigari* (slave-taking raids) either for sale or sexual exploitation,<sup>498</sup> and Takikawa suggests that brothels were a major buyer for captives.<sup>499</sup> As Ferejohn and Rosenbluth note, those states with greater access to labour would have stronger economies and could thus field more powerful armies.<sup>500</sup> As such, when Sengoku daimyo (“feudal lords”) did attempt to govern human trafficking, it was often with the goal of regulating the practice (for example, by prohibiting freelance slave traders) rather than eliminating it (as previous national governments had attempted).<sup>501</sup>

Transnational human trafficking also became an issue during the Sengoku Period. Europeans first arrived in Japan in 1543, when a Chinese junk carrying two Portuguese was forced by storms to Tanegashima, an island southeast of Kyushu. The Portuguese had with them muskets, which the local daimyo ordered his smith to replicate. However, this knowledge did not come free: aside from the considerable sum paid for the muskets, the smith tasked with reproducing them also reportedly gave his daughter Wakasa in marriage to one of the Portuguese in exchange for his assistance in reproducing the weapon. Supposedly Wakasa was sent off to Portugal with no say in the matter,<sup>502</sup> in which case the first encounter

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<sup>496</sup> Nelson, “Slavery in Medieval Japan,” 488; Farris, *Japan’s Medieval Population*, 207–56.

<sup>497</sup> Fernando Santos-Granero, *Vital Enemies: Slavery, Predation, and the Amerindian Political Economy of Life* (Austin, TX: University of Texas Press, 2009), 42.

<sup>498</sup> Hisashi Fujiki, *Zōhyō-Tachi No Senjō: Chūsei No Yōhei to Doreigari*, 2nd ed. (Tokyo: Asahi Shimbunsha, 2005).

<sup>499</sup> Takikawa, *Yūjo no rekishi*, 70.

<sup>500</sup> John A. Ferejohn and Frances McCall Rosenbluth, “War and State Building in Medieval Japan,” in *War and State Building in Medieval Japan*, ed. John A. Ferejohn and Frances McCall Rosenbluth (Stanford, CA: Stanford University Press, 2010), 8.

<sup>501</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 182.

<sup>502</sup> Olof G Lidin, *Tanegashima: The Arrival of Europe in Japan* (Copenhagen: NIAS Press, 2002), 1–12; Jurgis Elisonas, “Christianity and the Daimyo,” in *The Cambridge History of Japan Volume 4: Early Modern Japan*, ed. John Whitney Hall and James L. McClain (New York: Cambridge University Press, 1991), 301–72.



between Japan and Europe also led to the first case that could be labelled as “human trafficking” between Japan and Europe. The story of Wakasa may well be apocryphal. However, the first known Japanese to step foot in Europe, in 1555, were female slaves brought by the Portuguese for sexual exploitation. Over the following decades, the slave trade out of Japan grew rapidly, with both male and female slaves being sent in large numbers to the Portuguese colonies in the East Indies, particularly Goa.<sup>503</sup>

As Maki notes, Japan did not have a class analogous to the dehumanised slaves used in European colonies, and so often those bought by the Portuguese would have been *genin* or *shojū*—bonded persons who nevertheless had rights (i.e., to property and marriage), who were treated in Japan more like dependants rather than chattel, and who often had limited term contracts.<sup>504</sup> Others were lawfully free people who had been illegally abducted by the *wakō* pirates.<sup>505</sup> The Portuguese, however, recognised neither the rights nor contracts of those they purchased.<sup>506</sup> Conditions were reportedly horrific on the slave ships, and slaves who fell ill were simply left to die. This remained profitable for the Portuguese because they were able to purchase slaves in Japan at a low price: Kyushu, where the Portuguese were landing, had long had a higher number of unfree people than the mainland, and the wars of the Sengoku had also created ample opportunities for *doreigari*.<sup>507</sup> Expansion of the trade alarmed the Jesuits, who were concerned that it was undermining their missionary work in Japan, and at their urging King Sebastian prohibited the trade of Japanese slaves in 1571. However, this order was never fully enforced, and in 1605, King Philip clarified that it was meant to apply only to slaves taken illegally.<sup>508</sup>

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<sup>503</sup> Nelson, “Slavery in Medieval Japan,” 464. Some may even have gone as far as Mexico, via the Manila slave market. The Yomiuri Shimbun and Asia News Network, “Japanese Slaves Taken to Mexico in 16th Century,” *Asia News Network*, May 14, 2013, <http://news.asiaone.com/News/AsiaOne+News/Asia/Story/A1Story20130514-422430.html>.

<sup>504</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 189–223, 254–61.

<sup>505</sup> Arano, “The Formation of a Japonocentric World Order,” 195.

<sup>506</sup> However, those sent back to Iberia would have been afforded certain rights and legal protections by the Portuguese and Spanish monarchs. See William D. Phillips, *Slavery in Medieval and Early Modern Iberia* (Philadelphia, PA: University of Pennsylvania Press, 2014), 79–121.

<sup>507</sup> Fujiki, *Zōhyō-Tachi No Senjō: Chūsei No Yōhei to Doreigari*, 6–94.

<sup>508</sup> Nelson, “Slavery in Medieval Japan,” 463–69; Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 187–231; Tatiana Seijas, “The Portuguese Slave Trade to Spanish Manila: 1580–1640,” *Itinerario* 32,

The Sengoku Period ended, fittingly enough, with a series of violent conquests that began in 1560 under Oda Nobunaga, and were completed by his vassal Toyotomi Hideyoshi following Nobunaga's betrayal and murder in 1581.<sup>509</sup> Hideyoshi revived national human trafficking governance—as emperors and shoguns had done before him—by once again forbidding *hito no baibai* (“the buying and selling of persons”), a term closely related to earlier prohibitions of *jinrin baibai* (“the selling of human relations”) and the more common *jinshin baibai* (“the buying and selling of human beings”). Beyond simply forbidding the commerce in objectified persons, Hideyoshi also ordered the release of any person who had been bought and sold, as well as the forfeiture of assets for kidnapers, in any territories he conquered.<sup>510</sup> It is possible that these prohibitions were motivated by Hideyoshi's own humble origins: his father was a farmer-turned-soldier, and Asao suggests his family may have been descended from *nuhi*.<sup>511</sup> However, as Nelson notes, it is more likely that Hideyoshi recognised that slave raids were a major ongoing source of instability, and by forbidding human commodification he aimed to stabilise domain borders and root the peasantry more firmly to the land.<sup>512</sup>

This prohibition was not limited to his Japanese subjects either. When Hideyoshi arrived in Kyushu in 1587, he was reportedly disgusted at the sight of his fellow Japanese being sent off to Portugal and ordered both that the selling of Japanese slaves to Europeans cease and that existing slaves be set free, and, where possible, be returned to Japan.<sup>513</sup> Shortly thereafter, he also ordered the expulsion of the Jesuit missionaries. Though this latter order was not enforced, it sent a clear warning signal to the Jesuits about the danger of being associated with slavery posed to their mission in Japan. This led local religious authorities to

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no. 01 (March 2008): 19–38, <https://doi.org/10.1017/S0165115300001686>; J. F. Moran, *The Japanese and the Jesuits: Alessandro Valignano in Sixteenth-Century Japan* (London: Routledge, 1993), 105–10.

<sup>509</sup> Hall, “The Muromachi Bakufu”; Naohiro Asao, “The Sixteenth-Century Unification,” in *The Cambridge History of Japan Volume 4: Early Modern Japan*, ed. John Whitney Hall and James L. McClain, trans. Bernard Susser (New York, NY: Cambridge University Press, 1991), 40–95; Marius B. Jansen, *The Making of Modern Japan* (Cambridge, MA: Belknap Press of Harvard University Press, 2000), 11–17; Mary Elizabeth Berry, *Hideyoshi* (Cambridge, MA: The Council on East Asian Studies, Harvard University, 1982).

<sup>510</sup> Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 232–53.

<sup>511</sup> Asao, “The Sixteenth-Century Unification,” 45.

<sup>512</sup> Nelson, “Slavery in Medieval Japan,” 481.

<sup>513</sup> Jurgis Elisonas, *Deus Destroyed: The Image of Christianity in Early Modern Japan* (Cambridge, MA: Council on East Asian Studies, Harvard University, 1988), 116–21.

issue an order in 1598 prohibiting, under pain of excommunication, all labour from being transported out of Japan. However, as King Philip's decree makes clear, this did not end the buying of slaves by the Portuguese in Japan, which would continue until the ejection of the Portuguese in 1639.<sup>514</sup>

On their own, it is likely these orders would have had little impact. According to Leupp, the initial ban on *hito no baibai* was both limited in scope and soon allowed to lapse.<sup>515</sup>

Nevertheless, Hideyoshi's campaign for national unification did manage to greatly reduce the level of human trafficking in Japan simply by drying up the supply of commodified persons. Pacified territories could no longer engage in *doreigari*, one of the main sources of bonded labour during the Sengoku Period. At the same, Hideyoshi also actively worked to stamp out piracy, confiscating weapons from seafarers and demanding written pledges that they refrain from piracy; these measures were to be enforced by local daimyo, who would have their entire domain confiscated for perpetuity if it was used as a base for piracy.<sup>516</sup>

These measures effectively put an end to the *wakō* groups that had been taking slaves from China and Korea since the 13<sup>th</sup> century.<sup>517</sup> Thus even if he was unsuccessful at ending human commodification in Japan, Hideyoshi effectively put an end to the forced abductions which had fuelled this trade.

However, as Nelson notes, this initial reduction in the levels of human commodification was effectively reversed after Hideyoshi embarked on one of the single biggest expansions of slavery in Japan's history: the invasion of Korea, sometimes called in Japanese the "War of Abduction" ("*Hito-sarai Sensō*").<sup>518</sup> Following the end of the reunification in 1590, Hideyoshi turned his eye overseas, and in 1592, he ordered his generals to capture the Korean

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<sup>514</sup> Nelson, "Slavery in Medieval Japan," 463–69; Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 187–231; Seijas, "The Portuguese Slave Trade to Spanish Manila"; Moran, *The Japanese and the Jesuits*, 105–10.

<sup>515</sup> Gary P. Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan* (Princeton, NJ: Princeton University Press, 1992), 17.

<sup>516</sup> Jurgis Elisonas, "The Inseparable Trinity: Japan's Relations with China and Korea," in *The Cambridge History of Japan Volume 4: Early Modern Japan*, ed. John Whitney Hall and James L. McClain (New York: Cambridge University Press, 1991), 262–65.

<sup>517</sup> Shapinsky, "Lords of the Sea: Pirates, Violence, and Exchange in Medieval Japan," 441–70.

<sup>518</sup> Nelson, "Slavery in Medieval Japan," 481.

peninsula as a precursor to an invasion of China. Hideyoshi's forces met initial success and were able to take Seoul, but ultimately became bogged down after the Chinese sent in a counter-force.<sup>519</sup> The Japanese continued to occupy Korea to various extents until 1598, and over the course of this occupation they sent 50-100 thousand captives back to Japan, of which only 7,500 are estimated to have been (eventually) repatriated.<sup>520</sup> These were far from the first Korean slaves in Japan—as noted above, the *wakō* pirates had been bringing Korean slaves into Japan since the 13<sup>th</sup> century. However, this is the first time they were forcibly brought over in such numbers.

Following Hideyoshi's death in 1598, his vassal Tokugawa Ieyasu founded a new bakufu in the then-small town of Edo (present-day Tokyo). Despite on-going tensions over the massive number of Korean captives in Japan, in 1609 the bakufu concluded a peace agreement with the Korean government that normalised relations between the two countries.<sup>521</sup> This ended Japanese adventurism in East Asia until the end of the 19<sup>th</sup> century, and with it the possibility of taking additional foreign captives for forced labour. The end of warfare also brought with it an end to *doreigari* and the return of what Elias referred to as the “civilising process”: on the one hand, an increasing sensitisation to violence in the general population, and the on the other, an elite-led process of an increasingly elaborate system of manners.<sup>522</sup> Hideyoshi had already effectively ended the slave-taking of the *wakō* pirates, and those groups that were remained were either destroyed or coopted by the new regime as pirate hunters.<sup>523</sup> The Edo Period also saw a sharply lower frequency of famines—one of the major reasons people sold themselves, their servants or their family members into bondage—than

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<sup>519</sup> Berry, *Hideyoshi*, 207–16.

<sup>520</sup> The upper estimate is from Ui-hwan Kim, *Choson t'ongsisnsa Ui Palchach 'Wi* (Seoul: Chongum Munhwasa, 1985). In Etsuko Hae-Jin Kang, *Diplomacy and Ideology in Japanese-Korean Relations: From the Fifteenth to the Eighteenth Century* (Basingstoke, Hampshire: Palgrave Macmillan, 1997), 107, <https://doi.org/10.1057/9780230376939>. The lower estimate is from Shunpō Naitō, “Jinshin-Teiyū Eki Ni Okeru Hiryo Chōsenjin No Sakkan Mondai Ni Tsuite,” *Chōsen Gakuhō* 29 (1963). In Arano, “The Formation of a Japanocentric World Order,” 197.

<sup>521</sup> Elisonas, “The Inseparable Trinity: Japan's Relations with China and Korea,” 294–99.

<sup>522</sup> Elias, *The Civilizing Process*. See also Eiko Ikegami, *The Taming of the Samurai: Honorific Individualism and the Making of Modern Japan* (Cambridge, MA: Harvard University Press, 1995).

<sup>523</sup> Shapinsky, “Lords of the Sea: Pirates, Violence, and Exchange in Medieval Japan,” 467–70.

other periods.<sup>524</sup> Thus, with peace restored to Japan under the Edo Bakufu we see the elimination of most of the supply factors had fuelled trafficking during Japan's Middle Ages. The Edo Bakufu also ended the international demand for Japanese bonded labour through what later became known as the *Sakoku* ("closed country") Edicts. The government decided early on that Christianity—tied as it was to militant foreign powers and the restless western daimyo—represented an intolerable political threat. As such, they banned Christianity in Japan in 1612, and then banished all foreign priests, as well as Christian daimyo and their retainers, in 1614.<sup>525</sup> Edicts issued 1633–1639 forbade Japanese citizens from travelling to foreign countries and Japanese living abroad from returning, all upon pain of death. The English and Spanish voluntarily left Japan in 1623 and 1624, respectively, and as a result of a Christian-led rebellion in Shimabara in 1637-1638, the Portuguese were also banned from the country in 1639. By 1640, only the Chinese, Koreans, and Dutch could enter the country, and only in closely monitored and tightly controlled areas.<sup>526</sup> Thus, although these edicts were designed to exclude a hostile foreign religion, they had the additional effect of making it impossible for Japanese to be trafficked out of the country. This left only the domestic demand for trafficking, the changes to which I will explore in the next section.

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<sup>524</sup> Farris, *Japan's Medieval Population*, 174–207.

<sup>525</sup> Kiri Paramore, *Ideology and Christianity in Japan* (London: Routledge, 2009), 52–56.

<sup>526</sup> Ronald P. Toby, *State and Diplomacy in Early Modern Japan: Asia in the Development of the Tokugawa Bakufu* (1984; repr., Stanford, CA: Stanford University Press, 1991), 1–22; Michael S. Laver, *The Sakoku Edicts and the Politics of Tokugawa Hegemony* (Amherst, NY: Cambria Press, 2011); Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford: Oxford University Press, 2003), 16–19.

## HUMAN TRAFFICKING IN PRE-MODERN JAPAN

Table 3: Timeline of major events and governance related to human trafficking, 1600–1867

Year	Event
1600	Tokugawa Ieyasu founds the Edo Bakufu in what is now Tokyo, inaugurating an era of growth, urbanisation, and declining rates of bonded labour
1605	King Philip of Portugal clarifies that earlier order prohibiting importing slaves only applies to slaves taken illegally
1612	Shōji Jin'emon granted permission by Edo Bakufu to establish walled licensed quarter at Yoshiwara, Edo; this is followed by a proliferation of such quarters across the major cities of Japan
1616	Edo bakufu issues the first of its own bans on <i>jinshin baibai</i> , with a ban on contracts longer than three years
1625	Maximum contract length increased to ten years
1639	Portuguese ejected from Japan, and all Europeans besides the Dutch (under heavy restrictions) barred from entering Japan
1718	Edo Bakufu allows inns in post towns to employ sex workers, leading to boom in sex tourism along the highways
1750	(By this point, hereditary bonded labour has virtually disappeared in Japan, and Edo is the largest city in the world)
1853	American naval Commodore Perry arrives in Japan and forces the bakufu to open its ports to Europeans and Americans
1867	Last shogun resigns, ending the Edo bakufu

Tokugawa Ieyasu's victory over a coalition of western daimyo in the battle of Sekigahara in 1600 marks the beginning of the Edo period (1600–1868), a time when political control was consolidated and the groundwork laid for the institutions of a modern nation-state.<sup>527</sup> Early in his reign, Ieyasu ordered the relocation of the samurai to castle towns. Though intended to reduce the potential for armed uprisings, this move also created concentrations of artisans, merchants, builders and day labourers.<sup>528</sup> This in turn sparked what Hayami calls an "industrious revolution": the formation of a currency-based market economy in urban areas which in turn inspired innovation-based productivity gains amongst the newly economically-oriented agricultural class.<sup>529</sup> As a result, during the Edo Period, "The population trebled, the amount of cultivated land doubled, and agricultural output quadrupled."<sup>530</sup> This also led to a rate of urbanisation in 17<sup>th</sup> century Japan more rapid than anywhere else in the world, with the urban population rising from 1.4 million (7-8% of the national total) at the beginning of the Edo Period to 5 million (16%) by the end of the 17<sup>th</sup> century.<sup>531</sup> Edo grew from a small town to one of the largest—and, by the mid-18<sup>th</sup> century, the largest—city in the world,<sup>532</sup> a transformation made possible by sustained urban migration.<sup>533</sup>

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<sup>527</sup> John Whitney Hall, "Introduction," in *The Cambridge History of Japan Volume 4: Early Modern Japan*, ed. John Whitney Hall and James L. McClain (New York: Cambridge University Press, 1991), 1–39.

<sup>528</sup> Mark Ravina, *Land and Lordship in Early Modern Japan* (Stanford, CA: Stanford University Press, 1999), 63–64; Jansen, *The Making of Modern Japan*, 141–46; Tsuguharu Inaba, "Community Vitality in Medieval Japan," in *War and State Building in Medieval Japan*, ed. John A. Ferejohn and Frances McCall Rosenbluth (Stanford, CA: Stanford University Press, 2010), 71–90.

<sup>529</sup> Akira Hayami, "A Great Transformation: Social and Economic Change in Sixteenth and Seventeenth-Century Japan," 42–51; "Industrial Revolution versus Industrious Revolution," in *Population, Family and Society in Pre-Modern Japan: Collected Papers of Akira Hayami* (2001; repr., Folkestone: Global Oriental, 2009), 64–71; Akira Hayami, *Japan's Industrious Revolution* (Tokyo: Springer Japan, 2015).

<sup>530</sup> Hayami, "A Great Transformation," 44.

<sup>531</sup> André Sorensen, *The Making of Urban Japan: Cities and Planning from Edo to the Twenty-First Century* (New York, NY: Routledge, 2004), 12.

<sup>532</sup> Beatrice Bodard-Bailey, "Urbanisation and the Nature of the Tokugawa Hegemony," in *Japanese Capitals in Historical Perspective*, ed. Nicolas Fiévé and Paul Waley (New York: Routledge, 2013), 100–128.

<sup>533</sup> Akira Hayami, "Population Trends in Tokugawa Japan: 1600–1868," in *Population, Family and Society in Pre-Modern Japan: Collected Papers of Akira Hayami* (1987; repr., Folkestone, Kent: Global Oriental, 2009), 105–6.

At the beginning of the Edo period, there remained an underclass of labourers who were also often frequently commodified. Looking at a sample of almost 8,000 households in Kai province, Mizoguchi found that in 1650–1699, 20.6% had *genin*—and that for 1700–1749 this number had actually gone up to 26.1%.<sup>534</sup> Stanley likewise notes that in mining colonies, buying both male bodies (for manual labour) and female bodies (for sexual labour) continued into the early seventeenth century.<sup>535</sup> As mentioned above, Hideyoshi had banned *hito no baibai* (“the buying and selling of persons”) in 1587. However, it was clear that at the beginning of the Edo period this law was not being widely enforced, and Leupp argues it was “designed primarily to prevent kidnapping (*kadowakashi*) and the involuntary sale of persons by anyone other than their household head.”<sup>536</sup>

In 1616, the Edo Bakufu issued its own ban on *jinshin baibai* (“the buying and selling of human beings”). This was the first of a number of such bans that would be issued throughout the 17<sup>th</sup> and early 18<sup>th</sup> centuries.<sup>537</sup> In theory, these were not national decrees, and applied only to territory directly administered by the bakufu. However, in practice many of the daimyo took their regulatory cues from Edo, and many authored regional versions of these bans.<sup>538</sup> As Hiramatsu notes, even though technically the *ritsuryōsei* remained the law of the land, by the Edo period military law had in fact permeated the country.<sup>539</sup>

The bigger problem with these bans was their apparently lax enforcement and considerable loopholes. The bans were generally targeted at the sale of people into lifetime contracts, and as such left open the possibility of households placing a member of their house in a term-limited contract. In the early-17<sup>th</sup> century the maximum period for a contract was three years, but this was increased to 10 years in 1625, likely because the earlier maximum had not been enforceable. Moreover, the bans were sometimes shifted to the ambiguous

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<sup>534</sup> Tsunetoshi Mizoguchi, “Labour Migration in Kai Province during Tokugawa Era,” *Japanese Journal of Human Geography* 33, no. 6 (1981): 483–506.

<sup>535</sup> Amy Stanley, *Selling Women: Prostitution, Markets, and the Household in Early Modern Japan* (Berkeley, CA: University of California Press, 2012), 32–33.

<sup>536</sup> Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 17.

<sup>537</sup> Maki Hidemasa, *Kinsei Nihon no jinshin baibai no keifu* (Tokyo: Sobunsha, 1970), 60.

<sup>538</sup> J. Mark Ramseyer, *Odd Markets in Japanese History: Law and Economic Growth* (Cambridge: Cambridge University Press, 1996), 56–57.

<sup>539</sup> Yoshiro Hiramatsu, “Tokugawa Law,” *Law Japan* 14 (1981): 1.



period of “many years,” modified to allow extensions “with mutual consent,” or relaxed completely. Leupp suggests that, as with the relaxation of the ban on human trafficking in the Kamakura period, these changes came in response to famines, as families tried to sell off family members they could no longer afford to feed.<sup>540</sup> According to Ramseyer, heads of households could also take out a loan, pledge a family member or spouse as security, and then default on the loan. The “lender” would thus have acquired the securitised person as a hereditary servant without technically having purchased them. Alternatively, if the transfer involved a child, a household head could simply allow the buyer to adopt a child in exchange for a cash payment.<sup>541</sup>

Despite these loopholes, however, both human bondage and human commodification declined significantly across the Edo period. According to Mizoguchi, the number of households with *genin* declined to 15.1% in 1750–1799, and then to 6.2% in 1800–1869. Hereditary *genin* had effectively disappeared by 1750, and even before this the term *genin* had come to simply mean “servant,” in particular those with contracts of indenture. The length of these terms was also declining, from an average of three years at the beginning of the Edo period to an average of one year at the end.<sup>542</sup>

Ramseyer, looking at records of both indenture contracts and of the sales and pledges of human beings, arrives at similar findings, noting that outright sales and pledges had essentially vanished by 1740, while the duration of indenture contracts also steadily declined throughout the Edo period.<sup>543</sup> These findings match Smith’s earlier work, which found that hereditary servitude and lifelong contracts essentially disappeared from Japanese villages in the early 18<sup>th</sup> century.<sup>544</sup> And Leupp notes that, while similar data is not available for cities, the end of lifetime servitude had likely come even earlier in cities, where the bakufu’s law held greater sway. Only in samurai houses is there evidence for the

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<sup>540</sup> Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 18–23.

<sup>541</sup> Ramseyer, *Odd Markets in Japanese History*, 58–61.

<sup>542</sup> Mizoguchi, “Labour Migration in Kai Province during Tokugawa Era”; Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 49.

<sup>543</sup> Ramseyer, *Odd Markets in Japanese History*, 61–62.

<sup>544</sup> Thomas C. Smith, *The Agrarian Origins of Modern Japan* (Stanford, CA: Stanford University Press, 1959), 108–23.

continued presence of hereditary servants, and even in these cases it may have simply been a case of the traditional term (*fudai*) being applied to contracted workers.<sup>545</sup> As for *nuhi*, at the beginning of the Tokugawa period this referred generally to the wives and daughters of men who had committed serious crimes and who were subsequently given as domestic slaves to wealthy families. However, as the Edo period progressed, this practice also declined, being limited only to women who had illegally passed through the bakufu's checkpoints, and even then it was a punishment only rarely applied.<sup>546</sup>

Across all consulted sources, there is agreement it was shifts to Japan's political economy that undid the market for buying and selling people for labour, as well as ending lifetime and hereditary contracts of indenture and significantly reducing the length of time-limited contracts of indenture. Specifically, researchers such as Mizoguchi, Ramseyer and Leupp argue that these changes resulted from the shift to an open wage-labour market brought on by urbanisation and the industrious revolution. The demand for short term wage labour in the city meant that individuals—particularly males—could earn more for their families working in the cities than household heads could earn by selling them into indenture. As a result, outright sales disappeared except in times of extreme hardship, and contract lengths shortened to allow for workers to respond to changing labour markets and maximise their wage earnings. However, this focus on the household heads ignores the agency of the workers in question. It also does not tell us what happened to individuals already in lifetime or hereditary bondage during this period. Here, Ramseyer suggests we need to pay more attention to the economics of running away.<sup>547</sup>

The runaway problem is a fundamental issue that any system of forced labour needs to solve if it is to work as intended. In North America, for example, a primary reason for the European preference for African slaves over Native American slaves was that the latter could more easily escape, living off the land until they could reunite with their own

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<sup>545</sup> Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 23–28.

<sup>546</sup> Daniel Botsman, *Punishment and Power in the Making of Modern Japan* (Princeton, NJ: Princeton University Press, 2005), 74.

<sup>547</sup> Ramseyer, *Odd Markets in Japanese History*, 54–79.

people.<sup>548</sup> Likewise, for ethnic Japanese it would not be too difficult to disappear into another village or community. Taking more direct action to stop these workers (keeping them in chains or locked up, guarding them constantly, surrounding the compound with walls, etc.) would have been either infeasible or economically impractical in most settings, particularly agricultural ones. Up until the industrious revolution of the Edo period, then, the primary barrier to escape was simply a lack of alternative employment options: often the best outcome for an abscondee would be continued employment in subsistence farming, while the worst would be death by starvation. This changed fundamentally with the introduction of the market for day labour in urban environments. The risk of flight combined with the need to treat bonded labourers better to avoid incentivising them to flee pushed down the sum buyers were willing to pay for bonded persons, which also contributed to the collapse of the market for persons.<sup>549</sup>

This is not to say that the bakufu's efforts at human trafficking governance played no role: as noted above, they likely helped to end lifetime and hereditary servitude in the cities, a change that in turn accelerated the move to an open labour market. However, at other times they took a reactionary approach to changing economic and social conditions—for example, by requiring contracts of at least one year in Edo in an effort to better control and monitor the migrant population.<sup>550</sup> The government also tried to enforce those contracts and sales it did permit, which meant that at various times their agents policed highways or conducted sweeps of the vagrant population in search of runaways. On the other hand, the bakufu's need for labour, along with their generally hands-off approach to governance, meant that such efforts were sporadic.<sup>551</sup> Instead, they often relied on the *bakuto* to organise and control itinerant labour.

The *bakuto* were gambler gangs who had also branched out into money lending, labour brokering and the running of hostels for itinerant labourers. These were synergistic

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<sup>548</sup> Alan Galloway, "Introduction," in *Indian Slavery in Colonial America*, ed. Alan Galloway (Lincoln, NA: University of Nebraska Press, 2009), 1–32; Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven, CT: Yale University Press, 2002), 90.

<sup>549</sup> Ramseyer, *Odd Markets in Japanese History*, 58–60.

<sup>550</sup> Hidemasa Maki, *Koyō no rekishi* (Tokyo: Kōbundō, 1977), 83–88.

<sup>551</sup> Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 12.

enterprises, since someone who defaulted on their gambling debts could then be forced to pay off those debts through indentured labour, and since collecting these debts and enforcing contracts of indenture both required a capacity for violence.<sup>552</sup> In this respect, the *bakuto* were to the itinerant labourers of Edo Period Japan what the Cosa Nostra were to Italian immigrant communities of the United States during the early 20<sup>th</sup> century: a source of coercive governance among migrant communities where the state had abdicated its own governance responsibilities.<sup>553</sup>

However, while the Cosa Nostra early on found themselves in conflict with the agents of the state, in Japan the Edo Bakufu was willing to tolerate *bakuto* and their counterparts among the itinerant peddlers, the *tekiya*, provided these groups operated within certain limits and were willing to pass along information to the agents of the bakufu. These two groups would later come to be known collectively as “yakuza,” (a gambling term referring to a losing hand) and have continued to be involved in labour brokering up until the present. Their cooperative relationship with their law enforcement counterparts likewise continued up until the end of the 20<sup>th</sup> century.<sup>554</sup>

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<sup>552</sup> Hill, *The Japanese Mafia*, 37–38.

<sup>553</sup> John Dickie, *Cosa Nostra: A History of the Sicilian Mafia* (Basingstoke, Hampshire: Palgrave Macmillan, 2004), 161–89.

<sup>554</sup> See for example Eiko Maruko Siniawer, *Ruffians, Yakuza, Nationalists: The Violent Politics of Modern Japan, 1860-1960* (Ithaca, NY: Cornell University Press, 2008); Brian Woodall, *Japan Under Construction: Corruption, Politics, and Public Works* (Berkeley, CA: University of California Press, 1996); Hill, *The Japanese Mafia*; Kaplan and Dubro, *Yakuza*, 2003; Antoni Slodkowski and Mari Saito, “Down and out in Fukushima,” Reuters Special Report (Reuters, 2013), <http://graphics.thomsonreuters.com/13/10/fukushima.pdf>.

*HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN THE EDO PERIOD*

In 1589, Hideyoshi's vassal Hara Saburōzaemon petitioned for and was granted permission to open a brothel in Kyoto. Hara subsequently built an entire walled-in "licensed quarter"<sup>555</sup> modelled on similar districts in China. In 1612 Edo brothel owner Shōji Jin'emon followed Hara's example and petitioned the Edo Bakufu for permission to create a licensed quarter in Edo. Shōji argued that having a licensed quarter would allow brothels to be regulated, thereby preventing their use of victims of kidnapping—although for the bakufu, the ability to monitor clients to ensure that renegade samurai were not using the brothels to hide and conspire may have been a more important benefit. In 1617, the bakufu granted Shōji and his fellows some marshy land outside of Edo to build a licensed quarter, and this became known as Yoshiwara ("field of reeds," although later the characters were changed to mean "field of good fortune"). Soon other cities began imitating the Yoshiwara model, such that by 1720, there were twenty-five licensed quarters in Japan.<sup>556</sup>

However, although these licensed quarters were all based on the model of Yoshiwara (and before that Shimabara in Kyoto), there were still wide regional variations among them. Perhaps the most unusual of the licensed quarters was Maruyama in Nagasaki, whose sex workers were dispatched to the Dutch and Chinese quarters. In the case of the Dutch at Dejima, many of the women dispatched there ended up effectively living with a single partner for the duration of that individual's stay in Japan, and were thus often occupationally closer to mistresses than to sex workers. Moreover, because the Dutch were not usually permitted to leave their small enclosure at Dejima, nor were most Japanese permitted entry, these visits by the Nagasaki sex workers represented the most frequent point of contact between Japanese and Europeans up until the late 19<sup>th</sup> century.<sup>557</sup>

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<sup>555</sup> *Yūkaku*. The characters more literally mean "pleasure quarter", but it is commonly translated as "licensed quarter" or "red light district." I will use "licensed quarter" here to refer to those areas that were sanctioned by the bakufu as brothel districts.

<sup>556</sup> Cecilia Segawa Seigle, *Yoshiwara: The Glittering World of the Japanese Courtesan* (Honolulu, HI: University of Hawai'i Press, 1993), 8–24; J. E. de Becker, *The Nightless City: Or, The History of the Yoshiwara Yūkaku* (Yokohama: Z. P. Maruya & Co., L'd, 1899), 1–22.

<sup>557</sup> Stanley, *Selling Women*, 72–100; Gary P. Leupp, *Interracial Intimacy in Japan: Western Men and Japanese Women, 1543-1900* (London: Continuum, 2003), 100–125.

Although brothels were forbidden from operating outside of the licensed quarters, there were a range of other establishments euphemistically offering sexual services, such as tea houses and bath houses, which were tolerated to varying extents by the government.<sup>558</sup> Independent sex workers continued to work in large numbers during the Edo period, particularly near pilgrimage sites that were heavily trafficked by tourists.<sup>559</sup> Brothel-based sex work had also spread throughout rural Japan, such as at major transportation hubs like the harbour towns along the Seto Inland Sea.<sup>560</sup> The sex industry was particularly conspicuous along the post towns that dotted the bakufu's new highways. These towns were meant to provide rest areas and fresh horses both for agents of the government and the retinues of the daimyo, but after funding them proved a challenge, the Bakufu decided in 1718 to allow the inns to also employ euphemistically named "rice serving girls" — effectively turning these towns into major hubs of sexual entertainment and contributing to a boom in sex tourism along the highways.<sup>561</sup>

Sex work also flourished in the entertainment sector. Kabuki had originated as a female art form, whose performers also sold sex on the side, but performances of kabuki by women were banned by the bakufu after riots were sparked over competitions for the affections of the dancers.<sup>562</sup> Even after kabuki transitioned to an all-male art form, however, it remained

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<sup>558</sup> For example, when they forced Yoshiwara to move in 1656, part of the compensation offered by the city was the destruction of over 200 bathhouses (that had competed for customers with Yoshiwara). And in 1731, the city of Edo tried (and failed) to have the Bakufu sanction some of the thriving illicit brothel districts so that they could extract tax revenue. See Seigle, *Yoshiwara*, 49–50; de Becker, *The Nightless City*, 11–15; William R. Lindsey, *Fertility and Pleasure: Ritual and Sexual Values in Tokugawa Japan* (Honolulu, HI: University of Hawai'i Press, 2007), 7.

<sup>559</sup> Nam-lin Hur, *Prayer and Play in Late Tokugawa Japan* (Cambridge, MA: Harvard University Press, 2000), 87–90; Stanley, *Selling Women*, 61; Sarah Thal, *Rearranging the Landscape of the Gods: The Politics of a Pilgrimage Site in Japan, 1573-1912* (Chicago, IL: University of Chicago Press, 2005), 103–4.

<sup>560</sup> Stanley, *Selling Women*, 173–87.

<sup>561</sup> Usami Misako, *Shukuba to meshimori onna* (Tokyo: Dōseisha, 2000); Jilly Traganou, *The Tōkaidō Road: Traveling and Representation in Edo and Meiji Japan* (London: Routledge, 2004), 72–148; Laura Nenz Detto Nenzi, *Excursions in Identity: Travel and the Intersection of Place, Gender, and Status in Edo Japan* (Honolulu, HI: University of Hawai'i Press, 2008), 165–85.

<sup>562</sup> Katherine Mezur, *Beautiful Boys/Outlaw Bodies: Devising Kabuki Female-Likeness* (Basingstoke, Hampshire: Palgrave Macmillan, 2005), 54–64; Satoko Shimazaki, *Edo Kabuki in Transition: From the Worlds of the Samurai to the Vengeful Female Ghost* (New York, NY: Columbia University Press, 2016), 45–47.

closely associated with sex work, with the men who now played the women's parts in kabuki performances being particularly associated with the sale of sex to wealthy patrons.<sup>563</sup> Geisha, conversely, originated as a term referring to male entertainers, although their popularity was eclipsed in the mid-18<sup>th</sup> century by female imitators who often sold sex in addition to singing, dancing and playing the shamisen. However, the role and status of these female geisha could vary wildly across Japan. In many places, they were sex workers whose "entertainer" occupation was a way to avoid the bans on unlicensed sex work, while in Yoshiwara they were artists enjoined from engaging in formal sex work but who might nevertheless enter sexual liaisons with their patrons.<sup>564</sup>

Sex between men, often referred to as *nanshoku* ("male eros"), was neither stigmatised nor particularly uncommon during the Edo period, even at the highest levels of the government: seven of the fifteen Tokugawa shoguns had documented sexual contact with other men. It is thus not surprising that there was also considerable demand for male sex workers, and that some licensed quarters, such as Edo's Yoshichō, were known to specialise in *nanshoku*. Male entertainers, much like female entertainers, also sold sex to supplement their income or secure patrons. On the other side of transactional sex, women were also active as customers in the Edo period sex industry. Wealthy widows and the maidservants of the Shogun, for example, were known to visit Yoshichō, and there may have been a section of Yoshiwara limited to women who sold sex to women.<sup>565</sup>

As with previous periods, poverty and famine continued to push individuals into sex work,<sup>566</sup> but the frequency of famines had declined markedly since the middle of the 16<sup>th</sup> century.<sup>567</sup>

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<sup>563</sup> Leupp, *Male Colors*, 129–77.

<sup>564</sup> Stanley, *Selling Women*, 66–69; Seigle, *Yoshiwara*, 169–75; Liza Carihfield Dalby, *Geisha* (Berkeley, CA: University of California Press, 1983); Sayo Masuda, *Autobiography of a Geisha*, trans. G.G. Rowley (New York, NY: Columbia University Press, 2003), 59–62.

<sup>565</sup> Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 3–93, 171–91; Pflugfelder, *Cartographies of Desire*, 23–145; Sasama Yoshihiko, *Kōshoku Gengo Jiten: Seigo Ruishōshō* (Tokyo: Yūzankaku, 1989), 489.

<sup>566</sup> Leupp, *Male Colors*, 134.

<sup>567</sup> Osamu Saito, "Climate and Famine in Historic Japan: A Very Long-Term Perspective," in *Demographic Responses to Economic and Environmental Crises: Proceedings of the IUSSP Seminar*, ed. Satomi Kurosu, Tommy Bengtsson, and Cameron Campbell (Kashiwa: Reitaku University, 2010), 272–81.

On the other hand, it was possible that a decrease in mortality left families with more children than they could care for, and that the boom in the sex industry was partially in response to an increase in the “supply” of families willing to sell daughters to brothels. To a certain extent regional data support this idea: while in many parts of eastern Japan families took to abortion and infanticide as methods for limiting their number of children, the families of Echigo province<sup>568</sup> did not, and the result—noted even at the time—was that a disproportionately large number of sex workers came from Echigo.<sup>569</sup>

However, the main driver in the growth of the sex industry was likely an increasing demand for sexual labour, fuelled by the rapid urbanisation of the early Edo period.<sup>570</sup> The demand for manual labour in Japan’s cities had drawn in a significant number of young male migrants from the countryside, men who in previous periods might have worked as subsistence farmers. Research suggests that migrants are more likely to purchase sex than their peers who remain at home, due to either migration-induced separation from the values and surveillance of one’s home community or a self-selection for risk-takers among migrants.<sup>571</sup> Moreover, these migration patterns also resulted in heavily skewed gender ratios in the cities of Japan in the late 17<sup>th</sup>–early 18<sup>th</sup> centuries, with 110 men per 100 women in a number of cities, and 174 men per 100 women in Edo itself.<sup>572</sup> Sex ratio imbalances have also been linked to increased demand for sex work,<sup>573</sup> and help explain, for

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<sup>568</sup> Contemporary Niigata prefecture.

<sup>569</sup> Fabian Drixler, *Mabiki: Infanticide and Population Growth in Eastern Japan, 1660-1950* (Berkeley, CA: University of California Press, 2013); Stanley, *Selling Women*, 114–33.

<sup>570</sup> Lindsey, *Fertility and Pleasure*, 1–26; Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 4, 29–65.

<sup>571</sup> For contemporary studies, see Shiva S. Halli et al., “Migration and HIV Transmission in Rural South India: An Ethnographic Study,” *Culture, Health & Sexuality* 9, no. 1 (January 1, 2007): 85–94, <https://doi.org/10.1080/13691050600963898>; Pattana Kitiarsa, “Thai Migrants in Singapore: State, Intimacy and Desire,” *Gender, Place & Culture* 15, no. 6 (2008): 595–610, <https://doi.org/10.1080/09663690802518495>; Emilio A. Parrado and Chenoa A. Flippen, “Migration and Sexuality: A Comparison of Mexicans in Sending and Receiving Communities,” *Journal of Social Issues* 66, no. 1 (March 1, 2010): 175–95, <https://doi.org/10.1111/j.1540-4560.2009.01639.x>.

<sup>572</sup> Leupp, *Male Colors*, 62; Gary P. Leupp, “Population Registers and Household Records as Source for the Study of Urban Women in Tokugawa Japan,” *The Gest Library Journal* 50 (1992): 5.

<sup>573</sup> See for example Shyamala Nagaraj and Siti Rohani Yahya, “Prostitution in Malaysia,” in *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*, ed. Lin Lean Lim (Geneva: International Labour Office, 1998), 67–99; Vijayendra Rao et al., “Sex Workers and the Cost of Safe Sex: The Compensating Differential for Condom Use among Calcutta Prostitutes,” *Journal of*



example, the demand for Japanese sex workers in Singapore in the 19<sup>th</sup> century<sup>574</sup> and the demand for Filipino hostesses in rural Japan in the 21<sup>st</sup> century.<sup>575</sup> In Edo period Japan, the fact that many of the female migrants were employed in closely monitored settings (e.g., as servants in manors, shop assistants, or textile workers) that expected chastity from their female workers may have further aggravated this imbalance.<sup>576</sup>

While there were reported cases of kidnapping of both boys and girls for exploitation in the sex industry, unlike during the Sengoku period, abductors stood a good chance of being caught and executed—indeed, as mentioned above, preventing kidnapping was one of the reasons given for creating the licensed quarters.<sup>577</sup> The demand for sex workers was thus mostly met through contracts of indenture, typically signed by the parents on behalf of their child.<sup>578</sup> Contracts of indenture for sexual labour had been deliberately excluded from the prohibition on *jinshin baibai*, and could cover periods of up to ten years. Moreover, while contracts of indenture for physical labour entitled the contractor only to the labour of the contractee, contracts of indenture for sexual labour in the Edo period could entitle the contractor to the entire person of the contractee. Brothels could, for example, allow (or not allow) customers to buy out contracts for *yūjo* (effectively buying the *yūjo* as a wife or mistress), sell the *yūjo*'s contract to another brothel, or use the *yūjo* as collateral to secure a mortgage.<sup>579</sup> There were, of course, tactics by which *yūjo* could resist these coercive measures—Stanley describes instances of sex workers feigning illness, or the imminent death of a parent, to return home; and once they were physically gone from the brothel it

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*Development Economics* 71, no. 2 (August 2003): 585–603, [https://doi.org/10.1016/S0304-3878\(03\)00025-7](https://doi.org/10.1016/S0304-3878(03)00025-7); Joseph D. Tucker et al., “Surplus Men, Sex Work, and the Spread of HIV in China,” *Aids* 19, no. 6 (2005): 539–547.

<sup>574</sup> Jin Hui Ong, “Singapore,” in *Prostitution: An International Handbook on Trends, Problems, and Policies*, ed. Nanette J. Davis (Westport, CT: Greenwood Press, 1993), 243–72; James Francis Warren, *Ah Ku and Karayuki-San: Prostitution in Singapore, 1870-1940* (Oxford: Oxford University Press, 1993), 25–37.

<sup>575</sup> Lieba Faier, *Intimate Encounters: Filipina Women and the Remaking of Rural Japan* (Berkeley, CA: University of California Press, 2009), 117–21.

<sup>576</sup> Leupp, *Servants, Shophands, and Laborers in the Cities of Tokugawa Japan*, 95–100.

<sup>577</sup> Pflugfelder, *Cartographies of Desire*, 106–7; Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*, 84–85.

<sup>578</sup> Stanley, *Selling Women*, 53–59.

<sup>579</sup> Yuriko Yokoyama, “The Yūjo Release Act as Emancipation of Slaves in Mid-19th-Century Japan,” in *Abolitions as a Global Experience*, ed. Hideaki Suzuki (Singapore: NUS Press, 2015), 161–98.

could be difficult for brothel owners to compel their return or repayment of debts, particularly if there were credible allegations of abuse.<sup>580</sup> Nevertheless, it is clear that even as workers in general were being de-commodified in Japan, the trend for sex workers appears to have been going in the other direction.

The reason that indentured labour persisted in the sex industry even as it ended in other industries is likely on account of the difficulty sex workers had in both running away and working independently. The licensed quarters were deliberately constructed to make it difficult for sex workers to leave: Yoshiwara was surrounded by four walls, and had only a single Great Gate through which women who worked in Yoshiwara could pass only with special permits.<sup>581</sup> Kyoto's licensed quarters was so secure that it came to be named after Shimabara fortress.<sup>582</sup> Actors, who also frequently sold sex, were likewise confined to specific districts and were required to wear the same face-covering hats as criminals and outcasts if they left the district.<sup>583</sup>

This is not to say that running away was impossible: *yūjo* could, for example, feign personal illness or claim illness on behalf of one of their family members; *yūjo* contracts usually allowed departures for these reasons, and once gone the *yūjo* could simply opt not to return. However, in the absence of significant mistreatment or other extenuating circumstances—in which case local authorities might well void the contract or force a renegotiation—the brothels could use force to compel the return of the *yūjo*. Notably, this would be done not through public authorities, who did not generally get involved in contractual disputes, but rather through privately contracted groups like the *bakuto*.<sup>584</sup> The

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<sup>580</sup> Stanley, *Selling Women*, 90–92, 172–76.

<sup>581</sup> Hiromi Sone, "Prostitution and Public Authority in Early Modern Japan," in *Women and Class in Japanese History*, ed. Hitomi Tonomura, Anne Walthall, and Haruko Wakita, trans. Akiko Terashima and Anne Walthall (Ann Arbor, MI: Center for Japanese Studies, the University of Michigan, 1999), 169–85; Seigle, *Yoshiwara*, 24–34.

<sup>582</sup> Nicolas Fiévé, "Social Discrimination and Architectural Freedom in the Pleasure District of Kyoto in Early Modern Japan," in *Japanese Capitals in Historical Perspective*, ed. Nicolas Fiévé and Paul Waley (New York: Routledge, 2013), 67–99.

<sup>583</sup> Donald H. Shively, "The Social Environment of Tokugawa Kabuki," in *Studies in Kabuki: Its Acting, Music, and Historical Context*, by James R. Brandon, William P. Malm, and Donald H. Shively (Honolulu, HI: University of Hawai'i Press, 1978), 3–4.

<sup>584</sup> Stanley, *Selling Women*, 85–86, 173–87; Hiramatsu, "Tokugawa Law," 44–46.

Edo period thus also marks the beginning of organised crime's involvement in the governance of the sex industry in Japan.

For sex workers who wanted to work outside of the licensed quarters, there were a range of pseudo-brothels—"bath houses," "tea shops," "laundries"—that sprang up over the course of the Edo period. Initially, those who were caught running illegal brothels or profiting from illegal prostitution could face the death penalty, but this provision was never widely enforced and was relaxed over time.<sup>585</sup> Independent sex work, such as that performed by the *odoriko* ("dancing girls") of the early Edo period and the geisha of the later Edo period, was also illegal, although the penalty was different: women arrested for selling sex independently or as part of an illegal brothel faced the possibility of being sentenced to a period of indentured servitude in the brothels of the licensed quarter (they could also be exiled to the countryside). Thus not only did the law curtail competition to brothels using indentured sex workers, but it also provided these brothels with a potentially free source of labour. Enforcement of this provision was typically outsourced to the brothels themselves, effectively giving them license to abduct and enslave sex workers.<sup>586</sup>

As the Edo Period progressed, illicit brothels—increasingly tolerated by local governments who saw them as important magnets for tourism (i.e. travel for pleasure) and useful sources of income—proliferated. The increased competition brought with it a slow decline of the licensed quarters, which in turn led to a lowered status and increased stigmatisation of the *yūjo*. However, even with the decline of the licensed quarter system, sex workers remained in indenture contracts. Stanley argues that this was the result of a Confucian-inspired governmentality that perceived sex work as immoral unless justified by filial piety, the core virtue in Confucian thought. Thus sex work undertaken for one's own betterment was condemned, but sex work to save one's family from financial ruination was, if not celebrated, than at least accepted.<sup>587</sup> Japan is far from unique in this regard: as Molland has shown, the Buddhist principal of children owing a debt of merit to their parents plays an

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<sup>585</sup> Sone, "Prostitution and Public Authority in Early Modern Japan."

<sup>586</sup> Botsman, *Punishment and Power in the Making of Modern Japan*, 73–74; Seigle, *Yoshiwara*, 167–72.

<sup>587</sup> Stanley, *Selling Women*.

important role in mitigating sex work stigma in Laos and Thailand.<sup>588</sup> However, in Japan during the Edo Period this created a governmentality whereby women's involvement in sexual labour was acceptable only under circumstances in which they were *not* working of their own volition—which as to say, the inverse of the governmentalities driving the modern regulation of sex work in many countries.

Because contracts of indenture for sexual labour were often signed when girls were fifteen or younger, the entire Edo period sex industry would, according to some contemporary definitions, be based on human trafficking. Seigle gives the official legal minimum age for sex work during the Edo period as eighteen,<sup>589</sup> with contracted girls performing non-sexual labour in the interim—although she notes that this was routinely violated.<sup>590</sup> Stanley, meanwhile, suggests that the customary age of majority—fifteen—was used to decide if a woman was ready to see customers.<sup>591</sup> And Usami offers evidence that these minima were observed by noting that, for the “rice-serving girls” at the inns of the postal towns, contracts for sexually mature women (who could start seeing customers immediately) were worth more than those for children.<sup>592</sup>

Taken together, this suggests that the idea of an “age of consent” (or rather, given that this is a discussion of contracts of indenture, the age at which a young person becomes a suitable sexual partner for an adult) is not a foreign concept imposed on Japan, but one that had precedent in Japanese legal text and practice. Interestingly, the contracts for male kabuki actors, contained no such provisions (they could not, since these were not part of the legal sex industry), and the preferred age for passive partners in *nanshoku*<sup>593</sup> seemed to

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<sup>588</sup> Sverre Molland, *The Perfect Business?: Anti-Trafficking and the Sex Trade Along the Mekong* (Honolulu, HI: University of Hawai'i Press, 2012), 83–85.

<sup>589</sup> Traditional methods for counting age in Japan assign the age of one to newborns, and so 18 in the Edo period would be 17 in modern counting methods. See Kiyoshi Hamano, “Marriage Patterns and the Demographic System of Late Tokugawa Japan: Based on Two Case Studies of Contemporary Demographic Registers,” *Japan Review*, no. 11 (1999): 131.

<sup>590</sup> Seigle, *Yoshiwara*, 85–86.

<sup>591</sup> Stanley, *Selling Women*, 58.

<sup>592</sup> Usami, *Shukuba to meshimori onna*, 705–143.

<sup>593</sup> In Edo period Japan, male same sex activity seemed to be largely confined to anal sex. See Leupp, *Male Colors*, 191–94.

have been adolescent or even prepubescent boys.<sup>594</sup> However, this too parallels the international situation, where historically the ages of consent for homosexual and heterosexual conduct have been viewed differently, and where men are often viewed as more capable of sexual autonomy.<sup>595</sup>

Even aside from the problems with age, however, it is clear that the sex workers during the Edo period were heavily objectified: the use of long-term indenture contracts (of which they were not the primary beneficiaries), the limits on their personal mobility, their physical confinement, the use of corporal punishment, the forced return of runaways and the indenture of independent sex workers without pay—these demonstrate the commodification, instrumentalisation, denial of autonomy and violability of sex workers during the Edo period.<sup>596</sup> Even in language we can see the increasing dehumanisation of female sex workers, with the term *yūjo* (“pleasure woman”) being gradually replaced in common usage with the derogatory *baita* (“sold woman”).<sup>597</sup>

One consequence of this proliferation of brothel indenture during the Edo period was that “trafficking” became an increasingly gendered and sexualised phenomenon in Japan. Although male sex workers were also objectified in similar ways, if not always to the same extent, male sex workers were few in number relative to female sex workers, and male sex work was never institutionalised to the same degree as female sex work. This trend also ran parallel to the overall de-objectification of labourers during the Edo period, such that by the end of the Edo period “labour trafficking” had largely disappeared. The end result of these two trends, then, was that at end of the Edo period the idea of “human trafficking” (*jinchin baibai*) and of unfree labour had come to be associated primarily with women, and primarily with sexual labour.

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<sup>594</sup> Pflugfelder, *Cartographies of Desire*, 29–42.

<sup>595</sup> Melinda D. Kane, “Decriminalizing Homosexuality: Gaining Rights through Sodomy Law Reform,” in *The Ashgate Research Companion to Lesbian and Gay Activism*, ed. David Paternotte and Manon Tremblay (Farnham, Surrey: Ashgate, 2015), 275–89.

<sup>596</sup> These are different types of objectification described by Nussbaum. See Martha C. Nussbaum, “Objectification,” in *Sex and Social Justice* (Oxford: Oxford University Press, 1999), 213–239.

<sup>597</sup> Sone, “Prostitution and Public Authority in Early Modern Japan,” 172.

## HUMAN TRAFFICKING IN 19<sup>TH</sup> AND 20<sup>TH</sup> CENTURY JAPAN

Table 4: Timeline of major events and governance related to human trafficking, 1868–1952

Year	Event
1868	Beginning of Emperor-headed European-style constitutional monarchy in Japan
1872	Japanese court orders that the coolies aboard the Peruvian vessel the <i>María Luz</i> be set free and returned to China and that the vessel itself be confiscated and auctioned
“	Ban on <i>Jinshin Baibai</i> abolishes all life-time and long-term contracts of indenture, as well as banning litigation related to the debt of indentured sex workers
“	Cattle Release Act clarifies that all debts owed by sex workers to their brothels are to be cancelled
1892	Annaka Church succeeds in campaign to prohibit licensed sex work in Gunma prefecture
1895	Japan colonises Taiwan
1896	Civil Code passed into law; includes public morals ( <i>fūzoku</i> ) provision allowing for contracts contrary to public morals (for example, indenture contracts for sex workers) to be voided by the government
1900	Rules Regulating Licensed Prostitutes released by Home Ministry, creating right for free cessation, but also restricting movement of licensed sex workers
“	Administrative Enforcement Law passed, allowing police to arrest unlicensed sex workers and force them to undergo medical exams
1907	Penal Code passed; includes provisions calling for the punishment of those who received or removed from the country victims of <i>jinshin baibai</i> for the purpose of profit or “obscenity”
1910	Japan colonises Korea
1919	Japanese government orders its consuls to encourage and assist (and, if necessary, force) the repatriation of sex workers overseas

1925	Japan accedes to the 1910 International Convention for the Suppression of the White Slave Traffic and the 1921 International Convention for the Suppression of the Traffic in Women and Children
1931	The Japanese military stages Manchurian Incident to create a pretext for invading northeastern China
1932	Japan creates the puppet state of Manchukuo
1934	Home Ministry announces plans to phase out licensed prostitution
1937	Marco Polo Bridge incident marks beginning of the Second Sino-Japanese War; Japan passes a National Mobilization Law that leads to increasingly forced labour recruitment from Korea and Taiwan
1941	Japanese attack on Pearl Harbour and Japanese invasion of Southeast Asia brings Japan into WWII, and also leads to increasing exploitation of colonised and conquered labour force, including of women in the military brothels
1945	End of WWII and beginning of occupation; special brothels established for occupying forces under the Recreation and Amusement Association (RAA)
1946	Occupation General Headquarters (GHQ) shuts down the RAA and orders closure of the licensed quarters
“	Home Ministry eliminates Rules Regulating Licensed Prostitutes
1947	Imperial Ordinance to Punish Persons Compelling a Female to Prostitution eliminates the licensed quarters; brothels in Tokyo rename themselves as “special eating and drinking places”
1948	Amusement Businesses Regulation Act passed to regulate nighttime entertainment industry, including “special eating and drinking places”
1952	End of the American Occupation of Japan

The arrival of Commodore Perry's "black ships" in 1853 and the accompanying demand that Japan open its ports to American and European ships or risk war proved to be the final straw that broke an already-strained political system. The military government found itself powerless in the face of American and European demands, and the last shogun resigned in late 1867. The following year, the bakufu was replaced with an Emperor-headed constitutional monarchy, the domains were replaced with prefectures, and Edo became Tokyo.<sup>598</sup> The Meiji era had begun.

The new order's primary objectives were to prevent China's fate from befalling Japan and to make Japan a "first-class nation," policies summarised by the slogan *fukoku kyōhei* (rich country, strong army).<sup>599</sup> To this end the Charter Oath of the new government declared that, "Evil customs of the past shall be broken off and everything based upon the just laws of Nature," and "Knowledge shall be sought throughout the world so as to strengthen the foundations of imperial rule."<sup>600</sup> This "knowledge" ranged from chemistry to philosophy to literature, as well as the moral and medical Anglo-European discourses on gender and sexuality. One result of this process of "modernisation" was that homosexuality between men was pathologised (and briefly, from 1873 to 1882, criminalised) thus ending the status of *nanshoku* as a fashionable pastime among the elites of Japan.<sup>601</sup> The dismantling of the complex class-based system—including the abolition of both the base *eta-hinin* sub-caste and of samurai privilege—in favour of a German-inspired system that divided people neatly

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<sup>598</sup> Jansen, *The Making of Modern Japan*, 223–332; Marius B. Jansen, "Japan in the Early Nineteenth Century," in *The Cambridge History of Japan Volume 5: The Nineteenth Century*, ed. Marius B. Jansen (New York: Cambridge University Press, 1989), 50–115; W. G. Beasley, "The Foreign Threat and the Opening of the Ports," in *The Cambridge History of Japan Volume 5: The Nineteenth Century*, ed. Marius B. Jansen (New York: Cambridge University Press, 1989), 259–307.

<sup>599</sup> Sukehiro Hirakawa, "Japan's Turn to the West," in *The Cambridge History of Japan Volume 5: The Nineteenth Century*, ed. Marius B. Jansen, trans. Bob Tadashi Wakabayashi (New York: Cambridge University Press, 1989), 432–98; Jansen, *The Making of Modern Japan*, 333–70.

<sup>600</sup> William Theodore De Bary, Carol Gluck, and Donald Keene, eds., *Sources of Japanese Tradition, Volume Two: 1600 to 2000*, 2nd ed. (New York, NY: Columbia University Press, 2005), 672.

<sup>601</sup> Jim Reichert, *In the Company of Men: Representations of Male-Male Sexuality in Meiji Literature* (Stanford, CA: Stanford University Press, 2006), 13–29, 227–32; Furukawa Makoto, "The Changing Nature of Sexuality: The Three Codes Framing Homosexuality in Modern Japan," trans. Angus Lockyer, *U.S.-Japan Women's Journal. English Supplement*, no. 7 (1994): 98–127.



between nobles and commoners also meant that the system for the governance of sex work would soon need to be revisited.<sup>602</sup>

However, before any changes to the *yūjo*'s status could be made, their situation came to international attention as the result of a diplomatic incident. In June 1872, the storm-damaged Peruvian vessel the *María Luz* docked in Yokohama. On board were 234 indentured Chinese labourers acquired in Macao and bound for plantations in Peru. While the boat was anchored, two of the coolies escaped and swam to a nearby British warship, where they complained to the officers of horrific treatment and slave-like conditions. Unable to interfere with a Peruvian vessel in Japanese waters, the British embassy requested assistance from the authorities in Kanagawa, who then launched an investigation into the vessel. Peru's interests in Japan were represented by the US, but the American chargé d'affaires, consulting with the British embassy, announced that he would provide no assistance to the *María Luz*. A special court created to address the *María Luz* incident ordered the navy to prevent the departure of the *María Luz* while they pursued their investigation. The court ultimately decided both that the indentured labourers had been taken in violation of the laws and sovereignty of China, and that these crimes, similar to piracy, were subject to universal jurisdiction; as such, the court ordered the repatriation of the labourers and the auctioning of the vessel.<sup>603</sup>

To understand why Japan chose to intervene, recall that during this period most labourers in Japan were *more* free than labourers in other parts of the world. The *María Luz* Incident occurred less than a decade after the Civil War ended slavery in the United States and just over a decade since the abolition of serfdom in Russia, and while the Europeans had

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<sup>602</sup> Daniel Botsman, "Freedom without Slavery? 'Coolies,' Prostitutes, and Outcastes in Meiji Japan's 'Emancipation Moment,'" *The American Historical Review* 116, no. 5 (December 1, 2011): 1323–47, <https://doi.org/10.1086/ahr.116.5.1323>; Jansen, *The Making of Modern Japan*, 365.

<sup>603</sup> Suzanne Jones Crawford, "The Maria Luz Affair," *Historian* 46, no. 4 (August 1, 1984): 583–96, <https://doi.org/10.1111/j.1540-6563.1984.tb01256.x>; Igor R. Saveliev, "Rescuing the Prisoners of the Maria Luz: The Meiji Government and the 'Coolie Trade', 1868–75," in *Turning Points in Japanese History*, ed. Bert Edstrom (London: Routledge, 2013); Douglas Howland, "The Maria Luz Incident: Personal Rights and International Justice for Chinese Coolies and Japanese Prostitutes," in *Gender and Law in the Japanese Imperium*, ed. Susan L. Burns and Barbara J. Brooks (Honolulu, HI: University of Hawai'i Press, 2014), 21–47.

abolished slavery earlier, they continued to exploit labourers in slavery-like conditions in their colonies. Thus from Japanese perspectives, the treatment of the coolies was clearly a violation of their legal rights, whereas from European perspectives Japan's judgment in this case was seen as boldly progressive—particularly coming from a “backwards” “oriental” nation. However, as a lawyer for the captain of the *María Luz* pointed out, some Japanese were still themselves trapped in a system of indentured servitude. How, the barrister asked, could Japan condemn the trade in “coolies” given the conditions of its own *yūjo*? To this, the court replied that a review of the situation of the *yūjo* was already in progress.<sup>604</sup>

True to their word, later that year the Meiji government's Grand Council of State issued Proclamation No. 295, on “Matters concerning the prohibition of human trafficking, determining the year limits on all servants, emancipating female prostitutes and performers, and not suing to recover debts.” As the name suggests, this edict was not concerned exclusively with ending the bondage of indentured sex workers. Rather, it defined all life-time or overly long contracts as a form of *jinshin baibai*, and on this basis abolished them. As such, the law is frequently abbreviated as the *Jinshin Baibai Kinshirei* (“Ban on *Jinshin Baibai*”). However, the law does include this specific passage on sex workers:

Item. [So that] prostitutes (*shōgi*) and geisha (*geigi*), etc., and indentured servants (*hōkōnin*) can achieve complete emancipation pursuant to the above provisions, no litigation regarding their outstanding debts will be taken up.<sup>605</sup>

This inclusion earned the proclamation a second moniker, the *Geishōgi Kaihōrei* (“Emancipation Edict for Female Performers and Prostitutes,” henceforth “Emancipation Edict”). However, as it was not quite clear which debts this law actually refers to, the Ministry of Justice followed this with Notice No. 22, “Dealing with the debts related to prostitutes (*shōgi*) and geisha (*geigi*), as well as other acts related to *jinshin baibai*,” which gave the following three points of clarification (or modification) on the Emancipation Edict:

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<sup>604</sup> Botsman, “Freedom without Slavery?,” 136–43.

<sup>605</sup> Geishōgi Kaihōrei [Emancipation Edict] Grand Council of State Proclamation No. 295, Nov. 2, 1872. Abrogated by the Minpō shikō hō [Civil Code Enforcement Law], Act No. 11 of June 21, 1898. Own translation.

Item. As a result of *jinshin baibai* being prohibited since time immemorial, various practices such as fixed-term indentureships, etc., have become the pretexts by which the de facto sale [of persons] is accomplished. As such, capital used for the hiring of *shōgi* and *geigi* will be regarded as illicit funds. Consequently, individuals raising grievances in relation to the above matters will be investigated and the full amounts in question may be confiscated.

Item. Having lost their human rights, the above-mentioned *shōgi* and *geigi* are no different from horses and cattle. As there is no logic by which persons can seek to have their goods returned by horses and cattle, those who have lent to the above-mentioned *shōgi* and *geigi* shall completely refrain from demanding repayment of cash, credit, advances, etc.

However, this restriction shall not apply to amounts from after the 2<sup>nd</sup> of this month.

Item. Those who use the adoption of female children secured by loans as a pretext to have those children become prostitutes or geisha have in fact engaged in *jinshin baibai*. As such, those persons have previously and will continue to be punished severely.<sup>606</sup>

Perhaps the most immediately striking aspect of Notice No. 22 is the dehumanising livestock comparisons. In Chinese, “horses and cattle,” has served more generally as a metaphor for enslaved people, who under the long standing caste system based on Confucian moral strictures had been treated as less than fully human and thus morally acceptable to exploit. This language was deployed frequently, for example, in democratic and revolutionary rhetoric in the 20<sup>th</sup> century.<sup>607</sup> The use of that term here, by legal professionals trained in Chinese classics, was meant to draw attention to the dehumanising treatment accorded indentured sex workers—a description that late-20<sup>th</sup> century abolitionists would no doubt approve of. However, in the late-19<sup>th</sup> century it had the effect of undermining the serious tone of the notice, which quickly came to be known as the “Cattle Release Act.”<sup>608</sup>

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<sup>606</sup> *Shōgi geigi ni kakawaru taishaku sonota jinshin baibai ni ruisuru shogyō no shobun* [Dealing with the debts related to *shōgi* and *geigi*, as well as other acts related to *jinshin baibai*] Ministry of Justice Notice No. 22, Nov. 9 1872. Own translation.

<sup>607</sup> For examples, see S. A. Smith, *Like Cattle and Horses: Nationalism and Labor in Shanghai, 1895–1927* (Durham, NC: Duke University Press, 2002).

<sup>608</sup> Seigle, *Yoshiwara*, 222.

It is also striking that this law reminds the reader that *jinshin baibai* had been illegal “since time immemorial.” This mirrors many previous Japanese government pronouncements on human trafficking, including those of Emperor Tenmu in 676 and the Kamakura Bakufu in 1240. As with those earlier edicts, this law argued that employers of indentured labourers (*hōkōnin*), prostitutes (*shōgi*) and female entertainers (*geigi*) had been violating the previous ban on *jinshin baibai*. For those who violated the spirit of the law by seeking repayment of debts from these labourers through private mediation (perhaps assisted by the muscle of the *bakuto*), the government warned that they risked having all of their assets seized or being prosecuted as human traffickers. The law effectively argued that debt could be almost as onerous as a deed of ownership, and thus that total emancipation could only be achieved by making these debts non-enforceable.<sup>609</sup>

A number of scholars (both foreign and Japanese) have argued that the Emancipation Edict was in fact a direct reaction to the barristers’ claim that the *yūjo* were unfree and intended only to bolster their international image.<sup>610</sup> In this narrative, the Japanese government passed a token law that resulted in the visible closure of a large number of brothels—in particular those in Yoshiwara that relied heavily on indentured workers<sup>611</sup>—before quietly allowing the status quo to reassert itself once attention had drifted away. This perspective sees Japan as Said’s infantilised Oriental nation, unable to discern right from wrong and thus in need of constant monitoring and discipline lest it go astray.<sup>612</sup> This has been a persistent view of Japan by Anglo-Europeans, often linked to its status as a non-Christian nation. This view is also present in the oldest writings on Japan by Anglo-Europeans: that of the Jesuits, who were also themselves involved in the slave trade.<sup>613</sup> And it is a perspective we will see again in the discussion of the contemporary American TIP Report in Chapter 7.

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<sup>609</sup> Botsman, “Freedom without Slavery?,” 1342.

<sup>610</sup> See for example Yokoyama, “The Yūjo Release Act as Emancipation of Slaves in Mid-19th-Century Japan,” 191–92; Kondo, “Japanese Experience and Response in Combating Trafficking,” 216; Ramseyer, *Odd Markets in Japanese History*, 117; Howland, “The Maria Luz Incident: Personal Rights and International Justice for Chinese Coolies and Japanese Prostitutes.”

<sup>611</sup> Seigle, *Yoshiwara*, 221–24.

<sup>612</sup> Said, *Orientalism*, esp. 201–328.

<sup>613</sup> See for example the writings of Alessandro Valignano, 1590, cited in Nelson, “Slavery in Medieval Japan,” 464–65.

But Botsman shows that this narrative is false, as there is clear evidence that members of the Meiji government were both concerned about the status of sex workers and had started to work on the new law prior to the *María Luz* Incident; at best, then, the *María Luz* Incident affected only the final wording.<sup>614</sup> This is not to deny the influence of Anglo-European discourses on Japan's changing governance. However, rather than seeing this a moment when Japan was "embarrassed" into temporarily changing its conduct, this legal change should be understood as part of a process—predating the *María Luz* Incident—on the part of Japanese intellectuals and civil servants to "modernise" Japan's governance of the sex industry.<sup>615</sup> And in modernising the sex industry, these elites proceeded just as their peers had done in modernising the education system and military: by studying the practices of the major Anglo-European states and then deciding which of those could most easily be implemented in Japan. In doing so, they settled on a system whereby both brothel owners and sex workers would apply for (and pay for) licences from the police. The latter, in granting licences, would verify that sex workers were of legal age (eighteen) and had consented to sex work.<sup>616</sup> The Emancipation Edict and Cattle Release Act were thus part of a broader transition from a system of licensed quarters to a system of sex work regulation.

One of the main goals of the new system of regulation was to implement a system of mandatory syphilis testing. Unlike the Emancipation Edict, this testing did begin as the direct result of foreign demands, after foreigners in port cities demanded that the sex workers they visited be tested. Initially, then, testing was motivated by a desire to steer sailors to the brothels in a belief that this would prevent rape, which, due to the unequal treaties Japan had been forced to sign, they could not prosecute. Only later did these tests come to be widely institutionalised as part of a "modernising" regime of biopower.<sup>617</sup>

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<sup>614</sup> Botsman, "Freedom without Slavery?"

<sup>615</sup> Amy Stanley, "Enlightenment Geisha: The Sex Trade, Education, and Feminine Ideals in Early Meiji Japan," *The Journal of Asian Studies* 72, no. 03 (August 2013): 539–562, <https://doi.org/10.1017/S0021911813000570>.

<sup>616</sup> Sheldon Garon, *Molding Japanese Minds: The State in Everyday Life* (Princeton, NJ: Princeton University Press, 1998), 103.

<sup>617</sup> Susan Burns, "Bodies and Borders: Syphilis, Prostitution, and the Nation in Japan, 1860–1890," *U.S.-Japan Women's Journal. English Supplement*, no. 15 (1998): 3–30; A. Hamish Ion, "Sexual Imperialism on the China Station during the Meiji Restoration: The Control of Smallpox and Syphilis at

The forced medical checks for STIs in Japan during the late-19<sup>th</sup> and early 20<sup>th</sup> century were much the same as they were in the rest of the world, which is to say conducted by force in the presence of a large number of observers, a number of whom were not medical staff; often botched, with long-term consequences for the women's health; and freely used as practice sessions for trainees. They were, unsurprisingly, a source of dread, a cause of suicides, and the target of strikes. Moreover, by depicting sex workers as a source of diseases, the new system of governing the sex industry through biopower increased the stigmatisation of sex workers during the Meiji period. Prohibitionists in Japan—as with elsewhere—would later capitalise on both of these trends. On the one hand, they argued that the compulsory medical exams violated women's rights, and on this basis the system of licensed prostitution needed to be abolished. On the other hand, using this increase in stigmatisation, they worked to relabel sex workers themselves as deviant *shūgyōfu*, “women of the unsightly occupation,” and on this basis called for their criminalisation.<sup>618</sup>

As for the fees for the licences, these were meant to cover the costs related to monitoring the brothels, as well as medical expenses and special schools for the sex workers. In practice, however, they became a major source of revenue for local governments during a time when much of the tax income was going to the army and navy. This created a strong incentive for prefectures and municipalities to create new licensed districts, which in turn contributed to a growth of the sex industry that exceeded population growth during the Meiji period.<sup>619</sup> Expansion of the army and navy also contributed to the expansion of sex work more directly, since new concentrations of young men away from home with disposable income and no immediate opportunity for family formation led to the creation of

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Yokohama, 1868–1871,” *The International History Review* 31, no. 4 (December 2009): 711–39, <https://doi.org/10.1080/07075332.2009.9641170>.

<sup>618</sup> Bill Mihalopoulos, *Sex in Japan's Globalization, 1870-1930: Prostitutes, Emigration and Nation Building* (London: Pickering & Chatto, 2011), 3–4; Yuki Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” trans. Kerry Ross, *Positions* 5, no. 1 (1997): 137–42.

<sup>619</sup> Craig Colbeck, “From the Brothel, to the Body: The Relocation of Male Sexuality in Japan's Prostitution Debate, 1870-1920” (Harvard University, 2012), 58–63; Botsman, “Freedom without Slavery?,” 1343–47.

red light districts specifically for military use.<sup>620</sup> This phenomenon is hardly unique to Japan: during this time, the presence of American troops in the Philippines led to the “modernisation” of sex work there at the beginning of the 20<sup>th</sup> century,<sup>621</sup> and later American GIs would be instrumental in creating Thailand’s expansive sex industry.<sup>622</sup> However, these links between military expansion and the establishment of brothels offer an unsettling premonition of the military brothel system that would be established during the Pacific War.

As noted previously, the cancellation of debts for sex workers was intended to apply only retroactively, and after the Emancipation Edict the Meiji government continued allowing licensed sex workers to take out advance loans against further earnings. While these were now technically limited to women entering the sex industry of their own volition, this nevertheless meant that indenture contracts had returned to the sex industry; and in practice, there was little to stop family members from pressuring women into taking on contracts of indenture.<sup>623</sup> Meanwhile, the Emancipation Edict of 1872 was itself formally abrogated by the Civil Code Enforcement Law of 1898, without it being replaced with a new protective measure.<sup>624</sup> Instead, the new Civil Code included the following text in article 90: “Legal actions which have for their purpose matters that are contrary to public order or good morals (*fūzoku*) shall be without effect.”<sup>625</sup> This provision, which remains part of the

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<sup>620</sup> Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” 146–49.

<sup>621</sup> David J. Pivar, “The Military, Prostitution, and Colonial Peoples: India and the Philippines, 1885–1917,” *The Journal of Sex Research* 17, no. 3 (August 1981): 256–69, <https://doi.org/10.1080/00224498109551119>; Luis C. Dery, “Prostitution in Colonial Manila,” *Philippine Studies* 39, no. 4 (1991): 475–89.

<sup>622</sup> Pasuk Phongpaichit, *From Peasant Girls to Bangkok Masseuses* (Geneva: International Labour Office, 1982), 1–5; Thanh-Đạm Trương, *Sex, Money and Morality: Prostitution and Tourism in South-East Asia* (London: Zed Books, 1990), 98–101; Wathinee Boonchalaksi and Philip Guest, “Prostitution in Thailand,” in *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*, ed. Lin Lean Lim (Geneva: International Labour Office, 1998), 130–69.

<sup>623</sup> Ramseyer, *Odd Markets in Japanese History*, 109–34; Holly Sanders, “Indentured Servitude and the Abolition of Prostitution in Postwar Japan,” *USJP Occasional Paper* (Cambridge, MA: Program on U.S.-Japan Relations, 2006), 29–61.

<sup>624</sup> Minpō shikō hō, Act No. 11 of June 21, 1898.

<sup>625</sup> Minpō, Act No. 89 of April 27, 1896, art. 90. In Masugi Yuri, “Jinshin baibai hajjo: Hōshin ni miru kindai kōshō seido no yōsō,” *Ritsumeikan Daigaku Jinbun Kagaku Kenkyūsho Kiyō* 93 (2009): 240. Own translation.

Civil Code,<sup>626</sup> allows the government to void contracts with sex workers if it finds them to be contrary to “good morals”—for example, by being exploitative, coercive or predicated on the commission of illegal acts. It also became the basis for a number of lawsuits, launched by Japanese pastors and an American missionary in 1899, where the courts ultimately found that contracts of indenture for sex workers were non-enforceable.<sup>627</sup>

As a result of these rulings, when the Home Ministry issued their Rules Regulating Licensed Prostitutes in October 1900—part of an effort to standardise the rules for sex work across the country—they included a right to free cessation, whereby a sex worker could legally quit a brothel at any time simply by informing the police of her desire to do so, regardless of outstanding debts. On the other hand, these rules were otherwise highly restrictive, forbidding women who worked in licensed brothels from living or working outside of the brothels or from venturing outside of the licensed quarters without permission from the police. Furthermore, following a 1900 Supreme Court case, sex workers and their guarantors—brothels almost only ever offered advances if the worker had guarantors, typically their parents—remained bound to repay all outstanding loans even if the sex worker quit. Lenders could not compel work, but they could compel repayment, even by repossessing assets of the guarantors, and the lack of alternative well-paid work opportunities for women meant that they often still had no choice but to work in the brothels.<sup>628</sup>

As a consequence, a “Yoshiwara-lite” system of debt bondage and restricted movement remained prevalent up until the post-war period. However, Ramseyer argues that the continued use of advance loans in the sex industry does not necessarily imply exploitation. There was a significant one-time reputational cost for undertaking sex work, and employers had a strong incentive to exaggerate the potential earnings from sex work; contracts with

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<sup>626</sup> Minpō, Act No. 89 of April 27, 1896, art. 90, as last amended by Act No. 71 of June 7, 2016. Enacted in 1896, the Civil Code (*Minpō*) is one of the six codes of the modern Japanese legal system. See Hiroshi Oda, *Japanese Law*, 3rd ed. (Oxford: Oxford University Press, 2009).

<sup>627</sup> Masugi, “Jinshin baibai haijo: Hōshin ni miru kindai kōshō seido no yōsō”; Garon, *Molding Japanese Minds*, 93.

<sup>628</sup> Garon, *Molding Japanese Minds*, 92–94; Ramseyer, *Odd Markets in Japanese History*, 109–34; Sanders, “Indentured Servitude and the Abolition of Prostitution in Postwar Japan,” 29–61.



advance payments allowed sex workers to lock in earnings in advance. Moreover, while the licensed sex industry had long working hours and exploitative work conditions, the primary alternative for women without an education—the garment industry—had even worse working conditions and worse pay, along with its own system of contracts of indenture.<sup>629</sup>

The most pressing danger for exploitation, then, lay in the unlicensed sex sector. Despite the expansion of the sex sector, there were more applications for positions in the licensed sex industry than there were available positions, leading to a booming unlicensed sex industry on the side.<sup>630</sup> However, unlike the licensed sex workers, unlicensed sex workers could not readily go to the police for assistance, as the Administrative Enforcement Law of 1900 had empowered the police to arrest unlicensed sex workers and force them to undergo humiliating, painful and dangerous medical exams. At the same time, unlike the licensed brothels, unlicensed brothels could not expect the government to help them to enforce debt contracts.<sup>631</sup>

This created a market for contract enforcement outside of the law, leading brothels to contract out enforcement to groups like the *bakuto*, who had become increasingly strong in the early-19<sup>th</sup> century as a result of the weakness of the bakufu.<sup>632</sup> The *bakuto* also became increasingly involved with enforcement in the illegal brothels, filling in the security void created by the government's effort to monopolise the licensed sex trade. In this capacity, they could be used for the forced return of runaway sex workers or the kidnapping of a female family member of a debtor for forced sex work to repay debts.<sup>633</sup> For the brothels, having men of violence at their disposal could also be useful to fend off the increasing number of activists involved in assisting sex workers to leave the brothels.<sup>634</sup> Criminologist

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<sup>629</sup> Ramseyer, *Odd Markets in Japanese History*, 109–34. For conditions in the textile industry, see E. Patricia Tsurumi, *Factory Girls: Women in the Thread Mills of Meiji Japan* (Princeton, NJ: Princeton University Press, 1990), 174–90; Janet Hunter, *Women and the Labour Market in Japan's Industrialising Economy: The Textile Industry before the Pacific War* (London: Routledge, 2004), 288.

<sup>630</sup> Ramseyer, *Odd Markets in Japanese History*, 115.

<sup>631</sup> Garon, *Molding Japanese Minds*, 92.

<sup>632</sup> Siniawer, *Ruffians, Yakuza, Nationalists*, 20–55.

<sup>633</sup> Iwai Hiroaki, *Byōri shūdan no kōzō : oyabun kobun shūdan kenkyū* (Tokyo: Seishin Shobō, 1963), 44–47; Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan”; Ramseyer, *Odd Markets in Japanese History*, 113–17.

<sup>634</sup> Garon, *Molding Japanese Minds*, 88–89.

Hoshino Kanehiro suggests that it is this use of men of violence to abduct women in response to an alleged debt—subsequently reproduced and represented in popular media such as period dramas—that inform the contemporary understanding of *jinshin baibai* amongst the general public in Japan.<sup>635</sup>

The domestic sex industry was not the only site of demand for Japanese sex workers, as in the late 19<sup>th</sup> century, Japanese sex workers were increasingly travelling abroad. At the dawn of the Meiji period, it was primarily the elites who took advantage of the end of the travel ban, visiting foreign countries in order to absorb Anglo-European education and customs and subsequently retransmit them in Japan.<sup>636</sup> However, over the coming decades Japanese labourers began going abroad in increasing numbers for unskilled labour, driven by a continued surplus of rural labour and acute poverty aggravated by heavy taxation used to fund the rapidly expanding Imperial army and navy.<sup>637</sup> A disproportionate number of these migrants came from Kyushu, which had both higher levels of poverty and greater access to international travel—on account of the port at Nagasaki and its proximity to China—than the rest of the country. Many of these migrants, particularly in the early days, were (typically male) manual labourers. However, by the 1890s there were also a considerable number of Japanese women, later known as *karayuki-san* (literally, “Ms. Going-to-China”), who were migrating abroad to work in the sex industries of China and Southeast Asia.<sup>638</sup>

This migration was fueled by a demand for sexual labour, since the great new commercial cities of Asia—Hong Kong and Singapore in particular—as well as the new cities in the American West and the plantations in Hawaii were disproportionately populated by male migrants.<sup>639</sup> These migration flows were not approved of by the Japanese government,

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<sup>635</sup> Oral remarks, quoted with permission.

<sup>636</sup> See for example Tessa Morris-Suzuki, *The Technological Transformation of Japan: From the Seventeenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 1994), 63–70; Jansen, *The Making of Modern Japan*, 355–61.

<sup>637</sup> Susumu Watanabe, “The Lewisian Turning Point and International Migration: The Case of Japan,” *Asian and Pacific Migration Journal* 3, no. 1 (March 1, 1994): 119–47, <https://doi.org/10.1177/011719689400300107>.

<sup>638</sup> Warren, *Ah Ku and Karayuki-San*, 1–35; Mihalopoulos, *Sex in Japan’s Globalization, 1870-1930*, 1–36.

<sup>639</sup> Warren, *Ah Ku and Karayuki-San*, 67–99; Joan Hori, “Japanese Prostitution in Hawaii during the Immigration Period,” 1981, <http://evols.library.manoa.hawaii.edu/handle/10524/111>; Kelli Y.

whose paternalistic governance of migration meant that young women could have difficulty getting passports. As such many of the women travelled as stowaways with the assistance of what we would now call “human smugglers.”<sup>640</sup>

This irregular migration was initially tolerated, however, as these women remitted a high volume of foreign currencies, which was badly needed for the government’s industrial and military investments. In some cases, as Mihalopoulos shows, the government would directly tax the foreign currency wages of workers.<sup>641</sup> However, even the untaxed remittances benefited the government, as the accumulation of foreign deposits helped keep the value of the yen afloat and allowed both the government and industry to import capital at reasonable rates.<sup>642</sup> Of course, these remittances were often not nearly as much as the *karayuki-san* had planned for, as their contract holders would push them into buying expensive items as a means of prolonging the repayment of their debt. However, from the Japanese government’s perspective this remained advantageous, since by funnelling money into local Japanese businesses the *karayuki-san* were providing crucial support for Japan’s economic advance into Asia.<sup>643</sup>

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Nakamura, “Issei Women and Work: Washerwomen, Prostitutes, Midwives, and Barbers,” *Hawaiian Journal of History* 49, no. 1 (January 1, 2016): 119–48, <https://doi.org/10.1353/hjh.2015.0011>; Kazuhiro Oharazeki, “Listening to the Voices of ‘Other’ Women in Japanese North America: Japanese Prostitutes and Barmaids in the American West, 1887–1920,” *Journal of American Ethnic History* 32, no. 4 (July 2013): 5–40, <https://doi.org/10.5406/jamerethnhist.32.4.0005>.

<sup>640</sup> Mihalopoulos, *Sex in Japan’s Globalization, 1870–1930*, 28–36, 112–13.

<sup>641</sup> Mihalopoulos, 42.

<sup>642</sup> Warren, *Ah Ku and Karayuki-San*, 162–64.

<sup>643</sup> Hiroshi Shimizu, “Karayuki-san and the Japanese Economic Advance into British Malaya, 1870–1920,” *Asian Studies Review* 20, no. 3 (April 1997): 107–32, <https://doi.org/10.1080/03147539708713130>; Warren, *Ah Ku and Karayuki-San*, 54.

Internationally, the late 19<sup>th</sup>- and early 20<sup>th</sup>-century was also the period of the diffusion of the sex work prohibitionist movements, which soon spread to protestant communities in Japan. Even before the Meiji Constitution of 1889 enshrined a right to religious freedom, the ban on Christianity was only partially enforced, allowing for a mild proliferation of Christianity.<sup>644</sup> The predominance of Americans and British among foreigners in newly opened Japan meant these early Christians were primarily Protestant, and they brought with them Protestant discourses on sex work—specifically, that its immorality required its prohibition. In 1880, the Annaka Church submitted a proposal to prohibit licensed sex work in Gunma, where it was located. This initial effort was fruitless, but the church persisted in organising campaigns against sex work in Gunma over the next decade, until they (temporarily) succeeded in 1892. Their efforts also led to the formation of local and national Prostitution Abolition Leagues, and encouraged the Salvation Army and the Japanese Women’s Christian Temperance Union (JWCTU) in their own prohibitionist efforts.<sup>645</sup>

The JWCTU was founded as a branch of the World WCTU in 1886, and despite their English name, their focus was not exclusively on temperance but rather on a broader platform of moral reform. As such, the JWCTU made a tactical decision to include neither “temperance” nor “Christian” in their Japanese name in order to broaden their appeal, instead calling themselves the *Fujin Kyōfūkai* (“Women’s Reform Society”).<sup>646</sup> Ultimately, prostitution displaced the consumption of alcohol as their primary target for prohibition. As with alcohol, they described sex work—and by extension, sex workers—as a corrupting vice that needed to be stamped out for the protection of (upper middleclass) women and their families. In pursuit of this objective, they actively stigmatised sex workers, referring to them as *shūgyōfu* (“women of the unsightly occupation”) or *sengyōfu* (“women of the lowly

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<sup>644</sup> Notto R. Thelle, *Buddhism and Christianity in Japan: From Conflict to Dialogue, 1854-1899* (Honolulu, HI: University of Hawai’i Press, 1987), 10–18.

<sup>645</sup> Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” 149–50.

<sup>646</sup> “Christian” would later be added back in, but never “temperance.” See Elizabeth Dorn Lublin, *Reforming Japan: The Woman’s Christian Temperance Union in the Meiji Period* (Vancouver: UBC Press, 2010), 31, 169.

occupation”).<sup>647</sup> The Salvation Army, meanwhile, focussed primarily on rescue work, establishing shelters such as the Women’s Home for the purpose of “rescuing” “fallen women.”<sup>648</sup> Following this example, the foreign auxiliary of the JWCTU established the *Jiaikan*, the “House of Kindness,” which provided food and shelter for former sex workers while trying to transform them into productive (non-sexual) labourers.<sup>649</sup>

However, the main goal of these organisations was the abolition of the system of licensed prostitution. Operating as part of the broader Prostitution Abolition Leagues, they had some localised successes in eliminating specific brothel districts, accomplished by pressuring local authorities into declining to grant or renew licences for brothels.<sup>650</sup> However, the prohibitionists were unable to prevent Yoshiwara from being rebuilt after it was destroyed by a fire in 1911.<sup>651</sup> Following this defeat, the male abolitionists formed their own group, the Kakuseikai (“Purity Society”) to act as brother organisation to the JWCTU, and were able to recruit to their cause a number of high-profile, non-Christian political figures. Through these efforts, these groups were able to pressure a number of prefectures to prohibit licensed prostitution, and in 1934 the Home Ministry announced that the licensed system would be abolished in the near future. However, even with this expanded reach they struggled against

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<sup>647</sup> Bill Mihalopoulos, “Mediating the Good Life: Prostitution and the Japanese Woman’s Christian Temperance Union, 1880s–1920s,” *Gender & History* 21, no. 1 (April 1, 2009): 19–38, <https://doi.org/10.1111/j.1468-0424.2009.01533.x>; Lublin, *Reforming Japan*; Mara Patessio, “The Creation of Public Spaces by Women in the Early Meiji Period and the Tokyo Fujin Kyofukai,” *The International Journal of Asian Studies* 3, no. 02 (July 2006): 155–182, <https://doi.org/10.1017/S1479591406000313>; Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan.”

<sup>648</sup> Jack E. Nelson, “Moral Entrepreneurship in Japan: A Labeling Theory Analysis of the Salvation Army’s Efforts,” *Review of Religious Research* 40, no. 1 (1998): 35–54, <https://doi.org/10.2307/3512458>.

<sup>649</sup> Manako Ogawa, “Rescue Work for Japanese Women: The Birth and Development of the Jiaikan Rescue Home and the Missionaries of the Woman’s Christian Temperance Union, Japan, 1886–1921,” *U.S.-Japan Women’s Journal*, no. 26 (2004): 98–133; Lublin, *Reforming Japan*, 118–25.

<sup>650</sup> As we will see in subsequent chapters, this remains a tactic for the elimination of establishments offering sexual services in contemporary Japan.

<sup>651</sup> Mihalopoulos, *Sex in Japan’s Globalization, 1870–1930*, 61–81; Lublin, *Reforming Japan*, 111–18; Elise K. Tipton, “Cleansing the Nation: Urban Entertainments and Moral Reform in Interwar Japan,” *Modern Asian Studies* 42, no. 04 (July 2008): 705–731, <https://doi.org/10.1017/S0026749X06002678>.

the deep coffers and political connections of the sex industry, as well as the widespread patronage of the industry by male members of the elite.<sup>652</sup>

At the same time, the goals of these moral entrepreneurs shifted from ending the licensed system to criminalising sex work more generally. This would seemingly put the JWCTU at odds with the global prohibitionist movement, which claimed to be freeing women from sexual slavery. However—as both contemporary prohibitionists and sex workers’ rights advocates agree—despite its superficially abolitionist rhetoric, the international anti-trafficking movement had by this point already been hijacked by moral puritans who aimed to suppress and reform immoral practices and practitioners.<sup>653</sup> The JWCTU was simply making explicit the implicit beliefs animating the global anti-trafficking movement at the time, and as such were thus the first group in Japan to adopt a transnational human trafficking governmentality. Both ending the licensed system and prohibiting sex work would, however, prove out of reach until the post-war era.<sup>654</sup>

Faced with these difficulties, many members of the JWCTU focussed initially on ending sex work by Japanese overseas. In Japan during this period, one common aspiration—not just of the elites, but of commoners and of organisations such as the JWCTU—was the transformation of Japan into a first-class nation that commanded respect on the international stage.<sup>655</sup> This goal was often articulated in slogans such as “*fukoku kyōhei*” (“rich country and strong army”) and “*bunmei kaika*” (“civilization and enlightenment”).<sup>656</sup> Originally, the existence of overseas sex workers was largely (though certainly not universally) seen as congruent with this goal, since by remitting foreign currency, they contributed to *fukoku kyōhei*. However, some of the prohibitionist activists sought to recast these women as *kaigai shūgyōfu*, “overseas women of the unsightly occupation,” whose

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<sup>652</sup> Garon, *Molding Japanese Minds*, 98–105.

<sup>653</sup> Barry, *Female Sexual Slavery*, 24–38; Doezema, *Sex Slaves and Discourse Masters*, 59–60.

<sup>654</sup> Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” 153–58.

<sup>655</sup> Michael R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (Cambridge, MA: Harvard University Press, 2004), 146–75; Mihalopoulos, *Sex in Japan’s Globalization, 1870-1930*, 83–104; Jansen, *The Making of Modern Japan*, 371–413.

<sup>656</sup> Lublin, *Reforming Japan*, 2–3.

presence overseas undermined *bunmei kaika*. They argued that the significant presence of sex workers among the Japanese communities overseas was making these sex workers the public face of Japan, and was thus propagating a belief that Japan was a backward nation with loose morals. This discourse was in turn heightened by concerns—expressed in editorials and petitions—that the association of Japan with sex workers would lead to a ban on Japanese immigration to Anglo-European countries.<sup>657</sup>

Early responses to the outbound migration of sex workers were limited to criminal laws targeting “traffickers” that were similar to early “White slavery” laws passed overseas. For example, when the Penal Code was promulgated in 1907, it included provisions calling for the punishment of those who received or removed from the country victims of *jinshin baibai* for the purpose of profit or “obscenity” (*waisetsu*).<sup>658</sup> However, by depicting the *karayuki-san* as detrimental to *bunmei kaika*, the prohibitionists were—after decades of campaigning—able to push the government into taking a more restrictivist approach. In 1919, the Japanese government ordered its consuls to encourage and assist the repatriation of all overseas sex workers. Though nominally a voluntary recall, local Japanese communities pressured these women to repatriate, and in Singapore the Japanese consul worked with local authorities to forcibly repatriate virtually all of the *karayuki-san* there.<sup>659</sup>

Then in 1925, Japan acceded to the 1910 International Convention for the Suppression of the White Slave Traffic, whose official Japanese translation reads as the “International convention for the prohibition of the *baibai* (“buying and selling”) of women for the purpose of forcing them to undertake *shūgyō* (“the unsightly occupation”).”<sup>660</sup> That same year, they also acceded to the 1921 International Convention for the Suppression of the Traffic in

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<sup>657</sup> Sidney Xu Lu, “The Shame of Empire: Japanese Overseas Prostitutes and Prostitution Abolition in Modern Japan, 1880s–1927,” *Positions* 24, no. 4 (November 1, 2016): 839–73, <https://doi.org/10.1215/10679847-3666065>; Lublin, *Reforming Japan*, 101–25; Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” 154–58.

<sup>658</sup> Keihō, Act No. 45 of April 24, 1907, Ch. 33. In Kinzō Yamano, *Shinkyū Keihō Taishō* (Tokyo: Yūhikaku, 1908), 144–47. The Penal Code (Keihō, also sometimes translated as the “Criminal Code”), is another of the six basic codes of Japan. See Oda, *Japanese Law*.

<sup>659</sup> Warren, *Ah Ku and Karayuki-San*, 159–77.

<sup>660</sup> Full text of the MOFA’s official Japanese translation available from: <http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-353.pdf>. See also Appendix 3.

Women and Children, whose official Japanese translation reads as the “International convention for the prohibition of the *baibai* (“buying and selling”) of women and children.”<sup>661</sup> These treaties established a precedent for the use of the term “*baibai*” as the official translation for the English term “traffic,” a translation that would re-emerge with the use of “*jinshin baibai*” in the Japanese version of the 1949 Trafficking Convention. These treaties also served to link the *karayuki-san* (then called *kaigai shūgyōfu*) to White Slavery, by using the term *shūgyō* in the Japanese translation of the latter.

More concretely, these treaties committed Japan to criminalising both involuntary sex work and the use of underage women for sex work, with “underage” defined as including all women below the age of twenty-one. Originally Japan made two reservations to these treaties. One was that these rules would not apply to its colonies, a standard reservation made by most of the colonial powers.<sup>662</sup> The other—which again Japan was not alone in making—was that they would decide upon their own age of consent for sex work, which they then set at eighteen. The prohibitionists, interestingly, accepted the former reservation, but campaigned vigorously against the latter. These campaigns led to this reservation being dropped in 1927, making it illegal in Japan for women below the age of twenty-one to travel overseas for the purpose of selling sex, and leading the JWCTU to declare victory in their long-running war on overseas sex work.<sup>663</sup>

From a historical perspective, however, the outcome of these measures is more ambiguous. Although the *karayuki-san* had served as good sources of foreign currency (for the government) and as useful political pawns (for the prohibitionists) while abroad, they were of no further use to either group once they had been repatriated and were abandoned to their own devices. This did not mean that they were left in shame and poverty—many of the *karayuki-san* had been able to invest in their households and communities and were respected accordingly, and Mihalopoulos argues that it was only those who failed to

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<sup>661</sup> Full text of the MOFA’s official Japanese translation available from: [http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-373\\_1.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-373_1.pdf). See also Appendix 3.

<sup>662</sup> See reservations in the appendices to the 1910 White Slavery Convention and the 1921 Trafficking Convention, *supra*.

<sup>663</sup> Lublin, *Reforming Japan*, 111.



succeed financially who were stigmatised upon their return.<sup>664</sup> On the other hand, many of the *karayuki-san* had left believing that they were fulfilling their patriotic duty to enrich the nation, only to return to a country that would take to vilifying them as immoral women who brought shame upon it.<sup>665</sup> They were subsequently forgotten until the 1970s, when their memories were resurrected—in particular by Yamazaki’s book *Sandakan Brothel No 8* and its film adaptation—as part of a renewed battle over the acceptability of sex work.<sup>666</sup> These works, and their representation of the *karayuki-san*, would subsequently inform discourses on human trafficking in Japan in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries.<sup>667</sup>

As for the hopes that these measures would help Japan be recognised as a first-class nation, these had already been dashed by the US via its explicitly racist Asian Exclusion Act of 1924. This act not only confirmed Japanese fears of an immigration ban, but also suggested that, in the eyes of Americans, Asian countries would forever be “second class.” Even members of the JWCTU and other women’s organisations found themselves continuously confronted by racism and paternalism from their overseas counterparts.<sup>668</sup> This treatment helped convince Japanese policymakers of the US’s hostile intent, setting them on the path for war.<sup>669</sup>

Finally, it is important to keep in mind that the JWCTU supported Japanese colonialism as a path for “freeing” women in Korea and China from feudalism, allowed the Japanese government to keep in place the reservation preventing application of the 1921 Trafficking Convention to its overseas colonies, and said nothing about the establishment of licensed prostitution in Manchuria. Among other things, these actions created a legal possibility for sending Korean (but not Japanese) women to China to work in the military brothels. The

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<sup>664</sup> Mihalopoulos, *Sex in Japan’s Globalization, 1870-1930*, 34–36.

<sup>665</sup> Warren, *Ah Ku and Karayuki-San*, 159–77.

<sup>666</sup> Mihalopoulos, *Sex in Japan’s Globalization, 1870-1930*, 1–36.

<sup>667</sup> See Tomoko Yamazaki, *Sandakan Brothel No. 8: An Episode in the History of Lower-Class Japanese Women*, trans. Karen Colligan-Taylor (1972; repr., Armonk, NY: M.E. Sharpe, 1999); Kei Kumai, *Sandakan Hachiban Shōkan Bōkyō*, DVD (Toho, 1974).

<sup>668</sup> Manako Ogawa, “The ‘White Ribbon League of Nations’ Meets Japan: The Trans-Pacific Activism of the Woman’s Christian Temperance Union, 1906–1930,” *Diplomatic History* 31, no. 1 (January 1, 2007): 21–50, <https://doi.org/10.1111/j.1467-7709.2007.00601.x>.

<sup>669</sup> Izumi Hirobe, *Japanese Pride, American Prejudice: Modifying the Exclusion Clause of the 1924 Immigration Act* (Stanford, CA: Stanford University Press, 2001); John W. Dower, *War without Mercy: Race and Power in the Pacific War* (New York, NY: Pantheon Books, 1986), 27.

Salvation Army, for their part, was actively involved in the recruitment and transportation of young women as “maid servants” for the new colonies.<sup>670</sup> As a result, the two most prominent “anti-trafficking” civil society groups in Japan would themselves come to be implicated in human trafficking in Japan’s overseas colonies and captured territories.

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<sup>670</sup> Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” 158–62.

Japan's transition to a colonial power began in the first decade of the Meiji period, when they followed Perry's example by dispatching gunboats to "open" Korea to foreign trade. Victories in the First Sino-Japanese War (1894–1895) and the Russo-Japanese War (1905) allowed Japan to colonise Taiwan (in 1895) and Korea (in 1910), and in 1931 the Kwantung Army (Japan's expeditionary force in Manchuria) used a staged attack on Japanese rail lines in northeastern China as a pretext to seize control of Manchuria. Collectively, these seizures transformed Japan into a colonial empire.<sup>671</sup> Then in 1937, a Japanese soldier briefly went missing near the Marco Polo Bridge outside of Beijing. Disagreements over whether the Japanese forces could search the area led to skirmishes between Chinese and Japanese forces. Both sides saw the Marco Polo Bridge Incident as a violation of an earlier truce by the other, and the inability of either side to back down once hostilities had begun meant that the initial skirmishes quickly escalated into what became the Second Sino-Japanese War. This marked the first stage of the Pacific War, which would also include the Pacific Theatre of World War II after Japan—finding itself increasingly cut off by international sanctions from the strategic resources it would need in the event of hostilities with the Soviet Union—attacked the American naval base at Pearl Harbour and English, French and Dutch overseas colonies in Asia in 1941.<sup>672</sup>

Colonialism as a general practice is predicated on the exploitation of the colonised people, and in this respect Japanese colonialism was no different. Taiwanese and Korean subjects were treated as racial inferiors who at best could aspire to become Japanese, even while their labour was being exploited to support Japanese consumption and continued militarisation.<sup>673</sup> Korea in particular struggled under an initial period of despotic military control, as well as land reforms that impoverished the peasantry and a lack of industrial investment. This resulted in a sizeable number of Koreans moving to Japan for work, where

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<sup>671</sup> Jansen, *The Making of Modern Japan*, 424–45, 576–624.

<sup>672</sup> Eri Hotta, *Pan-Asianism and Japan's War 1931-1945* (Basingstoke, Hampshire: Palgrave Macmillan, 2007); Jansen, *The Making of Modern Japan*, 617–55.

<sup>673</sup> E. Taylor Atkins, *Primitive Selves: Koreans in the Japanese Colonial Gaze, 1910–1945* (Berkeley, CA: University of California Press, 2010).

they became both a new exploitable underclass and a target of violent racism from Japan's own struggling lower classes.<sup>674</sup>

Following the outbreak of hostilities in 1937, Japan adopted a National Mobilization Law, which allowed the government to directly control the deployment of both capital and labour.<sup>675</sup> Military conscription and the movement of Japanese settlers to Manchuria led to labour shortages on the Japanese home islands, however, and so Japan began to recruit labour from its colonies—mostly from Korea, but also from Taiwan—to help meet these shortages.<sup>676</sup> Initially, recruitment for both industrial labour and the military was handled through voluntary recruitment. However, foreign workers found themselves vulnerable to exploitation because many of them had limited Japanese language abilities; they were also paid less while given the worst and most degrading work. Together, these factors led to a low rate of volunteers and high number of runaways. Faced with continuing labour shortages, the Japanese government introduced a labour quota system, which was met by local brokers who often used deception or coercion to meet quotas. Later, they supplemented this with a direct draft of colonial labour. To prevent escape, the government placed these labourers in remote, and often dangerous, work conditions. Being forced to work with increasingly limited rations resulted in a high level of unrest, leading to fortified work sites with their own guards. This, in turn, amplified opportunities for the abuse of the

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<sup>674</sup> Mark R. Peattie, "The Japanese Colonial Empire, 1895-1945," in *The Cambridge History of Japan Volume 6: The Twentieth Century*, ed. Peter Duus (New York: Cambridge University Press, 1997), 217–70; Mark Caprio, *Japanese Assimilation Policies in Colonial Korea, 1910-1945* (Seattle: University of Washington Press, 2009).

<sup>675</sup> Yoshirō Miwa, *Japan's Economic Planning and Mobilization in Wartime, 1930s-1940s: The Competence of the State* (New York, NY: Cambridge University Press, 2015), 175–76; Takafusa Nakamura, "The Japanese War Economy as a 'Planned Economy,'" in *Japan's War Economy*, ed. Erich Pauer (London: Routledge, 1999), 9–22.

<sup>676</sup> Hui-yu Caroline Ts'ai, "Total War, Labor Drafts, and Colonial Administration: Wartime Mobilization in Taiwan, 1936-45," in *Asian Labor in the Wartime Japanese Empire: Unknown Histories*, ed. Paul H. Kratoska (Armonk, N.Y.: M.E. Sharpe, 2005), 90–100; Hisako Naitou, "Korean Forced Labor in Japan's Wartime Empire," in *ibid.*, 90–100; Shiaw-Chian Fong, "Hegemony and Identity in the Colonial Experience of Taiwan, 1895–1945," in *Taiwan Under Japanese Colonial Rule, 1895-1945: History, Culture, Memory*, ed. Ping-Hui Liao and David Der-Wei Wang (New York: Columbia University Press, 2006), 160–83.

work force.<sup>677</sup> And in the final years of the war, the military extended the draft to Koreans and Taiwanese to help make up for a lack of manpower, turning them into forced military labour.<sup>678</sup>

Outside of Japan and the colonies, labour conditions could be even worse. In their conquered territories, Japan would sometimes displace local populations to bring in Japanese labour.<sup>679</sup> During the war, however, they increasingly turned to drafting the local population for labour projects. In China, for example, not only were Chinese forced to work for locally based industries, but they were also gathered up in “rabbit hunts” to be shipped back to Japan for slave labour there.<sup>680</sup> In Southeast Asia, labourers were forced to work long hours under conditions of high temperature and humidity, low access to rations, and high prevalence of tropical disease, conditions which led to mortality rates of 30% (and perhaps as high as 40%) in some areas.<sup>681</sup> The Japanese army also drafted captured POWs for slave labour. These POWs, like other forced labourers, suffered from high levels of abuse from the soldiers supervising them, particularly in the later days of the war. This is likely the result of a process of brutalisation, developed both on the battlefield and through the treatment of Japanese soldiers by their own superiors. Nor did the Japanese have a

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<sup>677</sup> Petra Schmidt, “Japan’s Wartime Compensation: Forced Labour,” *Asia-Pacific Journal on Human Rights and the Law* 1, no. 2 (February 1, 2000): 1–54, <https://doi.org/10.1163/15718150020954796>; Timothy Webster, “Sisyphus in a Coal Mine: Responses to Slave Labor in Japan and the United States,” *Cornell Law Review* 91 (2006): 733–60; Edward T. Chang and Min Young Kim, “Transportation of Korean Slave Laborers During World War II: Kanfu Ferries,” *East Asia* 24, no. 1 (April 1, 2007): 69–85, <https://doi.org/10.1007/s12140-007-9002-3>.

<sup>678</sup> Aiko Utsumi, “Japan’s Korean Soldiers in the Pacific War,” in *Asian Labor in the Wartime Japanese Empire: Unknown Histories*, ed. Paul H. Kratoska (Armonk, NY: M.E. Sharpe, 2005), 81–89; Brandon Palmer, *Fighting for the Enemy: Koreans in Japan’s War, 1937-1945* (Seattle: University of Washington Press, 2013); Takashi Fujitani, *Race for Empire: Koreans as Japanese and Japanese as Americans during World War II* (Berkeley, CA: University of California Press, 2011), 239–98.

<sup>679</sup> Robert Thomas Tierney, *Tropics of Savagery: The Culture of Japanese Empire in Comparative Frame* (Berkeley, CA: University of California Press, 2010), 43–47.

<sup>680</sup> Yukiko Koga, *Inheritance of Loss: China, Japan, and the Political Economy of Redemption after Empire* (Chicago, IL: University of Chicago Press, 2016), 172–76.

<sup>681</sup> Paul H. Kratoska, “Labor in the Malay Peninsula and Singapore under Japanese Occupation,” in *Asian Labor in the Wartime Japanese Empire*, 237–64; Mỹ-Vân Trần, “Working for the Japanese: Working for Vietnamese Independence, 1941-45,” in *ibid.*, 287–99; Ricardo T. Jose, “Labor Usage and Mobilization during the Japanese Occupation of the Philippines, 1942-45,” in *ibid.*, 267–84; Shigeru Sato, “Forced Labour Mobilization in Java during the Second World War,” *Slavery & Abolition* 24, no. 2 (August 2003): 97–110, doi:10.1080/01440390308559158.

monopoly on cruelty, with many of the surviving POWs remembering the worst abuses as coming from the (even more brutalised) Korean soldiers.<sup>682</sup>

However, the most infamous case of forced labour by Japan during the war was that of the *ianfu* (“comfort women”<sup>683</sup>), the 20,000-410,000 women—often coerced or deceived—who worked in Japan’s military brothels.<sup>684</sup> Early in the war—before the mass sexual violence that accompanied the Nanjing Massacre—the government was distressed by reports of their troops raping local civilians; in particular, they were concerned that these actions would cause local unrest. They were also concerned about the high incidences of STIs among their soldiers, which the army believed were being acquired from local sex workers. In looking for solutions to these problems, the government worked with the same discourses on sex work and male sexuality that informed their regulation of the sex work in Japan: that men were possessed by a powerful and uncontrollable sexual desire, and that sex workers had to be monitored and contained to prevent the spread of STIs.<sup>685</sup>

This logic led to the military deciding to establish its own licensed brothels overseas. Since locals were perceived as having higher rates of STIs, and since recruitment from local populations could also become a cause for unrest, the military further decided to bring in women from the existing licensed brothels in Japan as well as Korea, where the Japanese licensed sex work system had previously spread and taken root.<sup>686</sup> Thus the early military

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<sup>682</sup> Gavan Daws, *Prisoners of the Japanese: POWs of World War II in the Pacific* (New York, NY: William Morrow & Company, 2007), 104; Charles G. Roland, *Long Night’s Journey into Day: Prisoners of War in Hong Kong and Japan, 1941 - 1945* (Waterloo, ON: Wilfrid Laurier University Press, 2001), 275; Karl Hack and Kevin Blackburn, eds., *Forgotten Captives in Japanese-Occupied Asia* (London: Routledge, 2008).

<sup>683</sup> Though this translation is commonly used in English, to avoid a somewhat problematic euphemism I will use the Japanese term untranslated.

<sup>684</sup> Shigeru Sato, “The Japanese Army and Comfort Women in World War II,” in *Sex, Power, and Slavery*, ed. Gwyn Campbell and Elizabeth Elbourne (Athens, OH: Ohio University Press, 2014), 389–403. As Sato notes, neither of these extremes are likely; he cites Yoshimi’s figures (45,000-200,000) as a more probably range. Yoshiaki Yoshimi, *Comfort Women: Sexual Slavery in the Japanese Military During World War II*, trans. Suzanne O’Brien (New York, NY: Columbia University Press, 2000), 93.

<sup>685</sup> Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan.”

<sup>686</sup> Song Youn-ok, “Japanese Colonial Rule and State-Managed Prostitution: Korea’s Licensed Prostitutes,” *Positions* 5, no. 1 (1997): 171–219; Chunghee Sarah Soh, “Military Prostitution and

brothels were set up with the assistance of brothel managers from Japan and Korea, with the sex workers for the military brothels being drawn largely from the ranks of existing sex workers in those two countries.<sup>687</sup> According to Fujime, even the euphemisms for the military brothels (*ianjo*, “comfort stations”) and the prostitutes (*ianfu*) had emerged as the result of the prohibitionists’ earlier efforts to end the licensed districts in Japan’s Gunma Prefecture.<sup>688</sup>

As the war expanded and the military’s perceived need for sex workers increased, these sources proved insufficient to keep up with demand. The military, though, was reluctant to engage in recruitment in Japan. In part this was out of concern that soldiers hearing that their female relatives were working in the military brothels would negatively affect morale. However, the government also believed that adhering to the 1921 Trafficking Convention required them to limit recruitment of Japanese women to those who were above 21 and who were working or had previously worked in a brothel.<sup>689</sup> It might seem surprising that Japanese authorities were concerned with adhering to this treaty after violating so many others (e.g., the Kellogg-Briand Pact, the Nine-Power Treaty, the Covenant of the League), and even leaving the League of Nations (which it did in 1933). Maruyama, though, argues that Japanese leaders—unlike German leaders—had convinced themselves that Japan was still an upstanding member of the international community and that violating those treaties had simply been the regrettable outcome of unavoidable circumstances.<sup>690</sup> In order for the Japanese government to live up to their image of Japan as a first-class nation, then, they could not deliberately violate the 1921 Trafficking Convention by recruiting Japanese women for the purpose of sending them overseas to the military brothels.

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Women’s Sexual Labour in Japan and Korea,” in *Gender and Labour in Korea and Japan: Sexing Class*, ed. Ruth Barraclough and Elyssa Faison (London: Routledge, 2009), 44–59.

<sup>687</sup> Yuki Tanaka, *Japan’s Comfort Women: Sexual Slavery and Prostitution during World War II and the US Occupation* (London: Routledge, 2002), 8–32; Yoshimi, *Comfort Women*, 42–96; Sato, “The Japanese Army and Comfort Women in World War II.”

<sup>688</sup> Fujime, “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan,” 153.

<sup>689</sup> Yoshimi, *Comfort Women*, 157–63.

<sup>690</sup> Masao Maruyama, “Thought and Behaviour Patterns of Japan’s Wartime Leaders,” in *Thought and Behaviour in Modern Japanese Politics*, ed. and trans. Ivan Morris, 2nd ed. (1949; repr., Oxford: Oxford University Press, 1969), 95–96.

However, as noted in the previous section, Japan had carved out an exception in signing that convention for their colonies. They now took advantage of this by moving to recruit women from Korea and Taiwan—particularly the former, on account of Koreans being perceived as ethnically closer to Japanese. The military contracted out this recruitment to local brothels, who then subcontracted the recruitment to private procurers with no real oversight. These agents, in turn, frequently engaged in deception and debt bondage, a process facilitated by a high rate of rural poverty caused by Japanese agricultural reforms. Sometimes procurers would use outright coercion or kidnapping. In these cases, the police would sometimes intervene and arrest the brokers; other times, however, the police themselves participated. Once at the military brothel, the women were coerced into serving out the terms of their contracts: being so far from home and unable to speak the local language made escape impossible, and women who chose not to comply could be raped or physically abused until they changed their mind.<sup>691</sup>

In China and the Philippines, soldiers positioned at the front lines who had grown used to the availability of sex on demand would sometimes establish their own unofficial *ianjo*. Since they did not have access to foreign women, they would instead kidnap or coerce local women into sexual slavery, holding them in captivity without remuneration. In these cases, “rape camps” is a more appropriate label than “military brothels.”<sup>692</sup> This in turn suggests that the military brothels were not achieving their stated goal of preventing rape, something that even their architects seem to have acknowledged. Elsewhere in Southeast Asia, the record is less clear, and Japanese forces may have simply converted brothels previously established for Dutch and British soldiers into their own military brothels. However, there are a number of recorded cases of these troops coercing local European women into military prostitution.<sup>693</sup>

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<sup>691</sup> Tanaka, *Japan's Comfort Women*; Yoshimi, *Comfort Women*, 98–129.

<sup>692</sup> Tanaka, *Japan's Comfort Women*, 44–60; Peipei Qiu, Su Zhiliang, and Chen Lifei, *Chinese Comfort Women: Testimonies from Imperial Japan's Sex Slaves* (Vancouver: UBC Press, 2013).

<sup>693</sup> Tanaka, *Japan's Comfort Women*, 61–83; Yoshimi, *Comfort Women*, 98–129.



*HUMAN TRAFFICKING UNDER THE OCCUPATION*

During the summer of 1945, terror bombings by the Allied forces—including the atomic bombings of Hiroshima and Nagasaki—destroyed almost every major city in Japan, leaving nearly 400,000 dead, the economy in ruins, and the survivors facing starvation. In the face of this destruction, Japan surrendered unconditionally on August 15. Two weeks later the first of the American occupation troops arrived; they were to remain for the next six years.<sup>694</sup>

As they prepared for the occupation, the Japanese government and the general public began to worry about the possibility of mass sexual violence at the hands of occupation forces used to sex on demand. Although these worries were based on the government's own experience running the military brothels and the soldiers' experiences of having participated in acts in sexual violence in Asia, they were not unfounded. American soldiers had made extensive use of brothels in Hawaii, New Caledonia and the Philippines, including many where the women were underage.<sup>695</sup> During the campaign in Germany, American soldiers are estimated to have committed 11,000–190,000 acts of sexual violence,<sup>696</sup> while in Japan American soldiers had reportedly already committed an estimated 10,000 rapes during and following the Battle of Okinawa—including the rapes of some of the Korean *ianfu*.<sup>697</sup> And while ultimately the landing of the American occupation forces in Tokyo was not followed by a mass rape event similar that which accompanied the Nanjing Massacre, it was nevertheless accompanied by heightened levels of sexual violence.<sup>698</sup> Many of these

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<sup>694</sup> Dower, *War without Mercy*, 293–317.

<sup>695</sup> Peter Schrijvers, *The GI War Against Japan: American Soldiers in Asia and the Pacific during World War II* (London: Palgrave Macmillan UK, 2002), 42–58, 154–55.

<sup>696</sup> The lower estimate comes from J. Robert Lilly, *Taken by Force: Rape and American GIs in Europe during World War II* (London: Palgrave Macmillan UK, 2007). The higher estimate comes from Miriam Gebhardt, *Crimes Unspoken: The Rape of German Women at the End of the Second World War*, trans. Nick Somers (Cambridge: Polity Press, 2016).

<sup>697</sup> Gavan McCormack and Satoko Oka Norimatsu, *Resistant Islands: Okinawa Confronts Japan and the United States* (Lanham, MD: Rowman & Littlefield, 2012); Tanaka, *Japan's Comfort Women*; Schrijvers, *The GI War Against Japan: American Soldiers in Asia and the Pacific during World War II*, 211–12.

<sup>698</sup> Eiji Takemae, *The Allied Occupation of Japan*, trans. Robert Ricketts and Sebastian Swann (London: Continuum, 2002), 67; Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II* (Boulder, CO: Westview Press, 1997), 100–109.

rapes were preceded or followed by offers of goods or currency, suggesting that Allied soldiers had come to view Asian women in general as commodified objects that could be purchased at will.<sup>699</sup>

Following the same governmentality that had led to the establishment of the *ianjo* overseas—a perception that rape was a problem in need of governance; that rape was caused by an uncontrollable male sexual impulse; and that government-sanctioned brothels were an appropriate venue for sating this lust, thereby preventing rape—the Japanese Home Ministry proposed establishing brothels for the occupying forces. The issue was seen as so important that Vice Premier and former Prime Minister Prince Konoe Fumimaro personally tasked the national police commissioner with establishing the brothels, and the budget was established by Ikeda Hayato, head of the Finance Ministry’s Tax Bureau and future Prime Minister. The order was passed down to local police chiefs, who under the licensed system were in charge of monitoring and regulating the licensed brothels, to work with existing brothels in order to enlist women with experience in sex work to work as *ianfu* for the occupying forces.<sup>700</sup>

However, many existing sex workers refused to work with Americans, who were understood to be violent brutes, and in some areas there were simply too few existing sex workers relative to the expected size of the occupation forces. In these cases, as with the wartime military brothels, women once again had to be recruited from the general public. This time, however, the recruitment targeted Japanese women, rather than Koreans, and it is unclear to what extent the process was directly coercive. Kovner argues that as Japan was no longer an imperial power at war, they could no longer forcibly recruit *ianfu* and needed to advertise for paid sex workers,<sup>701</sup> while Dower notes that in Tokyo, the full requirements of the job were explained to applicants, who could then decline the job.<sup>702</sup> Tanaka, however, reports that there were some cases of high school students being deceived into enlisting as

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<sup>699</sup> Tanaka, *Japan’s Comfort Women*, 120–21.

<sup>700</sup> John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York, NY: WW Norton & Company, 2000), 124–27; Takemae, *The Allied Occupation of Japan*, 67–68.

<sup>701</sup> Sarah Kovner, *Occupying Power: Sex Workers and Servicemen in Postwar Japan* (Stanford, CA: Stanford University Press, 2012), 23.

<sup>702</sup> Dower, *Embracing Defeat*, 126–27.

*ianfu* for the occupation soldiers, and that yakuza from ultra-nationalist organisations were heavily involved in the recruitment process.<sup>703</sup>

In August 1945, the “Association for Special Comfort Facilities” (*Tokushu Ianshisetsu Kyōkai*)—more commonly known by its English name, the Recreation and Amusement Association (RAA)—was inaugurated. The new *ianjo* were often similar to the old, with poor working conditions and a lack of privacy, high rates of STI infection (90%), and a high volume of costumers (reportedly 15-60 per day).<sup>704</sup> With much of the country’s physical infrastructure destroyed in the war, space was made for the brothels in police and naval dormitories. Given that these brothels were not formally licensed, in doing this, the police themselves were breaking the law—and they knew it. That they proceeded anyway is a sign of how real they considered the possibility of a mass rape.<sup>705</sup> Whether or not these brothels succeeded in this, however, is unknowable. American soldiers at the time and at least one subsequent Japanese researcher argue that they did,<sup>706</sup> while Kovner notes only that the number of reported rapes may have declined after the first few months.<sup>707</sup>

Ultimately, SCAP (Supreme Commander for the Allied Powers, which had a certain level of supra-governmental authority) ordered the RAA shut down in January 1946, after less than six months in operation, along with all the other licensed brothels. Officially, SCAP claimed that this was because prostitution was a violation of women’s human rights. The real reason, however, appears to have been the high rate of disease, as well as the negative public reaction to images of Allied soldiers “fraternising” with Japanese women back home.<sup>708</sup> Under pressure from SCAP, the Home Ministry abrogated the Rules Regulating

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<sup>703</sup> Tanaka, *Japan’s Comfort Women*, 138–41.

<sup>704</sup> John Lie, “The State as Pimp: Prostitution and the Patriarchal State in Japan in the 1940s,” *Sociological Quarterly* 38, no. 2 (March 1, 1997): 251–63, <https://doi.org/10.1111/j.1533-8525.1997.tb00476.x>; Dower, *Embracing Defeat*, 128–30.

<sup>705</sup> Tanaka, *Japan’s Comfort Women*, 134–38.

<sup>706</sup> Kovner, *Occupying Power*, 29; Yoshimi Kaneko, *Baishō no Shakaishi* (Tokyo: Yūzankaku, 1984), 198.

<sup>707</sup> Kovner, *Occupying Power*, 55–56.

<sup>708</sup> Dower, *Embracing Defeat*, 132; Kovner, *Occupying Power*, 25–30; Yuki Fujime, “Japanese Feminism and Commercialized Sex: The Union of Militarism and Prohibitionism,” trans. Suzanne O’Brien, *Social Science Japan Journal* 9, no. 1 (April 1, 2006): 33–50, <https://doi.org/10.1093/ssjj/jyl009>; Mark McLelland, *Love, Sex, and Democracy in Japan During the American Occupation* (Basingstoke, Hampshire: Palgrave Macmillan, 2012), 55–59.

Licensed Prostitutes of 1900 one month later, and the Emperor formalised SCAP order by issuing the Imperial Ordinance to Punish Persons Compelling a Female to Prostitution in January 1947.<sup>709</sup> On paper, these two policy changes finally realised Japanese prohibitionists' long-held goal of putting an end to the Meiji-era licensed system.

However, although the ban eliminated the old system of licensed prostitution, the Japanese government argued that even if licensed prostitution was illegal, people still had a right to sell sex. Taken together, these two moves effectively legalised unlicensed prostitution—a category which, owing to the mass layoffs of women who had worked in wartime industries, had included the majority of sex workers even before the ban.<sup>710</sup> This resulted in a significant increase in the number of women selling sex in the open, referred to either as *sutorīto gāru* (from the English “street girl”) or, more commonly, as *panpan*. The latter term is of unknown origin, though Dower suggests that it may have been picked up by American servicemen in the South Seas; its usage reflects a popular perception that the *panpan*—many of whom were former *ianfu* from RAA—primarily sold sex to the occupying forces.<sup>711</sup>

But while SCAP's abrupt termination of both the *ianjo* and the licensed brothels opened up new opportunities for independent sex workers, it also posed a severe risk to the existing sex industry, where brothel owners had substantial sums invested in buildings that could not easily be resold as is and where sex workers typically carried substantial debts, which were not cancelled by either SCAP order or the Imperial Ordinance and could not easily be paid off in other occupations. It also created problems for the police and other officials charged with regulating the sex industry. Previously, these officials had used the licensed system to segregate the sex industry and to keep it at a distance from residential

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<sup>709</sup> Garon, *Molding Japanese Minds*, 197; Minoru Yokoyama, “Emergence of Anti-Prostitution Law in Japan—Analysis from Sociology of Criminal Law,” *International Journal of Comparative and Applied Criminal Justice* 17, no. 1–2 (January 1993): 213, <https://doi.org/10.1080/01924036.1993.9689017>.

<sup>710</sup> Fujime, “The Prostitutes' Union and the Impact of the 1956 Anti-Prostitution Law in Japan,” 7–8; Fujime, “Japanese Feminism and Commercialized Sex”; Kovner, *Occupying Power*, 24.

<sup>711</sup> Holly Sanders, “Panpan: Streetwalking in Occupied Japan,” *Pacific Historical Review* 81, no. 3 (August 1, 2012): 404–31, <https://doi.org/10.1525/phr.2012.81.3.404>; Rumi Sakamoto, “Pan-Pan Girls: Humiliating Liberation in Postwar Japanese Literature,” *PORTAL: Journal of Multidisciplinary International Studies* 7, no. 2 (2010), <http://epress-dev.lib.uts.edu.au/journals/index.php/portal/article/view/1515>; Dower, *Embracing Defeat*, 132–39.

neighbourhoods and schools. Licensing had also allowed them to force compliance with health-related regulations, such as mandatory STI checks, and to monitor brothels to ensure (in theory) that they were not employing underage sex workers or victims of kidnapping or coercion. Finally, it helped in efforts to keep organised crime out of the sex industry.<sup>712</sup>

The pragmatic solution the police arrived at in Tokyo, which would serve as a model for the rest of the country, was to have the brothels simply rebrand as restaurants. The pretense was that at these “special eating and drinking places” (*tokushu inshokuten*) waitresses would—as was their right following the government’s position—independently negotiate the sale of sex to customers. Of course, the restaurants also happened to have beds on site, for whose use they could charge the customers, while their food offerings and the availability of tables tended to be limited. The districts where the “special eating and drinking places” were permitted to operate had no official status, but they were marked on police maps by red lines; as such, they came to be known as *akasen* (“red line”). Meanwhile, areas where *panpan* congregated were referred to as *aosen* (“blue line”) and were subject to a much greater level of police scrutiny. Subsequently, the National Diet, local municipalities and various government agencies put in place a wide range of laws, ordinances and regulations to govern sex work practiced in *akasen* and the *aosen*.<sup>713</sup> The most important of these was the *Fūzoku Eigyō Torishimarihō* (“Amusement Businesses law”), which restored to the police legal authority to regulate pseudo-brothels.<sup>714</sup> As this remains the main legal framework for the regulation of sex work in Japan today, it will be discussed in greater detail in the next chapter.

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<sup>712</sup> Garon, *Molding Japanese Minds*, 88–114, 198; Minoru Yokoyama, “Analysis of Prostitution in Japan,” *International Journal of Comparative and Applied Criminal Justice* 19, no. 1 (March 1995): 47–60, <https://doi.org/10.1080/01924036.1995.9678536>.

<sup>713</sup> Mamoru Iga, “Sociocultural Factors in Japanese Prostitution and the ‘Prostitution Prevention Law,’” *The Journal of Sex Research* 4, no. 2 (May 1, 1968): 127–46, <https://doi.org/10.1080/00224496809550564>; G.G. Rowley, “Prostitutes against the Prostitution Prevention Act of 1956,” *U.S.-Japan Women’s Journal. English Supplement*, no. 23 (2002): 45; Kovner, *Occupying Power*, 84–86; Dower, *Embracing Defeat*, 132.

<sup>714</sup> *Fūzoku eigyō torishimarihō* [Amusement Businesses Regulation Act] Act No. 22 of July 10, 1948. See also Kovner, *Occupying Power*, 85; Nagai Yoshikazu, *Fūzoku Eigyō Torishimari* (Tokyo: Kodansha, 2002).

Sex work prohibitionism also re-emerged in force in Japan during the occupation, in a large part because sex work was increasingly associated not with the enclosed space of the old licensed quarters, but with the *panpan* selling sex to the GIs in public.<sup>715</sup> Much in the way the sale of sex by the *karayuki-san* to foreign men on foreign shores had become a signifier for Japan's status as a lesser nation, so did the *panpan*'s sexual submission to the allied soldiers become a visual metaphor for Japan's military occupation by the Allied countries; this, in turn, sparked a public backlash against sexual labour. Groups like the JWCTU and the Kakuseikai, which had survived the war intact, sought to capitalise on these changing perceptions in 1948 by pushing for the prohibition and criminalisation of the sale of sex. In this they were initially aided by the enfranchisement of women as voters and the election of women to the Diet, since women were more likely to be opposed to legal prostitution than men. However, female politicians were also more concerned with the ultimate welfare of female sex workers, and so while almost all agreed that legal prostitution was a problem in need of governance, many were ultimately skeptical about the merits of criminalisation. As a result, the bill failed in committee.<sup>716</sup>

In the aftermath of the failure to pass a national bill, many municipalities passed localised bans on prostitution. Overwhelmingly these tended to be municipalities located in close proximity to American bases, where American soldiers were thus the primary purchasers of sex. Kovner suggests that these bans were driven by local anti-sex worker animus sparked by the image of the GI customer.<sup>717</sup> Fujime, on the other hand, argues that these bans were rather pushed by the American military as part of a broader and long-term effort to control sex work around the bases.<sup>718</sup> Meanwhile, having failed in their initial push for criminalisation, prohibitionists led by the JWCTU formed the Council for Opposing the Restoration of Licensed Prostitution, which successfully petitioned the Diet to convert the 1947 Imperial Ordinance—set to expire when Japan regained its independence in 1952—into a permanent statute. Subsequently, they renamed themselves the Committee for

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<sup>715</sup> Garon, *Molding Japanese Minds*, 197.

<sup>716</sup> Yokoyama, "Emergence of Anti-Prostitution Law in Japan—Analysis from Sociology of Criminal Law," 213–14; Kovner, *Occupying Power*, 104–6; Sanders, "Panpan."

<sup>717</sup> Kovner, *Occupying Power*, 106–7.

<sup>718</sup> Fujime, "Japanese Feminism and Commercialized Sex."

Promoting Enactment of Anti-Prostitution Law and began to push once again for the full criminalisation of sex work.<sup>719</sup>

As direct police control of the sex industry became politically and legally untenable, organised crime groups began to take their place. The combination of shortages and rationing for the Japanese and relative abundance for the Occupation soldiers led to a thriving black market, which in turn created a strong demand for protection. Many of the immigrant groups in Japan, fearing for their safety amidst the lawlessness and poverty of the immediate post-war era, formed self-help groups that quickly evolved into ethnic mafias to fill this demand. To get these groups under control, the government and police tacitly gave the ultra-nationalists a free hand to work with the *bakuto* and *tekiya* (itinerant peddlers)—either freshly out of uniform or prison—to form their own gangs as a counter. These groups, known collectively as “yakuza,” displaced Korean and Chinese groups and came to dominate the black markets. These markets disappeared as the Korean War fueled renewed economic growth in Japan, but the yakuza adapted by moving into protection and racketeering in entertainment industries—including the sex industry. Furthermore, while the government tried to restrain these groups through new regulations, they also continued to rely on them to suppress leftist protests during the 1950s and 60s, to provide an auxiliary security force when needed, and more generally to help the police surveil the underworld. This allowed the yakuza to remain a major presence in Japan’s sex industry for the remainder of the 20<sup>th</sup> century.<sup>720</sup>

Finally, as part of this occupation, Japan was subject to a number of war crimes trials. The most well-known of these, the International Military Tribunal for the Far East (IMTFE), focussed exclusively on a small number of high-ranking accused war criminals—in particular on the controversial question of whether they were guilty of “aggression.” Some of the previously occupied nations—the Republic of China, the People’s Republic of China and the

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<sup>719</sup> Yokoyama, “Emergence of Anti-Prostitution Law in Japan—Analysis from Sociology of Criminal Law,” 213–14; Kovner, *Occupying Power*, 109–10; Garon, *Molding Japanese Minds*, 199–202.

<sup>720</sup> Hill, *The Japanese Mafia*, 42–45, 113–14; Kaplan and Dubro, *Yakuza*, 2003, 31–82; Eiko Maruko Siniawer, “Befitting Bedfellows: Yakuza and the State in Modern Japan,” *Journal of Social History* 45, no. 3 (March 1, 2012): 623–41, <https://doi.org/10.1093/jsh/shr120>.

Philippines—held their own trials to address war crimes during the occupation.<sup>721</sup> However, most of the Asian countries that had been occupied by Japan were now either occupied or colonised by Americans, Europeans or Australians, and as a result they had to rely on these countries to pursue justice on their behalf. However, while some of the trials (which included separate trials conducted by the Dutch and Australians) touched on issues of forced labour, they tended to focus exclusively on the use of white POWs for slave labour while ignoring the far greater number of Asian labourers.<sup>722</sup>

As a result, a wide range of officials alleged to be involved in activities that might now be described as “trafficking” never faced trial. The most prominent of these was Kishi Nobusuke, who in his dual capacity as vice minister of industry and deputy chief of the Office of Administrative Affairs had overseen much of the labour exploitation. Kishi, though briefly imprisoned, avoided being formally charged with war crimes, and, with the blessing of the Americans, would subsequently go on to help found the Liberal Democratic Party (LDP) in 1955—a party which would go on to rule Japan for 58 of the next 62 years. Kishi himself governed as Prime Minister of Japan from 1957-1960, and he left behind one of Japan’s most important political dynasties, with his grandson Abe Shinzō serving as the Prime Minister of Japan at the time of writing.<sup>723</sup>

Koreans, meanwhile, found themselves further victimised by their liberators. In Hiroshima and Nagasaki, Koreans constituted a disproportionately high percentage of victims of the atomic bombings—horrific war crimes in their own right—with 40,000 deaths and 30,000

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<sup>721</sup> Barak Kushner, *Men to Devils, Devils to Men: Japanese War Crimes and Chinese Justice* (Cambridge, MA: Harvard University Press, 2015); Ōsawa Takeshi, “The People’s Republic of China’s ‘Lenient Treatment’ Policy towards Japanese War Criminals,” in *Trials for International Crimes in Asia*, ed. Kirsten Sellars (Cambridge: Cambridge University Press, 2016), 145–66, <https://doi.org/10.1017/CBO9781316221754.008>; Yuma Totani, *Justice in Asia and the Pacific Region, 1945-1952* (Cambridge: Cambridge University Press, 2015), 21–55.

<sup>722</sup> O-Gon Kwon, “Forgotten Victims, Forgotten Defendants,” in *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited*, ed. Yuki Tanaka, Timothy McCormack, and Gerry Simpson (Leiden: Martinus Nijhoff, 2011), 227–39.

<sup>723</sup> Mark Driscoll, *Absolute Erotic, Absolute Grotesque: The Living, Dead, and Undead in Japan’s Imperialism, 1895–1945* (Durham, NC: Duke University Press, 2010), 263–70. See more generally Tomohito Shinoda, *Contemporary Japanese Politics: Institutional Changes and Power Shifts* (New York, NY: Columbia University Press, 2013); Jeff Kingston, *Contemporary Japan: History, Politics, and Social Change since the 1980s*, 2nd ed. (Chichester, West Sussex: Wiley-Blackwell, 2013).



surviving Korean *hibakusha* (“atomic bomb victims”).<sup>724</sup> Meanwhile, their country had been divided in two by the victorious “Allies,” and many of the oppressive elements of the Japanese colonial state (the secret police, the commercial monopolies, etc.) were deliberately left in place to be exploited by the new regimes.<sup>725</sup> As a result, many of the Korean labourers in Japan found themselves unable (or at least very unwilling) to go home on account of the ongoing violence, repression and political persecution; to this day, they represent the most significant minority group in Japan.<sup>726</sup>

As for the military brothels, the Dutch government brought some charges related to the rape and sexual coercion of ethnically European women. However, they largely ignored the ethnically Asian comfort women—some of whom may have been sex workers for the Dutch before the arrival of the Japanese.<sup>727</sup> And although the Americans were aware of the existence of Korean sex workers, they did not pursue any war crimes charges related to them—probably because the Americans, too, had made extensive use of Asian sex workers.<sup>728</sup> As a result, the “comfort women issue” would go largely unaddressed until the 1990s.<sup>729</sup> And meanwhile, Nakasone Yasuhiro—who in his capacity as a lieutenant paymaster in Japan’s Imperial Navy had established a military brothel at Balikpapan on

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<sup>724</sup> Michael Weiner and David Chapman, “Zainichi Koreans in History and Memory,” in *Japan’s Minorities: The Illusion of Homogeneity*, ed. Michael Weiner, 2nd ed. (London: Routledge, 2009), 166–71. On the immorality and criminality of the bombings, see Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (New York: Basic Books, 2006), 111–16, 251–67.

<sup>725</sup> Alexis Dudden, *Troubled Apologies Among Japan, Korea, and the United States* (New York, NY: Columbia University Press, 2010), 69–70.

<sup>726</sup> Araragi Shinzō, “The Collapse of the Japanese Empire and the Great Migrations: Repatriation, Assimilation, and Remaining Behind,” in *The Dismantling of Japan’s Empire in East Asia: Deimperialization, Postwar Legitimation and Imperial Afterlife*, ed. Barak Kushner and Sherzod Muminov, trans. Sherzod Muminov (Abingdon, Oxon: Routledge, 2017), 66–83; Weiner and Chapman, “Zainichi Koreans in History and Memory.”

<sup>727</sup> Nicola Henry, “Silence as Collective Memory: Sexual Violence and the Tokyo Trial,” in *Beyond Victor’s Justice?*, 263–82.

<sup>728</sup> Stephanie Wolfe, *The Politics of Reparations and Apologies* (New York, NY: Springer, 2014), 239–40; Tanaka, *Hidden Horrors*, 103.

<sup>729</sup> Ustinia Dolgopol, “Knowledge and Responsibility: The Ongoing Consequences of Failing to Give Sufficient Attention to the Crimes against the Comfort Women in the Tokyo Trial,” in *Beyond Victor’s Justice?*, 243–61.

Borneo—would, following in the footsteps of Kishi, go on to become Prime Minister of Japan in 1982.<sup>730</sup>

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<sup>730</sup> Tanaka, *Japan's Comfort Women*, 78–79; Mindy Kotler, “The Comfort Women and Japan’s War on Truth,” *The New York Times*, November 14, 2014, <https://www.nytimes.com/2014/11/15/opinion/comfort-women-and-japans-war-on-truth.html>.

## CHAPTER 6: HUMAN TRAFFICKING GOVERNANCE IN POSTWAR JAPAN

### INTRODUCTION

The previous chapter focused on the historical governance of human trafficking—which is to say, acts of governance that are (with some exceptions) no longer in effect. This chapter, then, looks at laws and policies passed since the end of the WWII that have had an impact on human trafficking and which remain in effect in Japan. These include laws regulating sex work, laws governing children, regulations on tourism designed to curb sex tourism, and migration regulations—particularly related to migration for sexual labour. As such, much of this chapter is based on primary research, particularly Japanese legal documents. However, in addition to discussing specific laws and policies, this chapter also looks at the broader social movements that shaped this governance, building on the discussions from the previous chapter. This chapter thus also discusses the secondary literature on those social movements, as well as analysing data on media responses to some of these trends.

While this chapter is arranged topically, those topics are themselves presented semi-chronologically, such that the first section picks up where the last chapter left off: the re-emergence of interest in *jinshin baibai* following the end of the American occupation. The section on the governance of sex work looks at the establishment of Japan's modern system of sex industry regulation, with a particular focus on the Prostitution Prevention Law and the Amusement Businesses Act. The section on the governance of children covers a range of laws, including the national Child Protection Act and local Juvenile Protection and Development Ordinances; it also looks at the emergence of a new moral panic around fears that adolescents were selling sex. The section on sex tourism focuses on both the emergence of outbound sex tourism in Japan and the civil society groups who fought against this, as well as the way this fight helped to reshape human trafficking governance more broadly in Japan. The section on labour migration assesses Japan's labour migration regime, with reference to some of the demographic trends that are driving this regime. Finally, the section on sexual labour migration to Japan looks at the more recent emergence of sex workers and nightlife entertainment workers migrating to Japan and the impact this phenomenon has had on the outside understanding of human trafficking in Japan.

## THE RE-EMERGENCE OF *JINSHIN BAIBAI*

In the early years following the war, *jinshin baibai* once again became a problem of governance. There is a standard narrative for how this process unfolded: Following the democratising process implemented by SCAP, Japanese journalists developed a “human rights” conscience. These journalists, spurred on by their newly-developed awareness of human rights, visited the countryside and reported on the practice of peasants selling their children into child labour. As a response to these reports and the subsequent outrage, the government enacted new policies to protect children from exploitative labour practices in general and bonded labour in particular. Sex work prohibitionists later repurposed this interest in *jinshin baibai* to help build support for the criminalisation of sex work.<sup>731</sup>

I will offer some challenges to this narrative shortly. First, however, I will note that there are a number of factors which may have contributed to an increase in incidences of *jinshin baibai* in the countryside following the war. Japan’s defeat had left it destitute, and Sasaki suggests that, as in the past, this left many parents in the countryside simply unable to afford to feed their children.<sup>732</sup> The situation was exacerbated by a spike in births: as Drixler notes, pro-natalist policies during the war—encapsulated by the slogan *umeyo fuyaseyo* (“give birth and multiply”)—meant that during the war, even amidst a tragically high loss of life, Japan’s population continued to increase. In the aftermath of the war, there were more children than parents had wanted or could afford. Abortion rates spiked, but the increased surveillance power of the state had made infanticide more difficult at the same time as an apparent sensitisation to violence led to infanticide becoming less socially acceptable.<sup>733</sup>

In Japan, *jinshin baibai* has historically been negatively correlated with infanticide—traditionally a highly gendered phenomenon, with parents (typically mothers) killing

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<sup>731</sup> In English, two of the best explorations of this narrative can be found in Sanders, “Indentured Servitude and the Abolition of Prostitution in Postwar Japan”; Ayako Sasaki, “Human Trafficking and Slavery: Current Anti-Trafficking Efforts in Japan,” in *Globalization: Approaches to Diversity*, ed. Hector Cuadra-Montiel (Croatia: InTech, 2012), 237–60. In Japanese it had a much earlier treatment, for example, in Maki Hidemasa, *Jinshin Baibai* (Tokyo: Iwanami Shoten, 1971).

<sup>732</sup> Sasaki, “Human Trafficking and Slavery,” 246.

<sup>733</sup> Drixler, *Mabiki*, 229–31; Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York, NY: Viking, 2011), 577–91.

daughters in order to devote more resources to raising sons.<sup>734</sup> But as Stanley notes, families in areas such as Echigo Province that sold daughters into brothels at a higher rate than the national average also experienced a far lower average rate of infanticide.<sup>735</sup> Drixler explains this by arguing that the people of Echigo had a strong moral opposition to infanticide, and that this made them more likely to have more children than they could feed; consequently, Echigo experienced a higher rate of labour migration in general and of the migration of young women for indentured labour in brothels in particular.<sup>736</sup> Thus it is possible that the increased moral and legal prohibitions of infanticide in the aftermath of the war, combined with an increase in births and widespread destitution, led to a subsequent apparent increase in *jinshin baibai*.

There is still a question, however, as to whether or not the reaction of journalists and their readers to these practices changed in the aftermath of the war. Sanders argues that:

Incidents that would not have raised an eyebrow before the war now caused an uproar. For the first time since the turn of the 20th century, bonded labor had become a topic of public debate [...]. The concern for bonded labor in the early postwar period was a significant departure from previous reform movements in at least two ways. Critics focused on child servants rather than on adult women. And, critics were native Japanese, not foreign missionaries.<sup>737</sup>

This narrative fits with the understanding of the occupation of Japan as a “White Man’s burden” to civilise a nation of savages in the Far East: It establishes Japan as a country with historical human rights problems that had previously been ignored—except by “foreign missionaries”—and which were only addressed after foreigners intervened in some way. This was, of course, not the only time such arguments were made about Japan’s sudden development of a “human rights conscience” in response to foreign pressure. As noted above, similar arguments were made about the *María Luz* incident. More recently, as will be

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<sup>734</sup> Mildred Dickeman, “Demographic Consequences of Infanticide in Man,” *Annual Review of Ecology and Systematics* 6, no. 1 (1975): 125–33, <https://doi.org/10.1146/annurev.es.06.110175.000543>; Larry Stephen Milner, *Hardness of Heart/Hardness of Life: The Stain of Human Infanticide* (Lanham, MD: University Press of America, 1998), 235–36.

<sup>735</sup> Stanley, *Selling Women*, 111–33.

<sup>736</sup> Drixler, *Mabiki*, 6–44.

<sup>737</sup> Sanders, “Indentured Servitude and the Abolition of Prostitution in Postwar Japan,” 4.

discussed below, these same arguments were made about Japan's Tier 2 Watch List placement on the American TIP Report.

Recall, though, that by this time the Japanese government had been taking active measures against the sale of children for more than 1,300 years, and policy makers had specifically been trying to regulate coercive wage-labour contracts for more than 300 years.

Furthermore, "foreign missionaries" had never played a major role in Japan's regulation of human trafficking—aside from the Jesuits, whose complicity to varying degrees in the Portuguese slave trade out of Japan may have contributed to the ban on Christianity. While the JWCTU was founded by foreign missionaries, its original Japanese name (*Fujin kyōkai*) omitted both "temperance" and "Christian," and it was run instead by upper-middle class Japanese women as a secular anti-prostitution organisation. Moreover, where Christian churches, such as the Annaka Church, did play a role in pushing for the prohibition of prostitution, their congregations were Japanese. As noted previously, foreign missionaries tended to focus instead on "rescue work," rather than policy making.

If the arrival of the Americans did not cause the "discovery" of *jinshin baibai* by journalists in the aftermath of the war, though, then what did? One alternative explanation for this "discovery" is that it was a moral panic, with the journalists acting as moral entrepreneurs. Consider Figure 4, Figure 5 and Figure 6 (below), which trace the frequency of articles about *jinshin baibai* or articles whose titles reference *jinshin baibai* in two of Japan's papers of record from the 1870s up until to the 1980s (for a full discussion of the methods used here, see Chapter 4).

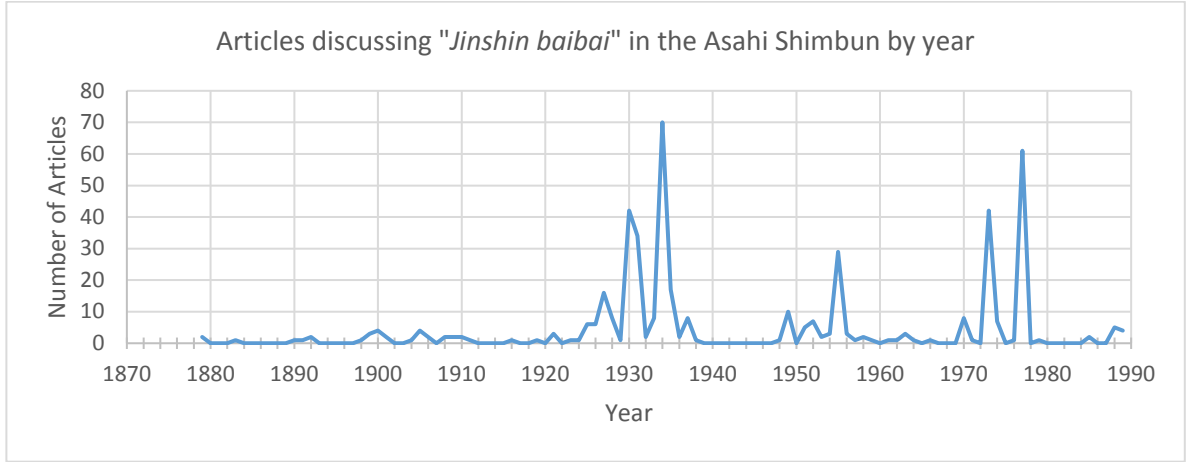


Figure 4: Articles discussing "Jinshin baibai" in the Asahi Shimbun by year

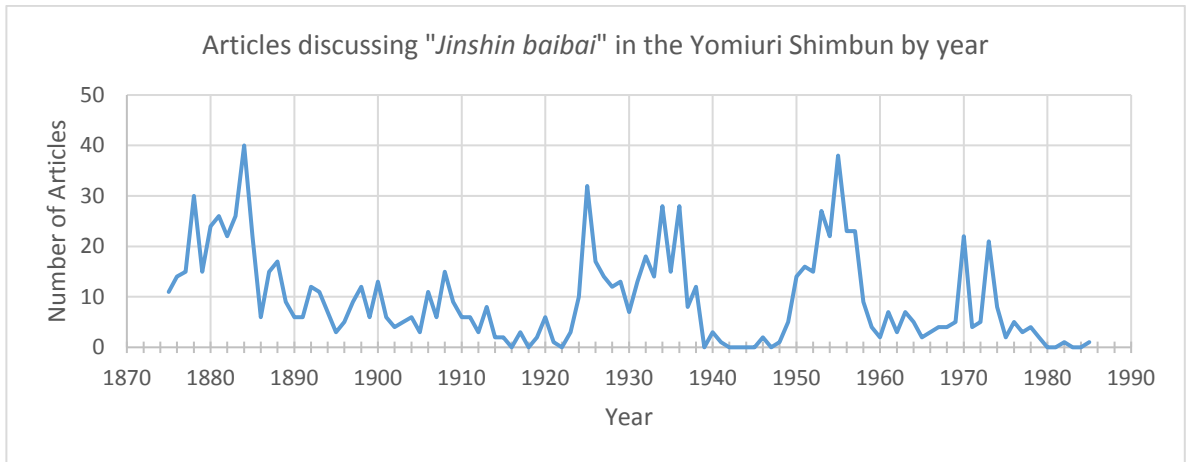


Figure 5: Articles discussing "Jinshin baibai" in the Yomiuri Shimbun by year

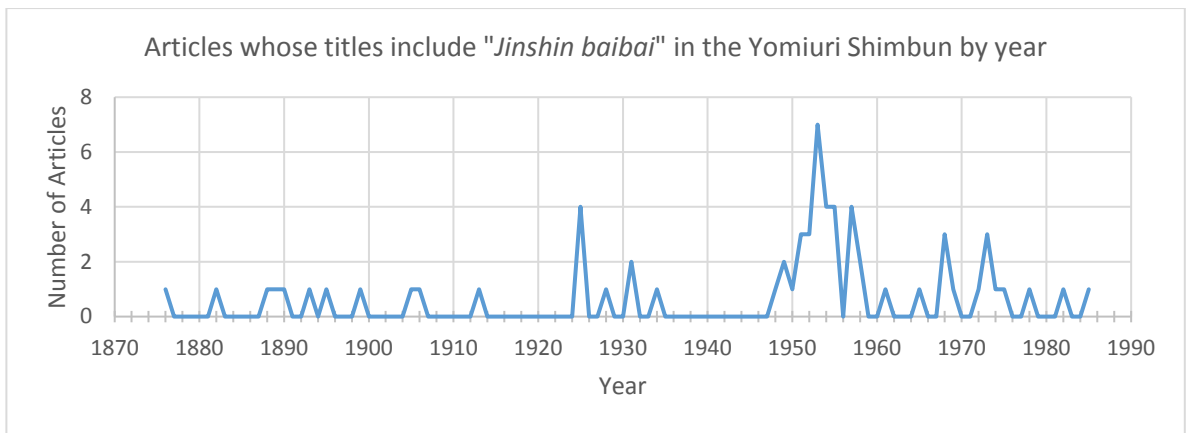


Figure 6: Articles whose titles include "Jinshin baibai" in the Yomiuri Shimbun by year

As we can see in these figures, the *Asahi Shimbun* went from publishing no articles on *jinshin baibai* for 10 years (1938–1948) to publishing 11 articles in less than three months, focussing heavily on the sale of children in Japan’s northeast. The *Yomiuri Shimbun* also began reporting once again on *jinshin baibai* at the end of 1948, and they too focussed on the sale of children. Previously, the *Yomiuri Shimbun* had run three *jinshin baibai*-tagged articles in 1940, one its “war” section (“Village of strange customs on the Shanxi front: Eating foliage and publically selling girls”<sup>738</sup>) and two in its crime section (“Gang abducting women”<sup>739</sup> and “The black market for humans”<sup>740</sup>); it ran one more during the war period, in its crime section in 1941 (“Brute of a man arrested for selling wife and children to pay for gambling”<sup>741</sup>). However, from April 1941 to January 1946, there was nothing. In the *Asahi Shimbun*, this absence began at the beginning of 1938.

These absences, however, are very likely only a consequence of wartime conditions in the Japanese media landscape, when the major newspapers had largely voluntarily repurposed themselves as vehicles for propaganda under the Japanese Newspaper League.<sup>742</sup> If we look at these newspapers before the war, we see that *jinshin baibai* was a topic of considerable interest. In fact, in the pages of the *Asahi Shimbun*, *jinshin baibai* was discussed with much greater frequency during the mid-30s than in the late-40s or early-50s. In 1936, for example, a married but childless reader asked in the women’s consultation corner about the legitimacy of purchasing a child from her younger sister (framed as a *jinshin baibai*-like transaction) in August,<sup>743</sup> while in December an article condemned a foster-father for selling

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<sup>738</sup> “Sansei Zensen No Kishū Mura: Ko No Ha o Jōshoku Ni, Kōzen Okowareru Kūnian Baibai,” *Yomiuri Shimbun*, March 5, 1940.

<sup>739</sup> “Fujo Yūkaidan / Tokyo,” *Yomiuri Shimbun*, December 25, 1940.

<sup>740</sup> “Ningen No Yamitorihiki / Tokyo, Shitaya,” *Yomiuri Shimbun*, February 9, 1940.

<sup>741</sup> “Saishi o Utte Tobaku: Tsukamatta Kichikudan / Tokyo, Katsushika,” *Yomiuri Shimbun*, April 17, 1941.

<sup>742</sup> Barak Kushner, *The Thought War: Japanese Imperial Propaganda* (Honolulu, HI: University of Hawai‘i Press, 2006); The Asahi Shimbun Company, *Media, Propaganda and Politics in 20th-Century Japan*, trans. Barak Kushner (New York, NY: Bloomsbury Academic, 2015), 37–99; Samuel Hideo Yamashita, *Daily Life in Wartime Japan, 1940-1945* (Lawrence, KS: University of Kansas Press, 2015), 11–22.

<sup>743</sup> Josei Sōdan, “Toi: Kodomo no seki o kinsen de, jinshin baibai no you na imōto fūfu,” *Asahi Shimbun*, August 7, 1936.



a child to a circus.<sup>744</sup> The same year, the *Yomiuri Shimbun* ran an article asking for assistance for a mother looking for a daughter who had been sold.<sup>745</sup>

The other major trend we can see is that these cases do not peak in the late 1940s. In the *Yomiuri Shimbun*, the number of articles continues increasing until reaching a peak in the mid-1950s. The *Asahi Shimbun* followed a more uneven pattern, with coverage of *jinshin baibai* becoming less frequent in the early 1950s before spiking in 1955. In neither case, however, does 1955 represent their pre-1990s high for articles tagged as *jinshin baibai*-related. In the case of the *Asahi Shimbun*, this peak came in 1934, with heavy coverage of young women being forced into prostitution—particularly in Japan’s northeast. In the case of the *Yomiuri Shimbun*, the peak came in 1884, with stories that focussed on indentured sex workers in the early days of a shift towards the system of regulated brothels.

Taken together, this data demonstrates that both journalists and their readers in Japan in the 1930s (and earlier) were already keenly interested in cases related to the buying and selling of human beings. The tone of these articles likewise suggests a sense of moral outrage that cases like this continued in Japan. This makes it clear that the media did not “discover” *jinshin baibai* in the aftermath of the war but rather that, as conditions under the occupation stabilised, journalists went back to reporting on a topic that had interested them since the earliest days of Japanese newspapers. The sensationalist tone of the coverage, then, as if *jinshin baibai* were just then being discovered more likely reflects a case of what Cohen calls “over-reporting,” and which he notes is a characteristic part of the build up to a moral panic.<sup>746</sup> However, there is no evidence, at least in the archives of the *Asahi Shimbun* and *Yomiuri Shimbun*, that the occupation had a substantial impact on the way Japanese thought about *jinshin baibai*.

This is not to say that the occupation had no impact on the way Japan responded to *jinshin baibai*. SCAP’s initial *raison d’être* was to turn Japan into a multi-party democracy, and while

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<sup>744</sup> “Namida No Sākasu Shōnen: Utta Giri No Chichi Oya Mo Kōkai; Buji, Haha No Te Ni Kaeru,” *Asahi Shimbun*, December 24, 1936.

<sup>745</sup> “Ureta Musume e Hahaoya No Sōsakunegai / Tokyo,” *Yomiuri Shimbun*, November 14, 1936.

<sup>746</sup> Cohen, *Folk Devils and Moral Panics*, 26–34.

this goal was later made secondary to the goal of preventing the communists from getting elected, it did lead to a government that was far more responsive to both the press and the popular sentiment.<sup>747</sup> Thus in the late 1940s, in response to reports on the sale of children, the government moved quickly to pass new “anti-trafficking” legislation. When sex work came to be rebranded as *jinshin baibai* in the 1950s, the government likewise was moved at last to pass a “prostitution prevention law.” Nevertheless, this demand for reform was generated within Japan. Thus while SCAP may have changed Japan’s government, they do not seem to have directly changed its governmentality.

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<sup>747</sup> Dower, *Embracing Defeat*, 203–73; Jansen, *The Making of Modern Japan*, 675–714.

## THE GOVERNANCE OF SEX WORK

The end of the occupation and the failure of the social purification movement's effort to criminalise sex work had dealt an initial blow to the sex work prohibitionist movement. However, the moral panic over *jinshin baibai* offered its supporters a new opportunity to advance their cause. Following the waves of reports on child labour in the late 1940s, the social purification movement began arguing that sex workers who received advanced payments were also victims of *jinshin baibai*, and that the only way to rescue them was to prohibit sex work and devote resources to helping women leave the sex industry.<sup>748</sup>

In making this argument, they were also able to draw upon the text of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. In English, this treaty labelled all prostitution as a form of "human trafficking," with its Article 1 calling on states to punish anyone who "exploits the prostitution of another person, even with the consent of that person."<sup>749</sup> And in Japanese, the official title of the treaty translates back into English as to the "Convention for the prohibition of *jinshin baibai* and the exploitation of others through their selling of sex," while a (highly literal) back-translation of the text's Article 1 suggests that in signing the treaty Japan would be agreeing to punish anyone who "squeezes money out of the sale of sex [*baishun*] by another even if the person in question agrees to this."<sup>750</sup> Activists could thus argue that prohibiting prostitution was a necessary precondition to ratifying the 1949 Trafficking Convention, which in turn was an important stepping stone for Japan's return to the international community and normalisation as a civilised country.<sup>751</sup>

Pushing back against this narrative was the National Service Employees Union Alliance, a labour union for sex workers centred on the old licensed district of Yoshiwara, and which emerged decades before similar groups would champion the rights of sex workers in North

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<sup>748</sup> Sanders, "Indentured Servitude and the Abolition of Prostitution in Postwar Japan"; Yokoyama, "Emergence of Anti-Prostitution Law in Japan—Analysis from Sociology of Criminal Law."

<sup>749</sup> 1949 Trafficking Convention, art. 1.

<sup>750</sup> Full text of the MOFA's official Japanese translation available from:

[http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-427-3\\_1.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-427-3_1.pdf). See also Appendix 3.

<sup>751</sup> Rowley, "Prostitutes against the Prostitution Prevention Act of 1956," 47–48.

America and Europe. This new labour union argued that, although sex work was neither pleasant nor glamorous, sex workers had made a rational choice to sell sex on account of a paucity of alternative employment options for women. They also noted that many of the women working in the sex industry were sole bread winners for their families, often as a result of having lost a husband in the war, and thus that they would not be the only ones to suffer from a ban on prostitution. As such, they suggested that instead of prohibiting sex work, the government should provide alternative employment opportunities for women, which would lead to sex work disappearing on its own over time.<sup>752</sup>

While there had previously been sex sector unions in Japan such as the Yoshiwara Women's Health-Preservation Union, these had been primarily geared towards the provision of health services for sex workers. The formation of a labour union, though, was facilitated by the fact that many of the women working in the sex industry had previously worked in the textile industry, and thus had experience with labour activism—in fact, many had turned to sex work after losing their jobs following failed strikes. These veterans of the labour movement were members of the Socialist party and hoped to find allies there. However, instead they found themselves opposed by the women's division of the Socialist party. Members of the women's division wrote an article for the *Asahi Shimbun* on Dec. 22, 1955, arguing that:

We do not view prostitution as a job. Protecting the right to participate in prostitution runs counter to common sense. [...] We view the protection of the life-styles of prostitutes to be tantamount to protecting the interests of the dealers. We are proceeding in an attempt to protect the rights of these unfortunate young women.<sup>753</sup>

This position, whereby the efforts of sex workers to politically organize is undermined by claims that the effort is a front for the sex industry; that sex workers needed protection even if they weren't asking for it; and that destroying the livelihood of sex workers was in their best interest is a familiar one: these same arguments became a doctrine for

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<sup>752</sup> Fujime, "The Prostitutes' Union and the Impact of the 1956 Anti-Prostitution Law in Japan"; Rowley, "Prostitutes against the Prostitution Prevention Act of 1956"; G.G. Rowley, "Translator's Introduction," in *Autobiography of a Geisha*, by Sayo Masuda (New York, NY: Columbia University Press, 2003), 1–10.

<sup>753</sup> *Asahi Shimbun*, quoted in Fujime, "The Prostitutes' Union and the Impact of the 1956 Anti-Prostitution Law in Japan," 14.

prohibitionist activists in the United States in the 1990s and 200s.<sup>754</sup> In Japan, the result of these efforts was that the Socialist party expelled those members who had assisted in the unionization effort, before going on to vigorously push for a bill that would apply criminal sanctions to sex workers.<sup>755</sup>

It was ironic, then, that help for the sex workers ultimately came from conservatives in the Liberal and Democratic parties (which were soon to merge). While the conservatives were opposed to organised labour, they continued to view sex work as a necessary social evil, although it may have also helped that some were getting money from the sex industry. The conservatives helped kill the punitive bill initially proposed by the Socialist party. Then, when a scandal broke out over the funding from the sex industry, they forestalled further attempts at prohibition by passing a watered down “Prostitution Prevention Law” (*Baishun Bōshihō*) 1956, which remains on the books today.<sup>756</sup>

Although this new law banned the sale of sex, it prescribed penalties only for ancillary practices related to the sale of sex: “soliciting, advertising, serving as an intermediary, contracts to prostitute, supplying a venue, capital, land, or buildings for prostitution, and compelling a person to stay in a house of prostitution.”<sup>757</sup> There are also—unsurprisingly, given who was wrote the law—no penalties for buying sex, and even the word for prostitution used here, “*baishun*,” literally means “selling sex.”<sup>758</sup> As a result, while the new law ended both the *akasen* and the National Service Employees Union Alliance, it did not

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<sup>754</sup> See for example Dorchen Leidholdt, “Prostitution: A Violation of Women’s Human Rights,” *Cardozo Women’s Law Journal* 1 (1993): 133–47; Raymond, “Prostitution as Violence against Women”; Sheila Jeffreys, *The Industrial Vagina: The Political Economy of the Global Sex Trade* (London: Routledge, 2009), 14–37.

<sup>755</sup> Garon, *Molding Japanese Minds*, 198–204; Fujime, “The Prostitutes’ Union and the Impact of the 1956 Anti-Prostitution Law in Japan”; Rowley, “Prostitutes against the Prostitution Prevention Act of 1956.”

<sup>756</sup> Yokoyama, “Emergence of Anti-Prostitution Law in Japan—Analysis from Sociology of Criminal Law”; Garon, *Molding Japanese Minds*, 202.

<sup>757</sup> Mark D. West, *Lovesick Japan: Sex, Marriage, Romance, Law* (Ithaca, NY: Cornell University Press, 2011), 147–48.

<sup>758</sup> This meaning is created by the Chinese characters used to write the term. However, later activists would create a new spelling for “*baishun*” using characters that mean “buying sex.” See Yayori Matsui in Sandra Buckley, *Broken Silence: Voices of Japanese Feminism* (Berkeley, CA: University of California Press, 1997), 153.

end sex work.<sup>759</sup> The law is, in fact, a very similar system to that used today by a wide range of “tolerationist” jurisdictions, such as Canada and Hong Kong.<sup>760</sup> Still, even if the content of the law was watered down, we can still see the moralistic and paternalistic intent behind the law in its opening “purpose” paragraph:

This law, taking into account that *baishun* (“prostitution”) damages human dignity, is inconsistent with sexual morality, and disturbs the virtuous *fūzoku* (“customs, manners, public morals) of society, aims to attempt to prevent *baishun* by punishing acts which foster *baishun*, as well as by taking measures regarding the protective custody and rehabilitative care of girls when, on account of their conduct or environment, there is concern that they will engage in *baishun*.<sup>761</sup>

What is interesting about this paragraph is the degree to which the language reflects that of the 1949 Trafficking Convention, whose preamble opens with:

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community[...]<sup>762</sup>

These similarities are not a coincidence: they seem to reflect a conscious effort on the part of Japanese legislators to harmonise Japanese law with the 1949 Trafficking Convention as a precursor to their acceding to that convention in 1958, two years after passing the

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<sup>759</sup> Fujime, “The Prostitutes’ Union and the Impact of the 1956 Anti-Prostitution Law in Japan.”

<sup>760</sup> See for example Leslie Ann Jeffrey and Barbara Sullivan, “Canadian Sex Work Policy for the 21st Century: Enhancing Rights and Safety, Lessons from Australia,” *Canadian Political Science Review* 3, no. 1 (2009): 57–76; William C.W. Wong, Eleanor Holroyd, and Amie Bingham, “Stigma and Sex Work from the Perspective of Female Sex Workers in Hong Kong,” *Sociology of Health & Illness* 33, no. 1 (2011): 50–65, <https://doi.org/10.1111/j.1467-9566.2010.01276.x>.

<sup>761</sup> Baishun Bōshihō [Prostitution Prevention Act] Act No. 118 of May 24, 1956, art. 1, para. 1. (Own translation). A full English translation of the Law can also be found in Ministry of Justice, Japan, *Materials Concerning Prostitution and Its Control in Japan* (Tokyo: Ministry of Justice, 1957), 32–39. However, for the purpose of discussing the usage of some of the Japanese terms, as well as due to variations in the translation of the same terms in different statutes (e.g. “Tokyo-to Municipal Ordinance 58, May 31, 1949” in *ibid.*, 40), I have decided to work with the official (Japanese) text instead.

<sup>762</sup> *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949).

Prostitution Prevention Law.<sup>763</sup> According to my research participants from the Ministry of Justice, changing laws to align with treaties prior to ratifying or acceding to the treaties is the standard practice in Japan, and one which would have profound implications later for Japan's attempts to ratify the 2000 Trafficking Protocol. Thus we can see in this opening paragraph an attempt to align Japan's new law on sex work with what was then seen as international best practice: the paternalistic protection of victimised "girls" (*joshi*) from the evils of prostitution.

However, unlike the Trafficking Convention, the Prostitution Prevention Law restricts the paternalistic discourse of its preamble to women—even though the provisions of the law itself are gender neutral.<sup>764</sup> This was not because of a lack of awareness on the part of regulators of the existence of male sex workers, given that male sex workers had reportedly beaten up a police chief during a failed raid on a gathering in Ueno Park.<sup>765</sup> Rather, it was because regulators saw women as both uniquely vulnerable to exploitation through sex work,<sup>766</sup> and because the sale of sex by women was seen as somehow injurious to the female gender as a whole in a way that the sale of sex by men was not seen as injurious to the male gender.<sup>767</sup>

One result of this paternalism was that, although the law forbids prostitution, it applies sanctions to sex workers only if they solicit publically—i.e., if they are street workers or *panpan*.<sup>768</sup> And even then, it does not punish them as criminals, but as wayward children. For those who are below 20 (the age of majority), the Juvenile Law channels them into a parallel legal channel, discussed in more detail below. Even for those 20 and above, however, the law subjects them not to fines or prison but to *hodō* ("correctional guidance")

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<sup>763</sup> Data on ratification from United Nations, "Chapter VII: Traffic in Persons: 11. a Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others."

<sup>764</sup> Baishun Bōshihō.

<sup>765</sup> Kovner, *Occupying Power*, 107.

<sup>766</sup> See for example Iga, "Sociocultural Factors in Japanese Prostitution and the 'Prostitution Prevention Law.'"

<sup>767</sup> Fujime, "The Prostitutes' Union and the Impact of the 1956 Anti-Prostitution Law in Japan," 10–11.

<sup>768</sup> Elmer H. Johnson, "Japan Reacts Against Street Prostitution: The Anti-Prostitution Law and Women's Guidance Homes," *International Journal of Comparative and Applied Criminal Justice* 17, no. 1–2 (January 1993): 36, <https://doi.org/10.1080/01924036.1993.9689005>.

measures—a term otherwise used to refer to police interactions with juvenile delinquents. In practice, this means that women are confined to Women’s Guidance Homes (*fujin hodōin*) for six months.<sup>769</sup> There, according to the 1958<sup>770</sup> Act on Women’s Guidance Homes, they are given medical assistance, guidance, education, training in housework, and assistance in finding alternative employment.<sup>771</sup> For women who voluntarily want to give up sex work, the Prostitution Prevention Law also includes a provision that requires each prefecture to establish a Women’s Consultation Office (*fujin sōdanjo*), a facility that provides shelter, medical and psychological treatment, career advice and general assistance.<sup>772</sup>

These two institutions have seen very different trajectories since the passage of the law. The Women’s Guidance Homes’ population peaked in 1960 at 408, and then dropped every year since. By 1991, there was only a single Women’s Guidance Home in Japan, and it had no residents.<sup>773</sup> This was, however, not due to a reduction in the total number of female sex workers. Rather, it reflects a reduction in the number of street workers who were the primary target of the Prostitution Prevention Law.<sup>774</sup>

The Women’s Consultation Offices also experienced gradually declining usage, due to the decline in the use of debt bondage in Japan’s sex industry as well as the generally improving job market and educational prospects for women. However, the Act on the Prevention of Spousal Violence and the Protection of Victims gave these offices a second life by authorising prefectures to use them as Spousal Violence Counseling and Support Centres.<sup>775</sup> Subsequently, this has become their primary purpose as more women flee domestic

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<sup>769</sup> Baishun Bōshihō, Ch. 3.

<sup>770</sup> This is the first year the penalties of the Prostitution Prevention Act went into effect. Andrew D. Morrison, “Teen Prostitution in Japan: Regulation of Telephone Clubs,” *Vanderbilt Journal of Transnational Law* 31 (1998): 482.

<sup>771</sup> *Fujin hodōin hō*, Act No. 17 Of March 25, 1958, as last amended by Act No. 111 of July 1, 1972.

<sup>772</sup> *Fujin hodōin hō*, art. 16.

<sup>773</sup> Johnson, “Japan Reacts Against Street Prostitution,” 37–39.

<sup>774</sup> Minoru Shikita and Shinichi Tsuchiya, *Crime and Criminal Policy in Japan Analysis and Evaluation of the Showa Era, 1926-1988* (New York, NY: Springer New York, 1992), 196–200, <http://dx.doi.org/10.1007/978-1-4612-2816-5>.

<sup>775</sup> *Haigūsha kara no bōryoku no bōshi oyobi higaisha no hogo tō ni kansuru hōritsu*, Act No. 31 of April 13, 2001, art. 3 as last amended by Act No. 28 of April 23, 2014



violence in Japan.<sup>776</sup> In more recent years, these centers have also come to play an important role in Japan's response to the trafficking of foreign women into Japan, by serving as shelters for trafficking victims pressing charges against their alleged traffickers.<sup>777</sup> This is an interesting legacy for an institution established by an anti-prostitution ordinance, but also a problematic one. Because male sex workers were excluded from the Prostitution Prevention Law, there were never any Men's Consultation Offices established. As a result, there are also no shelters for male sex workers looking to give up sex work, for male victims of domestic violence, or for male victims of human trafficking.

To understand why the sex industry was able to continue to thrive despite the Prostitution Prevention Act's prohibition of *baishun*,<sup>778</sup> we need to look at how it defines *baishun*:

For the purpose of this law, *baishun* is defined as sexual intercourse [*seikō*] with an unspecified [*futokutei*: unspecified/non-determined/random] partner in exchange for compensation or the promise of compensation.<sup>779</sup>

Thus for an act to be deemed "prostitution," three elements need to present: sexual intercourse, an "unspecified" individual, and "compensation." Put another way, absent one of these three criteria, an act is not legally prostitution. This definition has some gaping loopholes, and in the immediate aftermath of the Prostitution Prevention Act two-thirds of the existing brothels simply rebranded as *fūzokuten*<sup>780</sup> and carried on with business.<sup>781</sup>

One of the most prominent of these new *fūzokuten* has been soaplands, which were known as "Turkish baths" until complaints by Turkish diplomats led the Japanese Bath Association

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<sup>776</sup> Keiko Sato, "Enactment of 'Act on the Prevention of Spousal Violence and the Protection of Victims' and Reorganization of Protective Care for Women: A Case Study at 'A' Counseling Center for Women," *Journal of Aomori University of Health and Welfare* 11, no. 12 (2010): 93–102.

<sup>777</sup> See for example Minoru Yokoyama, "Measures Against Human Trafficking in Japan," *Women & Criminal Justice* 20, no. 1–2 (April 12, 2010): 27–39, <https://doi.org/10.1080/08974451003641354>; Masumi Yoneda and Marie Tada, "The Amendment of Japanese Laws and Its Challenges in the Field of Anti-Trafficking in Persons," *Contemporary Legal and Economic Issues* 2 (2009): 199–210.

<sup>778</sup> When I use this Japanese term, rather than an English one, I am referring specifically to *baishun* as defined in the Prostitution Prevention Law. That definition is discussed in further detail below.

<sup>779</sup> *Baishun Bōshihō*, art. 1, para. 2. (Own translation).

<sup>780</sup> Literally, "morals shops," but more properly "sex shops." Discussed below.

<sup>781</sup> Garon, *Molding Japanese Minds*, 204–5.

to change the name.<sup>782</sup> Soaplands are nominally bath houses where the customer pays for the use of a private bathing room and the assistance of a female bath attendant. In practice, this allows them to function largely like brothels, since the soapland's management can argue that during the bathing session the customer and bath attendant come to know each other. Once they know each other, they are no longer "unspecified," and as such they can engage in sexual intercourse for compensation—or at least that's the theory.<sup>783</sup> Participants from the NPA officials indicated that they did not accept this legal reasoning, but that the privacy created by the soaplands made any sort of enforcement difficult.

Other *fūzokuten* exploit the loophole created by the use of the term *seikō* ("sexual intercourse"). Since *seikō* has been interpreted to mean only penile-vaginal intercourse, *fūzokuten* can openly sell and advertise a range of sexual services—including manual sex, oral sex, anal sex and intercrural sex—as long as they do not offer intercourse. These *fūzokuten* are categorised by diverse English euphemisms such as "pink salons," "image salons" and "fashion health."<sup>784</sup> And since at least the 1980s, most sex workers have worked through dispatch services,<sup>785</sup> either meeting customers in their own homes or in "love hotels"—well-priced and generally high quality hotels where rooms can be rented in two- or four-hour periods.<sup>786</sup> Though these services have gone by an assortment of names over the years, now they are generally referred to as *deriheru*, a contraction of "delivery health." As the name suggests, these are businesses where sexual services (for "health") are "delivered," which gives them the advantage of low overhead and start-up costs, and gives

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<sup>782</sup> Nicholas Bornoff, *Pink Samurai: Love, Marriage & Sex in Contemporary Japan* (New York, NY: Pocket Books, 1992), 268.

<sup>783</sup> West, *Lovesick Japan*, 149–50; Motonobu Miyazaki et al., "Prevalences of and Risk Factors for Sexually Transmitted Diseases among Japanese Female Commercial Sex Workers in Middle- and High-Class Soaplands in Japan," *International Journal of STD & AIDS* 13, no. 12 (December 1, 2002): 833–38, <https://doi.org/10.1258/095646202321020116>.

<sup>784</sup> Kinuko Kimoto et al., "Changing Patterns in the Sex Industry and in Sexually Transmitted Diseases among Commercial Sex Workers in Osaka, Japan," *Sexually Transmitted Diseases* 29, no. 2 (February 2002): 79–82; West, *Lovesick Japan*, 150–51.

<sup>785</sup> Stephan M. Salzberg, "The Japanese Response to AIDS," *Boston University International Law Journal* 9 (1991): 263.

<sup>786</sup> Sarah Chaplin, *Japanese Love Hotels: A Cultural History* (New York, NY: Routledge, 2007), 100.

customers the advantage of avoiding the risk of being seen entering a *fūzokuten*.<sup>787</sup> By law, these services cannot include intercourse, but a number of my interview participants from the police noted that the difficulty in monitoring their activities meant that many *deriheru* services were likely offering intercourse illegally.

These establishments are regulated under the *Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu* (“Control and Improvement of Amusement Businesses Act” hereafter “Amusement Businesses Act”). Although *fūzoku eigyō* is commonly translated as “Amusement Business” or “Entertainment Business,” it literally means “businesses affecting public morals.” When this law was passed in 1948 this category included a range of businesses: the “special eating and drinking places” of the *akasen*, but also other types of entertainment businesses such as bars, clubs, late-night cafés, dance halls and massage parlours. *Seifūzoku eigyō*, “businesses affecting public sexual morals” was the term the law used to refer to those establishments that primarily sold or facilitated the sale of sexual services.<sup>788</sup> As a result, *seifūzoku* (“sexual morals”) or even simply *fūzoku* (“morals”) emerged as euphemisms for the sex industry, and *fūzokuten* (“morals shop”) emerged as the generic term to describe the sex shops that could not legally be called brothels.

The Amusement Businesses Act has been repeatedly updated over the years. The effect of these revisions has been to expand the Act to cover new types of businesses, such as “private rooms with attached baths” (i.e., soaplands) in 1966, “lodgings reserved for customers accompanied by members of the opposite sex” (i.e., love hotels) in 1984, and “businesses that dispatch workers” to provide “labour that involves touching customers of the opposite sex according to their sexual preferences” in “their homes or other lodgings” (i.e., *deriheru*) in 1998. They have also increased the reporting requirements for different types of establishments, limited the areas or hours in which they are permitted to operate, and increased punitive sanctions for rule breakers. In some cases, such as with the infamous

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<sup>787</sup> Takashi Kadokura, “Chapter 2. Japan’s Underground Economy,” *Japanese Economy* 34, no. 2 (August 1, 2007): 42–43, <https://doi.org/10.2753/JES1097-203X340202>.

<sup>788</sup> *Fūzoku eigyō torishimarihō*, Act No. 22 of July 10, 1948.

“no dancing” rules,<sup>789</sup> these revisions relaxed the law. In other cases, such as with the “no panties cafés,” the revisions put them out of business.<sup>790</sup>

One of the most significant changes came in 1985, when the law gave municipalities the ability to prohibit the construction of new *fūzokuten*—ranging from soaplands to peep shows to love hotels—in designated areas.<sup>791</sup> Over the following years, an increasing number of municipalities chose to use this provision to effectively phase out the presence of *fūzokuten* entirely from their boundaries by refusing not only new construction, but also renovations, repairs and changes of ownership.<sup>792</sup> Soaplands suffered particularly, in part because the AIDS panic led to customers being less inclined to visit *fūzokuten* whose primary draw was the possibility of purchasing illegal penile-vaginal intercourse.<sup>793</sup> More recently, research participants from the NPA noted that these regulatory changes have resulted in the near-total disappearance of *fūzokuten* from many of Japan’s nightlife districts. This decline, along with the ubiquity of cell phones and love hotels, has helped

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<sup>789</sup> Until 2015 Japan’s night clubs were licensed as bars, and dancing in them was technically either illegal or legal only before midnight. An enforcement campaign that kicked off in 2012 sparked outrage and led to the revision. See Jake Adelstein, “What’s with the Police Purge on Dance Clubs?,” *The Japan Times Online*, April 7, 2013, <http://www.japantimes.co.jp/news/2013/04/07/national/media-national/whats-with-the-police-purge-on-dance-clubs/>; Daisuke Kikuchi, “Japan Shedding 1940s Morality by Relaxing Rules on Nightclubs,” *The Japan Times Online*, May 30, 2016, <http://www.japantimes.co.jp/news/2016/05/30/reference/japan-shedding-1940s-morality-relaxing-rules-nightclubs/>.

<sup>790</sup> *Fūzoku eigyō tō torishimarihō no ichibu o kaiseisuru hōritsu* [Act to Amend Part of the Amusement Businesses, Etc. Regulation Act] Act No. 91 of June 30, 1966; *Fūzoku eigyō tō torishimarihō no ichibu o kaiseisuru hōritsu* [Act to Amend Part of the Amusement Businesses, Etc. Regulation Act] Act No. 76 of August 14, 1984; *Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu no ichibu o kaiseisuru hōritsu* [Act to Amend Part of the Control and Improvement of Amusement Businesses Act] Act No. 55 of May 8, 1998. Own translations.

<sup>791</sup> *Fūzoku eigyō tō torishimarihō no ichibu o kaiseisuru hōritsu* (1984). Note that this only applies to “de jure” love hotels, which only account for a fraction of Japan’s massive love hotel industry. See Mark D. West, *Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes* (Chicago, IL: University of Chicago Press, 2005), 176–78.

<sup>792</sup> Gabriele Koch, “The Libidinal Economy of the Japanese Sex Industry: Sexual Politics and Female Labor” (University of Michigan, 2014), 54–64.

<sup>793</sup> Kadokura, “Chapter 2. Japan’s Underground Economy,” 38–41; Salzberg, “The Japanese Response to AIDS,” 257–66.

smooth the rise of *deriheru* as the most significant form of sex work in Japan. It has also made regulating the sex industry significantly more challenging for the police.

Another legal instrument that has had a considerable effect on the sex industry, albeit indirectly, has been the Prevention of Unjust Acts by Organized Crime Group Members Act (hereafter Anti-Organised Crime Act). Yakuza groups became increasingly powerful in the early decades after the war, and the decline of the black markets led them to become heavily involved in businesses regulated by the Amusement Businesses Act. Pachinko (Japanese slots) became a major source of income for them, as did *mizu shōbai*, (“the water trade”) establishments that specialised in combining alcohol and attractive female (and sometimes male) companionship—and of course, so too did the sex industry. Some of these businesses frequently operated either partially or fully outside of the bounds of the law, which made them both vulnerable to predation and reliant on extra-legal protection.<sup>794</sup> For *fūzokuten*, examples of illegal behaviour include offering intercourse in contravention of the Prostitution Prevention Law, employing juveniles in contravention of the Amusement Businesses Act, operating without a license or simply evading taxes.<sup>795</sup> These businesses could also, because of their stigmatised and questionably legal status, have difficulty securing funding through traditional means, driving them to black market loan sharks who used yakuza debt collectors.<sup>796</sup>

The main means by which the yakuza profited from the nighttime entertainment industry was the collection of *mikajimeryō*, payments made to the yakuza for both protection and permission to conduct business in their *nawabari* (“roped-off area”). Payment was not optional, and non-payees could expect consequences, but it also came with benefits. For law-skirting *fūzokuten* this could mean being alerted to an imminent raid or inspection (which the yakuza themselves would learn about thanks to friendly relations with the

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<sup>794</sup> Hill, *The Japanese Mafia*, 45; Kaplan and Dubro, *Yakuza*, 2003, 61. For *mizu shōbai*, see Anne Allison, *Nightwork: Sexuality, Pleasure, and Corporate Masculinity in a Tokyo Hostess Club* (Chicago, IL: University of Chicago Press, 1994).

<sup>795</sup> Takashi Kadokura, “Chapter 4. Total Value of Boryokudan Activities and the Enjo Kosai Market,” *Japanese Economy* 34, no. 2 (August 1, 2007): 67–72, <https://doi.org/10.2753/JES1097-203X340204>.

<sup>796</sup> Chaplin, *Japanese Love Hotels*, 56, 174–78; West, *Law in Everyday Japan*, 155–60; Hill, *The Japanese Mafia*, 116–18.

police), which would give them time to ensure that they appeared to be in compliance.<sup>797</sup> Yakuza could also be more useful than the police in dealing with violent or unruly customers, both because the yakuza invoked more fear than the police and because so many of the customers at the *fūzokuten* (particularly the ones most likely to be violent or unruly) were themselves yakuza. In fact, the most common link between yakuza and sex workers is that of customer-client, in which case the yakuza is the one paying money, or boyfriend-girlfriend or husband-wife, in which case the yakuza is often living off the earnings of the *mizu shōbai* or *seifūzoku* worker.<sup>798</sup> This latter pattern appears to be the most common in Japan, with wives and girlfriends supporting not only the lifestyles but also the membership fees of yakuza members. As one of Alkemade's respondents put it, they are "the backbone of their men's life financially."<sup>799</sup>

Direct management by the yakuza of *fūzokuten* is made difficult, however, by the fact that these businesses are regulated by the police through the Amusement Businesses Act. As such, the yakuza tend to be involved in the establishment and management of *fūzokuten* only indirectly, for example through securing sites or forging paperwork.<sup>800</sup> When the yakuza are directly involved in the management of sex workers, it is usually in businesses not regulated by the Amusement Businesses Act, such as the telephone clubs (discussed below), street workers and foreign sex workers.<sup>801</sup> Street workers in particular are vulnerable to extraction and violence from the yakuza, due to their illegal status under the Prostitution Prevention Act. Although Japanese street workers had largely disappeared by the end of the 1980s, they were effectively replaced with foreign women who, as we shall see below, were even more vulnerable to exploitation. Still, the sex industry was never the

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<sup>797</sup> Adelstein, *Tokyo Vice*, 219.

<sup>798</sup> Ryu Otomo, "Women in Organized Crime in Japan," in *Women and the Mafia: Female Roles in Organized Crime Structures*, ed. Giovanni Fiandaca (New York, NY: Springer, 2007), 205–17; Hill, *The Japanese Mafia*, 97–98; Kaplan and Dubro, *Yakuza*, 2003, 115.

<sup>799</sup> Rié Alkemade, *Outsiders Amongst Outsiders: A Cultural Criminological Perspective on the Sub-Subcultural World of Women in the Yakuza Underworld* (Wolf Legal Publishers, 2014), 6, <http://www.globalcriminology.com/main/pdfs/AlkemadeYakuza.pdf>.

<sup>800</sup> Andrew Rankin, "21st-Century Yakuza: Recent Trends in Organized Crime in Japan - Part 1," *The Asia-Pacific Journal* 10, no. 7 (2012).

<sup>801</sup> Hill, *The Japanese Mafia*, 113–16.

most important source of funding for the yakuza; contrary to what some anti-trafficking activists have claimed, selling drugs is generally far more profitable than selling people.<sup>802</sup>

Enforcement against the yakuza began increasing in the 1960s, leading to a steep drop in their numbers. Their involvement in the bubble economy brought new life into yakuza groups during the 1980s, their financial entanglement with major banks and corporations—which included widespread shareholder manipulation—became clear after the bubble burst, and this in turn led to the passage in 1991 of the Anti-Organised Crime Act.<sup>803</sup> This law allows yakuza groups to be designated as “*bōryokudan*” (“violent groups”), a designation that both enhances the penalties for criminal activities committed by members of those groups and criminalises activities (such as asking for debt relief from someone aware of their affiliations, lending someone a knife if they intend to cut off a finger, or introducing minors to tattoo parlours) that would be legal for non-members.<sup>804</sup> This has affected the yakuza’s governance of the sex industry in several ways.

First, it effectively marked the end of the era of cooperation between the police and yakuza. While this meant police no longer had access to the yakuza’s underworld intelligence, it also made it harder for *fūzokuten* to operate illegally, as they would have no advance notice of raids. Some provisions have made it more difficult for yakuza to own or invest money in *fūzokuten*, for example, by making it possible for the police to freeze and seize assets related to illegal prostitution. Other provisions have made senior members of yakuza groups financially and criminally liable for the misdeeds of their underlings, which has had a dampening effect on overt displays of yakuza violence.<sup>805</sup> The Act also allows local Public

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<sup>802</sup> Kadokura, “Chapter 2. Japan’s Underground Economy,” 29–32; Hill, *The Japanese Mafia*, 92–94.

<sup>803</sup> Eric Thomas Messersmith, “Political Corruption in Japan: A Study of the Theory, Causes and Effects with Particular Reference to the Yakuza Factor in Banking Scandals and Prolonged Recession” (University of Miami, 2003), <http://scholarlyrepository.miami.edu/dissertations/2050/>; Kadokura, “Chapter 2. Japan’s Underground Economy,” 27–29; Kaplan and Dubro, *Yakuza*, 2003, 198–214.

<sup>804</sup> Bōryokudan-in ni yoru futōna kōi no bōshi nado ni kansuru hōritsu [Prevention of Unjust Acts by Organized Crime Group Members Act] Act No. 77 of May 15, 1991, as last amended by Act No. 79 of June 25, 2014.

<sup>805</sup> Tetsuya Hoshino and Takuma Kamada, “Third-Party Policing of Organized Crime: Evidence from the Yakuza,” 2016, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2827367](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2827367); Hill, *The Japanese Mafia*, 157–72, 261; Peter Hill, “The Changing Face of the Yakuza,” *Global Crime* 6, no. 1 (February 2004): 97–116, <https://doi.org/10.1080/1744057042000297007>; Ko Shikata, “Yakuza –

Safety Commissions to issue administrative orders against yakuza groups and requires the police to comply with such orders—a move which empowers local municipalities to issue cease and desist orders against yakuza or even to evict them from their headquarters.<sup>806</sup>

Some of these regulations have been slow to take effect, but they do appear to have seriously limited the ability of the yakuza to operate in the open. Moreover, these laws were also complemented by the Act on the Punishment of Organized Crimes and the Control, etc., of Crime Proceeds (Proceeds of Crime Law), which created additional penalties for profiting from illegal activities.<sup>807</sup> Thus, although the yakuza may still be surreptitiously collecting protection money from *fūzokuten*, my participants generally agreed that the yakuza currently play a much reduced role in the sex industry. As such, their current ability to govern human trafficking is much reduced from what it once was.

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Organized Crime in Japan,” *Journal of Money Laundering Control* 9, no. 4 (October 1, 2006): 416–21, <https://doi.org/10.1108/13685200610707653>.

<sup>806</sup> Julie Ayling and Roderic Broadhurst, “The Suppression of Organized Crime: New Approaches and Problems,” in *Policing and Security in Practice*, ed. Tim Prenzler (London: Palgrave Macmillan UK, 2012), 47.

<sup>807</sup> Soshikiteki-na hanzai no shobatsu oyobi hanzai shūeki no kisei tō ni kansuru hōritsu, Act No. 136 of August 18, 1999, as last amended by Act. 54 of June 3, 2016.



## THE GOVERNANCE OF CHILDREN

As seen by the moral panic over *jinshin baibai* in the late 1940s, one of the persistent areas of focus of Japan's human trafficking governance has been the governance of children. More recently, this governance has been particularly focussed on the sexual governance of children. However, one persistent issue with governing children is determining who qualifies as a child. We can see this with the shift of the age of consent from twenty-one in the 1921 International Convention for the Suppression of the Traffic in Women and Children to eighteen in the Trafficking Protocol of 2000. These definitions can become even more granular in domestic law, and Japan stands out for using a variety of terms and ages in its legal system. This section thus explores the socio-legal construction of the "child" in Japan, before proceeding to discuss their sexual governance. To avoid overwhelming the non-Japanese speaking reader, here I will be translating the relevant terms into English following the guidelines of the Japanese Law Translation Council (JLTC)—a group established by the Japanese government to facilitate the translation of Japanese legal terms into English.<sup>808</sup>

In Japan, "child" (*jidō*) is defined by the Child Welfare Act as anyone under eighteen years of age.<sup>809</sup> This act further divides children into "infants" (*nyūji*) from birth until the age of one, "toddlers" (*yōji*) from the age of one until they commence elementary school, and "juveniles" (*shōnen*) from the time they enter elementary school until they reach the age of eighteen. These categories largely determine who has access to what services.<sup>810</sup>

On the other hand, the Penal Code does not refer to "child" at all in its provisions, instead referring to "minors" (*miseinen*), meaning those who have yet to achieve the "age of

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<sup>808</sup> Noboru Kashiwagi, ed., *Standard Legal Terms Dictionary*, March 2017 Edition (Japanese Law Translation Council, 2013), <http://www.japaneselawtranslation.go.jp/dict/download..> See also Kayoko Takeda and Yasuhiro Sekine, "Translation of Japanese Laws and Regulations," in *The Ashgate Handbook of Legal Translation*, ed. Le Cheng, King Kui Sin, and Anne Wagner (Farnham, Surrey: Ashgate, 2014), 223–36.

<sup>809</sup> Since passing the *Nenrei keisan ni kansuru hōritsu* [Act Regarding the Calculation of Age] Act No. 50 of Dec. 2, 1902, Japanese children have been assigned the age of zero at birth, rather than one.

<sup>810</sup> *Jidō fukushihō*, art. 4 as last amended by Act No. 73 of 2007. Translation JLTC's: <http://www.japaneselawtranslation.go.jp/law/detail/?id=11&vm=04&re=02&new=1>

majority” (*seinen*).<sup>811</sup> The age of majority is set at twenty by the Civil Code, which also gives parents or guardians wide latitude to control the behaviour of minors.<sup>812</sup> For example, although the minimum age for marriage is eighteen for men and sixteen for women, minors can be married only with the consent of both parents.<sup>813</sup> If minors do marry, then they are considered for the purposes of the Civil Code, the Penal Code, and other laws to have attained majority<sup>814</sup>—although other age-based restrictions, such as the minimum age of twenty for alcohol consumption,<sup>815</sup> may still apply.

Other laws, however, use different ages and terminology as benchmarks. The Labor Standards Act, for example, has specific provisions for minors under thirteen, fifteen and eighteen, as well as specific provisions which apply to all minors.<sup>816</sup> The Amusement Businesses Act, in articles prefaced with the need to protect the healthy upbringing of “juveniles” (*shōnen*), bars entry for those below eighteen to all of the establishments it regulates—which range from pachinko parlors to love hotels to sex shops—with the exception of arcades, where they are allowed entry from 6:00 AM to 10:00 PM.<sup>817</sup>

Confusingly, in the Juvenile Act—which sets the procedures for judicial proceedings for young people—the term “juvenile” (*shōnen*) is defined as anyone below the age of 20. Following this definition, all juveniles accused of a crime are to be tried in a family court,<sup>818</sup>

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<sup>811</sup> Keihō, Act. No. 45 of April 24, 1907, arts. 3, 224, 226, 248, as last amended by Act No. 54 of 2007. Translation JLTC’s:

<http://www.japaneselawtranslation.go.jp/law/detail/?id=1960&vm=04&re=02&new=1>

<sup>812</sup> Minpō, art. 4.

<sup>813</sup> Minpō, art. 731 & 737.

<sup>814</sup> Minpō, art. 753.

<sup>815</sup> Miseinen inshu kinshi hō [Act Prohibiting the Consumption of Alcohol by Minors], Act No. 20 of March 30, 1922 as last amended by Act. No. 152 of December 12, 2001.

<sup>816</sup> Rōdō kijun hō, Act No. 49 of April 7, 1947 as last amended by Act No. 42 of 2012. Translation JLTC’s: <http://www.japaneselawtranslation.go.jp/law/detail/?id=2236&vm=04&re=02&new=1>

<sup>817</sup> Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu (Fūeihō), Act No. 22 of July 10, 1948, art. 21, as last amended by Act No. 89 of November 28, 2016.

<sup>818</sup> Parallel courts that specialise in family affairs and juvenile delinquency. Judgement is decided by a presiding magistrate, and for juvenile cases there are generally neither a prosecutor nor counsel for the defense. See Oda, *Japanese Law*, 61–63; Mark Fenwick, “Japan: From Child Protection to Penal Populism,” in *Comparative Youth Justice: Critical Issues*, ed. John Muncie and Barry Goldson (London: SAGE, 2006), 146–58.

and juveniles who are under 18 may not be sentenced to death.<sup>819</sup> The police also have considerable discretionary power to engage in *hodō* (“correctional guidance”)<sup>820</sup> if they suspect a juvenile is engaged in, or is liable to engage in, illegal activity. This “illegal activity” could include having illicit sex (see below), and this suspicion could be based on seeing them out late, with expensive designer goods, with an older man, or in a part of town with a high concentration of hotels. This *hodō* typically begins as a voluntary interview, but can easily escalate into a compulsory lecture, a forcible return to their parents or detention at the police station.<sup>821</sup>

Family courts may forward a case to a prosecutor if the crime in question would be punishable by death or imprisonment,<sup>822</sup> although the Penal Code’s Art. 41 prevents all those below the age of fourteen from being punished.<sup>823</sup> Up until 2000, family courts could not forward cases for prosecution in which the defendant was below sixteen, creating a de facto age of criminal responsibility of sixteen.<sup>824</sup> However, the 1990s in Japan were a time of moral panic surrounding violent crimes committed by juveniles. This moral panic peaked in 1997 when a fourteen-year-old boy going by the pseudonym Sakakibara Seitō murdered an eleven-year-old boy and left his head in front of the latter’s elementary school—and was

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<sup>819</sup> Shōnen hō, Act No. 168 of July 15, 1948, as last amended by Act No. 71 of 2008. Translation JLTC’s: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1978&vm=04&re=02&new=1>

<sup>820</sup> The ability of the police to engage in *hodō* in relation to specific activities is often contained in statutes related to those activities. See for example Fūeihō, art. 38(2); Shōnen hō, art. 25(2)(iii); Baishun Bōshihō, art. 17. The actual structure and range of activities for *hodō* is separately laid out in Shōnen keisatsu katsudō kisoku [Regulation on Juvenile-Police Activities] National Public Safety Commission Regulation No. 20 of 2002, as last amended by National Public Safety Commission Regulation No. 11 of May 15, 2018.

<sup>821</sup> This has long been a point of interest for Anglo-European scholars of Japanese policing. See David H. Bayley, *Forces of Order: Policing Modern Japan* (Berkeley, CA: University of California Press, 1976), 134–59; Walter L. Ames, *Police and Community in Japan* (Berkeley, CA: University of California Press, 1981), 82–85; David Leheny, *Think Global, Fear Local: Sex, Violence, and Anxiety in Contemporary Japan* (Ithaca, NY: Cornell University Press, 2006), 92–102. As Miyazawa notes, voluntary accompaniment—which has no evidentiary burden and fewer regulations than an arrest—has been a popular tactic for use against adult suspects as well. See Setsuo Miyazawa, *Policing in Japan: A Study on Making Crime*, trans. Frank G. Bennett Jr. and John O. Haley (Albany, NY: SUNY Press, 1992), 16–17.

<sup>822</sup> Shōnen hō, art. 20.

<sup>823</sup> Keihō, as last amended by Law. No. 54 of June 3, 2016.

<sup>824</sup> Guang-Xu Jin, “Japan / The Criminal Responsibility of Minors in the Japanese Legal System,” *Revue Internationale de Droit Pénal* 75, no. 1 (2004): 409–21.

subsequently, due to his age, immune from prosecution.<sup>825</sup> The fallout from this case and the broader moral panic led to a revision in the Juvenile Law that allowed fourteen- and fifteen-year-olds to be forwarded for prosecution.<sup>826</sup>

Some relevant crimes in the Penal Code can be committed only against minors (i.e., those below 20). For example, while it is illegal to kidnap of anyone by force (*ryakushu*) or enticement (*yūkai*) “for the purpose of profit, indecency, marriage or threat to the life or body,”<sup>827</sup> if the victim is a minor, then there is no need to specify a motive.<sup>828</sup> It is also illegal to “buy” (*kaiukeru*) a minor.<sup>829</sup> However, a different age threshold is used for sexual offenses: “forcible indecency” (*kyōsei waisetsu*) and “rape” (*gōkan*). The latter is restricted to cases of “sexual intercourse with a female” (*joshi o kan’in suru*) and calls for higher penalties, but otherwise both offences requires assault, intimidation, loss of consciousness or the inability to resist—or that the victim be under thirteen years of age.<sup>830</sup> This last provision thus criminalises all sex acts committed with minors below thirteen years of age. The Penal Code does not provide an exemption when both parties are under thirteen or when they are separated only by a small age gap, provisions (referred to as “Romeo and Juliet laws” or “close in age exemptions”) common to other jurisdictions.<sup>831</sup> Instead, a similar effect is provided by the Penal Code’s Art. 14’s provision for the absence of criminal responsibility for those under fourteen—a protection which would also have extended to fourteen- and fifteen-year-olds until the revision of the Juvenile Law in 2000. These

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<sup>825</sup> Leheny, *Think Global, Fear Local*, 58–61.

<sup>826</sup> Fenwick, “Japan: From Child Protection to Penal Populism”; Setsuo Miyazawa, “The Politics of Increasing Punitiveness and the Rising Populism in Japanese Criminal Justice Policy,” *Punishment & Society* 10, no. 1 (January 1, 2008): 48–55, <https://doi.org/10.1177/1462474507084197>.

<sup>827</sup> Keihō (2007), art. 225. Translation JLTC’s.

<sup>828</sup> Keihō, art. 224

<sup>829</sup> Keihō, art. 226-2 (2)

<sup>830</sup> Keihō, arts. 176–178.

<sup>831</sup> See for example Matthew Waites, *The Age of Consent: Young People, Sexuality, and Citizenship* (Basingstoke, Hampshire: Palgrave Macmillan, 2005); Victoria Simpson Beck and Stephanie Boys, “Romeo & Juliet: Star-Crossed Lovers or Sex Offenders?,” *Criminal Justice Policy Review* 24, no. 6 (November 1, 2013): 655–75, <https://doi.org/10.1177/0887403412458795>; Carol L. Dauda, “Childhood, Age of Consent and Moral Regulation in Canada and the UK,” *Contemporary Politics* 16, no. 3 (September 1, 2010): 227–47, <https://doi.org/10.1080/13569775.2010.501634>; Helmut Graupner, “Sexual Consent: The Criminal Law in Europe and Overseas,” *Archives of Sexual Behavior* 29, no. 5 (October 1, 2000): 415–61, <https://doi.org/10.1023/A:1001986103125>.

exemptions, however, still leave open the possibility of a family court imposing alternative sanctions.

The Penal Code's definition of rape and forcible indecency has led to a persistent myth that the "age of consent" in Japan is thirteen,<sup>832</sup> which has helped perpetuate a discourse that the Japanese government has cultivated a culture of permissiveness regarding the sexual exploitation of minors. However, the Penal Code is only one of many laws regulating the sexual activity with minors. For example, the Child Welfare Act's Art. 34 says that "no person shall [...] cause a child [i.e., someone below 18] to commit an obscene [*inkō*] act"<sup>833</sup> or "deliver a child knowingly to a person who is likely to commit [an obscene act],"<sup>834</sup> and Art. 60 provides penalties for violating both those provisions that are similar to or greater than the penalties for equivalent crimes in the Penal Code.<sup>835</sup> However, while the "cause a child to commit an obscene act" (*jidō ni inkō o saseru*) wording is vague enough to suggest that this provision could be used to prosecute any sex with (or between) minors, in practice this law is generally used against third parties causing the act—particularly in cases of commercial sexual exploitation.<sup>836</sup>

Instead, when courts want to pursue charges against adults or older children for sexual contact with children, they rely on Juvenile Protection and Development Ordinances. These Ordinances are set at the prefectural level, and currently they all allow the government to take punitive action against those who engage in sexual activity with young people through what are commonly referred to as "obscenity ordinances" (*inkō jōrei*).<sup>837</sup> The actual names

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<sup>832</sup> For examples of two major news outlets making this claim in the past year, see Kento Sahara, "Japan Exhibition Puts Child Prostitution in the Limelight," *Reuters*, September 2, 2016, <http://www.reuters.com/article/us-japan-prostitution-idUSKCN1180IT>; "Tiptoeing around: Better to Learn about Sex in School than from Pornographic Comics," *The Economist*, November 5, 2016, <http://www.economist.com/news/asia/21709599-better-learn-about-sex-school-pornographic-comics-tiptoeing-around>.

<sup>833</sup> *Jidō fukushihō* (2007), art. 34 (1) (vi). Translation JLTC's.

<sup>834</sup> *Jidō fukushihō* (2007), art. 34 (1) (vii). Translation JLTC's.

<sup>835</sup> *Jidō fukushihō* (2007), art. 60 (1)–(2). Translation JLTC's.

<sup>836</sup> Abe Tetsuo, "Jidō fukushihō 34-jō 1-kō 6-gō no 'Inkō o saseru' kōi no imi saikōsai heisei 10 nen 11 gatsu futsuka dai-san shōhōtei kettei," *Hokuriku Hōgaku* 7, no. 2 (September 15, 1999): 71–80; Kanehiko Toyota, "Hitsuyōteki Kyōhan Nitsuite No Ichikōsatsu (3)," *Ritsumeikan Hōgaku*, no. 3 (1999): 601–42.

<sup>837</sup> Leheny, *Think Global, Fear Local*, 90.

of these provisions, as well as their levels of punitiveness and their exceptions, vary from prefecture to prefecture, but all of them, following the Child Welfare Act, use eighteen as their “age of consent,” and there is now a Juvenile Protection and Development Ordinance in each of Japan’s prefectural-level governments—making eighteen the de facto national age of consent.<sup>838</sup> Note that as the age of majority is still twenty, here I will use the English term “juveniles” to refer to those under the age of 18, rather than the term “minors.”

These laws came into heavier use in response to an event that would have significant consequences for both the regulation of children’s sexuality in Japan and perceptions of Japan abroad: the moral panic over the involvement of adolescent girls in *enjo kōsai* (“compensated dating”). Starting in the late 1980s, new technologies allowed men and women looking for romantic encounters to arrange discreet encounters with strangers, sometimes mediated through intermediaries. The most prominent among these were “telephone clubs,” where customers pay at the entrance to a club and then wait in a private room for someone to call, with the idea that this call could then lead to an arrangement for a date.<sup>839</sup> Some who engaged in this type of dating began doing so either fully or partially for compensation, and these “compensated dates” could lead to sexual activity.<sup>840</sup> In some cases, these dates could also be used as a cover to engage in more straightforward sexual transactions—transactions abetted by the parallel rise to ubiquity and respectability of love hotels.<sup>841</sup> But note that while generally the customers of these clubs were male and the callers were female, this was not always the case; female customers were possible, and the clubs also became an important resource for men looking to sell sex to or purchase sex from other men. As Lunsing notes, despite the focus of the moral panic on the sale of sex through

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<sup>838</sup> Cabinet Office, “Kodomo, Wakamono Hakusho: Heisei 28 Nen-Ban” (Tokyo: Cabinet Office, Government of Japan, May 2016), <http://www8.cao.go.jp/youth/whitepaper/h28honpen/index.html>. This has been the case for most of Japan since the 1984, but Tokyo was a holdout until 2005, and Nagano was until 2016.

<sup>839</sup> Morrison, “Teen Prostitution in Japan,” 478.

<sup>840</sup> Tsubasa Wakabayashi, “Enjokosai in Japan: Rethinking the Dual Image of Prostitutes in Japanese and American Law,” *UCLA Women’s Law Journal* 13 (2003): 155–58.

<sup>841</sup> West, *Law in Everyday Japan*, 145–89; Chaplin, *Japanese Love Hotels*, 149–79.

the clubs by female high school students, male high school students also did sell sex through the telephone clubs.<sup>842</sup>

Importantly, even if it can sometimes lead to or be a front for sex work, *enjo kōsai* was a form of emotional, rather than sexual, labour. “Emotional labour” is a term coined by Hochschild,<sup>843</sup> which James defines as “the labour involved in dealing with other peoples’ feelings, a core component of which is the regulation of emotions.”<sup>844</sup> In the case of *enjo kōsai*, this labour can take the form of adolescent women acting out the role of a girlfriend on a date without necessarily providing sexual labour as well. This is not to say that it could not include sexual labour, only that *enjo kōsai* should not be understood (as it is often depicted in the media) as simply “schoolgirl prostitution.”

By the latter half of the nineties, however, there was a burst of reporting on adolescent girls engaged in *enjo kōsai*, typically with a much older man. Informal surveys undertaken by newspapers professed to reveal that an incredibly high proportion of girls in high school were engaging in *enjo kōsai*. Adding to the scandal was the fact that they were not forced into prostitution by poverty, as the newspapers and their readers believed sex workers in the past had been, but instead were supposedly motivated by a desire to purchase high-end brand name goods.<sup>845</sup> Coming amidst a broader moral panic in Japan about a perceived rise in juvenile delinquency, these stories led conservative moral entrepreneurs to seek an increase in the governance of young people generally.<sup>846</sup> By suggesting that adolescent girls were having sex with the wrong people (older men) for the wrong reasons (financial

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<sup>842</sup> Wim Lunsing, “Japanese Sex Workers: Between Choice and Coercion,” in *Sexual Cultures in East Asia: The Social Construction of Sexuality and Sexual Risk in a Time of AIDS*, ed. Evelyne Micollier (New York: Routledge, 2003), 54–75.

<sup>843</sup> Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling* (Berkeley, CA: University of California Press, 1983), 7.

<sup>844</sup> Nicky James, “Emotional Labour: Skill and Work in the Social Regulation of Feelings,” *The Sociological Review* 37, no. 1 (February 1, 1989): 15, <https://doi.org/10.1111/j.1467-954X.1989.tb00019.x>.

<sup>845</sup> Chizuko Ueno, “Self-Determination on Sexuality? Commercialization of Sex among Teenage Girls in Japan,” *Inter-Asia Cultural Studies* 4, no. 2 (2003): 317–24, <https://doi.org/10.1080/1464937032000113060>.

<sup>846</sup> Annette Erbe, “Youth in Crisis: Public Perceptions and Discourse on Deviance and Juvenile Problem Behavior in Japan,” in *Juvenile Delinquency in Japan: Reconsidering the “Crisis,”* ed. Gesine Foljanty-Jost (Leiden: Brill, 2003), 51–74; Leheny, *Think Global, Fear Local*, 27–48.

compensation), these moral entrepreneurs were thus able to present youth sexuality as a problem in need of (increased) governance. Following this discourse, moral entrepreneurs began to pressure the government to do something to address the perceived crisis. These moral entrepreneurs included both Japan's powerful Parent-Teacher Association, whose members had been patrolling red light districts and issuing their own reports, as well as international NGOs like ECPAT (discussed below).<sup>847</sup>

Responses began at the prefectural level, with Gifu prefecture passing a law to add regulations directed at “telephone clubs” and similar establishments to the existing Gifu Juvenile Protection and Development Bylaw in 1995.<sup>848</sup> Almost all the other prefectures—including Tokyo—followed suit by 1997, by putting in place or increasing penalties for engaging in or soliciting for compensated sex with juveniles.<sup>849</sup> The national government also amended the Amusement Businesses Law once again, this time to include establishments that operated off-site using phones—though this move was also aimed at the growing *deriheru* business.<sup>850</sup> However, these measures were largely undermined by rapid changes in technology and the amateur nature of *enjo kōsai*.<sup>851</sup> The Amusement Businesses Act already forbade minors from entering love hotels,<sup>852</sup> but this only applied to what West calls “statutory love hotels,” which by then made up only a fraction of the total number of love hotels.<sup>853</sup> These failures helped contribute to the push for the 1999 Act on the Punishment of Activities Relating to Child Prostitution (*kaishun*) and Child Pornography, and the Protection, Etc., of Children (Child Prostitution and Pornography Act). This law specifically criminalised compensated sexual activity with a “child” (*jidō*)—defined here again as anyone below 18—as well as the facilitation and solicitation of compensated sexual

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<sup>847</sup> Sharon Kinsella, *Schoolgirls, Money and Rebellion in Japan* (London: Routledge, 2014), 34; Leheny, *Think Global, Fear Local*, 88–113.

<sup>848</sup> Morrison, “Teen Prostitution in Japan,” 488–89.

<sup>849</sup> Kinsella, *Schoolgirls, Money and Rebellion in Japan*, 34–35.

<sup>850</sup> Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru no ichibu o kaiseisuru hōritsu [Act to Amend Part of the Control and Improvement of Amusement Businesses Act] Act No. 55 of May 8, 1998; National Police Agency, “Keisatsu Hakusho: Heisei 10 Nen-Ban [Police White Paper: 1998 Version]” (Tokyo, 1998), <https://www.npa.go.jp/hakusyo/h10/h10index.html>.

<sup>851</sup> Morrison, “Teen Prostitution in Japan”; Wakabayashi, “Enjokosai in Japan.”

<sup>852</sup> Fūeihō, as last amended by Act No. 89 of November 12, 1993.

<sup>853</sup> West, *Law in Everyday Japan*, 172–79.



activity with a child; it also included an amendment to the Amusement Businesses Act requiring age verification for anybody participating in telephone clubs.<sup>854</sup>

Notably, this new law does not refer to prostitution as “*baishun*” (“selling sex”), but as “*kaishun*,” written using the characters for “buying sex.” The term had been coined by anti-sex tourism activists two decades earlier as a means of making the active (and thus legally responsible) party the purchaser of sex, rather than the seller.<sup>855</sup> This language reflects a significant change in the governmentality that shaped the Child Prostitution and Pornography Act compared to that which shaped the Prostitution Prevention Act: now the “problem” with sex work was not that women were selling sex (*baishun*) but that men were buying it (*kaishun*). Correspondingly, the measures chosen to deal with this type of sex work do not target the sellers—as the Prostitution Prevention Act does—but rather they target the buyers. However, this shift was far from absolute, which we can see with the 2004 passage of the “Act on the Regulation, Etc., of the Use of Internet Dating Sites to Entice Children.” While this act penalises older persons who use dating sites in order to have sex with adolescents, its provisions can also be used to penalise juveniles who use those sites.<sup>856</sup> Thus for juveniles in Japan, there remains the possibility of being penalised for selling sex. Despite the explosion of media attention, though, the engagement of adolescents in sex work was not a new problem in Japan, and it was one the police had been concerned about since at least the 1970s.<sup>857</sup> The burst of media attention in the 1990s, then, suggests a moral panic,<sup>858</sup> complete with “exaggeration and distortion” (regarding the suddenness of rise of sex work by female adolescents and the importance of new technology in enabling it), “prediction” (about the health risks to those selling sex and the moral decline of the nation)

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<sup>854</sup> Jidō kaishun, jidō poruno ni kakawaru kōi tō no shobatsu oyobi jidō no hogo tō ni kansuru hōritsu, Act No. 52 of May 26, 1999 as last amended by Act No. 106 of 2004. Translation JLTC’s: <http://www.japaneselawtranslation.go.jp/law/detail/?id=100&vm=04&re=02&new=1>  
See also Kadokura, “Chapter 2. Japan’s Underground Economy,” 45.

<sup>855</sup> Yayori Matsui in Buckley, *Broken Silence*, 153.

<sup>856</sup> Intānetto isei shōkai jigyō o riyōshite jidō o yūinsuru kōdō no kisoku tō ni kansuru hōritsu, Act No. 83 of June 13, 2004 as last amended by Act No. 79 of June 25, 2014; Leheny, *Think Global, Fear Local*, 102–9.

<sup>857</sup> Yukiko Tanaka, *Contemporary Portraits of Japanese Women* (Westport, CT: Greenwood Press, 1995), 86–93.

<sup>858</sup> See Cohen, *Folk Devils and Moral Panics*, 25–41.

and “symbolisation” (where the image of the uniformed school girl comes to represent an imagined anomie and amorality in Japan’s youth in the 1990s).<sup>859</sup>

And despite the changes in the governance of youth sexuality that came from the resulting public pressure for regulators to address the issue, it is unclear, how much of a role these changes played in ending the practices of *enjo kōsai* itself. While the increased surveillance almost certainly had a deterrent effect, the media outcry may have actually helped to perpetuate the practice by alerting potential participants about both the existence of *enjo kōsai* and ways that one might go about engaging in it. Recognising this risk, the police asked media to refrain from using terms that might normalise illegal activity, and superficially *enjo kōsai* appears to have vanished from Japan.<sup>860</sup> Subsequently, the term and its attendant moral panic moved to Taiwan, where it eventually came to refer not only adolescent compensated dating, but also freelance sex work and one night stands.<sup>861</sup> Nevertheless, *enjo kōsai* in Japan remains enough of a concern among some regulators to have made it into the U.S. State Department’s 2009 Trafficking in Persons Report.<sup>862</sup>

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<sup>859</sup> Sharon Kinsella, “Narratives and Statistics: How Compensated Dating (Enjo Kōsai) Was Sold,” in *A Sociology of Japanese Youth: From Returnees to NEETs*, ed. Roger Goodman, Yuki Imoto, and Tuukka Toivonen (London: Routledge, 2012), 54–80; Fukutomi Mamoru, *An Analytical Study on the Causes of and Attitudes Toward “enjo Kosai” Among Female High School Students in Japan* (Asian Women’s Fund, 1997), 5–6; Leheny, *Think Global, Fear Local*, 71–82.

<sup>860</sup> Kinsella, “Narratives and Statistics: How Compensated Dating (Enjo Kōsai) Was Sold.”

<sup>861</sup> Josephine Ho, “From Spice Girls to Enjo Kosai : Formations of Teenage Girls’ Sexualities in Taiwan,” *Inter-Asia Cultural Studies* 4, no. 2 (2003): 325–36, <https://doi.org/10.1080/1464937032000113033>; Oi-Wan Lam, “Why Did Enjo Kosai Anchor in Taiwan but Not in Hong Kong? Or the Convergence of ‘Enjo’ and ‘Kosai’ in Teenage Sex Work,” *Inter-Asia Cultural Studies* 4, no. 2 (January 2003): 353–63, <https://doi.org/10.1080/1464937032000113051>.

<sup>862</sup> US Department of State, “2009 Trafficking in Persons Report,” June 2009, 170.

## SEX TOURISM AND CHILD EXPLOITATION OVERSEAS

As discussed in Chapter 3, the modern anti- trafficking movement was born in Southeast Asia, largely in response to reports of the exploitation of underage sex workers. Many of the subsequent reports put the blame for this exploitation on wealthy foreigners, particularly “sex tourists,” and called for countries to govern their citizens overseas through the use of criminal laws with extra-territorial jurisdiction.<sup>863</sup> This section thus traces the rise of sex tourism in Japan and the later efforts to govern both sex tourism and child exploitation overseas more broadly, as well as the impact these efforts later had on human trafficking governance more generally.

In the early post-war period, travel restrictions—put in place by SCAP and kept in place by the Japanese government to prevent the outflow of foreign currency—effectively made international tourism impossible. Even without these restrictions, widespread poverty would have put the cost of international travel out of reach for most Japanese. However, these restrictions were removed in 1964 following the 1963 Basic Law on Tourism, a liberalisation of travel designed to accompany Japan’s re-entry onto the global stage with its hosting of the 1964 Olympics. This liberalisation of travel, combined with general improvements to Japan’s economy and the relatively high value of the yen, led to a rapid increase in out-bound Japanese tourism.<sup>864</sup> The normalisation of relations with South Korea—the country closest to Japan both geographically and culturally—meant that much of these tourists were going to South Korea; and, for reasons that will be discussed below, much of this tourism had for its aim the purchase of sex.<sup>865</sup>

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<sup>863</sup> See for example Vickie F. Li, “Child Sex Tourism to Thailand: The Role of the United States as a Consumer Country,” *Pacific Rim Law & Policy Journal* 4 (1995): 505–42; Eric Thomas Berkman, “Responses to the International Child Sex Tourism Trade,” *Boston College International and Comparative Law Review* 19 (1996): 397–422; Eva J. Klain, “Prostitution of Children and Child-Sex Tourism: An Analysis of Domestic and International Responses” (National Center for Missing & Exploited Children, 1999); Fiona David, “Child Sex Tourism,” *Trends and Issues in Crime and Criminal Justice* (Canberra, ACT: Australian Institute of Criminology, 2000).

<sup>864</sup> Malcolm Cooper, “The Rules of the Game: Policy, Plans and Institutions for Tourism,” in *Japanese Tourism: Spaces, Places, and Structures*, by Carolin Funck and Malcolm Cooper (New York: Berghahn Books, 2013), 41–43.

<sup>865</sup> Seiko Hanochi, “Japan and the Global Sex Industry,” in *Gender, Globalization, and Democratization*, ed. Rita Mae Kelly et al. (Lanham, MD: Rowman & Littlefield, 2001), 142; Okpyo

In Japan, travel and tourism had long been linked to the purchase of sex, even going back to the days of the *asobime*. In this, Japan is hardly alone. McKercher and Bauer argue that sex is often a central motivation for travel and tourism globally,<sup>866</sup> while Eades notes that this is hardly a recent phenomenon, and that it is only recently that “sex tourism” has become a term of moral judgement.<sup>867</sup> Moreover, Trương argues that globally the expansion of aviation opened new transportation possibilities, and that many of these were explicitly sexual—particularly for destinations in the Mediterranean and Southeast Asia.<sup>868</sup> However, in Japan these practices came to form part of broader set of discourses about the sexually deviant character of Japanese men, the sexual exploitation of Asian women, and the legacy of Japan’s colonial enterprise in East and Southeast Asia.

Demand for commercial sex from Japanese tourists undeniably played a strong role in encouraging the development of sex tourism. Early Japanese tourists were mostly drawn from the male business elite, who were already conditioned to view the purchase of commercial sex as a socially acceptable recreational activity.<sup>869</sup> And even as travel restrictions were lifted, initially most foreign travel was still either done as part of business trips, or else through annual retreats sponsored by companies to reward employees for their service and loyalty. In the case of the former, nightlife entertainment (including the purchase of sex) was frequently an important part of socialising with business partners. In

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Moon, “Japanese Tourists in Korea: Colonial and Post-Colonial Encounters,” in *Japanese Tourism and Travel Culture*, ed. Sylvie Guichard-Anguis and Okpyo Moon (Abingdon, Oxon: Routledge, 2009), 152.

<sup>866</sup> Bob McKercher and Thomas G. Bauer, “Conceptual Framework of the Nexus Between Tourism, Romance, and Sex,” in *Sex and Tourism: Journeys of Romance, Love, and Lust*, ed. Thomas G. Bauer and Bob McKercher (New York, NY: Haworth Hospitality Press, 2003).

<sup>867</sup> J.S. Eades, “Moving Bodies: The Intersections of Sex, Work, and Tourism,” in *Economic Development, Integration, and Morality in Asia and the Americas*, ed. Donald C. Wood (Emerald Insight, 2009), 225–53, [http://dx.doi.org/10.1108/S0190-1281\(2009\)0000029011](http://dx.doi.org/10.1108/S0190-1281(2009)0000029011).

<sup>868</sup> Trương, *Sex, Money and Morality*, 95–130.

<sup>869</sup> Vera Mackie, “Division of Labour: Multinational Sex in Asia,” in *The Japanese Trajectory: Modernization and Beyond*, ed. Gavan McCormack and Yoshio Sugimoto (Cambridge: Cambridge University Press, 1988), 218–32; Carolin Funck and Malcolm Cooper, “Introduction to Japanese Tourism,” in *Japanese Tourism: Spaces, Places, and Structures*, by Carolin Funck and Malcolm Cooper (New York: Berghahn Books, 2013), 1–10.

the case of the latter, the availability of cheap sex in exotic locations was precisely what made the trips a “reward.”<sup>870</sup>

However, supply factors also clearly played a significant role in shaping the development of Japan’s sex tourism. Taiwan, South Korea, Thailand and the Philippines—the four countries Japanese men tended to visit the most—all have sex industries that had been expanding even before the arrival of Japanese tourists. The development and regulation of the sex industries of these countries were largely a result of the presence of a massive number of American soldiers, who were either stationed there to prevent an invasion from North Korea or China, passing through on their way to Vietnam or else on leave for “rest and recreation.”<sup>871</sup> All four were also in the process of industrialisation, and relied—as Japan had at the beginning of the 20<sup>th</sup> century—on foreign currency earnings from the sex sector to support capital investments. Thus as the United States withdrew from Vietnam and normalised relations with China, and consequently reduced its military footprint in Thailand, Taiwan, South Korea and the Philippines, these four countries all turned to tourists to replace American soldiers as consumers in their sex industries.<sup>872</sup>

In the case of South Korea, the increase in sex tourism appears to be primarily the result of deliberate decisions by the South Korean government, which (much as Taiwan had decades earlier) saw Japanese tourism as a source of development and a means to acquire foreign

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<sup>870</sup> Moon, “Japanese Tourists in Korea.”

<sup>871</sup> Andris Zimelis, “Human Rights, the Sex Industry and Foreign Troops: Feminist Analysis of Nationalism in Japan, South Korea and the Philippines,” *Cooperation and Conflict* 44, no. 1 (March 1, 2009): 51–71, <https://doi.org/10.1177/0010836708099721>; Hans Tao-Ming Huang, “State Power, Prostitution and Sexual Order in Taiwan: Towards a Genealogical Critique of ‘Virtuous Custom,’” in *The Inter-Asia Cultural Studies Reader*, ed. Kuan-Hsing Chen and Beng Huat Chua (London: Routledge, 2007); C. Michael Hall, “Gender and Economic Interests in Tourism Prostitution: The Nature, Development and Implications of Sex Tourism in South-East Asia,” in *The Sociology of Tourism: Theoretical and Empirical Investigations*, ed. Yiorgos Apostolopoulos, Stella Leivadi, and Andrew Yiannakis (Abingdon, Oxon: Routledge, 1996), 271.

<sup>872</sup> Seiko Hanochi, “A Historical Perspective on the Japanese Sex Trade,” *Refuge: Canada’s Journal on Refugees* 17, no. 5 (November 1, 1998), <http://refuge.journals.yorku.ca/index.php/refuge/article/view/21988>; Huang, “State Power, Prostitution and Sexual Order in Taiwan: Towards a Genealogical Critique of ‘Virtuous Custom,’” 371; Lucie Cheng and Ping-Chun Hsiung, “Women, Export-Oriented Growth, and the State: The Case of Taiwan,” in *The Role of the State in Taiwan’s Development*, ed. Joel D. Aberbach, David Dollar, and Kenneth L. Sokoloff (Armonk, NY: M.E. Sharpe, 1994), 321–53.

currency that could then be used to import industrial capital. To this end, in the 1970s the South Korean government sponsored investment including hotels, resorts and “*gisaeng*”<sup>873</sup> restaurants.”<sup>874</sup> In theory, *gisaeng* were dancers and musicians who might take patrons who supported their work as lovers. In practice, however, this had only ever described the upper ranks of the *gisaeng*, while the lower ranks had primarily supported themselves through sex work.<sup>875</sup> But during the colonial period earlier in the century, even this distinction collapsed, as the Japanese colonial government both ended state sponsorship of the elite *gisaeng* and applied a system of registration and monitoring similar to that used for geisha back in Japan. *Gisaeng* restaurants subsequently emerged as sites for the consumption of musical and sexual entertainment for both the colonial authorities and the newly emergent Japanese and Korean business elite.<sup>876</sup> And it was this type of *gisaeng* that the Korean government hoped to use to draw in the post-War Japanese business elite, using a system of regulation and certification for “sex tour *gisaeng*” that was based on the system developed to regulate prostitution around the American military bases.<sup>877</sup>

However, much as the image of Japanese women selling sex to foreign men had been used by prohibitionists in Japan during their campaigns against the *karayuki-san* and the *panpan*, so too did prohibitionist groups in South Korea use the image of Korean women selling sex to foreign men to push for prohibitionism throughout the 20<sup>th</sup> century. Originally, this push

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<sup>873</sup> Following the South Korean Ministry of Culture’s Revised Romanisation scheme. Note that traditionally this has been romanised as “kisaeng” using the McCune–Reischauer scheme.

<sup>874</sup> Hisae Muroi and Naoko Sasaki, “Tourism and Prostitution in Japan,” in *Gender, Work, and Tourism*, ed. M. Thea Sinclair (London: Routledge, 1997), 179–217.

<sup>875</sup> John Lie, “The Transformation of Sexual Work in 20th-Century Korea,” *Gender & Society* 9, no. 3 (June 1, 1995): 310–27, <https://doi.org/10.1177/089124395009003004>; Insuk Lee, “Convention and Innovation: The Lives and Cultural Legacy of the Kisaeng in Colonial Korea (1910-1945),” *Seoul Journal of Korean Studies* 23, no. 1 (2010): 71–93.

<sup>876</sup> Joshua D. Pilzer, “The Twentieth-Century ‘Disappearance’ of the Gisaeng during the Rise of Korea’s Modern Sex-and-Entertainment Industry,” in *The Courtesan’s Arts: Cross-Cultural Perspectives*, ed. Martha Feldman and Bonnie Gordon (Oxford: Oxford University Press, 2006), 295–311; Chunghee Sarah Soh, *The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan* (Chicago, IL: University of Chicago Press, 2008), 197–226.

<sup>877</sup> Na Young Lee, “The Construction of U.S. Camp-town Prostitution in South Korea: Trans/Formation and Resistance” (University of Maryland, 2006), <http://drum.lib.umd.edu/handle/1903/4162>; Katharine HS Moon, *Sex among Allies: Military Prostitution in US-Korea Relations* (New York, NY: Columbia University Press, 1997).

was centred on the *gijichon* (US military camptowns) sex workers. However, in the 1970s, the Korean Church Women United—one of the foremost women’s groups in Korea during the 1961–1986 period of military dictatorship—redirected the efforts of protestors to focus on *gisaeng* tourism, as part of what was then a broader anti-Japanese movement.<sup>878</sup>

Christian churches were also major vectors for the transmission of a transnational prohibitionist governmentality, with the National Council of Churches in Korea and National Council of Churches in Japan meeting in Seoul in 1973 to discuss a range of issues, including sex tourism.<sup>879</sup> That same year, the Korean Church Women United and the National Council of Churches in Japan began coordinating protests with other groups at airports in both Korea and Japan, targeting both the arrivals and returns of Japanese men.<sup>880</sup> These protests may have led some sex tourists to change their destination to Southeast Asia instead of Korea during the mid-1970s, though in 1979, South Korea remained both the second-most popular tourist destination for Japanese in general (behind Taiwan, but still with more tourists than the Philippines and Thailand put together) and the destination most dominated by men (93.7% of Japanese tourists to Korea were men in 1979).<sup>881</sup> Meanwhile, the movement against sex tourism had also spread through Southeast Asia. Mary Soledad Perpiñan, a Sister of the Good Shepherd,<sup>882</sup> arranged for protests during Japanese Prime

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<sup>878</sup> Seung-Kyung Kim, *The Korean Women’s Movement and the State: Bargaining for Change* (New York: Routledge, 2014), 37–65; Seung-Kyung Kim and Kyounghee Kim, “Mapping a Hundred Years of Activism: Women’s Movements in Korea,” in *Women’s Movements in Asia: Feminisms and Transnational Activism*, ed. Mina Roces and Louise P. Edwards (Abingdon, Oxon: Routledge, 2010), 196–98; Setsu Shigematsu, *Scream from the Shadows: The Women’s Liberation Movement in Japan* (Minneapolis, MN: University of Minnesota Press, 2012), 94.

<sup>879</sup> Barbara Molony, “Crossing Boundaries: Transnational Feminisms in Twentieth-Century Japan,” in *Women’s Movements in Asia: Feminisms and Transnational Activism*, ed. Mina Roces and Louise P. Edwards (Abingdon, Oxon: Routledge, 2010), 90–109; Misook Lee, “South Korea’s Democratization Movement of the 1970s and 80s and Communicative Interaction in Transnational Ecumenical Networks,” *International Journal of Korean History* 19, no. 2 (August 31, 2014): 253, <https://doi.org/10.22372/ijkh.2014.19.2.241>.

<sup>880</sup> Wendy Lee, “Prostitution and Tourism in South-East Asia,” in *Working Women: International Perspectives on Labour and Gender Ideology*, ed. Nanneke Redclift and M. Thea Sinclair (London: Routledge, 1991), 98.

<sup>881</sup> Muroi and Sasaki, “Tourism and Prostitution in Japan,” 183–90.

<sup>882</sup> A Catholic religious order whose missionary activities include providing assistance and skill training to sex workers and advocating for prohibitionist legislation. See Síle Nic Gabhan, “Human Trafficking: A Twenty-First Century Slavery,” *The Furrow* 57, no. 10 (2006): 528–37.

Minister Zenkō Suzuki's 1981 visits to the Philippines, and these subsequently spread to Thailand.<sup>883</sup>

However, although Japanese Christian prohibitionists played an important role in building links with Korean Christian civil society, as the movement against sex tourism in Japan spread it came to be increasingly dominated by secular women's liberation organisations. Initially, this included groups like the Asian Women's Conference that were more broadly involved in "leftist" causes such as protesting the Vietnam War and the continuing American occupation of Okinawa, as well as groups that offered social services in addition to engaging in activism, such as the Shinjuku Women's Liberation Centre.<sup>884</sup> These groups helped coordinate protests in Japan to coincide with the protests in Korea in 1973, drawing negative publicity that led to the cancellation of many of the tours, and leading the Japanese Association of Travel Agencies to institute a policy forbidding the advertising and promotion of *gisaeng* tours and other sex tours—though not the tours themselves.<sup>885</sup> As the anti-sex tour movement developed, however, new moral entrepreneurs emerged. Foremost among these was the Asian Women's Association, founded in 1977, which conducted and published research on the sex tours, as well as forming transnational coalitions to organise multinational protests against Japanese sex tourism.<sup>886</sup>

The governmentality of these groups—the way they saw "sex work" as a problem in need of governance, the way they saw the world that produced this problem, and the solutions they believed were appropriate to solving it—was shaped not by Christian prohibitionism but by something closer to what Doezema, borrowing from Brown, referred to as a "wounded

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<sup>883</sup> Mary Soledad Perpiñan, "Confronting Prostitution Tourism: The Third World Movement against the Exploitation of Women," *Canadian Woman Studies* 7, no. 1 (1986); Barry, "The Network Defines Its Issues: Theory, Evidence and Analysis of Female Sexual Slavery," 44.

<sup>884</sup> Vera Mackie, *Feminism in Modern Japan: Citizenship, Embodiment and Sexuality* (Cambridge: Cambridge University Press, 2003), 156, 211.

<sup>885</sup> Aiko Iijima, "From Personal Experience to Political Activism in the 1970s: My View of Feminism," in *Gender, Nation and State in Modern Japan*, ed. Andrea Germer, Vera Mackie, and Ulrike Wöhr, trans. Andrea Germer (Abingdon, Oxon: Routledge, 2014), 290–306; Shigematsu, *Scream from the Shadows*, 94.

<sup>886</sup> Vera Mackie, "Sexual Violence, Silence, and Human Rights Discourse: The Emergence of the Military Prostitution Issue," in *Human Rights and Gender Politics: Asia-Pacific Perspectives*, ed. Anne-Marie Hilsdon et al. (London: Routledge, 2000), 42.



attachment”<sup>887</sup> to the figure of the sex worker. Doezema, drawing on the work of Burton, Midgley, and Liddle & Rai, argues that:

The international, imperial nature of the feminist campaign against the Contagious Disease Acts in India homogenized the condition of British women as advanced, strong and civilized at the same time as it homogenized the Indian women as backward, helpless and inferior.<sup>888</sup>

Similarly, the imagined helplessness and poverty of the Southeast Asian sex worker allows Japanese middle class feminists to present themselves as part of a modern, politically active middle class. The foreign sex worker also, though, becomes a means for generating outrage at Japanese men; outrage which could be used to mobilise political movements, which could in turn be used to challenge patriarchal modes of governance at home. Brown, drawing on Nietzsche, calls this process “*ressentiment*,” arguing that it has been one of the main techniques for the modern formation of political identity in this late modern period.<sup>889</sup>

*Ressentiment* informed and was in turn informed by historical research that emerged in the 1970s, such as Senda Kakō’s *Jūgun-ianfu* (“Military Comfort Women”). This book, the first major work on the *ianfu*, became another source of outrage among Japanese women’s groups, this time over the treatment of Asian women by Japanese men during the war.<sup>890</sup> The existence of the *ianfu* contributed to a discourse about Japanese men that described

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<sup>887</sup> Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton University Press, 1995), 52–76.

<sup>888</sup> Doezema, “Ouch!: Western Feminists’ ‘Wounded Attachment’ to the ‘Third World Prostitute,’” 24–25. See also Antoinette M. Burton, *Burdens of History: British Feminists, Indian Women, and Imperial Culture, 1865-1915* (Chapel Hill, NC: University of North Carolina Press, 1994); Clare Midgley, “Anti-Slavery and the Roots of ‘Imperial Feminism,’” in *Gender and Imperialism*, ed. Clare Midgley (Manchester: Manchester University Press, 1998), 161–79; Joanna Liddle and Shirin Rai, “Feminism, Imperialism and Orientalism: The Challenge of the ‘Indian Woman,’” *Women’s History Review* 7, no. 4 (December 1998): 495–520, <https://doi.org/10.1080/09612029800200185>.

<sup>889</sup> Friedrich Wilhelm Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge: Cambridge University Press, 2006), 20–94, <http://dx.doi.org/10.1017/CBO9780511812026>; Brown, *States of Injury*, 52–76. Note that while Nietzsche saw *ressentiment* as something like envy, a source of distortion and something to be overcome, Brown identified it more closely with the politics of grievance.

<sup>890</sup> Senda Kakō, *Jūgun-ianfu* (Futabasha, 1973); Yoshiko Nozaki, “The ‘Comfort Women’ Controversy: History and Testimony,” *Japan Focus* 336 (2005), <http://apjjf.org/-Yoshiko-Nozaki/2063/article.pdf>; Soh, *The Comfort Women*, 149–51.

them as latent sex offenders who will engage in acts of sexual deviancy if presented with the opportunity.<sup>891</sup> This discourse thus positioned Japanese men, rather than sex workers, as the “problem” in need of governance.<sup>892</sup> This shift in governmentality required a new language to discuss sex work, and so Matsui Yayori (one of the most prominent Japanese feminists of the era) coined the term “*kaishun*” (“buying sex”) to replace “*baishun*” (“selling sex”).<sup>893</sup> In this respect, the strategies of the Japanese anti-*gisaeng* tour activists neatly paralleled those of Barry and other prohibitionist feminists in the U.S. In fact, Matsui’s essay on the anti-*gisaeng* tour activism would later be republished in Barry’s 1984 anthology, *International Feminism*.<sup>894</sup>

By the end of the decade, the protests arranged by these groups and their Christian allies were heavily covered by Japanese news media, generating negative press for both the individual tour operators and the Japanese government. The Japanese government took action against some of the tour operators, though it was ultimately changing economic conditions that ended widespread Japanese sex tourism in South Korea.<sup>895</sup> Muroi and Sasaki argue that this negative press also led to a decline in the number of sex tours to Thailand.<sup>896</sup> Aoyama, on the other hand, argues the strengthening value of the yen after the Plaza Accord of 1985<sup>897</sup> actually led to an increase in sex tourism in the late-1980s—in particular to Thailand, where Japanese companies were investing heavily, and thus where there was a considerable population of Japanese migrant workers as well.<sup>898</sup>

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<sup>891</sup> Becker, *Outsiders*.

<sup>892</sup> Mihalopoulos, *Sex in Japan’s Globalization, 1870-1930*, 15–17.

<sup>893</sup> Matsui in Buckley, *Broken Silence*, 153.

<sup>894</sup> Matsui, “Why I Oppose Kisaeng Tours,” 1984.

<sup>895</sup> Pilzer, “The Twentieth-Century ‘Disappearance’ of the Gisaeng during the Rise of Korea’s Modern Sex-and-Entertainment Industry,” 302–4.

<sup>896</sup> Muroi and Sasaki, “Tourism and Prostitution in Japan,” 187–90.

<sup>897</sup> An agreement between the US, Japan, West Germany, the UK and France to work to depreciate the dollar relative to the yen and deutsche mark. One result was that the yen very quickly became a much stronger currency, although this also led to the growth (and collapse) of Japan’s bubble economy in the late 1980’s. See Jeffrey Frankel, “The Plaza Accord, 30 Years Later,” Working Paper (National Bureau of Economic Research, December 2015), <https://doi.org/10.3386/w21813>.

<sup>898</sup> Kaoru Aoyama, *Thai Migrant Sex Workers: From Modernisation to Globalisation* (Basingstoke, Hampshire: Palgrave Macmillan, 2009).

Japan, though, was in no way unique in this regard. Western European men were also major consumers of commercial sex in Southeast Asia, and sex package tours were explicitly marketed in the Netherlands, Norway, West Germany, and the United Kingdom. Japan's share of the tourism market in Thailand was actually decreasing through the 1970s to the mid-1980s, while visitors—primarily male—from Singapore, Malaysia and the Middle East came to form a substantial portion of the total.<sup>899</sup> Thus the depiction of Japan as an outsized source of demand for sex in Southeast Asia may be less of a result of Japanese men being unusually willing to travel to purchase sex than a result of concerted efforts of Japanese civil society groups to protest and otherwise draw attention to sex tourism by Japanese men. Evidence of this dynamic can be found in the level of attention given to the *gisaeng* tours, which were the primary focus of anti-sex work activism despite the fact that in any given year during the 1960s, 70s and 80s, more Japanese men were travelling to Taiwan than to South Korea.<sup>900</sup> This suggests that *gisaeng* tourism became a particular focus for transnational feminist groups not because it was the most egregious example of sex tourism, but because the social infrastructure—in particular the existence of Christian moral entrepreneurs and anti-Japanese sentiment in South Korea —made it the easiest to protest. These transnational networks would become increasingly important during the 1990s, as reports emerged linking sex tourism to what was then being labelled “human trafficking.” Thailand, which had become the primary destination for Japanese (and other) sex tourists became ground zero for the new anti-trafficking movements. The foremost NGO on that issue was ECPAT (End Child Prostitution in Asian Tourism, changed in 1996 to End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), a transnational network with country-based chapters that was created following a conference in Chiang Mai in 1990. ECPAT's primary founders were three religious groups: the Christian Conference of Asia, the Asia Catholic Bishops' Conference, and the Ecumenical Coalition on

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<sup>899</sup> Trương, *Sex, Money and Morality*, 173–77; Mary Fish, “Deterring Sex Sales to International Tourists: A Case Study of Thailand, South Korea, and the Philippines,” *International Journal of Comparative and Applied Criminal Justice* 8, no. 1–2 (January 1984): 175–86, <https://doi.org/10.1080/01924036.1984.9688796>.

<sup>900</sup> Muroi and Sasaki, “Tourism and Prostitution in Japan,” 185–86; Ron O’Grady, *The Child and the Tourist: The Story Behind the Escalation of Child Prostitution in Asia* (Bangkok: ECPAT, 1992), 139.

Third World Tourism. However, secular international organisations such as UNICEF were also involved in its founding, and ECPAT is itself officially a secular NGO.<sup>901</sup>

ECPAT became involved in Japan both over concerns about the exploitation of underage sex workers overseas by Japanese men, as well as the practice of Japanese pornographers of filming child<sup>902</sup> pornography in Southeast Asia.<sup>903</sup> While most of the prefectures at the time had criminalised the purchase of sex with someone below 18, there was no national law that could have extraterritorial provisions. In this again, Japan was far from alone: child sex tourism in Southeast Asia in the 1990s was a major issue in a number of Anglo-European countries, which found their laws inadequate for pursuing prosecutions for crimes committed overseas. It would only be later, as a result of these reports, that these countries—Japan included—would begin passing laws that granted extra-territorial jurisdiction over the act of purchasing sex from a minor.<sup>904</sup>

However, when it came to anti-child pornography laws, Japan was something of an outlier. Globally, easy access to commercially produced child pornography began in the 1960s, as a result of the liberalisation of obscenity laws. This, in turn, had led to the passage of laws in many countries specifically prohibiting child pornography starting in late-1970s.<sup>905</sup> The United States, for example, began legislating against child pornography in earnest starting in 1977 as a result of both the “discovery” of child sexual abuse earlier in the 1970s and the broader anti-pornography campaign of that era.<sup>906</sup> Similar measures were passed in the UK

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<sup>901</sup> Leheny, *Think Global, Fear Local*, 88; Jo de Linde, ed., *ECPAT: A Network for Children* (Bangkok: ECPAT, 2002), 12–14, [http://www.ecpat.org/wp-content/uploads/legacy/a\\_network\\_for\\_children.pdf](http://www.ecpat.org/wp-content/uploads/legacy/a_network_for_children.pdf).

<sup>902</sup> Used here in the sense of “below 18 years of age.”

<sup>903</sup> Jennifer Chan, *Another Japan Is Possible: New Social Movements and Global Citizenship Education* (Stanford, CA: Stanford University Press, 2008), 9–12.

<sup>904</sup> Julia O’Connell Davidson, “Sex Tourism and Child Prostitution,” in *Tourism and Sex: Culture, Commerce and Coercion*, ed. Stephen Clift and Simon Carter (London: Cengage Learning EMEA, 2000); Berkman, “Responses to the International Child Sex Tourism Trade”; Li, “Child Sex Tourism to Thailand.”

<sup>905</sup> Maxwell Taylor and Ethel Quayle, *Child Pornography: An Internet Crime* (New York: Brunner-Routledge, 2003), 42–45; Suzanne Ost, *Child Pornography and Sexual Grooming: Legal and Societal Responses* (Cambridge: Cambridge University Press, 2009), 28–32.

<sup>906</sup> Amy Adler, “The Perverse Law of Child Pornography,” *Columbia Law Review* 101, no. 2 (2001): 209–73, <https://doi.org/10.2307/1123799>; Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, CT: Yale University Press, 2004), 145–63.

and many other European states at around the same time.<sup>907</sup> Some of more “liberal” states, such as Holland and Denmark (where much of the production was taking place), initially refrained from passing anti-child pornography laws. However, following the cocaine overdose of a six-year-old child during a pornographic photo shoot these states began following suit.<sup>908</sup>

In Japan, on the other hand, filming child pornography had been illegal from early on, as it would constitute a violation of the Child Welfare Law. Perhaps as a result, there was not the same wave of pressure to criminalise child pornography, and as such, by the 1990s there was still no ban on owning, buying or selling child pornography. Moreover, because the Child Welfare Law had no extraterritorial provisions, it only criminalised the creation of child pornography in Japan. This legal atmosphere led to Japan becoming a hub for buying and selling child pornography made—often by Japanese companies, photographers or directors—in Southeast Asia.<sup>909</sup>

In order to push for a change of laws in Japan, ECPAT formed branches in Japan’s two largest cities. This likely makes ECPAT the first anti-trafficking NGO in the modern anti-trafficking movement to attempt to govern human trafficking in Japan; appropriately, their Tokyo branch was headed by an antipornography activist who was also a staff member of the JWCTU, the first transnational “anti-trafficking” NGO to enter Japan at all.<sup>910</sup> ECPAT benefited, too, from the ongoing *enjo kōsai* moral panic, which had galvanised the PTA, lawmakers and the police into looking for a new regulatory mechanism by which they could govern the sale of sex by minors in Japan. As a result of this lobbying and the merger of these two issues, when Japan passed a law designed to govern *enjo kōsai* in 1999, they also included provisions to govern Child Pornography. This became the Child Prostitution and Pornography Act, discussed briefly in the previous section. Furthermore, in passing this law,

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<sup>907</sup> Yaman Akdeniz, *Internet Child Pornography and the Law: National and International Responses* (Burlington, VT: Ashgate, 2008), 9; Ost, *Child Pornography and Sexual Grooming*, 54–66.

<sup>908</sup> Taylor and Quayle, *Child Pornography*, 42–45.

<sup>909</sup> Leheny, *Think Global, Fear Local*, 88–91.

<sup>910</sup> Leheny, 91.

the government also amended the penal code such that the provisions of the Child Prostitution and Pornography Act could also be applied overseas.<sup>911</sup>

The passage of the Child Prostitution and Pornography Act thus finally made the purchase of sex from children below the age of 18 by Japanese nationals overseas and the production of child pornography by Japanese national overseas prosecutable offenses in Japan. However, while the text of this new law seemed to satisfy ECPAT's demands, much of the resources subsequently devoted to enforcing the act went to preventing underage sex work in Japan, rather than stopping the purchase of sex with minors in Southeast Asia. Furthermore, because the intent of the original law was to stop the production and importation of child pornography, and also because the opposition Democratic Party of Japan had pushed for freedom of expression protections, the original restrictions on child pornography were limited to creation- and distribution-related offenses.<sup>912</sup> Possession would not be criminalised until 2014, a hiatus that will be discussed in the next chapter.

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<sup>911</sup> Jidō kaishun, jidō poruno ni kakawaru kōi tō no kisoku oyobi shobatsu narabi ni jidō no hogo tō ni kansuru hōritsu (Jidō poruno hō) , Act No. 52 of May 26, 1999 as last amended by Act No. 79 of June 25, 2014.

<sup>912</sup> Leheny, *Think Global, Fear Local*, 51–106.

## LABOUR MIGRATION TO JAPAN

Although contemporary discussions of human trafficking are often implicitly tied to immigration, up until the 1980s, “human trafficking” discourses in Japan largely focussed on domestic cases and the behaviour of Japanese men overseas—largely because until the 1980s, Japan continued to be a net *exporter* of migrants. Partially this was because Japan had untapped labour reserves in the countryside, people who gradually left their villages for the cities as the economy expanded.<sup>913</sup> But another reason why Japan has less immigration compared to developed Anglo-European countries is that migration flows are often a legacy of colonial empires.<sup>914</sup> Japan had a much smaller empire for a much shorter time, but even so, the most significant populations in Japan come from its former colonies: of 2,142,014 foreigners in Japan, 1,887,568 come from Asia, with the plurality of these (623,081) being citizens of the two Koreas—Japan’s most significant colony.<sup>915</sup>

But starting in the mid-1980s, just before the start of Japan’s bubble economy, there was a steady increase in the number foreigners entering Japan. Many of these were entering Japan without proper documentation, putting them at greater risk of exploitation. We can see these shifts in Figure 7 (below), which shows the police figures for “illegal workers.”<sup>916</sup>

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<sup>913</sup> Mike Douglass and Glenda S. Roberts, “Japan in a Global Age of Migration,” in *Japan and Global Migration: Foreign Workers and the Advent of a Multicultural Society*, ed. Mike Douglass and Glenda S. Roberts (New York: Routledge, 2000), 2–35; Yasuo Kuwahara, “Migrant Workers in the Post-War History of Japan,” *Japan Labor Review* 2, no. 4 (2005): 25–47.

<sup>914</sup> Roger Goodman et al., “The Experience of Japan’s New Migrants and Overseas Communities in Anthropological, Geographical, Historical and Sociological Perspective,” in *Global Japan: The Experience of Japan’s New Immigrant and Overseas Communities*, ed. Roger Goodman et al. (New York: Routledge, 2003), 1–20.

<sup>915</sup> According to the Ministry of Justice, as of December 2016 there were 559,538 Korean residents in Japan, making them outnumbered by Chinese residents (843,740). However, this statistic excludes the hundreds of thousands of naturalised ethnic Koreans in Japan. The South Korean government puts the number of ethnic Koreans in Japan at 856,000 in 2015, down from a peak of 913,000 in 2011. For Japanese statistics, see: <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001177523> For Korean statistics, see: [http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx\\_cd=1682](http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1682) See also Yoshiko Nozaki, Hiromitsu Inokuchi, and Kim Tae-young, “Legal Categories, Demographic Change and Japan’s Korean Residents in the Long Twentieth Century,” *Japan Focus* 635 (2006), <http://apjjf.org/-Yoshiko-Nozaki/2220/article.html>; John Lie, *Zainichi (Koreans in Japan): Diasporic Nationalism and Postcolonial Identity* (Berkeley, CA: University of California Press, 2008), 1–12.

<sup>916</sup> I use this term only to refer to police statistics; otherwise I use the terms “undocumented workers” or “undocumented migrants.”

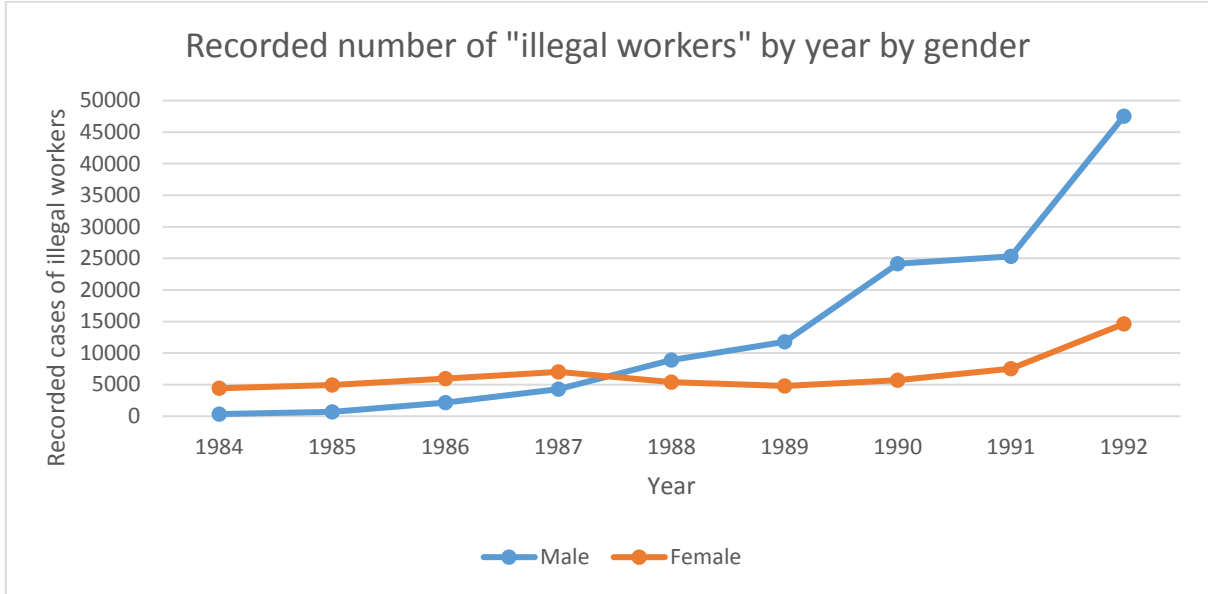


Figure 7: Recorded number of "illegal workers" by year by gender

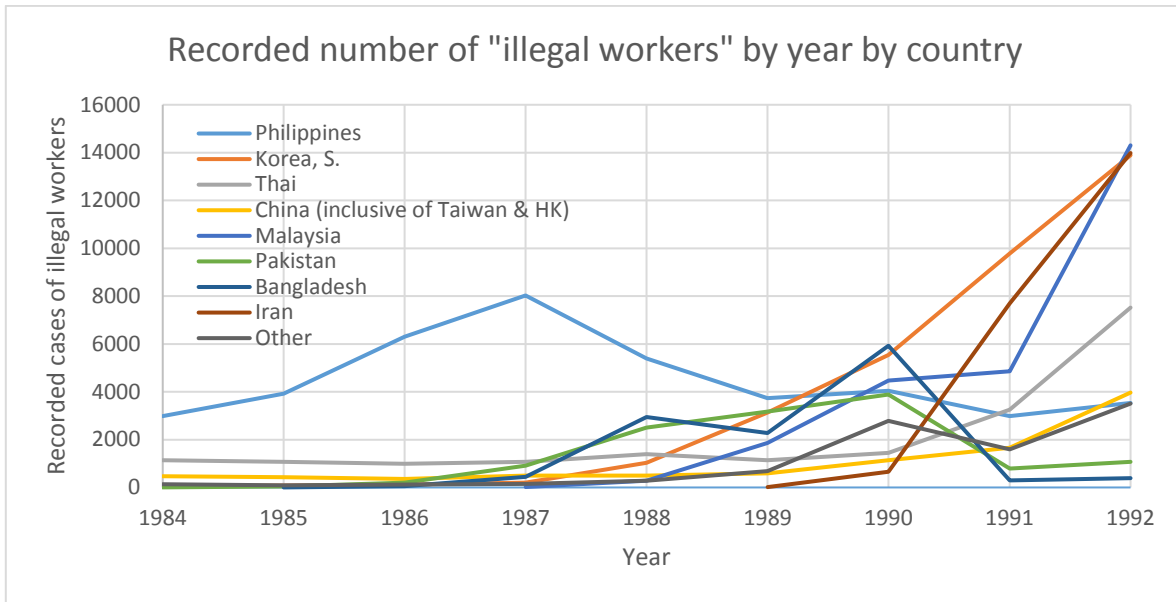


Figure 8: Recorded number of "illegal workers" by year by country<sup>917</sup>

<sup>917</sup> Data for both figures from the Ministry of Justice, found in National Police Agency, "Keisatsu Hakusho: Heisei 2 Nen-Ban [Police White Paper: 1990 Version]" (Tokyo, 1990), <https://www.npa.go.jp/hakusyo/h02/h02index.html>; National Police Agency, "Keisatsu Hakusho: Heisei 5 Nen-Ban [Police White Paper: 1993 Version]" (Tokyo, 1993), <https://www.npa.go.jp/hakusyo/h05/h05index.html>. After 1993, the NPA switched to reporting on



Initially, many of these arrests were for female migrants from the Philippines who were working either as hostesses or in the sex sector, a topic I will explore in more detail below. However, in 1988 the number of recorded cases of male “illegal labourers” (*fuhō shūrōsha*) passed the number of recorded cases of female illegal labourers (8,929 male vs. 5,385 female; compare with 4,289 male vs. 7,018 female in 1987). By 1992, there were more than three times the recorded number of male illegal labourers as female illegal labourers (47,521 male vs. 14,640 female). The country of origin for arrested workers also shifted from the Philippines, where migration flows were dominated by women, to countries where migration flows were dominated by men, such as South Korea, Iran and Bangladesh (see Figure 8, above). Furthermore, while arrested female irregular migrants were still more likely to be working as hostesses than any other occupation, collectively hostesses and sex workers made up less than half the total number of arrested irregular migrants.<sup>918</sup>

Often these migrants were aided by paid intermediaries (i.e., “human smugglers”), and reportedly, these intermediaries were sometimes affiliated with organised crime. While this led to fears, for example, that irregular migration in the aftermath of the handover of Hong Kong in 1997 was allowing Triads (Hong Kong’s organised crime groups) to infiltrate Japan, it is also possible that these stories were being deliberately played up by anti-immigration groups. Meanwhile, these workers also risked various forms of exploitation on account of their irregular status, such as unsafe work conditions, the illegal withholding of payment and benefits, or abuse on the job.<sup>919</sup> As such, it is entirely possible that by 1990s, the majority of

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the number of “illegal residents” rather than the number of “illegal workers,” and so 1992 is the last year with data on the number of illegal works available in the Police White Papers

<sup>918</sup> Junichi Goto, “The Impact of Migrant Workers on the Japanese Economy: Trickle vs. Flood,” *Japan and the World Economy* 10, no. 1 (January 1, 1998): 63–83, [https://doi.org/10.1016/S0922-1425\(96\)00251-4](https://doi.org/10.1016/S0922-1425(96)00251-4); Kirihiro Morita and Saskia Sassen, “The New Illegal Immigration in Japan, 1980–1992,” *The International Migration Review* 28, no. 1 (1994): 153–63, <https://doi.org/10.2307/2547030>.

<sup>919</sup> H. Richard Friman, “Migrant Smuggling and Threats to Social Order in Japan,” in *Global Human Smuggling: Comparative Perspectives*, ed. David Kyle and Rey Koslowski, 2nd ed. (Baltimore, MD: Johns Hopkins University Press, 2013); Tatsuko Terasawa, “Labor Law, Civil Law, Immigration Law and the Reality of Migrants and Their Children,” in *Japan and Global Migration: Foreign Workers and the Advent of a Multicultural Society*, ed. Mike Douglass and Glenda Susan Roberts (New York: Routledge, 2000), 220–45; Apichai W. Shipper, “Criminals or Victims? The Politics of Illegal Foreigners in Japan,” *The Journal of Japanese Studies* 31, no. 2 (August 10, 2005): 299–327, <https://doi.org/10.1353/jjs.2005.0060>.

human trafficking cases in Japan were (according to some definitions of “human trafficking”) cases of labour trafficking.

By 1993, however, illegal migration had already peaked. This came in response to the Japanese government experimenting with changes to the immigration system that were designed to reduce the number of irregular migrants without depressing the supply of labour.<sup>920</sup> The most significant example of this was the Ministry of Justice using the discretionary power granted to it by the 1989 revision to the Immigration Control and Refugee Recognition Act (Immigrations Act) to extend long-term residency visas to the children and grand-children of Japanese emigrants, contingent only on “good behaviour.”<sup>921</sup> As a result of this order and the booming Japanese economy, Japan experienced a significant influx of *Nikkeijin* (“those of Japanese descent”) labour migration—most notably from Brazil, but also from elsewhere in Latin America, as well from Asian countries such as the Philippines and Indonesia. However, the government assumed that the *Nikkeijin* would have little trouble adjusting to life in Japan. As such, they provided only minimal resources to support them, despite most of the *Nikkeijin* having never previously been to Japan and speaking little to no Japanese. The result was that the *Nikkeijin*, despite their legal status in the country, also experienced labour abuses, as well as social isolation, culture shock, and other quality-of-life issues. As a result, many returned home following the collapse of the bubble economy in the early 1990s and the disappearance of the jobs they had come for.<sup>922</sup>

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<sup>920</sup> Kadokura, “Chapter 2. Japan’s Underground Economy,” 34.

<sup>921</sup> Shutsunyūkoku kanri oyobi nanmin nintei hō dai nana jō dai ikkō dai ni gō no kitei ni motozuki dōhō beppō dai ni no teijūsha no kō no karan ni kakageru chii o sadameru ken [Case for determining the status raised in the text following the clause “long term residents” in annexed table 2 of the Immigration Control and Refugee Recognition Act, based on art. 7, para. 1, item 2 of the same law] Ministry of Justice Notice No. 132, May 24, 1990; Shutsunyūkoku kanri oyobi nanmin nintei hō [Immigration Control and Refugee Recognition Act] Cabinet Order No. 319 of October 4, 1951, as last amended by Act No. 79 of December 15, 1989.

<sup>922</sup> Daniela de Carvalho, *Migrants and Identity in Japan and Brazil: The Nikkeijin* (London: RoutledgeCurzon, 2003); Takeyuki Tsuda, *Strangers in the Ethnic Homeland: Japanese Brazilian Return Migration in Transnational Perspective* (New York, NY: Columbia University Press, 2003); Michael O. Sharpe, *Postcolonial Citizens and Ethnic Migration: The Netherlands and Japan in the Age of Globalization* (London: Palgrave Macmillan UK, 2014), 134–67, <https://doi.org/10.1057/9781137270559>; Shun Ohno, “Transnational Citizenship and Deterritorialized Identity: The Meanings of Nikkei Diasporas’ Shuttling between the Philippines and Japan,” *Asian Studies* 44, no. 1 (2008): 1–22; Keiko Yamanaka, “‘I Will Go Home, but When?’: Labor

The program currently remains in effect, and the level of social and linguistic support services have been expanded; the migrations flows, however, are far below the levels they reached during the bubble economy.<sup>923</sup>

Aside from the visas for *Nikkeijin*, Japan has had no large scale programs for guest workers. However, it has seen an expansion of the number of “trainees” and “technical interns” in the country. Nominally, trainees are migrants given “trainee” (*kenshū*) visas to come to Japan to learn technical and industrial skills in work placements as part of Japan’s broader investments in human and industrial capital in neighbouring countries. However, the industries that are most interested in hiring untrained foreigners on short-term visas have been those where the work is hard and the skills required (and thus the skills learned) are minimal, with the result that the program served largely to provide a pool of unskilled labour from China, South Korea and Southeast Asia with low oversight and which—since they were receiving living stipends as trainees rather than salaries as workers—could be paid below the relevant minimum wage. During the 1980s, there were heavy restrictions on who could access these visas and the actual number of trainee visa holders was relatively small—remaining below 20,000 until 1988, before topping out at 29,489 in 1989. In 1990, however, the range of companies that could make use of this program was expanded, leading to a trebling of the number of Chinese trainees in one year and continuous increases in the years that followed.<sup>924</sup>

To help deal with this evident demand for “trainee” labour, in 1991 the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Labour, the Ministry of International Trade

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Migration and Circular Diaspora Formation by Japanese Brazilians in Japan,” in *Japan and Global Migration: Foreign Workers and the Advent of a Multicultural Society*, ed. Mike Douglass and Glenda Susan Roberts (New York: Routledge, 2000), 120–49.

<sup>923</sup> Ron Bridget Vilog, “Narratives of Ethnolinguistic Bordering: Cultural Encounters of Philippine Nikkeijin Workers in Aichi, Japan,” *The Copenhagen Journal of Asian Studies* 33, no. 2 (January 5, 2016): 58–77; Hirohisa Takenoshita, “Labour Market Structure, Welfare Policy, and Integration: Brazilian Immigrants during the Economic Downturn,” in *International Migrants in Japan: Contributions in an Era of Population Decline*, ed. Yoshitaka Ishikawa (Melbourne: Trans Pacific Press, 2015), 234–55.

<sup>924</sup> Yoko Sellek, *Migrant Labour in Japan* (London: Palgrave Macmillan UK, 2001), 65–72, <https://doi.org/10.1057/9780230288256>; Apichai W. Shipper, *Fighting for Foreigners: Immigration and Its Impact on Japanese Democracy* (Ithaca, NY: Cornell University Press, 2008), 43–45.

and Industry, and the Ministry of Construction formed the Japan International Training Cooperation Organization (JITCO)—which has subsequently become an independent foundation authorised by the Cabinet Office<sup>925</sup>—to manage the trainee system. In 1993, JITCO launched the Technical Intern Training Program (TITP; *Ginō Jisshū Seido* in Japanese), which nominally serves a similar purpose to that of the trainee system but with more formal protections and clearer conditions of eligibility. Technical interns enter Japan on a “technical intern training” (*ginō jisshū*) visa, which allows them to spend up to one year in Japan in skill training (during which they receive a stipend, similar to the trainee system) and then a further year working in an industry that uses these skills (during which time they receive a salary).<sup>926</sup> In 1997, the law was changed to allow trainees to stay in the country for up three years, and to expand the number of approved occupations from 17 to 71. Over the next decade, the structure of the program remained largely unchanged, and the number of trainees and technical interns increased in tandem. However, additional changes to immigration law in 2009 and 2010 reduced the number of trainees drastically, with their numbers made up instead by more-regulated technical interns.<sup>927</sup>

The growth of these programs can be explained largely by the prolonged period of low fertility. Japan’s population has been shrinking in absolute terms since 2008, but even before that the proportion of the population who could work was shrinking relative to the population that depended on the work of others (e.g., the very old and the very young). This growing ratio of dependants to workers has, in turn, strained both state resources and the labour force. Moreover, this labour shortage is not shared across the country. Low birthrates and urban migration have turned rural villages into ghost towns, and regional urban centers have stagnated as the number of youth coming in from the country barely balances out the number of youth moving to larger cities. Furthermore, labour shortages

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<sup>925</sup> “About JITCO,” Japan International Training Cooperation Organization, accessed May 7, 2017, <http://www.jitco.or.jp/english/about/index.html>.

<sup>926</sup> Immigration Control and Refugee Recognition Act, appended table 1(2), Sellek, *Migrant Labour in Japan*, 65–72; Shipper, *Fighting for Foreigners*, 43–45.

<sup>927</sup> Ratnayake Piyadasa, De Silva Saliya, and Kage Rie, “Workforce Development with Japanese Technical Intern Training Program in Asia: An Overview of Performance,” *Saga Daigaku Keizai Ronshū* 49, no. 3 (2016): 1–31.

have also been concentrated sectorally by labour market preferences, with young people avoiding work in industries that fall within the “three D’s”: dirty, difficult and dangerous.<sup>928</sup>

One consequence of these demographic and labour market changes has been an endemic shortage of nurses and other care workers in Japan. In Japan (as with most Anglo-European countries), there has historically been a cultural expectation that household members gendered as female take on all tasks coded as “domestic labour.” These include not only culinary work and housekeeping, but also eldercare for both their own parents and (if they are married) those of their husband. As such, the shortage of care workers has further limited birthrates and female workforce participation, as women find themselves pressured into unpaid eldercare work, which leaves less time for starting a family or continuing a career.<sup>929</sup>

Other occupations traditionally coded as feminine have also been impacted by the stigma of the three D’s. Sex work, for example, is an occupation that has in Japan historically both been coded as female and stigmatised as a “dirty,”<sup>930</sup> and this stigma can partially explain why sex worker labour immigration to Japan began earlier than other forms of labour immigration. However, these labels can also apply to a range of more occupations that have been historically culturally coded as masculine, such as the farms and factories which have also experienced labour shortages over the past decade. As a result, the Keidanren (“Japan Business Federation”) has been pushing for decades for increased labour migration.<sup>931</sup>

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<sup>928</sup> In Japanese, “the three K’s”: (*kitanai*, *kitsui* and *kiken*) carry the same meaning. See John Connell, *Kitanai, Kitsui and Kiken: The Rise of Labour Migration to Japan* (Sydney: Economic & Regional Restructuring Research Unit, University of Sydney, 1993); Ceri Peach, “Contrasts in Economic Growth and Immigration Policy in Japan, the European Union and the United States,” in *Global Japan: The Experience of Japan’s New Immigrant and Overseas Communities*, ed. Roger Goodman et al. (New York: Routledge, 2003), 23–37.

<sup>929</sup> Aya K. Abe, “The Changing Shape of the Care Diamond: The Case of Child and Elderly Care in Japan,” *Gender and Development Programme Papers* (Geneva: United Nations Research Institute for Social Development, 2010); Yumi Hashizume, “Releasing from the Oppression: Caregiving for the Elderly Parents of Japanese Working Women,” *Qualitative Health Research* 20, no. 6 (2010): 830–844.

<sup>930</sup> See the previous chapter.

<sup>931</sup> See Toshihiko Hara, *A Shrinking Society* (Tokyo: Springer Japan, 2015); Florian Coulmas, *Population Decline and Ageing in Japan: The Social Consequences* (London: Routledge, 2007); Toru Suzuki, *Low Fertility and Population Aging in Japan and Eastern Asia* (Tokyo: Springer Japan, 2013).

But despite this demand for a guest worker program, the politics of migration—which include widely varying perspectives across ministries on what sort of migrants should be admitted to Japan, and a popular opposition to increased migration based on a perception (present in most countries) that foreigners are a vector for crime as well as a source of competition for jobs—make it difficult to actually implement such a program.<sup>932</sup> The result of the unstoppable force of Japan’s demographic crisis meeting the immovable object that is the politics of immigration reform has been that the TITP has been allowed to grow ever larger, such that at the end of 2016 there were 228,589 technical interns in Japan. This includes 88,211 Vietnamese, 80,858 Chinese, 22,674 Filipinos, 18,725 Indonesians, 7,279 Thais, 4,865 Cambodians and 3,960 Burmese, as well as citizens from 24 additional countries.<sup>933</sup>

And despite the TITP offering more protections than the trainee program, as the program has expanded there have been increasing reports of abuse. In 2014, Kyodo reported that there had been 304 deaths of trainees in Japan, including 29 (1.4/10,000) suicides and 87 (4.3/10,000) deaths potentially attributable to overwork.<sup>934</sup> This is actually a lower suicide rate than the general population of working age (2.1/10,000) in 2014, and though these claims of death by overwork are much higher than that for the general working age population (0.03/10,000), Kyodo’s methodology is unclear here and so it is difficult to know how much weight to give this comparison.<sup>935</sup> Nevertheless, the article’s emphasis on these

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<sup>932</sup> Gabriele Vogt, “Closed Doors, Open Doors, Doors Wide Shut? Migration Politics in Japan,” *Japan Aktuell* 5 (2007): 3–30; Ryoko Yamamoto, “Migrants as a Crime Problem: The Construction of Foreign Criminality Discourse in Contemporary Japan,” *International Journal of Comparative and Applied Criminal Justice* 34, no. 2 (2010): 301–30, <https://doi.org/10.1080/01924036.2010.9678831>; Hiroaki Miyoshi, “Policy Problems Relating to Labour Migration Control in Japan,” in *Global Japan: The Experience of Japan’s New Immigrant and Overseas Communities*, ed. Roger Goodman et al. (New York: Routledge, 2003), 57–76; Michael Weiner, “Japan in the Age of Migration,” in *Japan and Global Migration: Foreign Workers and the Advent of a Multicultural Society*, ed. Mike Douglass and Glenda Susan Roberts (New York: Routledge, 2000), 51–68.

<sup>933</sup> Statistics from the Japanese government: <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001177523>

<sup>934</sup> Kyodo, “Japan’s Foreign Trainee Program Suffering from Shocking Lack of Oversight,” *The Japan Times Online*, August 13, 2014, <http://www.japantimes.co.jp/news/2014/08/13/national/japans-foreign-trainee-program-suffering-shocking-lack-oversight/>. Rates given for

<sup>935</sup> Based on 16,410 suicides and 242 claimed deaths from overwork among an estimated working-age population of 78,749,000 as of January 2014, with “working age” defined as men and women

statistics' severity is important in its own right, since it indicates a media discourse of the TITP as a program leading to suicide and deaths by overwork. Moreover, these discourses have been partially confirmed by the government's own reporting, with the Ministry of Health, Labour and Welfare finding breaches of labour standards in 3,695 out of the 5,173 workplaces it inspected in 2016.<sup>936</sup> These discourses, in turn, have served to position the TITP as a problem in need of governance—including governance by transnational actors. In recent years, as will be discussed in the next chapter, these actors have been increasingly willing to label the TITP as a vector for human trafficking.

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aged 18-65. Data on deaths from overwork the MHLW:  
<http://www.mhlw.go.jp/stf/houdou/0000089447.html>. Suicide data from the World Health Organisation: <http://apps.who.int/healthinfo/statistics/mortality/whodpms/>. Data on population from the Japanese government:  
<http://www.e-stat.go.jp/SG1/estat/ListE.do?lid=000001119719>.

<sup>936</sup> Kentaro Iwamoto, "Abuses Rampant in Foreign Trainee Program, Japan Labor Ministry Finds," *Nikkei Asian Review*, August 18, 2016, <http://asia.nikkei.com/Politics-Economy/Economy/Abuses-rampant-in-foreign-trainee-program-Japan-labor-ministry-finds>.

## SEXUAL AND SEXUALISED LABOUR MIGRATION TO JAPAN

As discussed in Chapters 3 and 5, the stereotypical victim of human trafficking remains—in Japan as elsewhere—the migrant sex worker. In Japan, these migrants first began appearing in 1970s, around the same time as Yamazaki “re-discovered” and re-popularised the *karayuki-san* with her book *Sandakan Brothel No. 8*. For the activists who had previously protested the sex tours and fought for reparations for the *ianfu*, Yamazaki’s description of *karayuki-san* as the most “miserable” of all the sex workers of Japan at the dawn of the 20<sup>th</sup> century<sup>937</sup> offered a useful analogy for the migrant sex workers and night life entertainers who were now coming to Japan in increasingly large numbers. As a result, they began referring to those migrants as “*Japayuki-san*” (“Ms. Going-to-Japan”), and would eventually argue that they were victims of human trafficking.<sup>938</sup> This section thus looks more concretely at who was labelled as “*Japayuki-san*” and how they are governed.

One of the original archetypical cases of the “*Japayuki-san*” was not, in fact, sex workers. Rather they were female migrants from the Philippines working in a “hostess club.”<sup>939</sup> These are establishments where customers—overwhelmingly male—go to eat food with, be served alcohol by, and converse with female “hostesses.” Hostess work is primarily a form of emotional, rather than sexual, labour—according to Allison, their job is to provide flirtatious companionship in order to make their customers “feel like men” through sexualised performances of femininity.<sup>940</sup> There do also exist “host clubs,” as well as clubs where the hosts/hostesses are transgender men/women, and these cater to a wider range

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<sup>937</sup> Yamazaki, *Sandakan Brothel No. 8*, 8.

<sup>938</sup> Naoko Iyori, “The Traffic in Japayuki-San,” *Japan Quarterly*; Tokyo 34, no. 1 (January 1, 1987): 84–88; Vera Mackie, “Japayuki Cinderella Girl: Containing the Immigrant Other,” *Japanese Studies* 18, no. 1 (May 1998): 45–63, <https://doi.org/10.1080/10371399808727641>; Joyce Gelb, *Gender Policies in Japan and the United States: Comparing Women’s Movements, Rights, and Politics* (Basingstoke, Hampshire: Palgrave Macmillan, 2003), 29–31; Nobue Suzuki, “‘Japayuki,’ or, Spectacles for the Transnational Middle Class,” *Positions* 19, no. 2 (September 21, 2011): 439–62, <https://doi.org/10.1215/10679847-1331787>.

<sup>939</sup> Here I am using this term to be inclusive of establishments such “snack bars,” “cabarets,” and “pubs” where companionship by a “hostess” is standard, but exclusive of the establishments where sexual services are explicitly on offer.

<sup>940</sup> Allison, *Nightwork*, 178.



of genders and sexual preferences. However, these are far outnumbered by the number of clubs where the hostesses are cis-gender women and the clients are heterosexual men.<sup>941</sup>

Sex is not normally meant to be for sale at a hostess club, and at higher end clubs, having a sexual relationship with a customer, or even dating a customer, can be grounds for termination.<sup>942</sup> However, other clubs have a system called *dōhan* (“accompaniment”) that allows customers to “accompany” hostesses to the club, typically with a preliminary date-type activity (e.g., dinner, shopping or karaoke) between the customer and the hostess before going to the club. Clubs typically charge extra for this, and while the hostesses may receive a cut, they may also be financially penalised for failing to secure enough *dōhan* appointments. Furthermore outside of those higher end clubs, a hostess may—either during *dōhan* or otherwise—decide to engage in sexual activity with the customer. This can happen as part of a relationship with a customer in whom the hostess is interested, but it can also happen because she fears—or the customer has threatened—that the customer will begin asking for a different hostess or visiting a different club, as the salary and job security of a hostess are dependent on being selected by customers and selling drinks on commission. It can also be in response to a straightforward offer of compensation. Finally, the club may encourage, pressure or even coerce hostesses to sleep with customers on *dōhan* as a revenue-earning strategy, effectively turning the hostess club into an escort service.<sup>943</sup>

Part of the explanation for the appearance in Japan of these migrant Filipino hostesses lies with an increase in demand for foreign labour in the *mizu shōbai* (“nightlife entertainment”)

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<sup>941</sup> Reiko Yamagishi, “The Promised Land for Men: The Rising Popularity of Hosts in Contemporary Japanese Society” (National University of Singapore, 2009), <http://scholarbank.nus.sg/handle/10635/27860>; Akiko Takeyama, *Staged Seduction: Selling Dreams in a Tokyo Host Club* (Stanford, CA: Stanford University Press, 2016); Wim Lunsing, “The Politics of Okama and Onabe: Uses and Abuses of Terminology Regarding Homosexuality and Transgender,” in *Genders, Transgenders and Sexualities in Japan*, ed. Mark J. McLelland and Romit Dasgupta (London: Routledge, 2005), 81–95; Rhacel Parreñas, *Illicit Flirtations: Labor, Migration, and Sex Trafficking in Tokyo* (Stanford, CA: Stanford University Press, 2011), 22–23.

<sup>942</sup> Allison, *Nightwork*, 19.

<sup>943</sup> Faier, *Intimate Encounters*, 62; Parreñas, *Illicit Flirtations*, 72–77, 129, 163; Haeng-ja Sachiko Chung, “In the Shadows and at the Margins: Working in the Korean Clubs and Bars of Osaka’s Minami Area,” in *Wind Over Water: Migration in an East Asian Context*, ed. David W. Haines, Keiko Yamanaka, and Shinji Yamashita (New York, NY: Berghahn Books, 2012), 196–98.

industry. As with other industries, the *mizu shōbai* industry experienced a tightening of labour markets as the supply of rural labour dried up in the 1970s. These industries had previously been able to keep wages low thanks in large part to a gendered labour market in Japan that underutilised female labourers. However, as the general labour market tightened, women had increased opportunities for blue- and white-collar work, and the *mizu shōbai* industry—as a stigmatised occupation—had to increase wages to stay competitive.<sup>944</sup> At the same time, the appreciation of the Japanese yen following the Plaza Accord in 1985 meant that the already relatively-high salaries that migrants could earn in Japan were worth increasingly more back home.<sup>945</sup> Together, these factors meant that Japan's *mizu shōbai* industry was increasingly looking abroad for cheap female labour even as wages in Japan were worth increasingly more to foreign workers.

At the same time, the passage of the 1974 Labour Code in the Philippines also created a large supply of potential labourers. This law, put in place by the Marcos regime, devastated workers' protections and bargaining power while simultaneously explicitly encouraging and providing support for overseas migration—with the requirement that overseas workers remit a significant portion of their earnings. In its wake, men and women from the Philippines began migrating for work by the hundreds of thousands. For men, this often meant working on construction projects in the Middle East. For women—who increasingly came to dominate these migrant flows—it often meant work as professional caregivers or housecleaners.<sup>946</sup> But in Japan, households have historically placed the responsibility for caregiving and domestic labour exclusively on housewives.<sup>947</sup> What was left, for those who decided to go to Japan, was work in the entertainment sector—in particular, hostess clubs.

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<sup>944</sup> Koch, "The Libidinal Economy of the Japanese Sex Industry: Sexual Politics and Female Labor," 131–40.

<sup>945</sup> Vera Mackie, "Dialogue, Distance and Difference: Feminism in Contemporary Japan," *Women's Studies International Forum* 21, no. 6 (November 1998): 604–5, [https://doi.org/10.1016/S0277-5395\(98\)00075-2](https://doi.org/10.1016/S0277-5395(98)00075-2).

<sup>946</sup> James A Tyner, *Made in the Philippines: Gendered Discourses and the Making of Migrants* (London: RoutledgeCurzon, 2004), 21–37.

<sup>947</sup> Joy Hendry, "The Role of the Professional Housewife," in *Japanese Women Working*, ed. Janet Hunter (New York, NY: Routledge, 1995), 223–40; Kathleen S. Uno, "One Day at a Time: Work and Domestic Activities of Urban Lower-Class Women in Early Twentieth-Century Japan," in *Japanese Women Working*, 37–67; Yumi Hashizume, "Releasing from the Oppression: Caregiving for the Elderly

From a strictly legal perspective, these opportunities should not have existed: working visas to Japan are granted only for specific categories of “skilled” labour, and none of these categories include hostess work. As a result, many of the Filipinas working in hostess clubs were in violation of their visas. Statistics from the Ministry of Justice bear this out: up until 1987, almost all recorded illegal migrants were from the Philippines, and most of these were female (see Figure 8 on page 258, above). Furthermore, according to the NPA, the women from the Philippines—as well as those from Thailand—who appear in these statistics were primarily arrested for involvement in *fūzoku* (which could include hostess clubs as well as the legal sex industry) in violation of their visas, which were generally either short term visitor visas or short term work visas granted to them for employment as singers or dancers.<sup>948</sup>

The number of Filipinas arrested as undocumented workers began tapering off in the early 1990s. However, this decrease did not reflect a drop in the number of migrants from the Philippines; in fact, the number of Filipinos living in Japan went from 36,079 in 1990 to 123,747 in 2005.<sup>949</sup> As always with arrest rates, it can be difficult to ascribe a cause for this shift, since it could be in response to internal (i.e., changing police priorities) rather than external factors. However, it seems highly likely that the 1989 revision to Immigrations Act and the accompanying shift in the governance of migration were major factors.

In addition to creating a visa exception for the *Nikkeijin*, the 1989 revision to the Immigrations Act also allowed certain types of “skilled” workers, including “entertainers,” to remain in the country longer. Entertainers were migrants authorised to engage in “activities to engage in theatrical performances, musical performances, sports or any other form of show business.”<sup>950</sup> As skilled workers, they were supposed to have some specific abilities

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Parents of Japanese Working Women,” *Qualitative Health Research* 20, no. 6 (2010): 830–844; S. O. Long and P. B. Harris, “Gender and Elder Care: Social Change and the Role of the Caregiver in Japan,” *Social Science Japan Journal* 3, no. 1 (April 1, 2000): 21–36, <https://doi.org/10.1093/ssjj/3.1.21>.

<sup>948</sup> Data from the Ministry of Justice, found in National Police Agency, “Keisatsu Hakusho: Heisei 2 Nen-Ban [Police White Paper: 1990 Version]”; National Police Agency, “Keisatsu Hakusho: Heisei 5 Nen-Ban [Police White Paper: 1993 Version].”

<sup>949</sup> Data from Statistics Japan, “Foreigners by Nationality and Age (Five-Year Groups) (1950--2005),” available at <http://www.stat.go.jp/english/data/chouki/02.htm>

<sup>950</sup> Immigration Control and Refugee Recognition Act, appended table 1(2).

and training, and could not be “required to take part in serving customers.”<sup>951</sup> But even in 1993, Yamanaka noted that this policy seemed to be effectively a back door for “disguised cheap labour” for hostesses.<sup>952</sup> Twenty-three years later, the participants with whom I discussed entertainer visas all agreed that this was largely how the visas had been used.

The Philippines was hardly the only country to send “entertainers” as hostesses, but they were far and away the most significant source: by the end of the 1990s, more than half of all new arrivals with an entertainer visa in any given year were from the Philippines, while no other country comprised more than 10% of the total.<sup>953</sup> According to my participants, this was the result of an unusual agreement whereby Japan allowed the government of the Philippines to certify eligible entertainers. The government of the Philippines, in turn, subcontracted this work to a multitude of private companies, which effectively acted as recruiters for hostess clubs in the Philippines’ countryside. With the opportunity to work in Japan as a powerful draw, these companies were able to be highly selective, or else to force marginal candidates to improve their physical appearances in order to be selected for a visa. Upon selecting candidates, the agencies would provide some minimal training in traditional songs and dances before certifying the candidate as an “entertainer.” In the process, these migrants would accrue considerable debts to the brokers, debts they would be required to pay back through working at clubs in Japan. Their contracts thus resembled in a number of ways the contracts of indenture for geisha during the Edo Period, albeit with much shorter terms of duration.<sup>954</sup>

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<sup>951</sup> Shutsunyūkoku kanri oyobi nanmin nintei hō dai nana jō dai ikkō dai ni gō no kijun o sadameru shōrei [Ministerial Ordinance to Provide for Criteria Pursuant to Article 7, paragraph (1), item (ii) of the Immigration Control and Refugee Recognition Act] Ordinance of the Ministry of Justice No. 16, May 24, 1990. Translation JLTC’s:

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2715&vm=04&re=02&new=1>

<sup>952</sup> Keiko Yamanaka, “New Immigration Policy and Unskilled Foreign Workers in Japan,” *Pacific Affairs* 66, no. 1 (1993): 82, <https://doi.org/10.2307/2760016>.

<sup>953</sup> Data from the Ministry of Justice, found in Immigration Bureau of Japan, “Shutsunyūkoku Kanri: Heisei 15 Nen-Ban [Immigration Control: 2003 Version],” 2003.

<sup>954</sup> These accounts line up with much of the major English-language research on Filipina entertainers in Japan, including Faier, *Intimate Encounters*; Parreñas, *Illicit Flirtations*; Nobue Suzuki, “Filipina Modern: ‘Bad’ Filipino Women in Japan,” in *Bad Girls of Japan*, ed. Laura Miller and Jan Bardsley (New York, NY: Palgrave Macmillan US, 2005), 159–73, [https://doi.org/10.1057/9781403977120\\_11](https://doi.org/10.1057/9781403977120_11).

The entertainer visa program would become highly contentious. According to ENCOM's Tolentino, many of the women who entered Japan as entertainers were deceived about the nature of the work, particularly in the early days of the program. She also described a situation of tight control, wherein entertainers were accompanied by a club manager even to Sunday mass; forced into cramped living conditions with insufficient food allowances; faced domestic violence if they married Japanese men they met at the clubs; and were sometimes sent at ages as young as fourteen by agencies that falsified their dates of birth on official documents. I heard similar stories at the Embassy of the Philippines, where I also heard that many of the placements were arranged by Filipino criminal syndicates that preyed on Filipinas from lower socioeconomic backgrounds and who could threaten a hostess' family if she attempted to escape from a debt contract.

A representative from DAWN, a Filipino NGO that focusses on sex trafficking, told me bluntly that her organisation considers the program to be state-sponsored human trafficking conducted by the governments of both Japan and the Philippines. This was, she argued, because the governments were using legal channels to knowingly place women in what was essentially illegal work: hostessing and going on dates with customers while on a visa that permits only "entertainment" activities. She also argued that the widespread use of the *dōhan* system was tantamount to sex work. This was because quota systems at many of the Filipino hostess clubs required women to go out for *dōhan* a certain number of times per week, and most customers will only go on a limited number of dates before expecting a sexual relationship. Finally, both the participant from DAWN and the Consul General of the Philippines Tirol-Ignacio highlighted the case of Maricris Sioson. Sioson was a 22-year-old dancer from the Philippines whose cause of death in Japan was officially determined to be hepatitis, but whose body was returned to the Philippines with evidence of torture. This case caused an uproar in her home country, and ultimately reshaped how the government of the Philippines handled its certification of entertainers.<sup>955</sup>

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<sup>955</sup> For more on the Maricris Sioson case, see Anna Romina Guevarra, "Managing 'Vulnerabilities' and 'Empowering' Migrant Filipina Workers: The Philippines' Overseas Employment Program," *Social Identities* 12, no. 5 (September 1, 2006): 523–41, <https://doi.org/10.1080/13504630600920118>; James A. Tyner, "Migrant Labour and the Politics of Scale: Gendering the Philippine State," *Asia*

Because of these dangers and abuses, and because they were the most numerous and the most visible of those who were labelled as “*Japayuki-san*,” Filipino entertainers strongly influenced the way “human trafficking in Japan” was perceived and subsequently governed in the coming decades. However, hostesses were far from the only women migrating to Japan at the end of the 20<sup>th</sup> century for sexual or sexualised labour. Filipina women also worked in Japan as sex workers, although these were (in part because of their illegality) few in number relative to the hostesses.<sup>956</sup> Women also came from elsewhere in Asia, in particular areas such as Taiwan and South Korea which had previously catered to Japanese sex tourists.<sup>957</sup> Outside of Asia, Russian and Eastern European women—already genericised as “Natashas” by European anti-trafficking activists—also began coming to Japan (along with other destinations in Asia such as Macau) to work as models, hostesses and sex workers following the collapse of the economies in post-Soviet states.<sup>958</sup> And for a time there was also concern over the presence of Colombian women in Japan’s *mizu shōbai* industry.<sup>959</sup>

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*Pacific Viewpoint* 41, no. 2 (August 1, 2000): 131–54, <https://doi.org/10.1111/1467-8373.00112>; Suzuki, “‘Japayuki,’ or, Spectacles for the Transnational Middle Class.”

<sup>956</sup> Kadokura, “Chapter 4. Total Value of Boryokudan Activities and the Enjo Kosai Market,” 73.

<sup>957</sup> Haeng-ja Sachiko Chung, “Transnational Labor Migration in Japan: The Case of Korean Nightclub Hostesses in Osaka,” *Bulletin of the National Museum of Ethnology* 40, no. 1 (2015): 101119; Iyori, “The Traffic in Japayuki-San”; Nicola Piper, “Labor Migration, Trafficking and International Marriage: Female Cross-Border Movements into Japan,” *Asian Journal of Women’s Studies* 5, no. 2 (January 1, 1999): 69–99, <https://doi.org/10.1080/12259276.1999.11665849>; Kadokura, “Chapter 2. Japan’s Underground Economy,” 42.

<sup>958</sup> Viktoriya Kim, “Gender Politics and Its Impact on Female Marriage Migration: Women from Former Soviet Union Countries in Japan,” *Japan Social Innovation Journal* 4, no. 1 (2014): 20–33, <https://doi.org/10.12668/jsij.4.20>; Roman A. Cybriwsky, *Roppongi Crossing: The Demise of a Tokyo Nightclub District and the Reshaping of a Global City* (Athens, GA: University of Georgia Press, 2011), 134–35. On the “Natasha” label, see Donna M. Hughes, “The ‘Natasha’ Trade: The Transnational Shadow Market of Trafficking in Women,” *Journal of International Affairs-Columbia University* 53, no. 2 (2000): 625–652; Sheldon Zhang, “Beyond the ‘Natasha’ Story – a Review and Critique of Current Research on Sex Trafficking,” *Global Crime* 10, no. 3 (2009): 178–95, <https://doi.org/10.1080/17440570903079899>; John Davies, *‘My Name Is Not Natasha’: How Albanian Women in France Use Trafficking to Overcome Social Exclusion (1998-2001)* (Amsterdam: Amsterdam University Press, 2010), <http://www.oapen.org.virtual.anu.edu.au/search?identifier=341452>.

<sup>959</sup> Tomohiro Osaki, “Colombian’s Memoir Reveals Deceptions That Pulled Her into Japan’s Sex Trade in 1990s,” *The Japan Times Online*, September 8, 2016, <http://www.japantimes.co.jp/news/2016/09/08/national/crime-legal/colombians-memoir-reveals-deceptions-pulled-japans-sex-trade-1990s/>.

But at the end of the 20<sup>th</sup> century, the most significant source country for alleged trafficking victims in Japan was Thailand. Thailand's existing sex industry was largely fuelled by internal migration: women (both cis- and trans-gender) and men (rarer) left the countryside and moved to the city specifically to engage in sex work. This migration was not only in response to better potential opportunities for pay, but also for migrants to create some distance between themselves and their friends and family so as to create some plausible deniability about working in a stigmatised occupation. Migrating abroad was thus for many a logical next step: wages would be even higher, and distances greater. In rural areas, meanwhile, sex workers are often migrants from Thailand's less-developed neighbours, Burma, Laos and Cambodia, with these latter two having also emerged as new sites for sex tourism.<sup>960</sup> While these patterns of migration had been long-standing, they intensified in the late 1970s. This was the result of a decline in the value of agricultural goods combined with a process of industrialisation that aggravated the wealth gap between the cities and the countryside in these countries. This, in turn, led to a significant increase in the level of outbound Thai migration for the purpose of engaging in sex work, with the destination countries being largely those that were already sending sex tourists to Thailand.<sup>961</sup>

Japan was one of those countries, as existing contacts between Japanese sex purchasers and Thai sex workers combined with the increasing value of the yen and Japan's proximity to Thailand made it an attractive destination for Thai sex workers. As a result, the presence of (predominantly female) Thai sex workers in Japan increased radically toward the end of the 1980s. By 1991, Thai nationals were the largest population of "illegal residents" in Japan and accounted for most of the arrests of foreign women for "Amusement Businesses Law"

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<sup>960</sup> See for example Molland, *The Perfect Business?*, 90–92; Paul Leung, "Sex Tourism: The Case of Cambodia," in *Sex and Tourism: Journeys of Romance, Love, and Lust*, ed. Thomas G. Bauer and Bob McKercher (New York, NY: Haworth Hospitality Press, 2003), 181–96.

<sup>961</sup> Prapairat R. Mix and Nicola Piper, "Does Marriage 'Liberate' Women from Sex Work?--Thai Women in Germany," in *Wife or Worker?: Asian Women and Migration*, ed. Nicola Piper and Mina Roces (Lanham, MD: Rowman & Littlefield, 2004), 53–72; Wathinee Boonchalaksi and Philip Guest, *Prostitution in Thailand*, 171 (Salaya, Nakorn Phathom: Institute for Population and Social Research, Mahidol University, 1994), <http://www.ipsr.mahidol.ac.th/ipsrbeta/FileUpload/PDF/Report-File-171.pdf>; Molland, *The Perfect Business?*, 110–41.

violations.<sup>962</sup> Despite these arrests, however, the NPA noted that these migrants were vulnerable to exploitation from both their employers, who might “exploit them with low wages,” and foreign brokers (primarily Thai), who might “interpose themselves between employers and illegal workers for profit.”<sup>963</sup>

According to Aoyama, the experiences of Thai sex workers could vary considerably. On the one hand, there was a very real possibility of making good money, far more than they could have made back in Thailand. On the other hand, unlike the Filipino hostesses, Thai sex workers were always in the country illegally, as selling sex remained illegal under the Prostitution Prevention Law. This meant that they often relied on the aforementioned “brokers” to enter the country and find work, saddling them with debt. Their lack of Japanese language skills made seeking help or changing employers difficult, while going to the police would typically lead to their deportation and potentially the inability to pay off their debt. Taken together, these factors left Thai sex workers highly vulnerable to exploitation—exploitation which could reach levels Aoyama argues are akin to slavery.<sup>964</sup>

The “problem” of Thai migrant sex workers emerged as another key issue for Japanese feminists. Matsui condemned the practice as “*jinshin baibai*,” a term which Toyokawa and Francis translated into English as “human trafficking.”<sup>965</sup> The JWCTU, meanwhile, ran presentations on the “*Japayuki-san*” while also housing escaped Filipina and Thai sex workers at their HELP Asian Women’s Shelter.<sup>966</sup> However, the issue did not stop at Japan’s borders. At this point, the latest moral panic over human trafficking was in full swing. Thus, in 2000, following their earlier influential reports on human trafficking in Thailand, Human

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<sup>962</sup> Starting in 1994, the NPA began reporting on the number “illegal residents,” rather “illegal workers,” with the former defined as either those working in violation of their visa (“illegal workers”), or who entered the country illegally or remained past the duration of their visa. National Police Agency, “Keisatsu Hakusho: Heisei 6 Nen-Ban [Police White Paper: 1994 Version]” (Tokyo, 1994), <https://www.npa.go.jp/hakusyo/h06/h06index.html>.

<sup>963</sup> National Police Agency, “Keisatsu Hakusho: Heisei 6 Nen-Ban.” Own translation. The word used here by the police for “broker” here is “*burōkā*,” from the English term.

<sup>964</sup> Aoyama, *Thai Migrant Sex Workers*.

<sup>965</sup> Yayori Matsui, “Trafficking in Women,” in *Women in the New Asia: From Pain to Power*, trans. Noriko Toyokawa and Carolyn Francis (1996; repr., London: Zed Books, 1999), 13–30. See also Suzuki, “‘Japayuki,’ or, Spectacles for the Transnational Middle Class.”

<sup>966</sup> Mackie, “Division of Labour: Multinational Sex in Asia,” 229.



Rights Watch (HRW) published their report *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*.

The HRW report, which looked at the period of 1994–1999, drew their data from a diverse group of sources, including the prohibitionist JWCTU’s HELP Asian Women’s Shelter, the Japanese sex worker rights’ activist Momocca Momocco, and GAATW. Its conclusions were scathing, arguing that both Japan and Thailand were remiss in their human rights’ obligations and that as a result they were both complicit in the trafficking of Thai sex workers. Interestingly, although the report mentioned the 1949 Trafficking Convention, it also noted that:

“Trafficking” has been used in international legal instruments to refer to the movement of, and trade in, human beings, usually in connection with slavery, prostitution, and/or sexual exploitation. However, none of these documents articulates a clear definition of the term, so a precise legal meaning has yet to be established.<sup>967</sup>

However, even if the report was unclear on what exactly “trafficking” meant, it was very firmly convinced that Thai women were victims of it. The report was also clear that yakuza were involved in this trade, claiming that they were involved not only in running or collecting protection money from brothels, but that they were actively procuring sex workers directly from Thailand through connections with local organised crime syndicates.<sup>968</sup> This report did not emerge in isolation; a similar narrative can be found, for example, in both the 1986 and 2003 editions of Kaplan and Dubro’s best-selling book on the yakuza.<sup>969</sup> However, I have found no evidence for this claim elsewhere in the literature, nor did I find any support for this claim in any of my own interviews.

These claims aside, however, the HRW report succeeded in advancing a discourse that positioned Japan as a major destination country for human trafficking; that positioned this

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<sup>967</sup> Kinsey Alden Dinan, “Owed Justice: Thai Women Trafficked into Debt Bondage in Japan” (New York: Human Rights Watch, 2000), <https://www.hrw.org/reports/2000/japan/0-ack.htm>.

<sup>968</sup> Dinan.

<sup>969</sup> David E. Kaplan and Alec Dubro, *Yakuza : The Explosive Account of Japan’s Criminal Underworld* (New York, NY: Collier Books, 1986), 200–208; Kaplan and Dubro, *Yakuza*, 2003, 238–43.

trafficking as the conduct of sophisticated organised crime groups; and that positioned Japan's own response to the problem as self-evidently inadequate—and it did all of this in the same year as the drafting of UNTOC and the Trafficking Protocol, as well as the year before the United States began issuing its Trafficking in Persons' Reports. In other words, just as the modern instruments of transnational human trafficking governance were being developed, this report established “human trafficking in Japan” as a problem in need of such governance.

## CHAPTER 7: CONTEMPORARY GOVERNANCE OF HUMAN TRAFFICKING IN JAPAN

### INTRODUCTION

While Chapter 6 focussed on the development of Japan's human trafficking governance up until the beginning of the 21<sup>st</sup> century, this chapter focusses on the period from 2000, when the Trafficking Protocol was signed, to 2014, when the majority of my fieldwork took place. In addition to looking at changes in Japan's own human trafficking governance, this chapter discusses the transnational actors that have tried to influence this governance, as well as the transnational discourses that have been deployed by both local and transnational actors for the same purpose. These discussions aim to answer my research questions: How do transnational ideas, actors and networks influence the local governance and governmentality of human trafficking in a given country (if at all)? And, how does a given country's historical understanding of human trafficking impact the transnational governance of human trafficking in that country?

As discussed in Chapter 3, the most important development in the global transnational governance of human trafficking in recent history has been the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Trafficking Protocol"), supplementing the United Nations Convention against Transnational Organized Crime ("UNTOC") adopted November 15, 2000 by the UN General Assembly. This chapter thus begins by looking at how Japan reacted to UNTOC and the Trafficking Protocol during the period after its passage, as well as discussing how actors used the Trafficking Protocol to reshape the governance of human trafficking in Japan. However, during this period there was another significant instrument of transnational governance that I argue has had more of an impact on Japan's response to human trafficking than the Trafficking Protocol: the United States' State Department's Trafficking in Persons (TIP) Report. Because of the importance of the TIP Report to human trafficking governance in Japan, this chapter also provides an overview of the development of the legal framework behind the TIP Report, as well as exploring both the ways that different actors have reshaped the governmentality behind the

report, and the ways that the indicator in the report—its “Tier ranking”—have changed over the years. Having provided an overview of the TIP Report itself, this chapter then looks at how the report has discussed and ranked Japan over the years, focussing in particular on patterns of negative coverage.

Following the discussion of how the TIP Report has covered Japan, I turn to how my own research—both interviews, data from the police and the immigrations bureau, and a variety of other supplementary data—suggests Japan has responded to human trafficking. This section focusses not only on changes to the governance of human trafficking, but also on the governmentality of human trafficking—the way it is seen as a problem in need of governance. Finally, I analyse these changes in light of the previous discussion of the Trafficking Protocol and the TIP Report in order to assess to what extent transnational governance has had an impact on the governance of human trafficking in Japan.

## JAPAN AND THE TRAFFICKING PROTOCOL

Japan was, from the beginning, significantly involved in the crafting of UNTOC. They sent one of the largest delegations to its negotiations, proposed and debated changes to its text, and made voluntary financial contributions to assist in its drafting. Japan was particularly active in the crafting of the Optional Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (“Firearms Protocol”). However, while they may have eschewed the high stakes battle over the precise wording of the Trafficking Protocol, they were nevertheless involved in the broader process of drafting this protocol as well.<sup>970</sup> And when UNTOC was completed, Japan became one of its earliest signatories, signing it on December 12, 2000 in Palermo, Italy.<sup>971</sup> Japan was likewise a signatory to the three optional protocols, signing all three on December 9, 2002—three days before the period for signing closed.<sup>972</sup>

These signatures were, however, what are referred to in international law “simple signatures.”<sup>973</sup> According to the Vienna Convention on the Law of Treaties, having signed

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<sup>970</sup> See United Nations Office on Drugs and Crime, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (New York, NY: United Nations, 2006), [https://www.unodc.org/pdf/ctoccop\\_2006/04-60074\\_ebook-e.pdf](https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf); Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, “Report of Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on Its First Session, Held in Vienna from 19 to 29 January 1999” (Vienna: UN General Assembly, March 8, 1999).

<sup>971</sup> United Nations, “Chapter XVIII: Penal Matters: 12. United Nations Convention against Transnational Organized Crime.”

<sup>972</sup> United Nations, “Chapter XVIII: Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime”; “Chapter XVIII: Penal Matters: 12. b Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime,” United Nations Treaty Collection, July 26, 2017, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en); “Chapter XVIII: Penal Matters: 12. c Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime,” United Nations Treaty Collection, September 19, 2017, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-c&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&clang=_en).

<sup>973</sup> Curtis A. Bradley, “Treaty Signature,” in *The Oxford Guide to Treaties*, ed. Duncan B. Hollis (Oxford: Oxford University Press, 2012), 208–19, [opil.ouplaw.com/view/10.1093/law/9780199601813.001.0001/law-9780199601813](http://opil.ouplaw.com/view/10.1093/law/9780199601813.001.0001/law-9780199601813).

these agreements, Japan is “obliged to refrain from acts which would defeat the object and purpose” of the convention and its protocols.<sup>974</sup> The actual provisions of these agreements, though, would not be binding on Japan until they were formally ratified by the Japanese government. Under the Japanese constitution, the cabinet is authorised to carry out negotiations for international agreements,<sup>975</sup> but ratification requires approval from Japan’s legislature—the Diet—if the agreement “include[s] undertakings related to the legislative power of the Diet.”<sup>976</sup> The Trafficking Protocol meets this criterion, as it requires States Parties to “adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3.”<sup>977</sup>

And as I began writing this chapter, this approval had yet to be granted. This means that for almost fifteen years, Japan had been a signatory to the Trafficking Convention but not a state party. To put this in perspective, more than half of the UN’s current member states had ratified the protocol by 2006, and three quarters had ratified by 2011; and although twenty-two other UN member states had yet to ratify as of the beginning of 2017, since 2006 Japan had been the only member of the G8 that had not.<sup>978</sup>

If a treaty is signed without being subsequently ratified, it is often the result of an executive branch concluding a treaty only to have it be rejected by the legislature. This was, for example, the fate of the Kyoto Protocol, which was signed by the Clinton administration but

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<sup>974</sup> Vienna Convention on the Law of Treaties, art. 18. On Japan’s ratification, see United Nations, “Chapter XXIII: Law of Treaties: 1. Vienna Convention on the Law of Treaties,” United Nations Treaty Collection, July 26, 2017, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=IND&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en).

<sup>975</sup> Kenpō, Nov. 3, 1946, art. 73. Translation from the Cabinet Officer, available at:

[http://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

<sup>976</sup> Takao Kawakami, “National Treaty Law and Practice: Japan,” in *National Treaty Law and Practice: Austria, Chile, Colombia, Japan, The Netherlands, United States*, ed. Monroe Leigh, Merritt R. Blakeslee, and L. Benjamin Ederington (Washington, DC: American Society of International Law, 1999), 111.

<sup>977</sup> Trafficking Protocol, art.

<sup>978</sup> United Nations, “Chapter XVIII: Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.”

never ratified by the United States Senate.<sup>979</sup> In Japan's case, initially some writers claimed that Japan was unable to sign the Trafficking Protocol because it did not have a law criminalising human trafficking.<sup>980</sup> This is because, although Japan is a "monist" state—meaning that a treaty promulgated by the Diet has the force of domestic legislation—the Trafficking Protocol is not a self-executing treaty, and requires additional legislation. Furthermore, in Japan—as the MOFA confirmed to me—it is government policy to have in place the necessary legislation to be in compliance with a treaty before promulgating said treaty.<sup>981</sup>

However, a closer reading of the treaty shows this interpretation to be, at best, misleading. The Trafficking Protocol does not require domestic legislation criminalising trafficking; rather, it requires domestic legislation criminalising the conduct that the Trafficking Protocol labels as "trafficking." A country which has laws that collectively criminalise "the recruitment, [etc.,] by means of the threat of force, [etc.,] for the purpose of exploitation, [etc.]"<sup>982</sup> could claim that they are compliant with the Trafficking Protocol even if these practices are not explicitly labelled as trafficking. Indeed, this is precisely the approach that Japan would take in later years. It is also worth noting that if the problem was simply a lack of an anti-trafficking law, then it could be easily solved by passing such a law. However, even when Japan did expand its legal definition of human trafficking in 2005, it still did not ratify the Trafficking Protocol. This failure to ratify has subsequently been characterised by

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<sup>979</sup> Ultimately, even this signature was withdrawn by the Bush administration. See Greg Kahn, "The Fate of the Kyoto Protocol under the Bush Administration," *Berkeley Journal of International Law* 21 (2003): 548–71.

<sup>980</sup> Norimitsu Onishi, "Japan, Easygoing Till Now, Plans Sex Traffic Crackdown," *The New York Times*, February 16, 2005, <https://www.nytimes.com/2005/02/16/world/asia/japan-easygoing-till-now-plans-sex-traffic-crackdown.html>; Steve Silver, "The Trafficking Scourge," *The Japan Times Online*, August 15, 2006, <http://www.japantimes.co.jp/community/2006/08/15/issues/the-trafficking-scourge/>.

<sup>981</sup> David Sloss, "Domestic Application of Treaties," in *The Oxford Guide to Treaties*, ed. Duncan B. Hollis (Oxford: Oxford University Press, 2012), 367–95, [opil.ouplaw.com/view/10.1093/law/9780199601813.001.0001/law-9780199601813](http://opil.ouplaw.com/view/10.1093/law/9780199601813.001.0001/law-9780199601813); Kawakami, "National Treaty Law and Practice: Japan," 116–17; John H. Jackson, "Status of Treaties in Domestic Legal Systems: A Policy Analysis," *The American Journal of International Law* 86, no. 2 (April 1992): 310, <https://doi.org/10.2307/2203236>.

<sup>982</sup> Trafficking Protocol, art. 3.

certain scholars and activists as “troublesome”<sup>983</sup> or “leaving victims vulnerable,”<sup>984</sup> while some of my NGO participants suggested that non-ratification was proof that the government was not taking human trafficking seriously.

Still, as I discuss below, Japan was making efforts during this period to at least appear responsive to human trafficking. Why then did it not ratify the Trafficking Convention once the necessary legal framework was in place? To answer this question, it must be recalled that the Trafficking Protocol is an optional protocol to UNTOC. As such, states parties to UNTOC can choose not to ratify the Trafficking Protocol, but they cannot ratify the Trafficking Protocol without first ratifying UNTOC. As with the Trafficking Protocol, at the time I began writing this chapter Japan had yet to ratify UNTOC. As such, it could not ratify *any* of its protocols—Trafficking, Migrant Smuggling, or Firearms; and while the drafting of the Trafficking Protocol was led by the United States and Argentina, the Firearms Protocol was advanced largely by Canada (who first proposed it) and Japan (who funded the research that brought it together).<sup>985</sup> It seems unlikely that Japan—which has some of the strictest laws on firearms in the world and culture that presumes fewer guns to be an inherent good<sup>986</sup>—is for some reason deliberately avoiding ratifying this protocol.

This suggests that the primary barrier to ratification lay in UNTOC itself, and not the Trafficking Protocol. This was confirmed to me during interviews with participants from the Ministry of Justice, who told me that the problem preventing Japan’s ratification of the Trafficking Protocol was UNTOC’s provisions requiring the criminalisation of “conspiracy”—a key provision in the convention from which (as discussed previously) reservations are not

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<sup>983</sup> Laura L. Shoaps, “Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act,” *Lewis & Clark Law Review* 17 (2013): 935.

<sup>984</sup> Lighthouse, “Lighthouse.”

<sup>985</sup> United Nations Office on Drugs and Crime, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, xxiv, 319–25.

<sup>986</sup> See for example Jeffrey A. Miron, “Violence, Guns, and Drugs: A Cross-Country Analysis,” *The Journal of Law and Economics* 44, no. S2 (October 1, 2001): 615–33, <https://doi.org/10.1086/340507>; Robert J. Spitzer, *The Politics of Gun Control*, 6th ed. (Boulder, CO: Paradigm Publishers, 2015), 50–52.



possible. The relevant definition can be found in UNTOC's Art. 5, para. 1, (a) (i), requiring the criminalisation of:

Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.<sup>987</sup>

This provision requires states to criminalise conspiracies to commit crimes, in addition to attempts to commit crimes and the actual committing of crimes. Internationally, conspiracy laws have been widely used against organised crime groups, which are UNTOC's primary targets.<sup>988</sup> However, scholars have also criticised conspiracy laws for being overly broad, prone to prosecutorial abuse, responsible for swelling the ranks of the incarcerated with people who may never have gotten around to committing an actual criminal act, and simply unnecessary.<sup>989</sup> And in Japan, the idea of a "conspiracy law" recalls the 1925 Peace Preservation Law, which made it a crime to "organise or knowingly participate in an association for the purpose of changing the national polity or repudiating the private property system."<sup>990</sup> Violators of that law would literally be charged with "thought crimes" (*shisōhan*), and the Peace Preservation Law became a tool to shut down political movements during the lead up to the Pacific War.<sup>991</sup>

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<sup>987</sup> UNTOC, art. 5.

<sup>988</sup> Frederick Desroches, "The Use of Organized Crime and Conspiracy Laws in the Investigation and Prosecution of Criminal Organizations," *Policing: A Journal of Policy and Practice* 7, no. 4 (December 1, 2013): 401–10, <https://doi.org/10.1093/police/pat002>; Howard Abadinsky, *Organized Crime*, 9th ed. (Belmont, CA: Wadsworth/Cengage Learning, 2010), 366–68; Liz Campbell, *Organised Crime and the Law: A Comparative Analysis* (Oxford: Hart, 2013), 12–29.

<sup>989</sup> Phillip E. Johnson, "The Unnecessary Crime of Conspiracy," *California Law Review* 61, no. 5 (1973): 1137–88, <https://doi.org/10.2307/3479790>; Paul Marcus, "Criminal Conspiracy Law: Time to Turn Back from an Ever Expanding, Ever More Troubling Area," *William and Mary Bill of Rights Journal* 1 (1993 1992): 1–46; Joyce A. Arditti and Charles McClintock, "Drug Policy and Families," *Marriage & Family Review* 32, no. 3–4 (July 17, 2002): 11–32, [https://doi.org/10.1300/J002v32n03\\_03](https://doi.org/10.1300/J002v32n03_03).

<sup>990</sup> Patricia G. Steinhoff, "Tenkō and Thought Control," in *Japan and the World: Essays on Japanese History and Politics*, ed. Gail Lee Bernstein and Haruhiro Fukui (London: Palgrave Macmillan, 1988), 79.

<sup>991</sup> Richard H. Mitchell, "Japan's Peace Preservation Law of 1925: Its Origins and Significance," *Monumenta Nipponica* 28, no. 3 (1973): 317–45, <https://doi.org/10.2307/2383786>; Steinhoff, "Tenkō

As a result, conspiracy laws are linked in the public imagination in Japan to both political repression and runaway militarism. Participants from the MOJ told me that the non-LDP political parties in Japan—even including the LDP’s coalition partners—would never support conspiracy laws. Evidence bears this out: following Japan’s signing UNTOC, the LDP tried to pass anti-conspiracy laws in 2002 and 2003, and they made a third attempt after their 2004 Action Plan on Trafficking in Persons called for Japan to accede to the Trafficking Protocol. All three failed: the 2002 bill was defeated in the legislature, the 2003 bill was withdrawn, and the 2005 bill was delayed and then heavily amended in 2006, but still failed to pass.<sup>992</sup> As a result, according to the MOJ, Japan could not accede to UNTOC, and without acceding to UNTOC Japan could not accede to the Trafficking Protocol.<sup>993</sup>

Of course, this would have been a non-issue had the Trafficking Protocol been a separate convention rather than an optional protocol to UNTOC—implying that Japan’s inability to sign the Trafficking Protocol was the ironic outcome of the securitisation of human trafficking. However, even though Japan did not initially ratify the Trafficking Protocol, this does not mean that Japan did not have an anti-trafficking law or that Japan was unable to engage in international cooperation on human trafficking issues. It also does not mean that the Trafficking Protocol did not reshape the governance of human trafficking in Japan.

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and Thought Control”; Elise K. Tipton, *The Japanese Police State: Tokko in Interwar Japan* (New York, NY: Bloomsbury Academic, 2012).

<sup>992</sup> Chris Coulson, “Criminal Conspiracy Law in Japan,” *Michigan Journal of International Law* 28 (2006): 863–94; The Japan Times, “A New Name for Old Conspiracy Bill,” *The Japan Times Online*, August 31, 2016, <http://www.japantimes.co.jp/opinion/2016/08/31/editorials/new-name-old-conspiracy-bill/>.

<sup>993</sup> Note that some individuals have argued against the government’s reasoning here. Merits of their arguments aside, though, the government itself clearly believes this reasoning. This is based on both my own interviews, and the fact that they went nearly 17 years without ratifying UNTOC on account of it. See Japan Federation of Bar Associations, “JFBA Opposes Criminalization of Conspiracy,” JFBA: Japan Federation of Bar Associations, September 14, 2006, <https://www.nichibenren.or.jp/en/document/opinionpapers/20060914.html>; “TOC Manual Author Disputes Japanese Gov’t Rationale for ‘anti-Conspiracy’ Bill: Interview,” *Mainichi Daily News*, June 14, 2017, <https://mainichi.jp/english/articles/20170614/p2a/00m/0na/016000c>; Anna Fifield, “In Japan, Prime Minister Pushes Ahead with Controversial ‘Anti-Conspiracy’ Bill,” *Washington Post*, May 22, 2017, sec. Asia & Pacific, [https://www.washingtonpost.com/world/asia\\_pacific/in-japan-prime-minister-pushes-ahead-with-controversial-anti-conspiracy-bill/2017/05/22/a50bf7b4-3ed0-11e7-9851-b95c40075207\\_story.html](https://www.washingtonpost.com/world/asia_pacific/in-japan-prime-minister-pushes-ahead-with-controversial-anti-conspiracy-bill/2017/05/22/a50bf7b4-3ed0-11e7-9851-b95c40075207_story.html).

One way it has done so has been by shaping the governmentalities of civil society groups in Japan, such as those affiliated with the Japan Network Against Trafficking in Persons (JNATIP). In January 2003, the ILO and the Asia Foundation held an “International Symposium on the Trafficking of Women to Japan.” The symposium’s focus was clearly on the issues raised in the 2000 HRW report rather than the Trafficking Protocol.<sup>994</sup> However, the conference proved to be a fertile ground for networking between diverse civil society actors, and it led these groups to form JNATIP (Japanese name: *Jinshin baibai kinshi nettowāku*) that same year.<sup>995</sup> Unlike ideologically oriented groups like CATW and GAATW, JNATIP is a diverse coalition: in 2004, its members included groups such as Sex Work and Sexual Health (SWASH); End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT); the Congregation de Notre Dame (CND) Maria Province; and the United States-based transnational NGO the Polaris Project.<sup>996</sup> Individually, these groups have very different priorities and understandings of what human trafficking is. Lighthouse, for example (which was known as Polaris Japan up until shortly before I interviewed them) told me that they see Japan’s main human trafficking problem as the commercial sexual exploitation of children. On the other hand, Not For Sale Japan told me that they see human trafficking as practices closer to slavery, and expressed uncertainty as to whether all cases of the commercial sexual exploitation of children should be included under the “trafficking” label. However, both of these groups grounded their definitions of “trafficking” on the definition of the Trafficking Protocol, as does JNATIP as a network.

This vernacularisation the Trafficking Protocol has allowed these groups to tap into a broader international legal discourse whereby they can make a knowledge claim about what human trafficking “is,” regardless of how “trafficking” is defined under Japanese law.<sup>997</sup> It

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<sup>994</sup> ILO Office in Japan, “International Symposium on Trafficking of Women to Japan (Tokyo, 22 January 2003),” International Labour Organization, January 8, 2004, <http://www.ilo.org/public/english/region/asro/tokyo/conf/2003trafficking2.htm>.

<sup>995</sup> Keiko Tamai, “About the JNATIP,” trans. Lisa Katayama, *JNATIP: Japan Network Against Trafficking in Persons*, January 29, 2008, <https://jnatip.blogspot.com/2008/01/about-jnatip.html>.

<sup>996</sup> JNATIP, “Organizations Affiliated with JNATIP,” *JNATIP: Japan Network Against Trafficking in Persons*, January 30, 2008, <https://jnatip.blogspot.com/2008/01/organizations-affiliated-with-jnatip.html>.

<sup>997</sup> Sally Engle Merry, “Counting the Uncountable: Constructing Trafficking through Measurement,” in *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, ed. Prabha

has also led to a governmentality where one of the “human trafficking problems” these groups see as being in need of governance is the way human trafficking is understood by the Japanese state. As such, these groups have pushed the Japanese government to both align domestic law with the text of the Trafficking Protocol and to ratify (and be bound by) the protocol itself.<sup>998</sup> This, however, presented a new problem: how to translate the “human trafficking” as it was used in the Trafficking Protocol into Japanese.

Up until 2004, “trafficking” had been translated into Japanese as *baibai*, “buying and selling.” Thus, “the White Slave traffic” became *shugyō o okonawashimuru tame no fujo baibai*, “buying and selling of women for the purpose of forcing them to undertake the unsightly occupation;” “the traffic in women and children,” became *fujin oyobi jidō no baibai*, “buying and selling of women and children;” and “the traffic in persons”—under the 1949 definition—became *jinshin baibai*, “the buying and selling of human beings.”<sup>999</sup> However, while the idea of *jinshin baibai* as labour trafficking might have made sense during the Muromachi Period, when adult men could still have been sold as indentured labourers, since the Edo Period the idea of *jinshin baibai* had been linked mostly to the sale of women or children into indentured labour—in particular indentured sexual labour. Back when the English term “human trafficking” had effectively meant “placing women and children into brothels for sexual exploitation,” *jinshin baibai* had provided a workable translation. Now that the term could also include adult male migrants who were deceived into working in exploitative, non-sexual work conditions or into having their organs removed, the translation broke down and a new term was needed.

Shifts in the Japanese terminology begin appearing during the 1990s, as new trafficking discourses emerged out of the work of groups like GAATW that could not be accurately

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Kotiswaran (Cambridge: Cambridge University Press, 2017), 273–304; Sally Engle Merry, “Sex Trafficking and Global Governance in the Context of Pacific Mobility,” *Law Text Culture* 15 (2011): 187–208; Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (Chicago, IL: University of Chicago Press, 2016), 112–60.

<sup>998</sup> Tamai, “Japan Network Against Trafficking in Persons.” See also Apichai W. Shipper, “Influence of the Weak: The Role of Foreigners, Activism, and NGO Networks in Democratizing Northeast Asia,” *International Studies Quarterly* 56, no. 4 (December 1, 2012): 689–703, <https://doi.org/10.1111/j.1468-2478.2012.00742.x>.

<sup>999</sup> See Appendix 2

translated as “*jinshin baibai*.” One of these was “*torafikkingu*,” a simple transliteration of the English term “trafficking.” Another alternative was the term *hito no mitsuyu*, which could be translated literally as “the smuggling of human contraband.” This term is distinct from the Japanese term for “human smuggling,” “*mitsunyūkoku saseru*,”<sup>1000</sup> in that the latter suggests “illegal migration” while the former suggests that people are being treated like drugs.<sup>1001</sup> And finally, there was “*jinshin torihiki*,” a term which keeps “*jinshin*” for “humans” but replaces “*baibai*” with “*torihiki*,” a word meaning: “The economic behaviour between two merchants or between a merchant and customer,” or: “Negotiations undertaken for mutual profit.”<sup>1002</sup> “*Torihiki*” is usually translated as “transactions,” “dealings,” or “business.”<sup>1003</sup> However, there is a precedent for using the term *torihiki* to mean “trafficking,” as it was the term used to translate the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances into Japanese.<sup>1004</sup>

Of these, “*jinshin torihiki*” eventually emerged as the preferred translation. In theory, it is more likely to be understood by a native Japanese speaker than the foreign import “*torafikkingu*” and less likely to be confused with human smuggling than “*hito no mitsuyu*.” Still, it would take some time for the word to see much usage. The earliest mention I have found of this term is a single use of the term in a brief letter to the *Yomiuri Shimbun* in 1976 whose context suggested the writer was using it as a synonym for *jinshin baibai*. This is an outlier, though; the term does not otherwise appear until the 1990s, and even then only sporadically. It shows up, for example, in Sono’s 1993 translation of Ramseyer’s “Indentured

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<sup>1000</sup> As used in the Japanese translation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. See Appendix 2.

<sup>1001</sup> The former is used, for example, in Committee on the Elimination of Discrimination against Women, “Joshi Sabetsu Teppai Jōyaku Jishijōkyō Dai 5 Kai Hōkoku (Kayaku) [Fifth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (Provisional Translation)],” trans. Ministry of Foreign Affairs (Tokyo: MOFA, Japan, September 2002), <http://www.mofa.go.jp/mofaj/gaiko/josi/fifth/index.html>. Both are used in Gender Equality Bureau Cabinet Office, “Josei No Torafikkingu Ni Tsuite [Regarding the Trafficking of Women]” (Tokyo: Cabinet Office, Government of Japan, July 17, 2002), <http://www.gender.go.jp/kaigi/senmon/boryoku/siryō/pdf/bo14-1.pdf>.

<sup>1002</sup> *Digital Daijisen*, via <https://dictionary.goo.ne.jp/jn/161347/meaning/m0u/>.

<sup>1003</sup> JMditct, via <http://ejje.weblio.jp/content/%E5%8F%96%E5%BC%95>

<sup>1004</sup> See Appendix 2.

Prostitution in Imperial Japan.” It also appears in two articles each published in the *Asahi Shimbun* and the *Yomiuri Shimbun* 1999–2000—all in connection to child sexual exploitation. It is only in 2003–2004 that the term catches on, as shown in Figure 9 below.

The primary reason for the shift in 2004 is clear. This is the year the cabinet secretariat put together both an Inter-Ministerial Liaison Committee (Task Force) Regarding Measures to Combat Trafficking in Persons (*Jinshin torihiki taisaku ni kansuru kankeishōchō renraku kaigi*), and an Action Plan to Combat Trafficking in Persons (*Jinshin torihiki taisaku kōdōkeikaku*), as well as promising to work on ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (translated as: *Hito (toku ni josei oyobi jidō) no torihiki o bōshi shi, yokushi shi oyobi shobatsu suru tame no giteisho*).<sup>1005</sup> The commonality here is the use of the term “*torihiki*” for trafficking, and in particular “*jinshin torihiki*” for human trafficking. According to the 2004 Action Plan:

The words “*jinshin torihiki*,” as used in this Action Plan, follow the definition in Art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>1006</sup>

Thus, in 2003 *jinshin torihiki* effectively became the new “official” translation for human trafficking in Japanese. Still, my own observations suggest that broader uptake of this term has been low. During my fieldwork in Japan, I engaged in casual conversations about my research with non-specialists I met in hostels and bars in ten cities across Japan. Only twice did I not have to explain the term *jinshin torihiki*, and one of those times was to someone who turned out to be connected to an anti-trafficking NGO. Furthermore, looking at Figure 10, below, we can see that the media’s preferred term remains *jinshin baibai*. Even the initial spike of usage of *jinshin torihiki* following the 2004 Action Plan was accompanied by an even larger spike in articles using *jinshin baibai*. Of the two, only *jinshin baibai* is a crime according to the Japanese Penal Code (art. 226), which never mentions *jinshin torihiki*.

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<sup>1005</sup> Inter-Ministerial Liaison Committee Regarding Measures to Combat Trafficking in Persons [cited below as “Task Force”] “Jinshin Torihiki Taisaku Kōdōkeikaku [Action Plan to Combat Trafficking in Persons]” (Tokyo: Cabinet Office, Government of Japan, 2004), <http://www.cas.go.jp/jp/seisaku/jinsin/kettei/041207keikaku.html>.

<sup>1006</sup> Task Force, 2004, 1. Own translation.

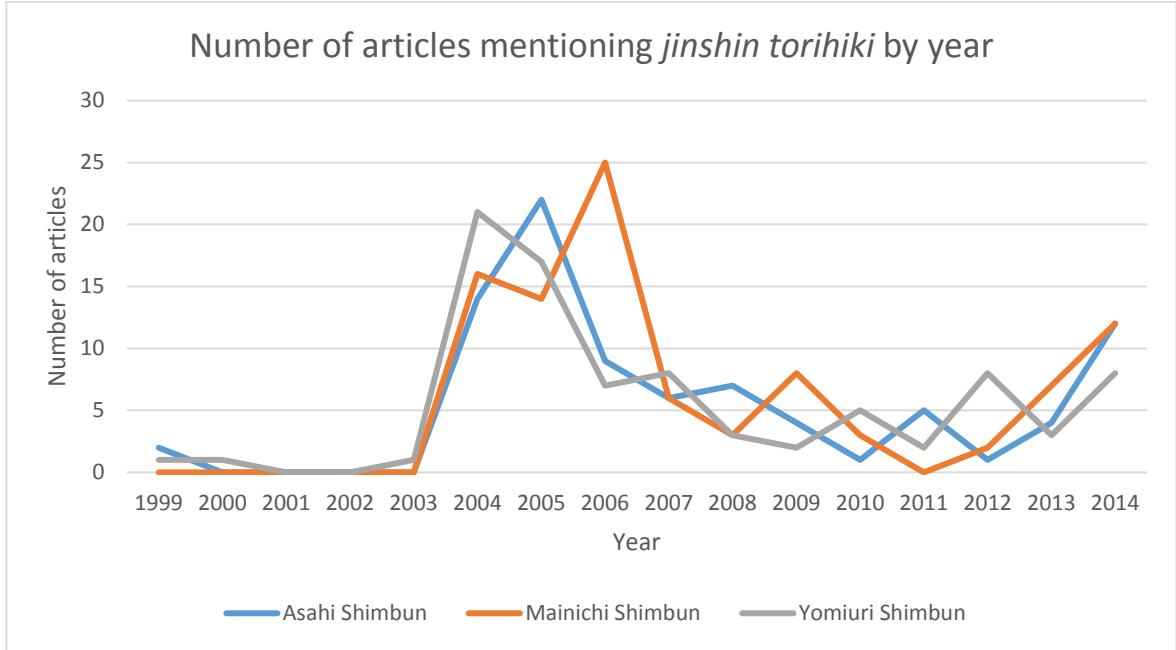


Figure 9: Number of articles mentioning jinshin torihiki by year

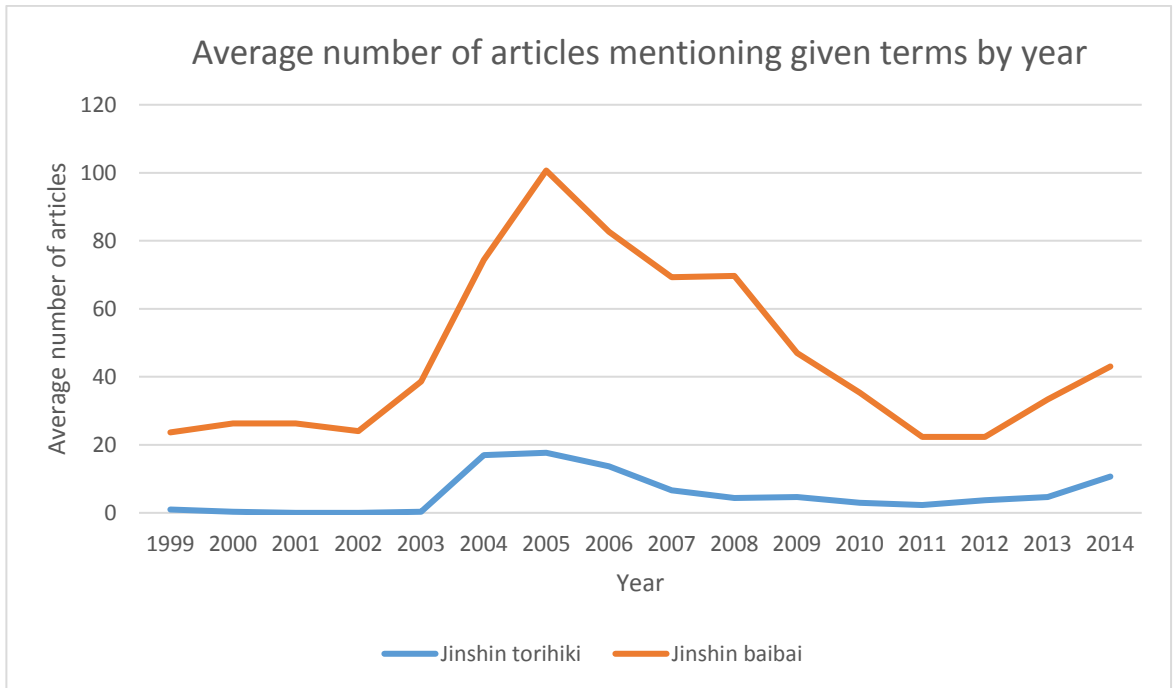


Figure 10: Average number of articles mentioning given terms by year<sup>1007</sup>

<sup>1007</sup> Average is for the Asahi Shimbun, the Mainichi Shimbun and the Yomiuri Shimbun.

To a certain extent, this might suggest that the vernacularisation of “human trafficking” as “*jinshin torihiki*” has been a case of what Merry calls “replication,” where an “imported institution remains largely unchanged from its transnational prototype.”<sup>1008</sup> This replication stands in contrast to the more “hybridised” translation of “*jinshin baibai*,” which took the transnational idea of “human trafficking” and framed it in a way that made sense to Japan’s sociocultural understanding of criminal behaviour. As Merry notes, this hybridised translation is both more likely to be accepted locally and more open to subversion.<sup>1009</sup>

However, in spite of its failure to achieve broader cultural-linguistic spread, the term *jinshin torihiki* remains important for the governance of human trafficking. It sets how human trafficking is defined across the government—and unlike laypersons, every single government employee I spoke with used the term *jinshin torihiki* and linked it to the Trafficking Protocol. On the other hand, as I will discuss below, in practice enforcement of *jinshin torihiki* is often limited to activities that would also meet the definition of *jinshin baibai*, suggesting that we avoid reading too much into the change of language alone. Still, this change has opened up the possibility for the recognition of a wider range of acts of human trafficking, and in recent years we have seen some of these possibilities acted on.

This still leaves the question of what happened in 2004 to catalyse this shift in the governmentality of human trafficking. One explanation for this shift that many of my participants either hinted at or stated outright was that it came in response to the 2004 American Trafficking in Persons Report. This report condemned the human trafficking situation in Japan, placing it in the same category as Thailand, Qatar and the Democratic Republic of the Congo,<sup>1010</sup> and implicitly threatening to apply sanctions. There was wide agreement across NGOs, foreign embassies and even some government officials I spoke with that this and subsequent reports have shaped Japan’s response to human trafficking. It is thus to these reports that I turn in the following section.

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<sup>1008</sup> Sally Engle Merry, “Transnational Human Rights and Local Activism: Mapping the Middle,” *American Anthropologist* 108, no. 1 (March 1, 2006): 44, <https://doi.org/10.1525/aa.2006.108.1.38>.

<sup>1009</sup> Merry, 38–51.

<sup>1010</sup> US Department of State, “2004 Trafficking in Persons Report,” June 2004, 39.



## THE AMERICAN TIP REPORT

On March 11 1998, U.S. President Clinton issued his “Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls.” This marked the first appearances of contemporary human trafficking discourses in American policy, and it set the tone for the two decades that followed.<sup>1011</sup> However, though the memorandum called for “the Attorney General [...] to recommend any appropriate legal changes to ensure that trafficking is criminalized,”<sup>1012</sup> it was not yet clear what shape such a law would take or how it would define—and thus govern—“human trafficking” in the United States. On the one hand, the then-paradigmatic case of “trafficking” in the United States—Miguel Flores and Sebastian Gomez’ exploitation of hundreds of migrant workers in 1997—dealt with primarily male migrant workers. On other the hand, the term “sex trafficking” was emerging at that time as a powerful alternative trafficking discourse in American policy making circles.<sup>1013</sup>

“Sex trafficking” appeared in tandem with other phrasings, such as “human trafficking” and “trafficking in persons,” primarily around the start of the 1990s. Though usage of “sex trafficking” has continued to trend upward over time, it has been outpaced by the rival term “trafficking in persons,” particularly following the drafting of the Trafficking Protocol and changes in American law in 2000. We can see these changes clearly in Figure 11, below. These trends are, on the whole, unsurprising: The term “sex trafficking” is not used by the Trafficking Protocol, and has no meaning in international law; it also explicitly excludes a number of activities now described as “trafficking.” “Trafficking in persons” is the term used in many official documents, (i.e., “the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” “the Trafficking in Persons Report”) but it is somewhat cumbersome. “Human trafficking” is its common shorthand.

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<sup>1011</sup> Clinton, “Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls”; Ryf, “The First Modern Anti-Slavery Law.”

<sup>1012</sup> Clinton, “Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls.”

<sup>1013</sup> Alicia W. Peters, *Responding to Human Trafficking: Sex, Gender, and Culture in the Law* (Philadelphia, PA: University of Pennsylvania Press, 2015), 56–58; Yvonne C. Zimmerman, *Other Dreams of Freedom: Religion, Sex, and Human Trafficking* (Oxford: Oxford University Press, 2013), 35–39.

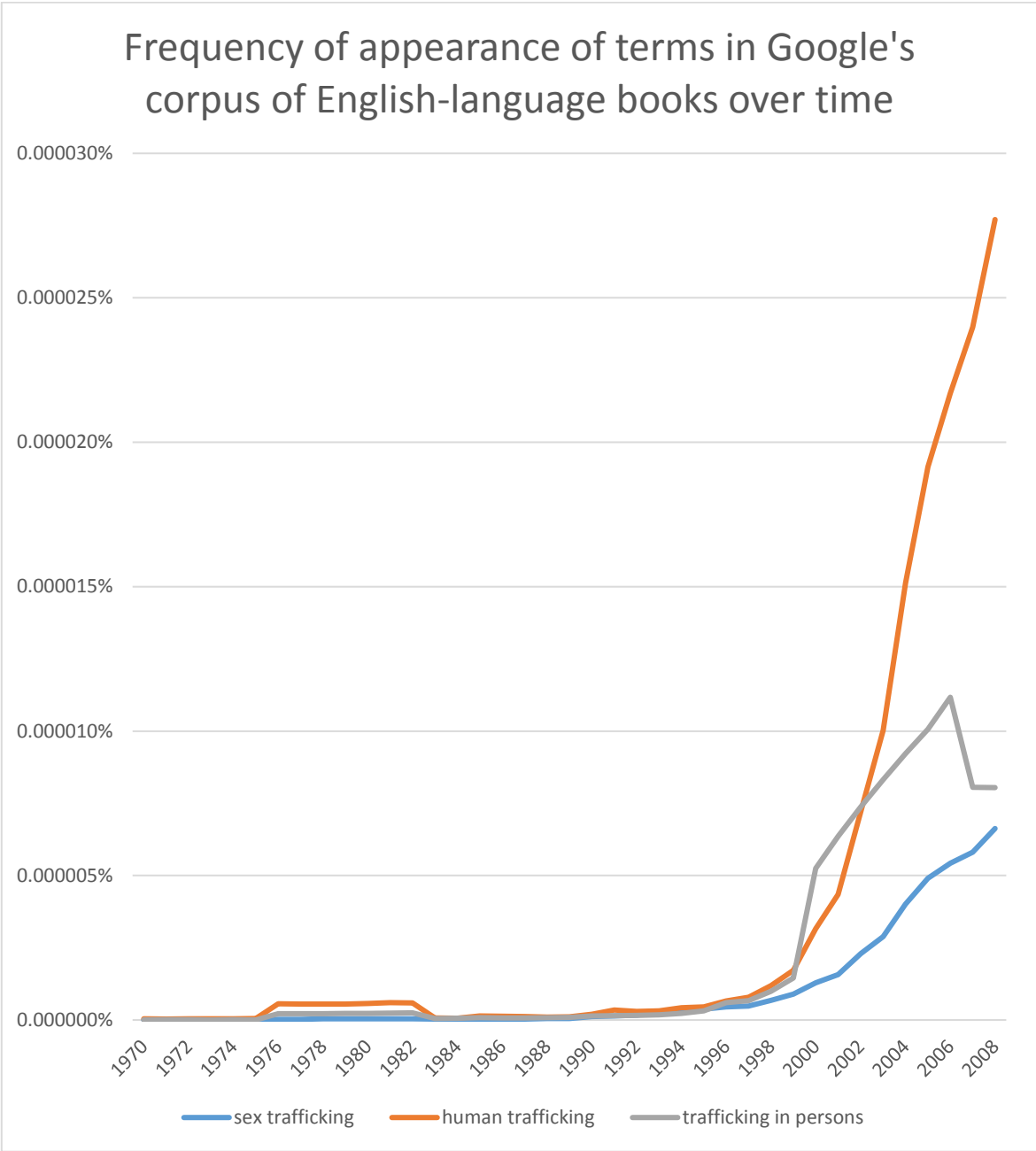


Figure 11: Frequency of appearance of "sex trafficking," "human trafficking" & "trafficking in persons" in Google corpus of English-language books over time<sup>1014</sup>

<sup>1014</sup> Data from <https://books.google.com/ngrams>

However, even if “sex trafficking” has no formal status in international law, it has still been useful for groups seeking to differentiate “trafficking” related to what they perceive as “sexual exploitation” from other activities, such as labour exploitation and organ trafficking, that have been included in definitions of “human trafficking.” As such, the term has seen heavy usage by Evangelical Christian groups, who, at the end of the 1980s, had begun to see rescuing women in developing countries from prostitution as a new frontier for Christian good works.<sup>1015</sup> These groups helped to lay the foundation for what Agustín calls a “rescue industry,” and this industry would, through the use of what Weitzer calls “consultative access,” heavily shape official government policies towards trafficking.<sup>1016</sup> ECPAT, discussed previously, was one of the groups that emerged from this movement in 1990. However, the most well-known of these groups is probably the International Justice Mission (IJM), a group founded in 1997 by an evangelical former trial attorney.<sup>1017</sup> The IJM has been praised heavily by both the American government<sup>1018</sup> and major media figures such as the (controversial) New York Times’ Nicholas Kristof.<sup>1019</sup> However, it has also come under fire from academics and activists for abducting and forcibly confining sex workers who did not want to be “rescued.”<sup>1020</sup>

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<sup>1015</sup> Zimmerman, *Other Dreams of Freedom*, 48.

<sup>1016</sup> Agustín, *Sex at the Margins*, 4; Weitzer, “The Social Construction of Sex Trafficking,” 459.

<sup>1017</sup> Samantha Power, “The Enforcer,” *The New Yorker*, January 12, 2009, <https://www.newyorker.com/magazine/2009/01/19/the-enforcer>.

<sup>1018</sup> US Department of State, “2012 Trafficking in Persons Report,” June 2012, 49.

<sup>1019</sup> See Nicholas Kristof, “Raiding a Brothel in India,” *The New York Times*, May 25, 2011, <https://www.nytimes.com/2011/05/26/opinion/26kristof.html>. Or more recently, see Nicholas Kristof, “God Should Sue Roy Moore,” *The New York Times*, November 10, 2017, <https://www.nytimes.com/2017/11/10/opinion/roy-moore-sexual-assault.html>.

<sup>1020</sup> See for example Maggie Jones, “Thailand’s Brothel Busters,” *Mother Jones*, November 2003, <http://www.motherjones.com/politics/2003/11/thailands-brothel-busters/>; Empower, “A Report by Empower Chiang Mai on the Human Rights Violations Women Are Subjected to When ‘Rescued’ by Anti-Trafficking Groups Who Employ Methods Using Deception, Force and Coercion” (Chiang Mai, Thailand: Empower, 2003); Amy Kazmin, “Deliver Them from Evil,” *Financial Times*, July 10, 2004, [http://www.ft.com/cms/s/0/b135415a-d20d-11d8-85fc-00000e2511c8.html?ft\\_site=falcon&desktop=true](http://www.ft.com/cms/s/0/b135415a-d20d-11d8-85fc-00000e2511c8.html?ft_site=falcon&desktop=true); Gretchen Soderlund, “Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition,” *NWSA Journal* 17, no. 3 (2005): 64–87; Aziza Ahmed and Meena Seshu, “‘We Have the Right Not to Be ‘Rescued’...’: When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers,” *Anti-Trafficking Review*, no. 1 (June 2012): 149–68.

Some of these religiously affiliated-NGOs have argued that “sex trafficking” needs to take priority over other forms of trafficking, with one prominent neo-conservative prohibitionist even arguing that, “If you want to end the enslavement of those in debt bondage in the brick factories in India, the best thing you can do is put all of the sex traffickers in jail.”<sup>1021</sup> Some of these groups have also adopted a broad perspective on “sexual exploitation,” arguing that all sex work is inherently exploitative, and that prostitution itself is a form of trafficking.<sup>1022</sup> While these beliefs made them natural allies of prohibitionist feminist groups like CATW, they also put them on a collision course with labour rights activists and the Clinton administration, effectively causing the same conflict that occurred during the drafting of Trafficking Protocol to play out in the American legislature.

This led to two competing bills being introduced in March 1999: the International Trafficking of Women and Children Protection Act in Senate, which defined “trafficking” in terms of actions that put someone into slavery and forced labour;<sup>1023</sup> and the Freedom from Sexual Trafficking Act (FFSTA) in the House, which defined “sexual trafficking” as:

The taking of a person across an international border for the purpose of a commercial sexual act, if either such taking or such sexual act is effected by fraud, force, or coercion, or if the person has not attained the age of 18 years.<sup>1024</sup>

Ultimately, these two acts were reconciled the following year under the name, “the Trafficking Victims Protection Act of 2000” (TVPA).<sup>1025</sup> The result of this reconciliation process was a law whose internal contradictions were even sharper than those of the Trafficking Protocol. Furthermore, unlike the Trafficking Protocol, the TVPA made no real

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<sup>1021</sup> Michael Horowitz in E. Benjamin Skinner, *A Crime So Monstrous: Face-to-Face with Modern Day Slavery* (New York, NY: Free Press, 2008), 53.

<sup>1022</sup> Jennifer Musto, *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States* (Berkeley, CA: University of California Press, 2016), 9–11; Jacqueline Berman, “Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy,” *Tulane Journal of International and Comparative Law* 14, no. 2 (2006): 269; Bernstein, “Militarized Humanitarianism Meets Carceral Feminism.”

<sup>1023</sup> The International Trafficking of Women and Children Victim Protection Act of 1999, S. 600, 106<sup>th</sup> Congress.

<sup>1024</sup> The Freedom from Sexual Trafficking Act of 1999, H.R. 1356, 106<sup>th</sup> Congress.

<sup>1025</sup> *Victims of Trafficking and Violence Protection Act of 2000*. Public Law 106–386. U.S. Statutes at Large 114 (2000): 1463-1548. Cited below as TVPA 2000.

attempt to patch over the differing ideas of what constitutes trafficking. Instead, it simply included two definitions of trafficking. Thus on the one hand, the TVPA defines “sex trafficking” as: “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>1026</sup> On the other, it defines “severe forms of trafficking in persons” as:

(A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>1027</sup>

However, although this law includes two definitions of trafficking, these are not accorded equal importance. Every time the term “sex trafficking” is used in the report, it is always followed by additional qualifiers, as in: “For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent[...].”<sup>1028</sup> And in fact, the TVPA creates no penalties or monitoring of “sex trafficking” when this “sex trafficking” does not also fall under the umbrella of “severe forms of trafficking in persons.” In this sense, then, “severe forms of trafficking in persons” is the only real definition that “counts.” As such, legally-speaking, the 2000 version of the TVPA is based on a broad understanding of “human trafficking” similar to the one used in the Palermo Protocol, rather than a narrow, sex-specific one.

This would seem to render the existence of the term “sex trafficking” in the TVPA almost entirely unnecessary; an appendix that remained as a by-product of its evolution from the FFSTA. However, as Chapkis notes, the inclusion of this term nevertheless serves to “set a tone” within the TVPA by describing all commercial sex as “trafficking.”<sup>1029</sup> This

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<sup>1026</sup> TVPA 2000, Sec. 103(9).

<sup>1027</sup> TVPA 2000, Sec. 103(8)

<sup>1028</sup> TVPA 2000, Sec. 108(a)(2)

<sup>1029</sup> Chapkis, “Trafficking, Migration, and the Law,” 927.

“prohibitionist stance with respect to prostitution”<sup>1030</sup> in turn establishes “sex trafficking” — in other words, all commercial sex—as a problem in need of governance, even if the tools to accomplish this are not found directly in the law itself. Evidence for this governmentality can also be found in the introductory text of the TVPA, which states that:

The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.<sup>1031</sup>

The line about the “low status of women in many parts of the world” is important, because it highlights another aspect of the TVPA that was carried over from the FFSTA: the idea that human trafficking in other countries is a problem in need of *American* governance (or at least American-led international governance), and that the American leverage over much of the world’s financial system should be used as one of the techniques to solve this problem. To this end, the TVPA lays out “minimum standards for the elimination of trafficking” that it expects other countries should adhere to. Specifically, countries should ensure that they “prohibit severe forms of trafficking in persons and punish acts of such trafficking,” that the punishment for severe forms of trafficking should be similar to other serious crimes, and that the “government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.”<sup>1032</sup> Every year the Secretary of State is required to submit a report listing which governments “fully comply with such standards;” which governments “do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance;” and which governments “do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.”<sup>1033</sup>

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<sup>1030</sup> Anne T. Gallagher, “Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports,” *Human Rights Review* 12, no. 3 (September 2011): 393, <http://dx.doi.org/10.1007/s12142-010-0183-6>.

<sup>1031</sup> TVPA 2000, Sec. 102(b)(2)

<sup>1032</sup> TVPA 2000, Sec. 108.

<sup>1033</sup> TVPA 2000, Sec. Sec. 108-110.

Cooperation with these “minimum standards” is judged according to the “3 P”— prosecution, protection and prevention— criteria, as well as international cooperation and the securitisation of borders. Notably, all of these indicators are focussed on law enforcement activities and ignore broader governance indicators. For example, as Keo notes, Cambodia was determined by the State Department not be in compliance in 2005, but subsequently improved their standing by increasing the number of “crackdowns” on the sex industry, the number of arrests, the number of prosecutions, and the number of “rescued females.” However, in practice this has meant that the government empowered the highly corrupt Cambodian police force to engage in rent seeking behaviour among marginal groups, and it has largely been those who were unable to pay bribes that make up both the “perpetrator” and “victim” numbers in Cambodia’s trafficking statistics.<sup>1034</sup>

This report on TVPA compliance is known as the Trafficking in Persons Report (TIP Report). Following its mandate, the report places countries in either Tier 1 (compliant), Tier 2, (making efforts), or Tier 3 (not making efforts). As discussed in Chapter 2, this makes the TIP Report a type of “indicator.” However, where other indicators often aim to govern by “naming and shaming” countries, the TIP Report has punitive measures to support its ratings. Specifically, according to the TVPA, for those countries that are judged to be not complying with these minimum standards and “not making significant efforts to bring [themselves] into compliance with such standards,” it is American policy not to provide any “nonhumanitarian, nontrade-related foreign assistance”—including by “instruct[ing] the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director’s best efforts to deny, any loan or other utilization of the funds of the respective institution to that country.”<sup>1035</sup> In other words, countries that are placed in Tier 3 risk—in the absence of a Presidential waiver—losing access not only to funding from the US, but also to funding from major multilateral institutions such as the IMF and World Bank.

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<sup>1034</sup> Chenda Keo, *Human Trafficking in Cambodia* (London: Routledge, 2014), 78–106.

<sup>1035</sup> TVPA 2000, Sec. 108.

The TIP Report itself is put together by the Office to Monitor and Combat Trafficking in Persons (TIP Office). Data for the TIP Report is gathered primarily by local embassies, although officials from the TIP Office do at times conduct their own independent fact-finding missions. This country-level data is, in turn, drawn directly from the local government—which is asked to submit reports on trafficking in their countries—and submissions made by NGOs, as well as the observations of the embassy staff (e.g., of reports of incidents that might be considered “trafficking” in local newspapers).<sup>1036</sup> Interpreting this data and turning it into an indicator falls to the TIP Office, which does not always agree with the assessments of country based officials—and which have reportedly shoehorned cases and data to fit their belief regarding what trafficking is and what a given country’s ranking should be.<sup>1037</sup> These assessments are subject to review from the upper echelons of the State Department, who have been known to veto findings or rankings that they find to be inconvenient for their own diplomatic priorities. However, even in the event that the State Department allowed an allied nation to be assigned a Tier 3 ranking, the President can still waive the sanctions—as President Bush did for Saudi Arabia in 2005.<sup>1038</sup>

The power of interpretation held by the TIP Office, combined with the influence inherent in the coercive nature of the report, makes the director of the TIP Office wield an unusual degree of influence over global trafficking governance. As a result, getting a specific candidate into the director’s position can itself be a form of governance. We can see this early on in the history of the TIP Report. Nancy Ely-Raphel, a former diplomat, was the first director of the TIP Office. However, with the election of George W. Bush, evangelicals and their allies—including prohibitionist feminists—held increasing sway over American policy making. Believing that Ely-Raphel was focussing too much on “severe forms of trafficking,” and not enough on “sex trafficking,”<sup>1039</sup> these groups succeeded in pushing Ely-Raphael out

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<sup>1036</sup> This I confirmed during a discussion with an official from the American embassy in Tokyo, as well as with Japanese officials and NGOs who were submitting data to this same embassy.

<sup>1037</sup> Ko-lin Chin and James O. Finckenauer, *Selling Sex Overseas: Chinese Women and the Realities of Prostitution and Global Sex Trafficking* (New York: NYU Press, 2012), 214.

<sup>1038</sup> Skinner, *A Crime So Monstrous*, 194–97.

<sup>1039</sup> Donna M. Hughes, “Foreign Government Complicity in Human Trafficking: A Review of the State Department’s 2002 Trafficking in Persons Report” (Testimony before the U.S. House Committee on



following the 2002 TIP Report and replacing her with John Miller. Miller did not have any particularly relevant “anti-trafficking” experience, but he was already publically committed to fighting against “sex trafficking,” and believed that there was a direct correlation between prostitution and trafficking.<sup>1040</sup>

As expected, Miller’s arrival signalled a change in the tenor of the report. Under Miller, the TIP Office reportedly had a policy of “white listing” those NGOs whose ideological positions it found agreeable and cutting off contact with those whose ideological positions it did not.<sup>1041</sup> Correspondingly, we see a spike in the relative usage of words like “sex” and “prostitution” once Miller takes office (see Figure 12 and Table 5, below). However, to the disappointment of prohibitionists, Miller began pursuing other forms of trafficking further into his tenure,<sup>1042</sup> leading to a relative decline in the use of words such as “sex” and “prostitution” and an increase in the use of words such as “labour.” This increasing focus on “labour” continued under Miller’s Bush-appointed successor, Mark Lagon (2007–2009), and again with Lagon’s Obama-appointed successor Luis CdeBaca (2009–20014). Still, even across all these directors, the focus on “sex trafficking” never disappeared, and women and children continue to be mentioned far more often than men.

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International Relations, Washington, DC, June 19, 2002),  
<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1027&context=humtraffdata>.

<sup>1040</sup> Anthony M. DeStefano, *The War on Human Trafficking: U.S. Policy Assessed* (New Brunswick, NJ: Rutgers University Press, 2007), 112–13; Janie A. Chuang, “Rescuing Trafficking from Ideological Capture: Anti-Prostitution Reform and Anti-Trafficking Law and Policy,” *University of Pennsylvania Law Review* 158, no. 6 (May 1, 2010): 1681; Erin O’Brien, “Fuelling Traffic: Abolitionist Claims of a Causal Nexus between Legalised Prostitution and Trafficking,” *Crime, Law and Social Change* 56, no. 5 (December 2011): 550–51, <https://doi.org/10.1007/s10611-011-9334-1>; Erin O’Brien, Sharon Hayes, and Belinda Carpenter, *The Politics of Sex Trafficking: A Moral Geography* (Basingstoke, Hampshire: Palgrave Macmillan, 2013), 184–86.

<sup>1041</sup> O’Brien, Hayes, and Carpenter, *The Politics of Sex Trafficking*, 183.

<sup>1042</sup> E. Benjamin Skinner, “The Fight to End Global Slavery,” *World Policy Journal* 26, no. 2 (July 1, 2009): 39.

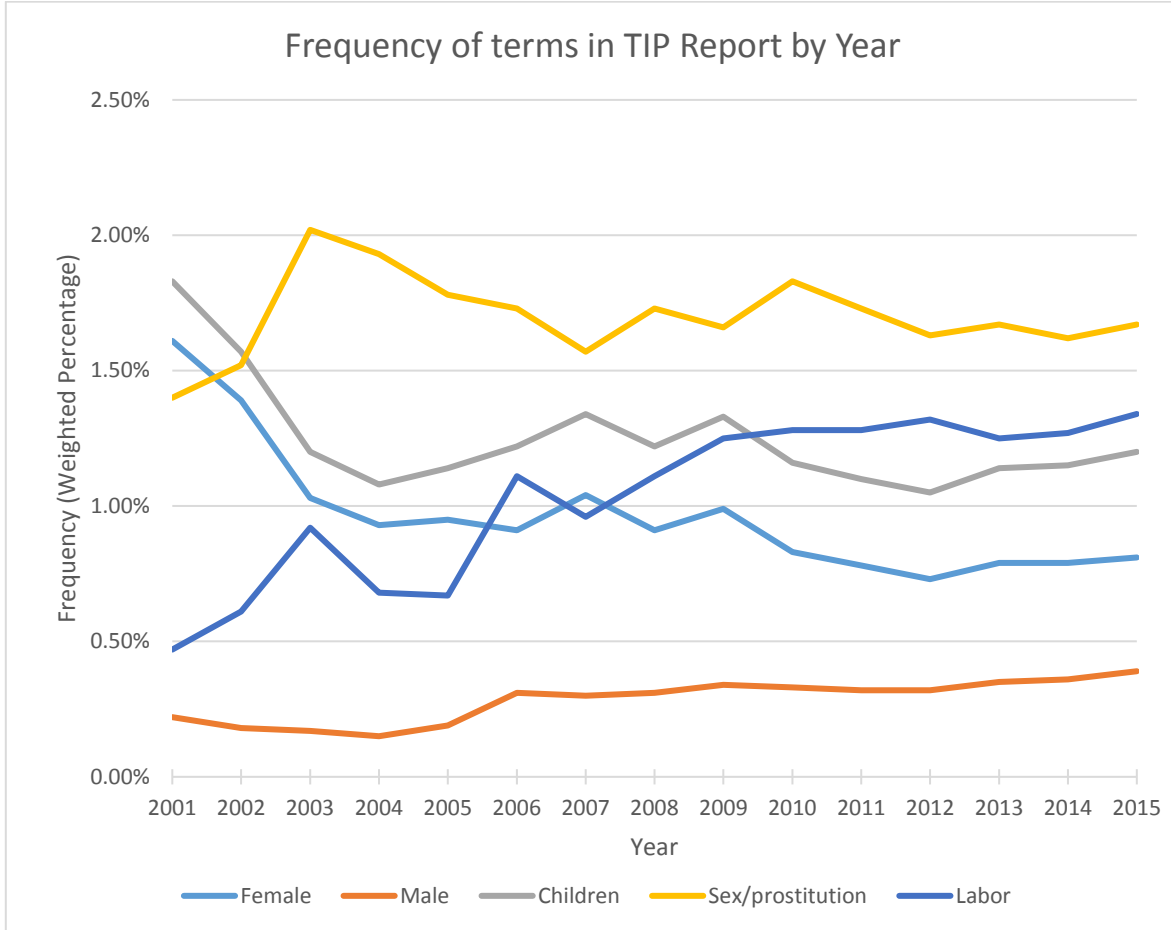


Figure 12: Frequency of Terms in TIP Report by Year<sup>1043</sup>

TIP Reports	Director/Ambassador-at-Large <sup>1044</sup> of TIP Office
2001–2002	Nancy Ely-Raphel
2003–2006	John R. Miller
2007–2008	Mark P. Lagon
2009–2014 <sup>1045</sup>	Luis CdeBaca
2016	Susan P. Coppedge (current Ambassador-at-large)

Table 5: Directors and Ambassadors-at-Large of the TIP Office

<sup>1043</sup> Data extracted from TIP Reports for given years using NVivo 11’s ‘Query’ function. All terms include stemmed words. “Female” also includes “women” and “girl;” “male” also includes “men” and “boy;” “children” also includes “child;” “sex” also includes “sexual.”

<sup>1044</sup> The title of the position was changed during Miller’s tenure.

<sup>1045</sup> The 2015 TIP Report was released between Ambassadors-at-Large.

Critics of the report have highlighted how this politicisation of the TIP Report ultimately undermines its legitimacy as an indicator. Early versions of the report were also criticised for their opaque methodology, inconsistent ranking scheme, poor research, limited selection of countries, and even their shoddy production values. These critiques came from a range of sources, including legal experts,<sup>1046</sup> sociologists,<sup>1047</sup> prohibitionist activists,<sup>1048</sup> and human rights experts.<sup>1049</sup> They even came from the US Government Accountability Office (GAO), which noted “methodological weaknesses, gaps in data, and numerical discrepancies” in the TIP Report’s global data, and “limited availability, reliability, and comparability” in their country data.<sup>1050</sup> As the report has evolved over the years, some of these criticisms have tapered off. Nevertheless, the Tier Ranking system remains somewhat arbitrary, the methodology opaque, and political factors a strong influence over the final product.

Changes to the TIP Report have come not only from the changing directors of the TIP Office, but also from changes to its underlying legal structure. The TVPA needs to be periodically reauthorised, and it has been amended five times—in 2003, 2005, 2008, 2013 and 2015—through “Trafficking Victims Protection Reauthorization Acts” (TVPRAs). The first TVPRA, which followed the push to oust Ely-Raphel and bring in Miller, brought with it the most significant set of changes. One of these was the introduction of a “Watch List” for Tier 2 countries where “the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;” there is a failure to provide evidence of improved

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<sup>1046</sup> Anne T. Gallagher, “Trafficking in Persons Report (Review),” *Human Rights Quarterly* 23, no. 4 (2001): 1135–41, <https://doi.org/10.1353/hrq.2001.0050>; Soderlund, “Running from the Rescuers”; Janie A. Chuang, “The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking,” *Michigan Journal of International Law* 27, no. 2 (Winter 2006).

<sup>1047</sup> Wendy Chapkis, “Soft Glove, Punishing Fist: The Trafficking Victims Protection Act of 2000,” in *Regulating Sex: The Politics of Intimacy and Identity*, ed. Elizabeth Bernstein and Laurie Schaffner (New York, NY: Routledge, 2005), 51–66; Weitzer, “The Social Construction of Sex Trafficking”; Bernstein, “The Sexual Politics of the ‘New Abolitionism.’”

<sup>1048</sup> Hughes, “Foreign Government Complicity in Human Trafficking: A Review of the State Department’s 2002 Trafficking in Persons Report”; Norma Ramos, “Addressing Domestic Human Trafficking,” *University of St. Thomas Law Journal* 6 (2008): 21–27.

<sup>1049</sup> Berman, “Left, the Right, and the Prostitute”; Terry Coonan, “The Trafficking Victims Protection Act: A Work in Progress,” *Intercultural Human Rights Law Review* 1 (2006): 99–132.

<sup>1050</sup> US Government Accountability Office, “Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad” (Washington, DC: US Government Accountability Office, July 2006), 2, <http://www.gao.gov/products/GAO-06-825>.

counter-trafficking efforts over the previous year, or the decision to place a country in Tier 2 rather than Tier 3 was based on a promise of future actions.<sup>1051</sup> The Watch List thus effectively acts as an intermediate tier between Tiers 2 and 3 and gave the indicator a wider spectrum of rankings, which in turn helped the TIP Report move away from a system where the majority of countries shared the same ranking.

At the same time, the 2003 TVPRA added a provision declaring that governments who did not submit data on law enforcement activities were to be assumed to not be “vigorously” engaged in such activities—making them a candidate for a Tier 3 ranking.<sup>1052</sup> The 2008 TVPRA then made it explicit that countries were to be assessed on whether they had “made serious and sustained efforts to reduce the demand for commercial sex acts.”<sup>1053</sup> That TVPRA also amended the Watch List so that countries on it for two consecutive years would (absent a Presidential waiver, which could be given for up to two years) automatically be placed in Tier 3.<sup>1054</sup>

Other measures served to expand the range of acts covered by the TVPA. The 2008 TVPRA added restrictions to prevent convicted “sex tourists” from obtaining passports.<sup>1055</sup> The 2013 TVPRA added a section on preventing child marriages.<sup>1056</sup> But perhaps the biggest expansion of the definition of “trafficking” came with the 2015 TVPRA, which changed the definition of “sex trafficking” to: “the recruitment, harboring, transportation, provision, obtaining, *patronizing*, or *soliciting* of a person for the purpose of a commercial sex act.”<sup>1057</sup> The effect of this was that, currently under American federal law, paying or even trying to pay someone for sex is now considered “trafficking;” and if that person is under the age 18, purchasing sex from them is legally considered a “severe form of trafficking.” The 2016 TIP

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<sup>1051</sup> *Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. No. 108–193, 117 Stat. 2875–2887 (2003) (“TVPRA 2003”): Sec. 6(e)(2)

<sup>1052</sup> TVPRA 2003, Sec. 6(d)(2).

<sup>1053</sup> *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, Pub. L. No. 110–457, 122 Stat. 5044–5091 (2008) (“TVPRA 2008”), Sec. 106(2)(D).

<sup>1054</sup> TVPRA 2008, Sec. 107(a).

<sup>1055</sup> TVPRA 2008, Sec. 236.

<sup>1056</sup> *Trafficking Victims Protection Reauthorization Act of 2013*, Pub. L. No. 113–4, 127 Stat. 54–160 (2013) (“TVPRA 2013”), Sec. 1207(a).

<sup>1057</sup> *Justice for Victims of Trafficking Act of 2015*, Pub. L. No. 114–22, 129 Stat. 227–267 (2015) (“TVPRA 2015”), Sec. 108(c).

Report reinforces this point, noting that, from the perspective of the TIP Office, “movement and physical restraint are not required for a crime to be considered human trafficking.”<sup>1058</sup> To a certain extent, this has always been the subtext of the TIP Report, hidden within phrases such as “demand reduction.” But previously it was possible to claim that American anti-trafficking laws were compatible with the Trafficking Protocol. With the passage of the 2016 TVPRA, this is no longer a claim that can be made with any credibility—the American definition is now much wider, meaning that many American anti-trafficking activities and resources are being directed at activities not considered trafficking by the Trafficking Protocol.

Aside from the changes to the TVPA, the most significant change in the TIP Report has been the number of countries it covers. Originally, the TIP Office decided to only include countries where there were at least 100 reported cases of trafficking. As a result, the 2001 TIP Report looked at only 88 countries. However, looking at Figure 13, below—which shows the number of countries in different tier rankings over time—we can see that this number rose quickly, began slowing down in 2010, and then only levelled out in 2013 at 187 countries. We can also see in Figure 13 and Figure 14 the impact that came with the introduction of the Watch List in 2004: previously, there were almost twice as many countries in Tier 2 as the other tiers combined (actual ratio 1.83:1); while in 2015 less than half the countries evaluated fell into Tier 2.

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<sup>1058</sup> US Department of State, “2016 Trafficking in Persons Report,” June 2016.

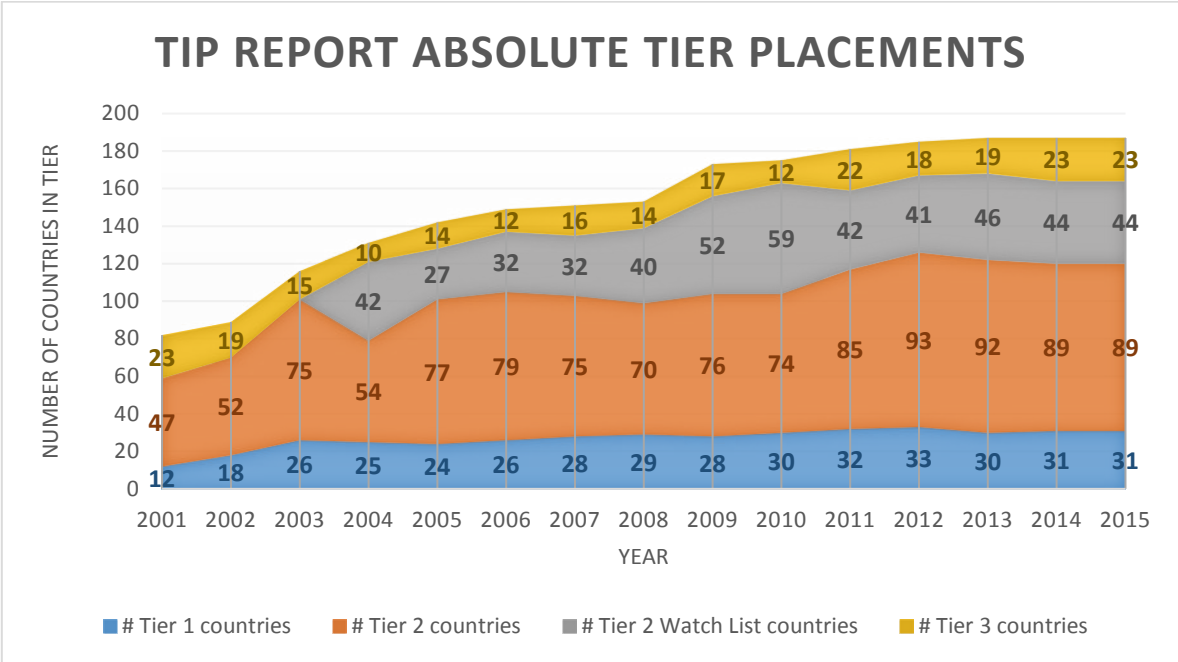


Figure 13: TIP Report Absolute Tier Placements

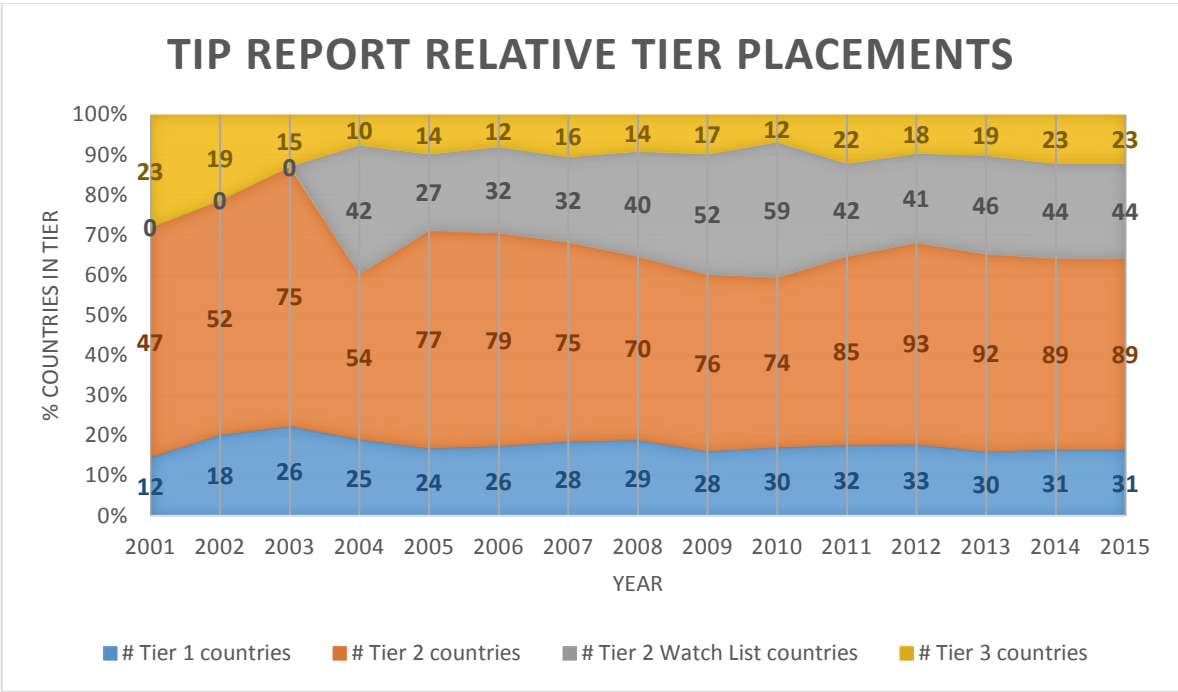


Figure 14: TIP Report Relative Tier Placements<sup>1059</sup>

<sup>1059</sup> Data taken directly from TIP Reports for years 2001–2015.

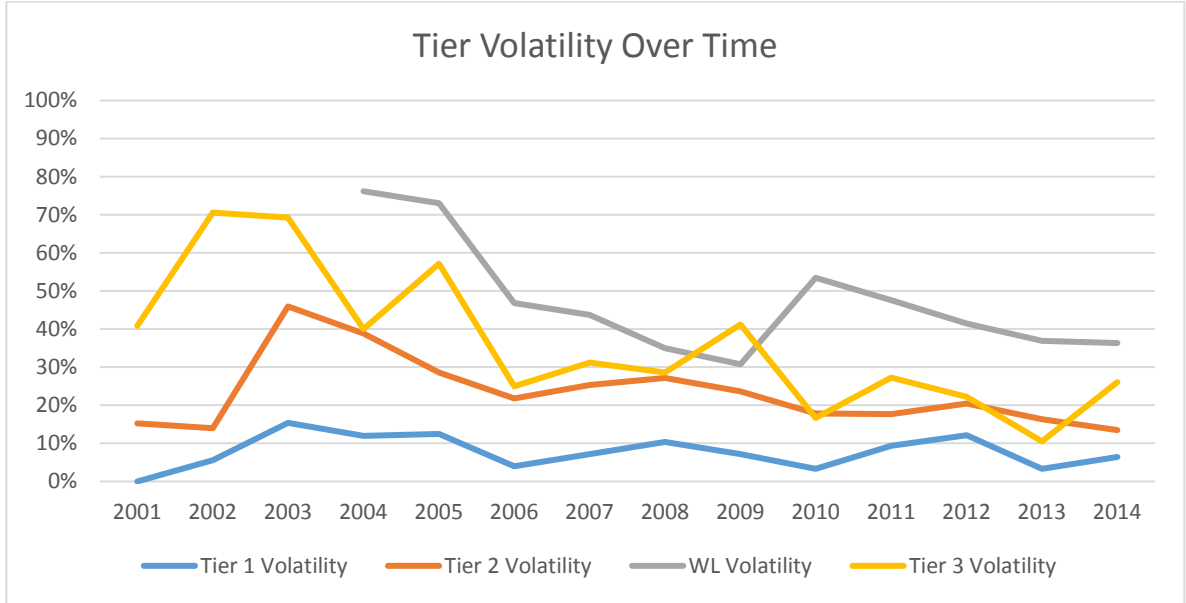


Figure 15: Tier Volatility over Time<sup>1060</sup>

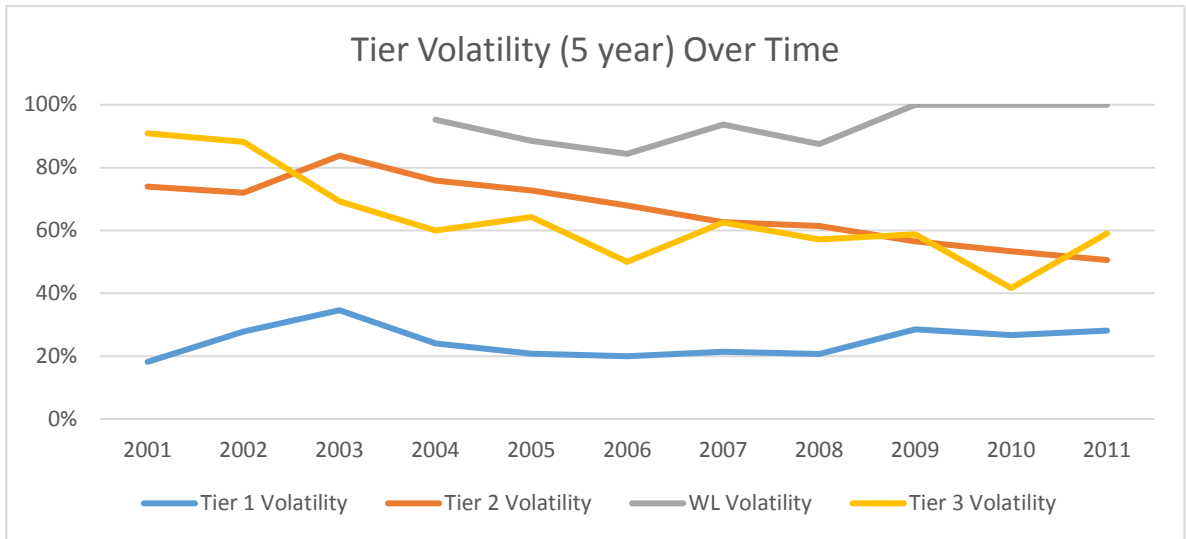


Figure 16: Tier Volatility (5 year) Over Time<sup>1061</sup>

<sup>1060</sup> Data taken directly from TIP Reports for years 2001–2015. “Volatility” here refers to the percentage of countries in a tier in a given year that were had left that tier in the following year. For example, every country in Tier 1 in 2001 was also in Tier 1 in 2002 (with the exception of Taiwan, which did not appear in the report at all), and so volatility for Tier 1 was 0% in 2001. There were some new countries in Tier 1 in 2002, but this does not affect the volatility score. In 2003, however, Canada (1 of 18 Tier 1 countries) was moved to Tier 2, and so Tier 1 volatility was 5.6% for 2002.

<sup>1061</sup> As with above, but the percentage of countries that left their tier during any of the following four years.

However, aside from the two years following the introduction of the Watch List, the relative distribution of countries across tiers has remained remarkably stable—particularly once the number of countries being evaluated in the report stabilised. To see this another way, we can look at the “volatility” of the tiers: the odds that a country that is ranked in a given tier in one year will still be ranked in that tier the following year, or for a series of subsequent years.

In Figure 15, above, we can see that the ranking system starts out highly volatile and becomes more stable over time. As we might expect, Tier 1 is highly stable: countries that the State Department has determined are meeting their minimum standards one year (such as Germany, Italy, the Netherlands and Australia) are unlikely to be determined not to be meeting those standards the following year. Also unsurprising is the fact that the Watch List is the most volatile tier, as its entire purpose is to threaten countries with a Tier 3 designation if they do not improve. Either these countries do improve and are upgraded to Tier 2 (Sri Lanka, Panama), or they do not, and are downgraded to Tier 3 (Thailand, South Sudan). We can see similar patterns in Figure 16, which looks at 5-year volatility: in 2015, more than 70% of Tier 1 countries had been there continuously since 2010, while none of the Watch List countries had been there continuously since 2010. Tier 3 in both cases comes in-between, with some countries (primarily American geopolitical foes such as Cuba, Sudan, Syria, North Korea and Iran) being trapped in Tier 3 and others (such as Micronesia, Oman and Uzbekistan) moving in and out.

What *is* surprising is the extent to which Tier 2 has become a non-volatile category. From 2010–2014 Tier 2 countries had on average an 83% chance of being ranked in Tier 2 the following year, and in 2010 countries had a 49% chance of still being in Tier 2 in 2015. The reason that this is surprising is that Tier 2 is supposed to designate “countries that do not fully meet the TVPA’s minimum standards but are making significant efforts to meet those standards.”<sup>1062</sup> If these countries were acting in bad faith, then we would expect this to result in “a failure to provide evidence of increasing efforts to combat severe forms of

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<sup>1062</sup> US Department of State, “2016 Trafficking in Persons Report,” 39.



trafficking in persons from the previous year,”<sup>1063</sup> and a placement in the Tier 2 Watch List. However, instead we have a situation where a significant number of countries’ efforts are judged honest enough to keep them in Tier 2, and yet are still never enough to meet even the TVPA’s “minimum standards”—symbolised by a Tier 1 ranking. This stability of Tier 2 is of particular relevance to Japan, since Japan itself has been placed in Tier 2 in all but one of the TIP Reports. The next section will thus ask why this is, looking at the specific content of TIP Report’s coverage on Japan as well as how this coverage has changed over the years.

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<sup>1063</sup> US Department of State, 39.

## THE TIP REPORT ON JAPAN

The first TIP Report, released in 2001, called Japan a “destination country for women, primarily from Thailand, the Philippines, and the New Independent States,” as well as for illegal immigrants from China. It also highlighted several areas of concern: the lack of a dedicated anti-trafficking law, the lack of a dedicated “tasked force,” the lack of support for NGOs and the reported tendency of law enforcement to treat victims as criminals. For all this, Japan was placed in Tier 2, but the problems seemed easy to address and the report also highlighted some positive steps Japan was taking.<sup>1064</sup> In 2002, Japan remained in Tier 2, but the overall tone of the report was largely unchanged. The report again criticised the lack of a trafficking convictions, along with uneven enforcement, light sentences for some traffickers, lack of resources for victims and a tendency to treat victims as illegal immigrants and deport them.<sup>1065</sup>

In 2003, Miller took over the TIP Office. Japan, still in Tier 2, was now described as a “country of destination for men, women, and children trafficked for sexual exploitation,” with victims coming “mainly from China, South Korea, Thailand, Taiwan, the Philippines, Colombia, and Eastern Europe.” The report specifically criticised its lack of a “national plan of action,” and, while acknowledging that Japan did investigate and prosecute trafficking, claimed “that the number of prosecutions has been too few and the penalties too weak to act as an effective deterrent against the professional syndicates involved in trafficking.”<sup>1066</sup>

These themes were largely repeated in the 2004 report, but now the tone was more hortative, with the report declaring that, “Japan must begin to fully employ its resources to address this serious human rights crime within its borders,” and that “Japan could do much more to protect its thousands of victims of sexual slavery.”<sup>1067</sup> This was also the first year that the report called on Japan to address the system of entertainer visas, and the first year that it called on Japan to “reduce domestic demand for trafficking victims”<sup>1068</sup>—which,

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<sup>1064</sup> US Department of State, “2001 Trafficking in Persons Report,” June 2001, 52.

<sup>1065</sup> US Department of State, “2002 Trafficking in Persons Report,” June 2002, 65.

<sup>1066</sup> US Department of State, “2003 Trafficking in Persons Report,” June 2003, 87.

<sup>1067</sup> US Department of State, “2004 Trafficking in Persons Report,” 96.

<sup>1068</sup> US Department of State, 97.

based on subsequent reports, appears to be a call for the police to crack down on the sex industry. However, the most significant difference between this report and all the other TIP Reports was the tier ranking. 2004 was the year that the TIP Report introduced the “Tier 2 Watch List” category, and Japan was one of the countries placed on that list.

In the four years leading up to Japan’s placement on the Watch List, we can see two major trends emerging. One of these is a focus on the lack of a dedicated anti-trafficking law in Japan, a criticism that first emerged in 2001 and was repeated annually until 2005, when Japan revised its penal code to make *jinshin baibai* a broader criminal offense. Although this move bought a year’s respite, in 2007 the report began claiming that, “It is unclear if the existing legal framework is sufficiently comprehensive to criminalize all severe forms of trafficking in persons,” apparently on account of the lack of a single law criminalising all the American-recognised forms of trafficking.<sup>1069</sup> This would become a common refrain in future TIP Reports, and by 2012 this critique had become an explicit “recommendation”<sup>1070</sup>: “Draft and enact a comprehensive anti-trafficking law prohibiting all forms of trafficking.”<sup>1071</sup> And yet while this might seem to suggest a coherent and continuous critique of Japanese policy, what exactly the Americans thought this law should look like changed from year to year: what had been a concealed demand for an anti-sex work law in 2005 had become a concealed demand for anti-migrant labour exploitation law in 2012.

The other major trend to emerge was a focus on organised crime. We see this in the very first report, with its reference to “Chinese and Japanese organized crime groups who hold illegal immigrants in debt bondage.”<sup>1072</sup> However, it was only in 2004 that the word “yakuza” first appeared in the TIP Report, with the report stating emphatically that, “Japan's trafficking problem is large, and Japanese organized crime groups (yakuza) that operate

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<sup>1069</sup> US Department of State, “2007 Trafficking in Persons Report,” June 2007, 125.

<sup>1070</sup> Starting in 2008, the TIP began including a “recommendations” section for each country. I place the word “recommendation” in scare quotes because future tier placements are implicitly contingent on following or not following these “recommendations.” Given the possibility for sanctions with a Tier 3 placement, these are better understood as “coercive demands” rather than “recommendations” in the standard usage of the term.

<sup>1071</sup> US Department of State, “2012 Trafficking in Persons Report,” 199.

<sup>1072</sup> US Department of State, “2001 Trafficking in Persons Report,” 52.

internationally are involved,” and that as such, Japan needed to “pursue efforts to prosecute the powerful organized crime figures behind Japan’s human trafficking.”<sup>1073</sup> Following this 2004 report, the yakuza would appear in every TIP Report up until 2013, although the language would moderate over time. Thus, while the 2005 report claimed the yakuza “are involved trafficking,”<sup>1074</sup> the 2006 report claimed they “are thought to be involved in trafficking.”<sup>1075</sup> By 2010, the report had settled on a formulaic, “Japanese organized crime syndicates (the Yakuza) are believed to play a significant role in trafficking in Japan, both directly and indirectly,” which it would recycle for the next three reports.<sup>1076</sup> But in the 2014 report, yakuza disappeared altogether. In their place were “sophisticated and organized prostitution networks” that “target vulnerable Japanese women and girls.”<sup>1077</sup>

Japan’s Watch List placement was a short-lived affair, and in 2005 Japan was back in Tier 2, with the report praising the steps Japan had taken to fight trafficking: implementing a national action plan, revising the penal code to include offenses for trafficking, tightening the conditions for entertainer visas, providing funding for shelters, and no longer treating victims as criminals. References to labour trafficking were back in, but the overall tenor of the report was less emotionally charged, and it left the impression that Japan was improving in the eyes of the Americans—and that a Tier 1 ranking might be just around the corner.<sup>1078</sup> But in 2006 Japan was back in Tier 2 again, with the report now drawing attention to victims of *domestic* trafficking, specifically “minor girls in the sex industry.”<sup>1079</sup> The report also suggested that Japan pass an anti-conspiracy law to fight trafficking by organised crime, and criticised Japan for what it claimed to be excessively lenient sentences for traffickers.<sup>1080</sup> Ultimately, this return to Tier 2 has proven to be a permanent affair, even as the specific

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<sup>1073</sup> US Department of State, “2004 Trafficking in Persons Report,” 96.

<sup>1074</sup> US Department of State, “2005 Trafficking in Persons Report,” June 2005, 132.

<sup>1075</sup> US Department of State, “2006 Trafficking in Persons Report,” June 2006, 149.

<sup>1076</sup> US Department of State, “2010 Trafficking in Persons Report,” June 2010, 189.

<sup>1077</sup> US Department of State, “2014 Trafficking in Persons Report,” 220.

<sup>1078</sup> US Department of State, “2005 Trafficking in Persons Report,” 132–33.

<sup>1079</sup> US Department of State, “2006 Trafficking in Persons Report,” 149.

<sup>1080</sup> US Department of State, 149–51.

criticisms of Japan changed from year to year.<sup>1081</sup> This is line with the previous observation of low volatility of the Tier 2 ranking.

Even while the tier rating remained the same, a significant change came to the TIP Report's coverage of Japan with Lagon's appointment as Ambassador-at-Large for the TIP Office in 2007. Lagon's TIP Office continued to focus on what it said was trafficking in Japan's commercial sex industry, including now domestic female victims of full age, as well as on the yakuza. However, the 2007 report also took aim at Japan's child pornography laws, which did not criminalise purchase or possession.<sup>1082</sup> The 2008 TIP report, still under Lagon, touched on similar themes, while adding "exploitation in pornography" as a purpose for domestic trafficking in Japan and the "delivery health" business as a site for "sex trafficking."<sup>1083</sup> Surprisingly, 2007 was the first year that the report included a note on Japan's non-ratification of the Trafficking Protocol, an observation which would become an annual ritual until 2013, when it transformed into an active "recommendation" that Japan ratify the protocol. 2007 was also the first year that the report discussed the TITP, criticising "conditions of forced labor" that occurred within the program. As with the sudden inclusion of the Trafficking Protocol, the TITP's earlier absence from the TIP Report is curious, and it is unclear whether this reflects an absence of critical reporting on the program until 2007 or a lack of interest on behalf of the TIP Office in non-sexual trafficking.

Either way, discussions of the TITP became an increasingly significant portion of the TIP Report's coverage of Japan, particularly following President Obama's 2009 appointment of CdeBaca as Ambassador-at-Large. That year, the report suggested that as many as 3,400 technical interns and trainees could be victims of trafficking, and it criticised the government for treating people who had been exploited in the TITP as victims of contract fraud, rather than as victims of human trafficking.<sup>1084</sup> Subsequent TIP Reports criticised the Japanese government's apparent refusal to treat labour abuses within the TITP as

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<sup>1081</sup> The most recent report, released as I write this chapter, has placed Japan in Tier 2 for the 13<sup>th</sup> year running. See US Department of State, "2017 Trafficking in Persons Report," June 2017, 225–27.

<sup>1082</sup> US Department of State, "2007 Trafficking in Persons Report," 126.

<sup>1083</sup> US Department of State, "2008 Trafficking in Persons Report," June 2008, 149–52.

<sup>1084</sup> US Department of State, "2009 Trafficking in Persons Report," 171.

“trafficking,” noting for example that Japan had yet to prosecute a trafficker or identify a trafficking victim in connection to abuses committed in the TITP,<sup>1085</sup> or that “the Government of Japan has not officially recognized the existence of forced labor within” the TITP.<sup>1086</sup> The reports did, however, make note of changes to Japanese labour laws and the regulations governing the TITP that increased protections for workers, such as banning deposits or requiring copies of contracts to be deposited with the Ministry of Justice.<sup>1087</sup>

The increased attention given to the TITP does not mean, though, that the TIP Report abandoned its previous areas of focus under CdeBaca. Sex trafficking and the yakuza retained a prominent position in the TIP Report, and while the 2009 report contained wording that acknowledged the possibility of voluntary sex work, it still continued to press Japan to reduce the demand for commercial sex acts.<sup>1088</sup> The 2010 report added “credit card debt” as a means of domestic trafficking, and took note of foreign women who were entering Japan “for [...] fraudulent marriage” and who were then “forced into prostitution.”<sup>1089</sup> This latter observation would become repeated in each subsequent iteration of the TIP Report. The 2011 report noted that some women had been forced to work in “hostess bars,” while also noting that they were not forced to have sex with clients.<sup>1090</sup> Starting in 2009, the report also began drawing attention to objectification of adolescent girls in Japan, claiming that, “The phenomenon of *enjo-kosai* [sic], also known as ‘compensated dating,’ continues to facilitate the prostitution of Japanese children,”<sup>1091</sup> and claiming in 2014 that, “In a recent trend called *joshi-kosei osampo* [sic],<sup>1092</sup> also known as ‘high school walking,’ girls are offered money to accompany men on walks, in cafes, or to hotels, and engage in commercial sex.”<sup>1093</sup>

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<sup>1085</sup> US Department of State, “2010 Trafficking in Persons Report,” 190.

<sup>1086</sup> US Department of State, “2011 Trafficking in Persons Report,” June 2011, 205.

<sup>1087</sup> US Department of State, “2013 Trafficking in Persons Report,” 213.

<sup>1088</sup> US Department of State, “2009 Trafficking in Persons Report,” 170–72.

<sup>1089</sup> US Department of State, “2010 Trafficking in Persons Report,” 189.

<sup>1090</sup> US Department of State, “2011 Trafficking in Persons Report,” 205.

<sup>1091</sup> US Department of State, “2009 Trafficking in Persons Report,” 170.

<sup>1092</sup> More commonly romanised as “*osampo*,” which I use below.

<sup>1093</sup> US Department of State, “2014 Trafficking in Persons Report,” 220. *Joshi kōsei*, often abbreviated as “JK,” literally means “high school girl.” See appendix 1.

The TIP Report also continued to criticise Japan’s responses to these trends. Aside from noting the continued lack of a comprehensive anti-trafficking law and Japan’s continued non-ratification of the Trafficking Protocol, the report also focussed on the low number of recorded victims of trafficking and the low number of individuals prosecuted for trafficking. Starting in 2007, the number of prosecutions began decreasing, which became a new source of criticism.<sup>1094</sup> The report also repeatedly highlighted the low number of shelters available to female trafficking victims, and (post-Miller) the non-existence of shelters for male trafficking victims. The report granted that some of the offenses related to human trafficking—such as Articles 226 and 227 of the Penal Code—had sentences that were “sufficiently stringent,” but suggested that others—specifically, Article 7 of the Prostitution Prevention Law—did not.<sup>1095</sup>

Collectively, these reports paint a picture of the Japanese government as reluctant to engage in anti-trafficking efforts, even in the face of what the reports suggest is a serious human trafficking situation. However, many of the criticisms made by the TIP Report seem at odds with the available evidence—something that even the TIP Office seems to have realised over the years. Though it has never officially retracted a claim, it quietly dropped claims in subsequent reports without explanation or any apparent action from the Japanese government. The involvement/non-involvement of the yakuza is one example; police corruption is another. Consider that in 2009, the report noted that:

During the reporting period, there was a media report of an ex-government official accepting a \$54,000 bribe to use government connections to facilitate the granting of entertainment visas to 280 Filipina women who were to perform in charity concerts but ended up working as hostesses in bars. Officials in the Department of Justice and the Ministry of Foreign Affairs granted the visas. The government has not investigated or prosecuted any individuals allegedly involved in this possible trafficking-related corruption case, citing a lack of evidence. Corruption is a serious concern in the large and socially accepted entertainment industry in Japan, largely due to the industry’s economic power.<sup>1096</sup>

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<sup>1094</sup> US Department of State, “2007 Trafficking in Persons Report,” 124.

<sup>1095</sup> US Department of State, “2014 Trafficking in Persons Report,” 221.

<sup>1096</sup> US Department of State, “2009 Trafficking in Persons Report,” 171.

Here the report does two things: it describes one case, and makes a general statement about corruption in Japan. However, it is unclear how the report proceeds from one to the other. Clearly one case is insufficient to make generalisations about corruption in Japan, but the report gives no information about where else it might be getting its information. Moreover, the following year, the report noted that the official in question had been “convicted and sentenced to two years’ imprisonment with labor on charges of accepting bribes in exchange for favorable reviews of residence permits for female bar workers.”<sup>1097</sup> But although the report now had no outstanding cases of police corruption it could cite, the 2010 TIP Report again reiterated the claim that “Corruption is a serious concern in the large and socially accepted entertainment industry in Japan,” and that, “government efforts against such corruption have been inadequate.”<sup>1098</sup> These claims would appear in the next two reports as well, both times accompanied by a claim that “the government did not report investigations, [...] prosecutions, convictions, or jail sentences against any official for trafficking-related complicity during the reporting period.”<sup>1099</sup> And yet despite these sweeping claims, the only other case the report could cite was one where, “The government actively investigated a February 2012 case in which a retired police chief was arrested in Japan for soliciting child prostitution”<sup>1100</sup>—which, while concerning, is clearly not a case of “police corruption.”

This would be the last mention of police corruption in the TIP Report’s coverage in Japan<sup>1101</sup>—which would be odd, if corruption had truly been a “serious concern” in Japan. This is not to say that police corruption is non-existent in Japan. Johnson, for example, argued in 2003 that, “The problem of police corruption in Japan is not a matter of a few rotten apples but of a failed organization.”<sup>1102</sup> However, it is unclear to what degree (if any) the problems Johnson observed in the late 1990s continue today, almost two decades later.

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<sup>1097</sup> US Department of State, “2010 Trafficking in Persons Report,” 190.

<sup>1098</sup> US Department of State, 190.

<sup>1099</sup> US Department of State, “2011 Trafficking in Persons Report,” 206; US Department of State, “2012 Trafficking in Persons Report,” 200.

<sup>1100</sup> US Department of State, “2012 Trafficking in Persons Report,” 200.

<sup>1101</sup> As of the 2017 TIP Report.

<sup>1102</sup> David T. Johnson, “Above the Law? Police Integrity in Japan,” *Social Science Japan Journal* 6, no. 1 (2003): 33.



Ramseyer seems to suggest they have not, claiming that, “By all accounts police corruption is low in Japan.”<sup>1103</sup> It is also noteworthy that none of my participants from civil society groups—who could otherwise be highly critical of the police—highlighted police corruption as a particular area of concern. Taken together, this suggests that the reason the TIP Report stopped mentioning police corruption in Japan was that the TIP Office did not have any evidence of such corruption in relation to trafficking in persons—and that, aside from that one case, it probably never had.

And yet despite these errors and gaps in knowledge, the central theme of the TIP Report’s critiques is that the Japanese government does not have an accurate understanding of human trafficking or the world that produces it, and that it is not using all the tools at its disposal to govern human trafficking. In other words, the TIP Report takes issue not only with Japan’s governance of human trafficking, but with its human trafficking governmentality. The next section will thus look at these two areas—the governance and governmentality of human trafficking in contemporary Japan—in more detail, focussing on what the Japanese government has done about human trafficking, how members of this government described human trafficking to me, and how other actors involved in the governance of human trafficking in Japan see these efforts.

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<sup>1103</sup> J. Mark Ramseyer, “Nuclear Power and the Mob: Extortion in Japan,” *Journal of Empirical Legal Studies* 13, no. 3 (September 1, 2016): 494, <https://doi.org/10.1111/jels.12122>.

## JAPAN'S RESPONSE TO HUMAN TRAFFICKING: 2004–2014

In March 2004, the Japanese government created the Inter-Ministerial Liaison Committee Regarding Measures to Combat Trafficking in Persons (“the Task Force”). That December, the Task Force released their Action Plan to Combat Trafficking in Persons (“Action Plan”) which laid out a range of planned legislative and regulatory changes to how the Japanese government would address human trafficking, many of which were implemented during the following year.<sup>1104</sup> Of these, the most prominent is the June 2005 amendment to the penal code, which renamed Chapter XXXIII from “Crimes of Kidnapping” to “Crimes of Kidnapping and Buying or Selling of Human Beings” and added a number of provisions to criminalise human trafficking as defined by the Trafficking Protocol.

Notably, the revised Penal Code does not criminalise *jinshin torihiki* by name, even though this is the term used as the official translation for “human trafficking” by the Task Force, the Action Plan, and the translation of the Trafficking Protocol. Instead, it expands the definition of an existing criminal act, “purchasing people” (*hito o kaiukeru*). This is the same prohibition that has been repeated across the ages in Japan in various forms since the reign of Emperor Tenmu. This particular criminal law was originally written in 1907 under the shadow of the moral panic over the *karayuki-san*, and as such its article 226 specifically forbade kidnapping or taking someone out of Japan.<sup>1105</sup> The amendment changed this article to refer instead to taking someone from one country to another, thus criminalising buying someone to bring them into Japan. This article also had provisions added that made it a crime to buy or sell a minor, or to buy or sell anyone for the purpose of profit, indecency, marriage or threat to the life or body. Revisions to article 227 also extended sanctions to anyone who “delivers, receives, transports or hides a person.”<sup>1106</sup> According to the Action Plan, this amendment aimed to criminalise all the practices defined as “human trafficking” in the Trafficking Protocol.<sup>1107</sup> Its success in this endeavour, though, depends on

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<sup>1104</sup> Task Force, “Kōdōkeikaku [Action Plan].”

<sup>1105</sup> Keihō, 1907.

<sup>1106</sup> Keihō tō no ichibu o kaiseisuru hōritsu [Act to Amend Part of the Penal Code, etc.] Act No. 66 of June 22, 2005, art. 1; Keihō, Ch. 33. Translations JLTC's: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1960&vm=04&re=02>

<sup>1107</sup> “Kōdōkeikaku [Action Plan],” 2.

whether “kidnapping by enticement” can be interpreted to include fraud, deception and abuse of power—all of which are included as “means” in the Trafficking Protocol, but are not mentioned explicitly in the Japanese Penal Code.

However, the existence of a law alone is not enough to govern conduct; at the very least, the law needs to be put into use by agents of law enforcement, and these laws do not seem to have resulted in a major increase in convictions. According to the Ministry of Justice’s White Paper on Crime, there have been an average of 219 recognised violations of the law against kidnapping and *jinshin baibai* since 1989, which peaked in the period from 1992–2004. This was followed by a sharp decline in 2005—the very year the law was changed to add *jinshin baibai* (see Figure 17, below). That the number of Penal Code Chapter 33 prosecutions *fell* after the law was expanded to include a wider range of practices suggests that this law has not been a widely used tool in Japan’s fight against human trafficking.

This falling number of prosecutions aligns with the TIP Report’s complaints of insufficient trafficking convictions, complaints that are based on a presumption of under-enforcement. They also, however, align with what some of my participants from the NPA told me: that prosecutors believed obtaining enough evidence to make a conviction under the new law was too difficult, and that they preferred to charge offenders under other statutes—which could explain some of the changes in the data. However, across government sources there was agreement that *jinshin baibai*—as defined by the revised penal code—only represented one subtype of *jinshin torihiki*. Even though there is no one specific law prohibiting *jinshin torihiki*, the Japanese government still releases statistics on cases that it determines matches its criteria for *jinshin torihiki*; these are summarised in Figure 18, below. Here, unlike with cases of kidnapping and *jinshin baibai*, we do see a sudden spike in 2005—followed by a precipitous drop until 2010.

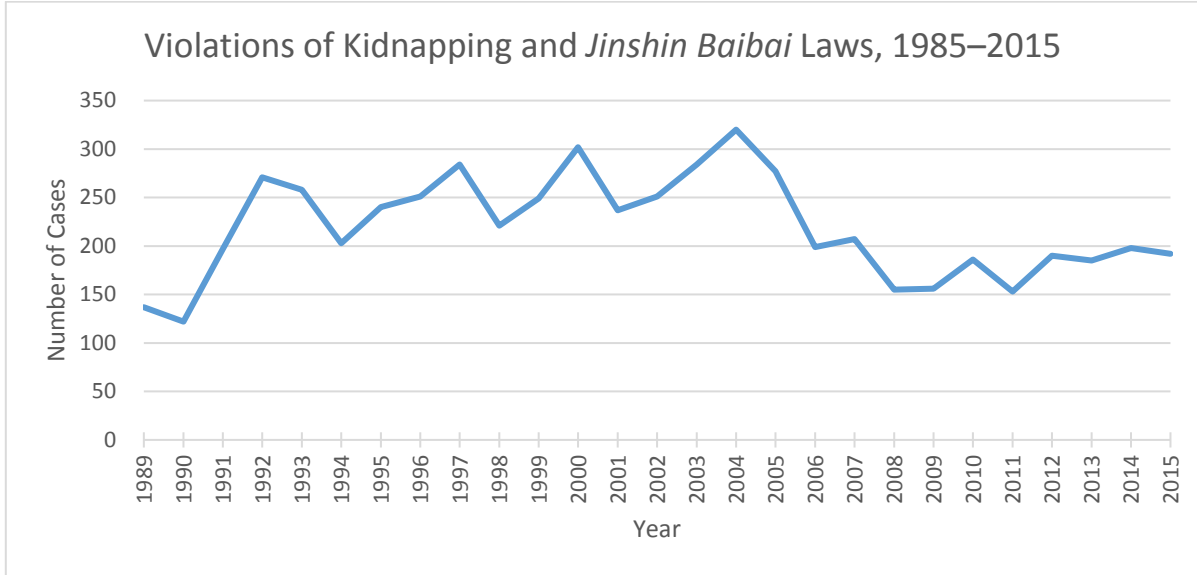


Figure 17: Violations of Kidnapping and Jinshin Baibai Laws, 1985–2015<sup>1108</sup>

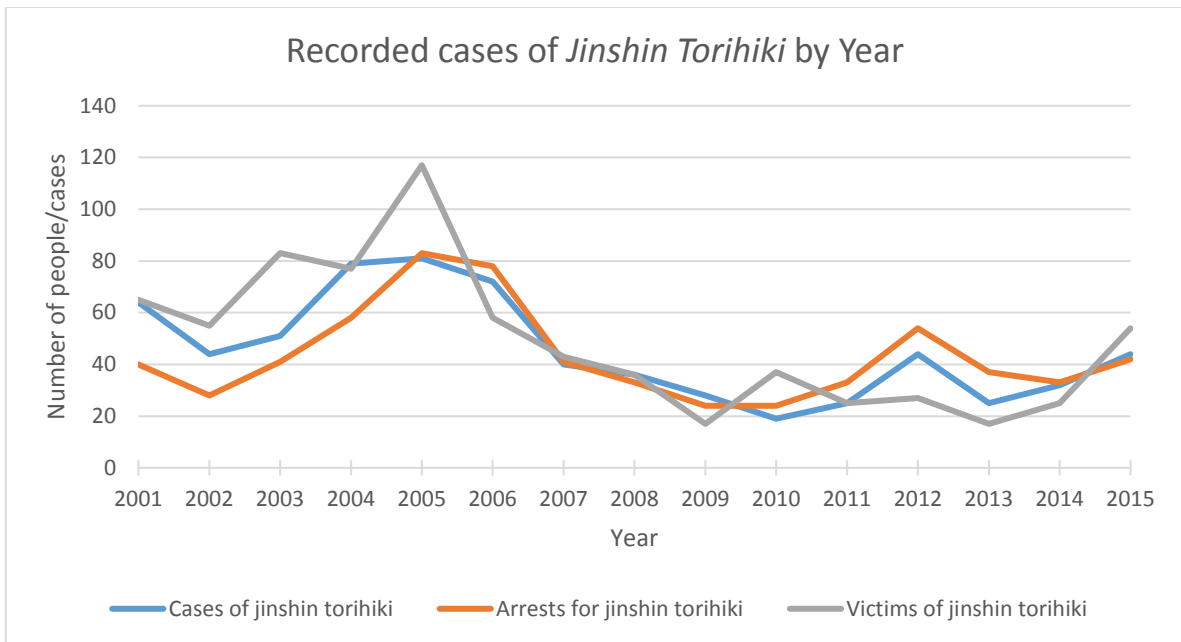


Figure 18: Recorded cases of Jinshin Torihiki by Year<sup>1109</sup>

<sup>1108</sup> Referring to Chapter XXXIII of the Penal Code. Prior to 2005, this chapter referred only to kidnapping. Data from Ministry of Justice, Japan, “Hanzai Hakusho: Heisei 28 Nen-Ban [White Paper on Crime: 2016 Version],” 2016, <http://hakusyo1.moj.go.jp/jp/63/nfm/mokuji.html>. Statistics for number of recognised cases, rather than number of reported cases.

<sup>1109</sup> Data from the Japanese government: <http://www.gov-online.go.jp/useful/article/201111/3.html>

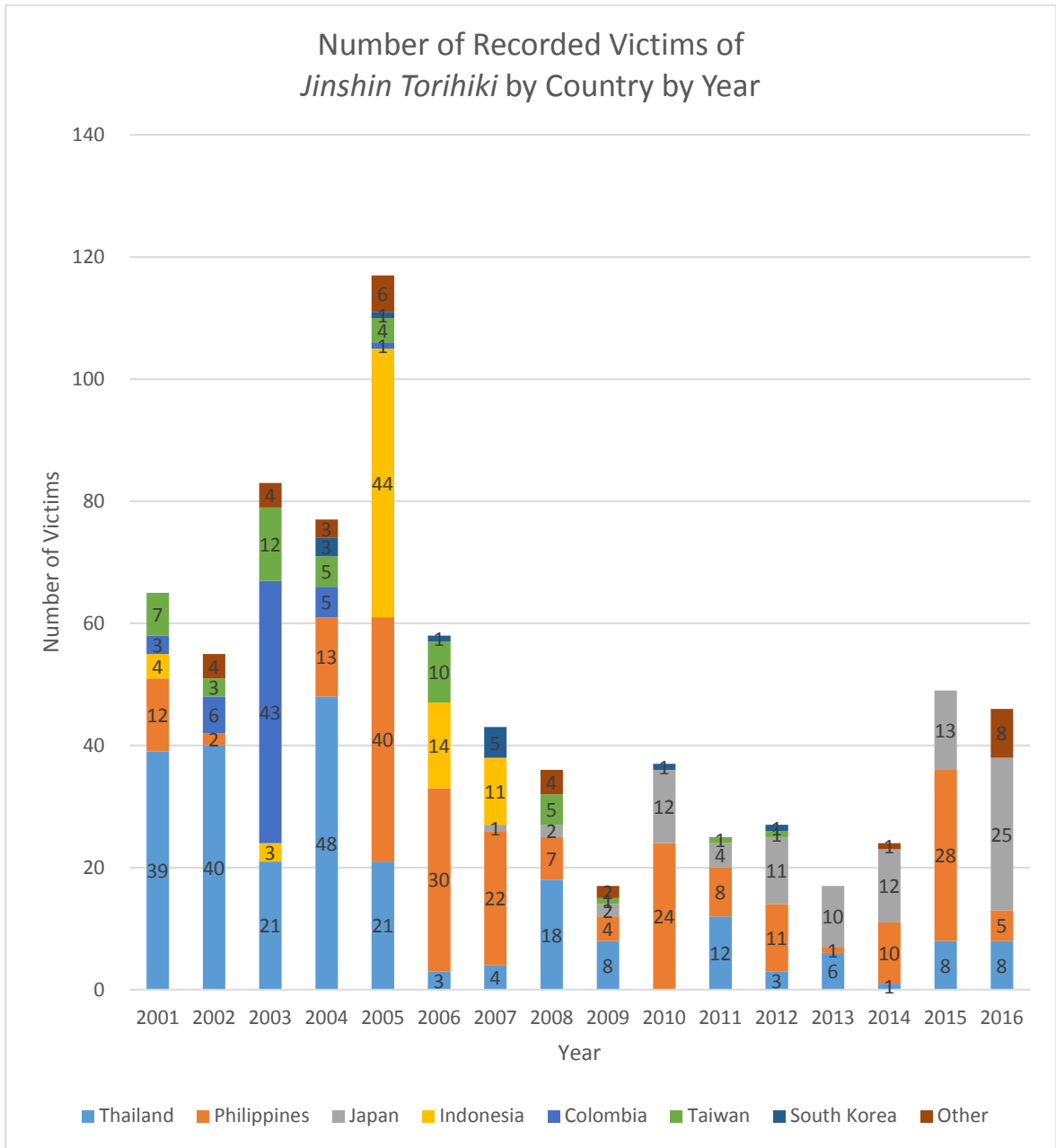


Figure 19: Number of Recorded Victims of Jinshin Torihiki by Country by Year<sup>1110</sup>

<sup>1110</sup> "Other" includes Cambodia (9), China (8), Romania (4), Hong Kong (2), Macao (2), Russia (2), Bangladesh (1), Australia (1), Estonia (1), Laos (1) & Vietnam (1). Data from the NPA: <http://www.npa.go.jp/publications/statistics/safetylife/jinshin.html>

We can also see where these victims are coming from in Figure 19, above. These numbers line up with other reports on human trafficking for sexual exploitation in Japan, with a high number of Thai cases in the early 2000s, a brief spike in Colombian victims in 2003, and then the appearance of Filipina victims in 2004 as attention shifted from sex workers to hostesses. These recorded victims are overwhelmingly female, with male victims (three of them) only showing up in the final year of the report. The primary countries of origins for participants in the TITP—China and Vietnam—only show up in the “other” section of this graph on account of how few of them were recorded. Collectively, these numbers suggest that although the official definition of *jinshin torihiki* includes labour trafficking, Japanese governance has been focussed almost entirely on trafficking for sexual exploitation.

According to my interviews with the NPA, cases that are recorded as incidences of *jinshin torihiki* are frequently prosecuted using either the Prostitution Prevent Act or the Amusement Businesses Act. The latter was also amended in 2005 as part of the new anti-trafficking laws, and now requires businesses to fully verify the age and citizenship of anyone working for them and dealing directly with customers. In the event that these employees are non-Japanese, they are further required to provide verification that their residence status in Japan enables them to work in their establishment and that they are within the period of validity for their visa. Non-compliance with these measures was made punishable by a one million yen (approximately 10,000 USD) fine.<sup>1111</sup> This change has limited the ability of owners and managers to engage in a “don’t ask, don’t tell” policy with underage and irregular migrant workers, which participants from the NPA told me used to be prevalent. However, irregular migrants and brokers have responded to this measure in part by relying on forged documents. According to a participant from the NPA: “They’re good fakes. But maybe in some cases the employer knows that it is fake, but they need cheap labourers, so they hire them pretending they can’t distinguish.”

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Data is not disaggregated by type of trafficking, but participants confirmed that almost all cases of *jinshin torihiki* are related to sexual exploitation.

<sup>1111</sup> Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu no ichibu o kaiseisuru hōritsu [Act to Amend Part of the Control and Improvement of Amusement Businesses Act] Act No. 119 of Nov. 7, 2005, art. 36 & art. 53.

The 2005 revisions were not limited to the Penal Code. They also included, for example, revisions to the Proceeds of Crime Law to make this law also apply to the proceeds of kidnapping, *jinshin baibai* and child exploitation offenses.<sup>1112</sup> But after the Penal Code revisions, the next most significant change that came in 2005 was probably the revisions to the Immigration Control and Refugee Recognition Act (Immigration Act). Unlike the Penal Code revision, the Immigration Act revision added in a new definition of *jinshin torihiki*:

The kidnapping [by force or enticement], buying or selling of persons for the purpose of profit, [indecent acts] or threats to a person's life or body, or delivering, receiving, transporting or hiding such persons who have been kidnapped, bought or sold; [...] placing persons under 18 years of age under one's control for the purpose of profit, indecency or threats to a person's life or body; [...] [and] delivering persons under 18 years of age, knowing that they will be or are likely to be placed under the control of a person who has the purpose of profit, indecency or threat to their lives or bodies.<sup>1113</sup>

This definition largely follows the various definitions included in Chapter 33 of the Penal Code. However, it was emphasised to me both in interviews with participants from Immigration Bureau and in written material they gave to me that this definition was based on the definition in the Trafficking Protocol.<sup>1114</sup> Using this definition, the revision to the Immigration Act allows the Immigration Bureau to deny landing to or to deport any “person who has committed trafficking in persons or incited or aided another to commit it.”<sup>1115</sup> Interestingly, this does not seem to require a conviction, simply a determination that the individual in question has been involved with trafficking. Participants I interviewed at the Immigration Bureau told me that they keep a black list of “traffickers,” and that this list is used to summarily deny entry to anyone so listed.

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<sup>1112</sup> Keihō tō no ichibu o kaiseisuru hōritsu, Act No. 66 of June 22, 2005, art. 4.

<sup>1113</sup> Keihō tō no ichibu o kaiseisuru hōritsu, art. 3; Immigration Act, art. 2 (vii), Translation adapted from JLTC's: <http://www.japaneselawtranslation.go.jp/law/detail/?id=2647&vm=04&re=02&new=1>

<sup>1114</sup> The written material was Immigration Bureau of Japan, “The Immigration Control and Refugee Recognition Act: FY 2005 Amendment” (Tokyo: Ministry of Justice, 2005).

<sup>1115</sup> Keihō tō no ichibu o kaiseisuru hōritsu, art. 3; Immigration Act, art. 5 (vii-2), art. 24 (iv)(c). Translation adapted from JLTC's:

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2647&vm=04&re=02&new=1>

Meanwhile, migrants whom the police identify as victims of *jinshin torihiki* are referred to the local branch of the Immigration Bureau. These victims are subsequently exempted from provisions barring entry into Japan for those who have engaged in *baishun* (assuming this was a result of their exploitation), and are eligible both for special landing permits and special residency permits.<sup>1116</sup> According to participants from the Ministry of Justice, these visas and permits are not contingent on victims cooperating with a prosecution, and are renewable for those who wish to stay in Japan. Once the immigration status of identified victims is settled, the Immigration Bureau tries to find them accommodations in a shelter and asks if they want to stay in the country or be repatriated. Repatriation in Japan is conducted largely by the IOM, which receives funding from the Japanese government, and which also takes referrals for trafficking victims in need of repatriation from embassies. In addition to helping identified victims return to their place of origin, the IOM told me that they also provide counselling and rehabilitative services, framed as a way to assist in the “reintegration” of victims in their home communities.

Accommodation for victims was originally provided through private shelters run by NGOs. The most prominent of these is HELP (House in Emergency of Love and Peace), established by the Japanese Women’s Christian Temperance Union (JWCTU) to provide assistance to women leaving the sex industry. Following the 2004 Action Plan, though, the government began relying more on government-run shelters, specifically those connected to the Women’s Consultation Centers—which had also been initially established to help women transition out of the sex industry. In addition to accommodations, these shelters also provide medical and legal services, as well as physical protection. Migrants may circumvent this process by either going directly to an NGO (who will generally either try to provide them with accommodations or find another organisation that can) or to their own embassy. The Embassy of the Philippines’ Consul General Tirol-Ignacio noted for example, that if a Filipino or Filipina came directly to them for assistance but did not want to go to the police, they had a network that they could turn to provide assistance and accommodation for victims—typically via Catholic churches.

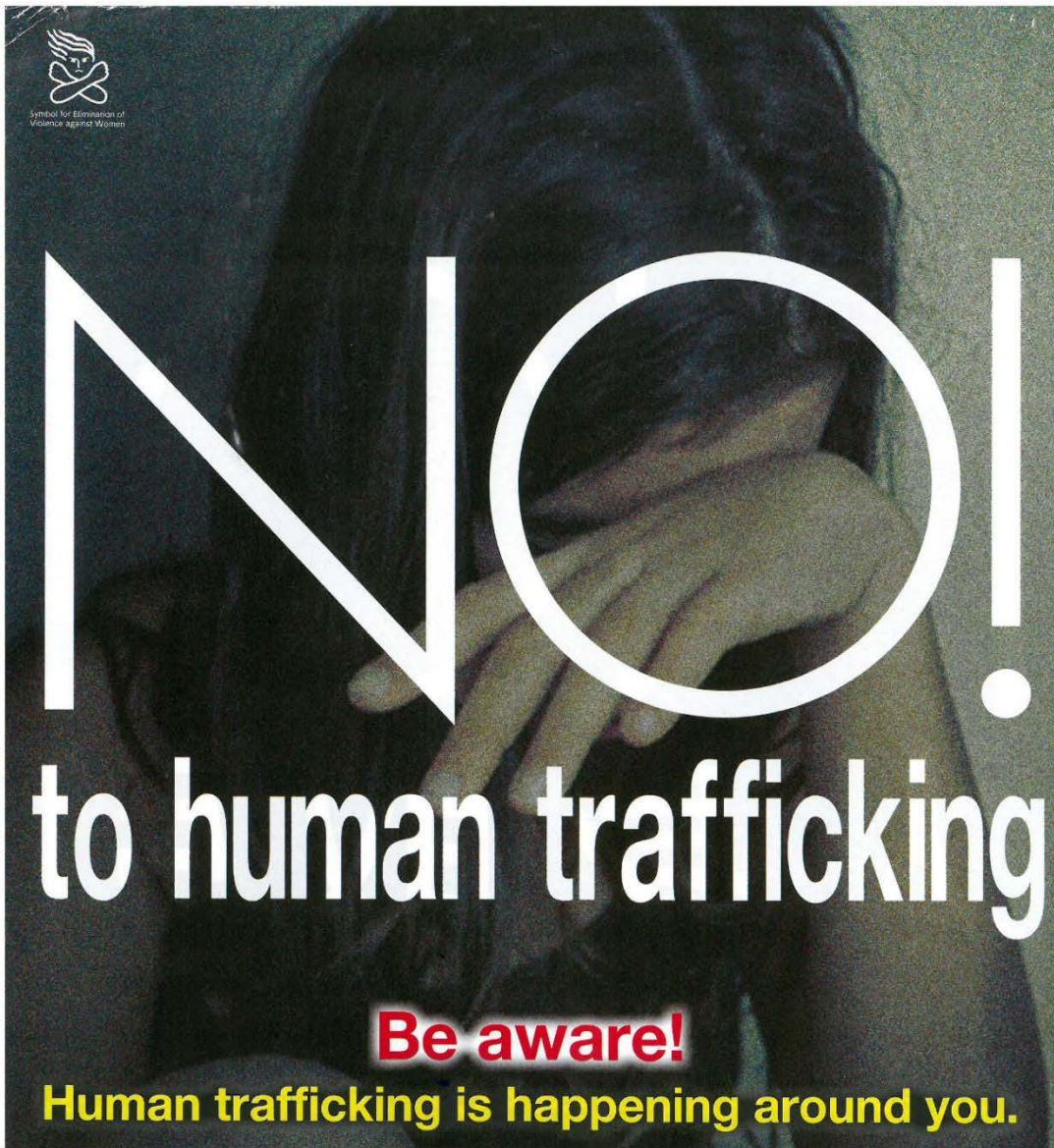
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<sup>1116</sup>Keihō tō no ichibu o kaiseisuru hōritsu, art. 3.



One issue with this system is that, throughout this period, there were no shelters for men—although participants from the MOJ told me that the Ministry of Health, Labour, and Welfare (MHLW) had recently established shelters for victims of labour trafficking, which would include men. Another issue, identified by Lighthouse’s Fujiwara-san, is the lack of dedicated shelter space for child victims, and the lack more generally of options for children (who may be engaged in survival sex work) who have run away from home (and potentially an abusive home life) other than being forcibly returned home. There are also issues with limited shelter space and insufficient funding. Participants told me that in recent years, the public shelters had been taking in more victims of domestic violence, leaving them running at capacity. Foreign trafficking victims are thus only able to stay at a Women’s Consultation Office for short period of time, after which, if they wish to remain in Japan, they are moved to a private shelter. To assist with this increased demand for shelter space, the MOFA has reportedly been providing some limited funding to private shelters such as HELP.

Still, the low number of victims coming forward suggests that there may be barriers to access preventing those who might qualify as victims of trafficking from identifying as such. Participants from the NPA and the embassies suggested that this could be because of fear—fear of the police, if they are in the country illegally, and fear of criminal syndicates who may have threatened them or their families back home. To this end, the ministries, police and embassies have all been trying to reach out to victims with a range of materials. These include official anti-trafficking posters placed prominently in airports and subway stations, and small pamphlets with contact details for both the police and potential assistance providers that are likewise distributed at major transportation hubs or in local government centres. The posters come in English and Japanese, and present images of women covering their faces along with slogans such as “NO! To Human Trafficking,” and “Be aware! Help prevent Japan from being a destination for trafficking in Persons!” These are included below.



- Human trafficking is the exploitation of humans through forced prostitution or labor causing severe psychological and physical damage.
- Forced prostitution is a grave violation of human dignity and human rights and must never be tolerated.
- Human trafficking and child prostitution, whether committed in Japan or abroad, are malicious crimes and subject to punishment .

**You can help the victims of human trafficking by reporting to the nearest Police Station or Immigration Office. Your information could lead to their rescue.**

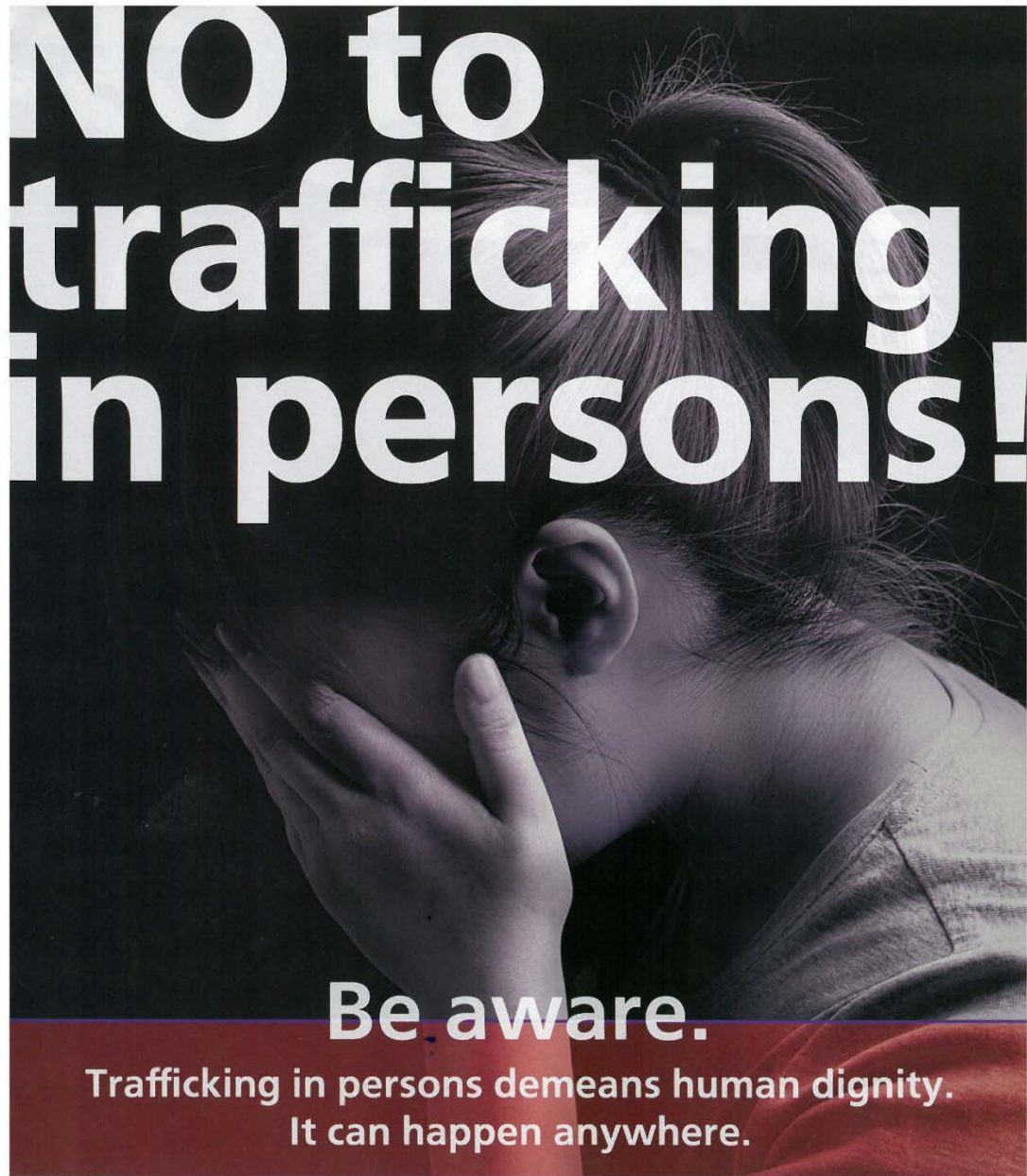
<http://www.gov-online.go.jp/useful/article/201111/3.html>

Cabinet Secretariat / Cabinet Office / National Police Agency / Ministry of Justice / Ministry of Foreign Affairs/  
Ministry of Education, Culture, Sports, Science and Technology / Ministry of Health, Labour and Welfare/Japan Coast Guard

**HELP!**  
 ช่วยฉันด้วย!  
**Saklolo!**  
 PELAYANAN BANTUAN!  
 請救救我!  
 도와주세요!  
**¡Socorro!**  
**СПАСИТЕ!**  
 救救我!

The persons showing this leaflet may be victims of human trafficking. Please report to the police or other relevant institutions.

Figure 20: Anti-Trafficking Poster 1



- "Trafficking in persons" is the exploitation of humans through forced prostitution or labor which causes severe psychological and physical damage.
- Forced prostitution is a grave violation of human dignity and human rights and must never be tolerated.
- Trafficking in persons and child prostitution, whether committed in Japan or abroad, are punishable crimes.

**You can help the victims by reporting to the nearest Police Station or Immigration Office—information that can lead to their rescue.**

<http://www.gov-online.go.jp/useful/article/201111/3.html>

Cabinet Secretariat/Cabinet Office/National Police Agency/Ministry of Justice/Ministry of Foreign Affairs/  
Ministry of Education, Culture, Sports, Science and Technology/Ministry of Health, Labour and Welfare/Japan Coast Guard



Symbol for Elimination of  
Violence against Women



The persons showing this leaflet  
may be victims of human trafficking.  
Please report to the police or other  
relevant institutions.

Figure 21: Anti-Trafficking Poster 2





Symbol for Elimination of Violence against Women



# Victims of trafficking in persons aren't found only in distant countries. They may be your neighbours.

Even in Japan today, victims of trafficking in persons suffer from being forced into prostitution and harsh labour. There may well be such victims in your immediate vicinity. We must first be aware of this hard fact in order to root out trafficking in persons and rescue its victims.

- "Trafficking in persons", which exploits human beings by forcing them into prostitution and harsh labour, causes severe psychological and physical damage to the victims.
- Prostitution is a grave violation of human dignity and human rights and shall never be tolerated.
- Trafficking in persons and child prostitution, committed in Japan or abroad, is punishable crimes.

**Please report to the nearest Police or Immigration Offices when you find, or are approached by, victims of trafficking in persons.**

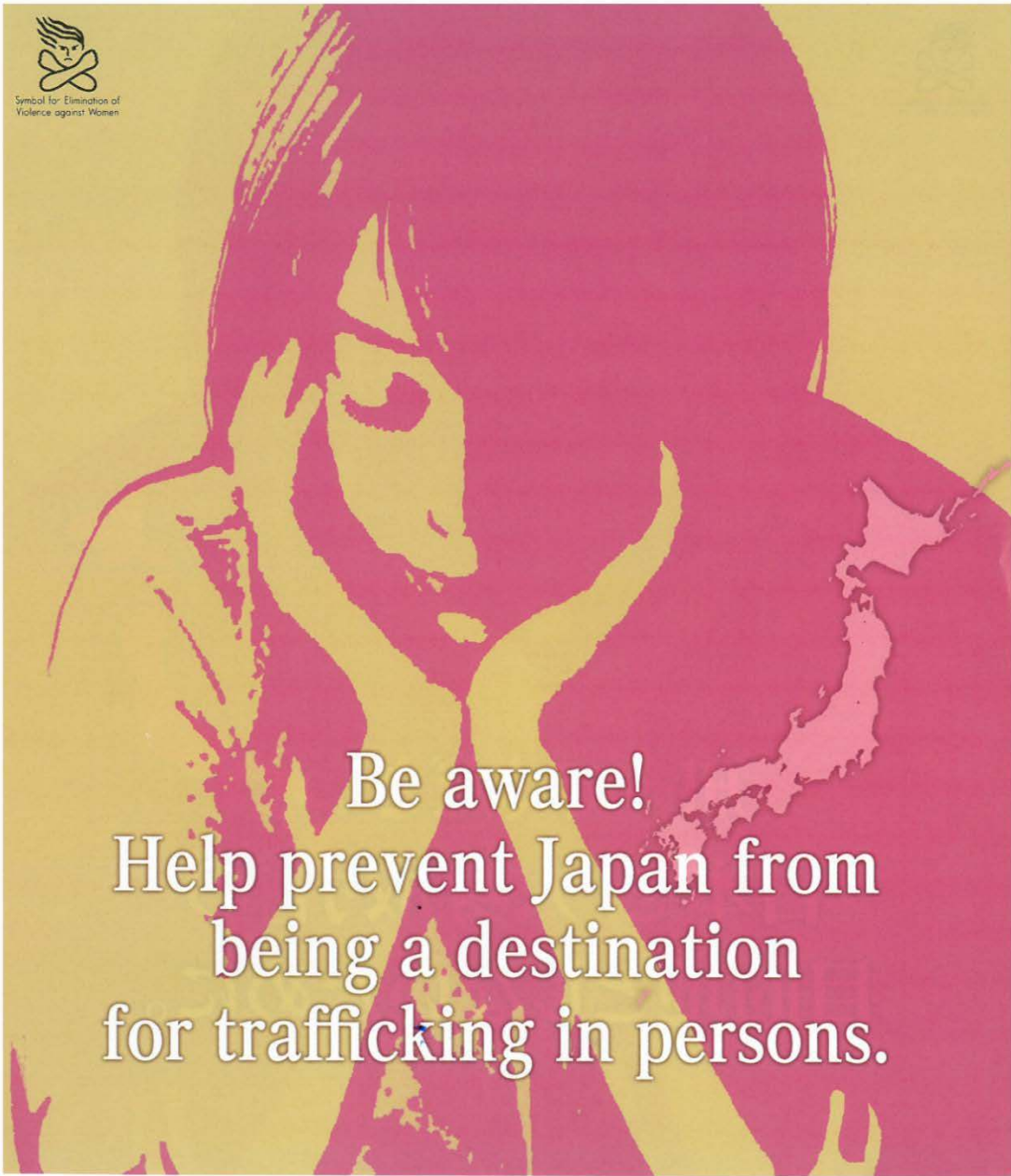
Cabinet Secretariat Cabinet Office National Police Agency Ministry of Justice  
Ministry of Foreign Affairs Ministry of Education, Culture, Sports, Science & Technology  
Ministry of Health, Labour and Welfare Japan Coast Guard

The persons showing this leaflet may be victims of human trafficking. Please report to the police or other relevant institutions.



[www.cas.go.jp/jp/seisaku/jinsin/](http://www.cas.go.jp/jp/seisaku/jinsin/)

Figure 22: Anti-Trafficking Poster 3



- "Trafficking in persons", an exploitation of human beings through forced prostitution or labor, causes severe psychological and physical damage to the victims.
- Prostitution is a grave violation of human dignity and human rights and shall never be tolerated.
- Trafficking in persons and child prostitution, committed in Japan or abroad, are punishable crimes.

Please report to the nearest Police Stations or Immigration Offices when you notice, or are asked to help by, victims of trafficking in persons.

<http://www.cas.go.jp/jp/seisaku/jinsin/>

Cabinet Secretariat Cabinet Office National Police Agency Ministry of Justice  
 Ministry of Foreign Affairs Ministry of Education, Culture, Sports, Science & Technology  
 Ministry of Health, Labour and Welfare Japan Coast Guard



The persons showing this leaflet may be victims of human trafficking. Please report to the police stations or other relevant institutions.

Figure 23: Anti-Trafficking Poster 4



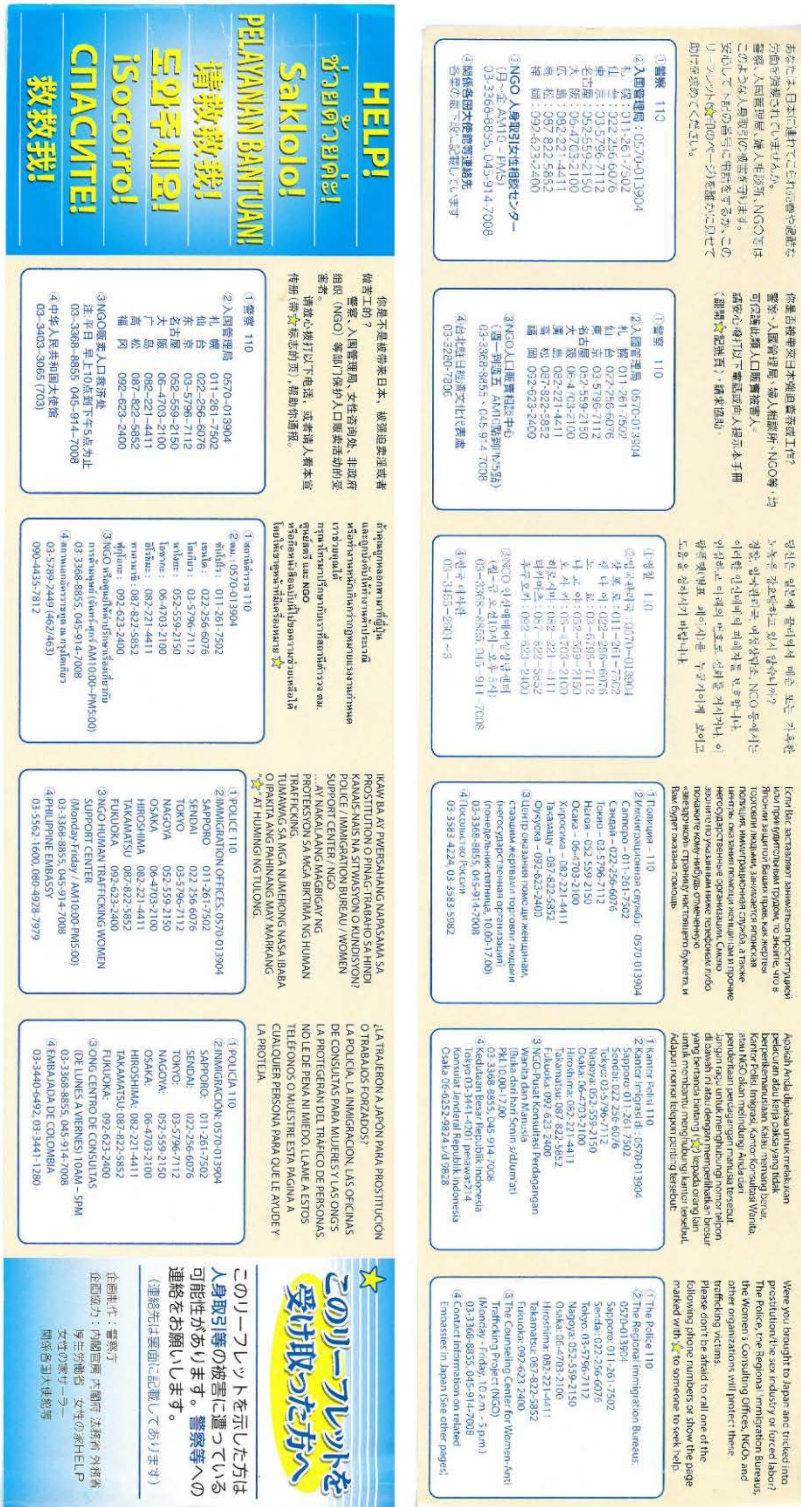


Figure 24: Anti-Trafficking Leaflet, Front and Back

The leaflets, meanwhile (Figure 24, above), contain the following text in English:

Were you brought to Japan and tricked into prostitution/the sex industry or forced labor? The Police, the Regional Immigration Bureaus, the Women’s Consulting Offices, NGOs and other organizations will protect these trafficking victims.

Please don’t be afraid to call one of the following phone numbers or show the page marked with [star symbol] to someone to seek help.

Versions of this are repeated in Japanese, both simplified and traditional Chinese, Korean, Thai, Indonesian, Spanish, Tagalog, and Russian; each is accompanied by the phone number for an NGO and the relevant embassy. Interestingly, the NGO whose contact details are included is the Counseling Center for Women: Anti Trafficking Project—again suggesting a highly gendered understanding of human trafficking.

However, in addition to offering aid to the victims it identified, the Japanese government’s post-2004 governance of human trafficking has also tried to prevent potential victims from entering the country in the first place. This goal was made explicit in the 2009 update to the Task Force’s Action Plan, which stated that “preventing potential [or latent]<sup>1117</sup> victims from entering the country” was part of their plan for preventing of trafficking in persons.<sup>1118</sup>

Documents I received from ministries and the NPA summarising Japan’s anti-trafficking activities likewise placed a version of this phrase (“prevent potential victims from entering Japan”) right at the top of their summaries, suggesting that it has importance for Japan’s human trafficking governmentality—its understanding of what causes human trafficking and how it should be solved.<sup>1119</sup> Interestingly, this phrase was nowhere to be found in the 2014 version of the Action Plan. In its place, though, were phrases such as, “prevention of trafficking in persons by thorough immigration control,” and, “strict examination of visas.”<sup>1120</sup> These phrases suggest that preventing those who might later be categorised as

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<sup>1117</sup> *Senzaiteki* can be translated either way. The 2009 Action Plan uses “potential,” but the 2014 Action Plan uses “latent;” I shall also use latent below.

<sup>1118</sup> Task Force, “Japan’s 2009 Action Plan to Combat Trafficking in Persons (Provisional Translation),” December 2009, 4.

<sup>1119</sup> “Measures of the Japanese Government to Combat Trafficking in Persons (Overview),” September 2014.

<sup>1120</sup> Task Force, “Japan’s 2014 Action Plan to Combat Trafficking in Persons (Provisional Translation),” December 16, 2014.

victims of human trafficking from entering Japan remains an important part of Japan's human trafficking governance.

Perhaps the most significant example of the Japanese government's efforts to prevent "latent victims" from entering the country was the change made to the rules for the entertainer visas, a change made with the explicit intent of reducing the high volume of Filipino entertainers entering Japan. Originally, a prospective migrant had to meet one of three criteria for entering Japan as an entertainer: having qualifications that were recognised by the state or local government or by a public or private body of those governments; two years of relevant study at an educational institute; or two years' relevant work experience. However, on February 15, 2005, the Ministry of Justice promulgated a Ministerial ordinance to remove that first provision.<sup>1121</sup> The effect of this change was to make the government of the Philippines unable to independently recognise the qualifications of women to be "entertainers" or to delegate this authority to private companies. This, in turn, essentially put an end to the system set up to bring in migrant hostesses from the Philippines.

The result of this change to the visa regulations was a rapid drop in the number of Filipino entertainers entering Japan, as illustrated by Figure 25, below. In 2004, 82,741 new arrivals came to Japan from the Philippines on entertainer visas, representing 61% of the 134,879 total newly arrived entertainers. By 2006, the number of entertainers coming from the Philippines had dropped almost 90%, to 8,608. With that drop came a reduction in the total number of entertainers entering Japan by more than 50%, to 48,249, with arrivals from the Philippines now representing only 18% of that total. Moreover, although the total number of entertainers stabilised, the number of entertainers from the Philippines continued to drop, bottoming out at 1,407 in 2011—5% of that year's total number of newly arrived entertainers, and less than 2% of the number of entertainers who had come from the Philippines in 2004.

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<sup>1121</sup> *Shutsunyūkoku kanri oyobi nanmin nintei hō dai nana jō dai ikkō dai ni gō no kijun o sadameru shōrei*; Ministry of Justice, Japan, "Hōmu Nenkan (Heisei 17-Nen) [Yearbook of Judicial Affairs (2005)]" (Tokyo: Ministry of Justice, 2005), 323–24, <http://www.moj.go.jp/content/000005273.pdf>.



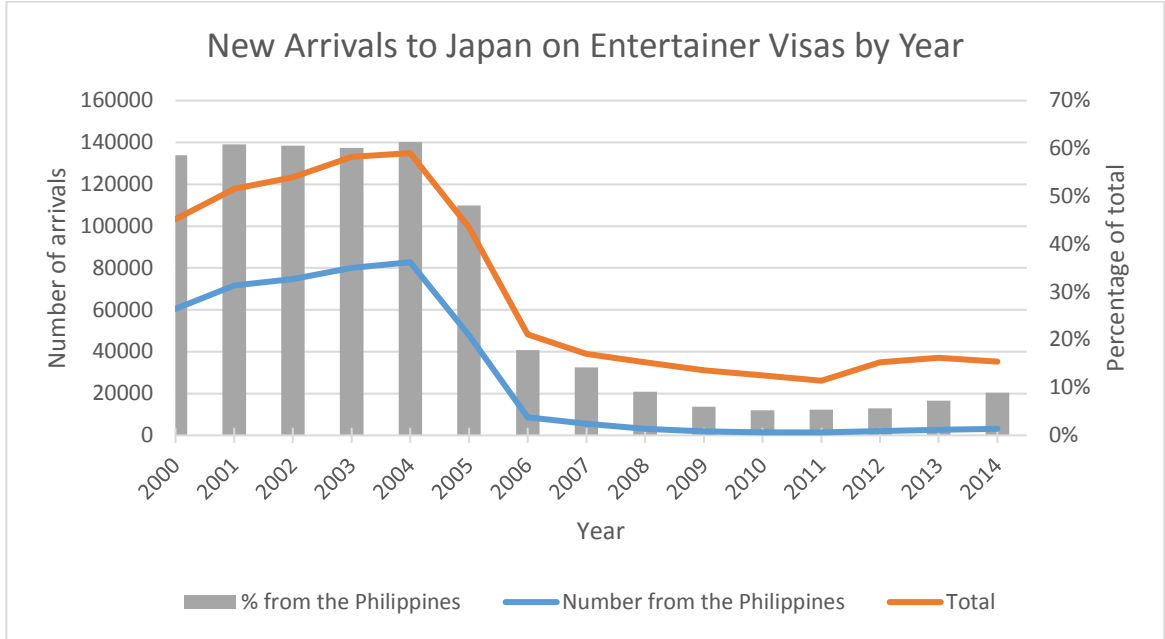


Figure 25: New Arrivals on Entertainer Visas by Year<sup>1122</sup>

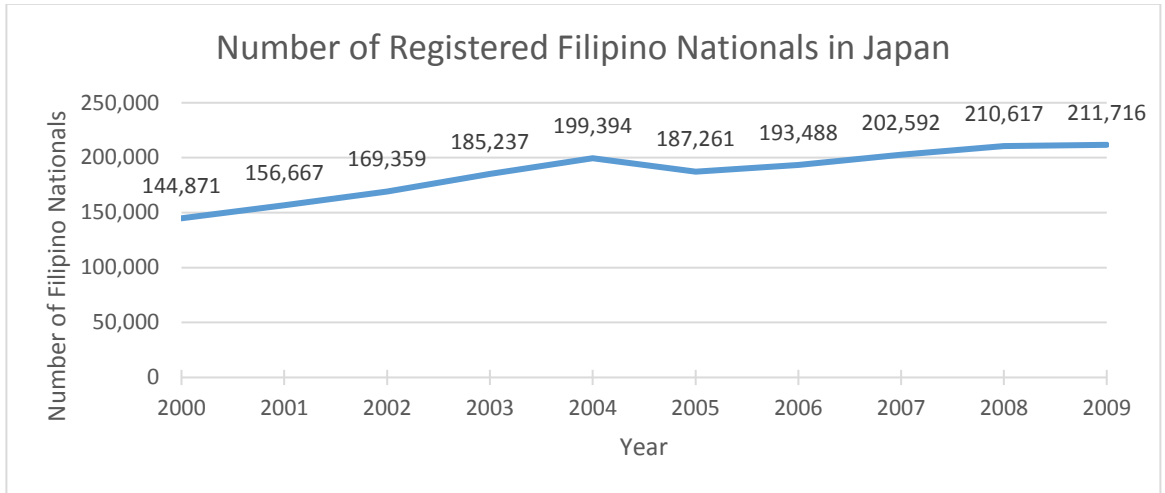


Figure 26: Number of Registered Filipino Nationals in Japan<sup>1123</sup>

<sup>1122</sup> Data from Immigration Bureau of Japan, “Immigration Control: 2005” (Tokyo: Ministry of Justice, 2005), [http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan\\_nyukan46.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan46.html); “Immigration Control: 2010” (Tokyo: Ministry of Justice, 2010), [http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri01\\_00015.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri01_00015.html); “Immigration Control: 2015” (Tokyo: Ministry of Justice, 2015), [http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri06\\_00068.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri06_00068.html).

<sup>1123</sup> Data from *ibid.* From 2011, the MOJ changed how they record foreigners in Japan, and those figures for 2000–2005 are incomplete. As such, I have used the older figures and omitted later years.

A number of participants framed this step as an important advancement in Japan's human trafficking governance. Participants from the MOJ described entertainers as the "typical" victims of trafficking (along with sex workers and Thai women more generally), and when asked how the MOJ had responded to trafficking, their first response was that they had changed the regulations surrounding entertainer visas. A participant from the Iwate Prefectural Police noted (approvingly) that up until 2004, there had been a high number of "Filipino Pubs" in Morioka, but that these had practically disappeared as a result of the immigration laws becoming more stringent. Meanwhile, Consul General Tirol-Ignacio described the entertainers as "highly vulnerable to trafficking," and said that, since the change in laws, "The human trafficking profile has changed. It has changed tremendously."

However, participants also emphasised that this change had not impacted the number of people coming to Japan from the Philippines. Figure 26, above, shows the changes in the number of registered foreigners from the Philippines in Japan.<sup>1124</sup> Here we can see that the change to the regulation of entertainer visas did indeed not have a serious long term effect on the number of Filipinos living in Japan. Though this number did drop in 2005 with the change to entertainer visas, it began recovering the next year, and by 2007 it had surpassed its 2004 total. Many of my participants expressed concern about the status of these Filipinos. For example, although the participant from the Filipino NGO DAWN argued that the entertainer visa program had been a form of human trafficking, she was also concerned that Filipina women were still working in the hostess clubs while on non-entertainer visas, and that these hostesses were now even more vulnerable on account of their irregular status. Meanwhile, ENCOM's Tolentino noted that marriage visas, in particular, had become a popular means for Filipinas to get into Japan following the changes to the entertainer visa:

In 2006, the number of Filipinos marrying Japanese has really increased that much. [...] At the beginning they were panicking about what to do, so many people would marry a Japanese. [...] But you know, marrying a Japanese man is, as I told you, not always a happy ending.

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<sup>1124</sup> This includes those in the country as "temporary visitors."

As Faier notes in her ethnography of Filipina women living in Japan's Kiso Valley, marriage between Filipina women and Japanese men are not uncommon, even in the countryside, and generally falls under two patterns: hostesses marrying customers, and international marriages arranged by intermediaries.<sup>1125</sup> Tolentino here seems to be referring primarily to the first pattern—hostesses who wanted to stay in Japan but knew they would be unable to renew their visa, and so set out to marry one of their patrons and obtain a spousal visa. Following up on her comment about there not always being a “happy ending,” she described a range of possible problems these women could have in Japan, ranging from language barriers, to divorce after the birth of a child, to domestic violence, to being married to a member of the yakuza who would take some of the proceeds of her labour. This made an interesting contrast to Tirol-Ignacio, who told me:

From our perspective, however, most of our Filipinos here who have migrated are actually very happy with their experience in Japan. The majority of our Filipinos here are permanent residents or long-term residents. [...] The profile is mostly Filipinos who are married to Japanese nationals, or else are children of Japanese nationals

In fact, one of Tirol-Ignacio's concerns about these women was that some of them were involved in trafficking other Filipina women to Japan—a concern shared by the participant from DAWN. Meanwhile, participants from the NPA's anti-trafficking unit told me that in 2014, they had, in fact, arrested a Filipina women who was married to a Japanese man on charges of committing *jinshin baibai*.

Filipina women are far from the only group using marriage visas to enter Japan, and indeed many of my participants noted that this group had been eclipsed by Chinese women entering Japan to work in the *mizu shōbai* (nightlife entertainment) and *seifūzoku* (legal commercial sex) industries. A participant from the Iwate Prefectural Police told me specifically that many of the foreign women working in the *fūzokuten* in Morioka were Chinese nationals in Japan on spousal visas. Likewise, a participant from the Royal Thai Embassy noted that women from northern Thailand were using matchmaking services to find spouses (typically older men) in Japan. This flow is not confined to Asian women

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<sup>1125</sup> Faier, *Intimate Encounters*, 1–32.

marrying Japanese men. Kumustaka's Nakashima-san noted that Russian women also used the "marriage route" (*"kekkon no ruto"*) to enter Japan, and he discussed a case with me where a Nigerian man who had overstayed his visa married a Japanese woman he had met over the internet in order to stay in the country.

In this last case, the marriage's validity was challenged by the Immigration Bureau as a result of the bride's father reporting it to the police. The couple ultimately prevailed at court, but this case still highlights an issue about which a number of participants expressed concern: the use of *gisō kekkon*—"fake marriages"—as a means of human trafficking. This concern was expressed to me directly by the NPA in Sapporo, who told me that fake marriages were emerging as the main mechanism for human trafficking. Similar sentiments were expressed by participants from the NPA's headquarters, as well as from the IOM, DAWN, Kumustaka and the Embassy of the Philippines. On the other hand, Nakashima-san suggested that this was not a new "route," but rather that stricter enforcement of the entertainer visas was pushing migrants to use a route that had previously been available. Furthermore, according to ENCOM's Tolentino:

We see that there are those who are coming in different visa statuses. So it could be like, adoption. Or it could be through marriage. Always, somehow. [...] Why? Because the entertainment industry is still present. [...] So the problem still exists. But it may not be as controlled as before, because they are not dependent on their visa statuses to the management. They have their own visa.

Here, Tolentino points to a couple of specific aspects of the visa system. First, women who came over on entertainer visas were limited to working in the entertainment sector—under the conditions of their visa, they could not get other work. In addition, their visas could also make it difficult to change employers within the entertainment industry, giving their employers a high degree of power over them. A spousal visa, on the other hand, allowed its holder to work anywhere, thus potentially limiting opportunities for exploitation.<sup>1126</sup>

Interestingly, though JNATIP had begun as a network focussed largely on the sexual exploitation of migrant women in Japan, participants from JNATIP's member organisations I

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<sup>1126</sup> See also Immigration Act, art. 19.

spoke with argued that, when it came to trafficking for sexual exploitation, Japanese women were now the primary at-risk population. According to Lighthouse’s Fujiwara-san:

We do get calls from Thai or Filipino women saying that their club is underpaying them or that they heard they can get more money elsewhere and asking us for help, but all migrant labourers are exploited to a certain extent, and they still come because it’s better than what they would be getting back home. [...] Traffickers realise it’s easier to just exploit young Japanese girls.

NFSJ’s Yamaoka-san likewise said that:

I think it's much easier for the traffickers or the perpetrators to make the Japanese women into victims, rather than to get them from abroad. Because it takes lots and lots of things to do, like forging the passport, and doing a lot of things like travelling. But why don't you just look for the women in Japan? And poverty is one of the reasons I think, in Japan. Women's poverty rate is much higher than man's, and a lot of children are much poorer than adults, so for the victim side there are lots of factors—push factors for the victim side. So it's much easier for the traffickers to take advantage of women and girls.

In both cases, participants were concerned with the exploitation of Japanese women in Japan’s sex industry. Fujiwara-san was particularly concerned over the commercial sexual exploitation of children in Japan’s “JK (*joshi kōsei*, i.e., “school girl”) business”: businesses such as the previously mentioned JK *osampo*, or the “JK Reflexology” shops in Akihabara<sup>1127</sup> that employ female high school students (or women presenting themselves as female high school students) as masseuses. In theory, none of the services these shops offer can be sexual, since sex with juveniles (compensated or otherwise) is illegal across Japan. However, according to Fujiwara-san, in practice these shops can circumvent this restriction by moving girls between different clubs, some of which might offer sex and be nominally off-limits to juveniles. Even without these measures, encounters in these shops can be used to negotiate a subsequent (paid) date at a hotel, at which point the club can deny all involvement.

Both Fujiwara-san and Yamaoka-san also described the AV (adult video) industry as a major driver of human trafficking in Japan. Here again Fujiwara-san highlighted the exploitation of

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<sup>1127</sup> A district in Tokyo’s Chiyoda Ward that specialises in comics, animation, video games, and “JK businesses,” popular with both the Japanese “otaku” sub-culture and foreign tourists.

juveniles in the AV industry, and noted that once someone had appeared in one video, the producers could blackmail that person into appearing in subsequent videos by threatening to release it to their families. Yamaoka-san, on the other hand, focussed on the problem of the deceptive recruitment of women into the AV industry by “scouts” who prowl the popular entertainment districts.

Participants from the police and government agreed that there had been an increase in domestic trafficking in Japan, and suggested that this had come in response to a greater scrutiny of visas. This shift in focus to the trafficking of Japanese women rather than foreign women also shows up in the statistics: looking once more at Figure 19 (pg. 320), we can see a sharp increase in the number of reported Japanese victims of human trafficking starting in 2010, even as the total number of reported victims remained lower than it had been from the 2001–2006 period. As for what this domestic trafficking looks like, the Hokkaido Prefectural Police cited some specific cases, including women who were deceived into racking up significant debts at host clubs. These women were subsequently pressured into engaging in sex work at *fūzokuten* affiliated with the host club to pay off their debts, pressure reinforced by implicit threats of violence if they tried to refuse or escape. According to the NPA, dealing with this form of trafficking requires more scrutiny of the *fūzokuten* to identify and rescue victims, as well as awareness-raising among Japanese women about the risks of trafficking and their legal recourses in the event of blackmail.

Meanwhile, the increased focus on child exploitation had led to some local changes, with Fujiwara-san noting that Chiyoda Ward had passed a ban on underage soliciting as a way of limiting practices like JK *osampo* and JK reflexology in Akihabara. It also led to national changes, most significantly an amendment to the Child Pornography Law in 2014. The renamed Act on the Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, as well as the Protection, etc., of Children criminalises possession of child pornography (limited to media recordings of actual children and with restrictions related to artist expression), as well as broadening the range of sexual conduct forbidden

under both the prostitution and pornography portions of the Act.<sup>1128</sup> This amendment was explicitly framed as an anti-trafficking measure by the Japanese government in their 2014 Action Plan.<sup>1129</sup> This is, in fact, part of a larger trend of framing the Child Pornography Law as an anti-trafficking measure: the original Child Pornography Law is mentioned prominently in the first Action Plan,<sup>1130</sup> and the 2009 Trafficking Plan lists it among “laws and regulations related to trafficking in persons, etc.,” as well as promising both to “thoroughly crack down on [...] child pornography” and to “enhance the action to eliminate child pornography.”<sup>1131</sup>

Aside from the focus on child pornography as trafficking, more recent anti-trafficking efforts by the Japanese government have focussed on “labour trafficking,” with particular attention paid to the TITP. The 2014 Action plan notes that:

With regard to Technical Intern Training Program, given that unfair cases such as unpaid wages and prolonged work have occurred, the programs will be drastically revised to make them more suitable and ensure the purpose of international contribution, and the necessary bills will be submitted.<sup>1132</sup>

The report specifically calls for more inter-ministerial cooperation, the creation of a dedicated oversight body, increased auditing, providing information on legal protection to migrants, enforcing labour laws, and carefully scrutinising the expansion of visas for housekeeping jobs and jobs related to the 2020 Olympics.<sup>1133</sup> And participants from the NPA discussed the labour abuses within TITP as an ongoing problem and mentioned efforts to investigate what they described as “illegal companies” and “brokers.”

Nevertheless, the program remains highly contentious with civil society actors, in particular in light of planned expansions to the program to deal with both general labour shortages caused by the aging population and specific shortages related to the 2020 Olympics.

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<sup>1128</sup> Jidō poruno hō, Act No. 52 of May 26, 1999 as last amended by Act No. 79 of June 25, 2014.

Translation JLTC's:

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2592&vm=04&re=01&new=1>

<sup>1129</sup> Task Force, “2014 Action Plan,” 10.

<sup>1130</sup> “Kōdōkeikaku [Action Plan].”

<sup>1131</sup> Task Force “2009 Action Plan,” 6, 9.

<sup>1132</sup> Task Force, “2014 Action Plan,” 6.

<sup>1133</sup> Inter-Ministerial Liaison Committee Regarding Measures to Combat Trafficking in Persons, 6–7.

Kumustaka's Nakashima-san, for example, told me that the government does not really see the TITP as human trafficking—an assessment supported by earlier comments made to me by the MOJ. Furthermore, at the June 4, 2015 “Meeting in the Diet Demanding a Proper Immigration Policy,” civil society groups and opposition lawmakers that attended were scathing in their assessment of the program. One speaker called the entire program a “human rights violation” (“*jinken shingai*”). Another called on the government to stop what they referred to as a “half-baked” (“*chūtohanpa*”) immigration system.

Thus, over the 2004–2014 period, the Japanese government developed a governmentality that understands human trafficking—*jinshin torihiki*—to be primarily a problem of sexual exploitation, both of migrants and Japanese women. This *jinshin torihiki* problem is further understood to be caused by deviant criminals. As such, law enforcement techniques—arrests and punishment, but also increased police and border agent surveillance to create a self-regulating panopticon—are understood to be important techniques for addressing this problem. These techniques have also been extended to a broad range of phenomena perceived as related to human trafficking, such as the criminalisation of the possession of child pornography.

However, the *jinshin torihiki* problem is also understood to be rooted in the vulnerability of “latent victims,” a category that includes children, migrant women, and certain categories of Japanese women of full age (i.e., the sort that might go drinking at a host club). According to this *jinshin torihiki* governmentality, protecting these “latent victims” may require restricting some of their freedoms. For juveniles, this might mean restrictions on what income-earning activities they can be involved in, as Chiyoda Ward did by banning solicitation by juveniles. However, for prospective migrants, this might mean denying them entry into Japan entirely. On the other hand, once someone has moved from the category of “latent victim” to “victim,” the problem becomes one addressed through biopower, including through the provision of accommodations, as well as medical and psychological services. The number of people covered by this biopower regime, however, remains relatively low, and the measures that participants from the Japanese government discussed with me were primarily focussed on prevention and deterrence.



## THE TRANSNATIONAL GOVERNANCE OF HUMAN TRAFFICKING IN JAPAN

From the previous two sections, it should be clear that there is a convergence of the TIP Report's coverage of Japan and the Japanese government's response to human trafficking. However, the question remains: to what extent has this coverage actually influenced Japan's response to human trafficking? And, to the extent that it has influenced Japan's response to human trafficking, to what extent has it influenced the governmentality of human trafficking in Japan? In other words, assuming the report has had any influence, has this influence been limited to the conduct of the Japanese government in regards to human trafficking, or has it changed the way the government actually thinks about human trafficking?

Many of Japan's NGOs were willing to give the TIP Report credit for changes to the governance of human trafficking in Japan. Lighthouse's Fujiwara-san suggested to me that the Japanese government only started treating human trafficking as a major issue in 2004, after being placed on the Watch List. Yamaoka Mariko-san of the NGO Not For Sale Japan (NFSJ) argued that the TIP Report had played a crucial role in forcing both the Japanese government and the Japanese general public to re-examine conduct that had become normalised, such as the "JK business" or the TITP. Shin'ichirou Nakashima-san, from the NGO Kumustaka, told me that:

That's why Japan's Action Plan for Combatting Trafficking in Persons, well, it's particularly aimed at the Americans. And that's why they say we're doing these meetings, and we're making these posters, and we're doing things like this, right?<sup>1134</sup>

And ENCOM's Leny Tolentino went as far as to tell me that:

Without that [the TIP Report] the Japanese government would not do anything, I think. So we always say that if there is this criticism from outside—especially from America, probably—then Japan would listen to it.

The Japanese government, on the other hand, was far less forthcoming regarding the influence of the TIP Report. The government's official position on the TIP Report, as put to me by participants from the MOFA, was that the Japanese government cannot comment on

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<sup>1134</sup> Translated from Japanese.

the contents of a report put out by a foreign government. Similarly, participants from the MOJ avoided discussing the TIP Report with me, and when I asked participants from the MOJ what international influences there had been on changes to Japan's response to human trafficking, I was told that the official answer to this was the United Nations—in particular the report of the UN's Special Rapporteur on Trafficking in Persons. Interestingly, the recommendations in the Special Rapporteur's report—which was not otherwise mentioned by my participants—are quite similar to those found in the TIP Report.<sup>1135</sup>

Participants from foreign embassies were similarly circumspect. Consul General Tirol-Ignacio limited her comments to noting that the TIP Report did not impact how the government of the Philippines understood human trafficking in Japan. A participant from the Royal Thai Embassy noted only that:

I think that international influence sometimes is needed in order to encourage the agencies or the actors on this issue to move forward or to do something more aggressively, positively. If it is used constructively, I mean—the international pressure—and is not being used as a diplomatic tool for another aim.

On the other hand, participants from the police spoke rather openly about how they saw the influence of the TIP Report. Participants from the Hokkaido Prefectural Police told me that the Japanese government was eager to avoid a negative rating in the TIP Report, and that as a result the TIP Report has had an impact on the governance of human trafficking in Japan. They noted in particular that Japan wanted to avoid being placed back on the Watch List, saying that there had been some talk of Japan being placed there in 2015, and that they were relieved that this had not happened. Meanwhile, participants from the Fukuoka Prefectural Police told me that, "We recognize that Japan is internationally behind the international standard—that's what's been pointed out." The comment came at the end of an interview and I was unable to follow up on this to ask who had pointed it out. Still, the comment alludes to the influence of those doing the pointing out, for by encouraging an understanding that Japan is "behind the international standard," indicators like the TIP Report also encourage a belief that the current anti-trafficking governance is insufficient

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<sup>1135</sup> These are summarised in Task Force, "2009 Action Plan," 3.

and needs to be modified somehow. Indeed, many of my participants in government or the police—including the MOJ, the Immigration Bureau, and the Fukuoka Prefectural Police—went out of their way to stress that they understood human trafficking in Japan to be a serious problem and that they and their subordinates were working hard to stop it.

Further evidence of American influence can be found in the flurry of anti-trafficking activity in Japan in the 2004–2005 period. Previously, the 2001 TIP Report had criticised the Japanese government for its lack of a “formal ‘task force,’ or interagency working group, to coordinate anti-trafficking efforts among various ministries,”<sup>1136</sup> while the 2003 TIP Report had criticised Japan for not having a “national plan of action.”<sup>1137</sup> Then in 2004, the year that the TIP Report placed Japan in the Watch List, the Japanese government put together an interagency working group on human trafficking that they explicitly referred to in English as the “Task Force,” as well as a document that they explicitly called an “Action Plan.” And while it is true that the Task Force was actually formed three months before the release of the 2004 TIP Report, participants from the government and police indicated to me that the American government let them know well in advance what their tier rating was likely to be. Furthermore, the 2004 TIP Report had placed Japan on the Watch List (rather than Tier 3) “based on its commitments to bring itself into compliance with the minimum standards by taking additional steps over the next year,” additional steps which included “speed[ing] its review of anti-trafficking legislation.”<sup>1138</sup> This report was then followed in 2005 by wide-ranging legislative reforms to a number of areas specifically criticised by the report: the lack of an anti-trafficking law, the use of the entertainer visa system for migrant Filipino hostesses, and the presence of foreign women in the sex industry.

Taken together, the timing and framing of these developments support the accepted wisdom among civil society groups that the TIP Report had in some ways influenced the Japanese government. At the same time, it is also clear that the Japanese government’s human trafficking governmentality was not based on the TIP Report, and that they did not

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<sup>1136</sup> US Department of State, “2001 Trafficking in Persons Report,” 52.

<sup>1137</sup> US Department of State, “2003 Trafficking in Persons Report,” 87.

<sup>1138</sup> US Department of State, “2004 Trafficking in Persons Report,” 96.

automatically follow its recommendations. We can see this in the discrepancy between the TIP Report's coverage of the yakuza and the way that my participants discussed the role of the yakuza, as well as in the Japanese government's position on the sex industry.

From 2001–2013, the TIP Report claimed that yakuza were directly involved in human trafficking. In fact, part of my own interest in this research project came from an assumption of yakuza involvement in human trafficking—an assumption based in part on the TIP Report's coverage of Japan. As a result, though my interviews were semi-structured, open-ended, and tailored to specific participants, I would always include a question about the role of the yakuza. However, the answers that came back—regardless of whether I was interviewing civil society groups, civil servants or police officers—consistently suggested that the yakuza played at most a minor role in human trafficking in Japan.

Early on in my interviews, participants from the NPA confirmed that yakuza were involved in the sex industry, but these participants described the yakuza's role in terms that Gambetta, Varese and Hill have argued make them “protection specialists”: they coerced *mikajimeryō* (protection) payments from *fūzokuten*, illicit brothels and sex workers within their *nawabari* (turf), but they were generally not directly involved in management or recruitment. ENCOM's Tolentino did describe to me an incident in the 1980s where three yakuza surrounded a house where she and a priest had been sheltering four Filipina women who had escaped from prostitution. This case, where yakuza members tried to forcibly abduct migrant women for the purpose of sexual exploitation, was the most clear cut example of yakuza involvement in human trafficking any of my participants related to me. This incident also fits the historical pattern that Prof. Kaneshiro Hoshino described to me, whereby yakuza acted as the enforcement arm for brothels. However, it is telling that this incident occurred in the 1980s, before the end of the bubble economy and the passage in 1991 of the Anti-Organised Crime Act.

This is not to say that migrant sex workers do not have any contact with the yakuza. However, as with Japanese sex workers, the yakuza's relationship with migrant sex workers and hostesses is generally either that of customer or long-term intimate partner. The

participant from DAWN, who was generally the most scathing of my participants in her criticism of Japan's response to trafficking in persons, told me that:

Actually the women were telling us ... you know, sometimes the women even think that the yakuza are kind, because some of their customers are yakuza, and then of course there are times when they try to protect the women, but maybe these yakuza sometimes fall in love with them for a while, you know, so it's like they keep protecting them—they want the women to be just for them, you know? But actually, of course, later on even those men abandon them, after having a child or two from them.

Likewise, the most significant case Tolentino identified of yakuza post-1991 was one in which a Filipina woman was married to a yakuza member who was taking a cut of the money she made. In this case, the assistance that ENCOM provided to her was helping her to get a divorce.

Nor is this to say that there was no mention of organised crime being involved in human trafficking; rather, it is that the organised crime groups who were linked to trafficking were generally not yakuza. For example, participants from the Embassy of the Philippines asserted there was wide involvement of “syndicates” in the trafficking of entertainers from the Philippines to Japan. However, they had no evidence that these were yakuza, nor had they otherwise seen evidence of yakuza involvement in the exploitation of Filipina women. Senior officials from the NPA involved in controlling organised crime likewise noted that foreign organised crime groups were involved in bringing foreigners to work in bars or shops offering sexual services—but while these groups would have contact with the yakuza, their relationship was largely limited to paying *mikajimeryō*.

Participants from the NPA did note one case of yakuza involvement with what they described as domestic trafficking in 2014, where yakuza members were running a *deriheru* call girl service. Here payments were extracted from workers under the pretext of paying off debts, and those who wanted to leave were threatened with acts of physical violence. However, typically when it came to domestic trafficking the yakuza were described as being in the background. NFSJ's Yamaoka-san suggested that brokers who threatened violence to coerce women into the sex industry typically benefited from the implicit support of the

yakuza—and the protection that came with that support—rather than being yakuza members themselves. Moreover, according to participants from the Hokkaido Prefectural Police, host clubs or their agents might well threaten violence against women as an attempt to coerce them into the sex industry. However, while these clubs might be paying protection money to the yakuza, these yakuza were generally not involved (at least not visibly) in these efforts at coercion. One reason for this may be that involvement with this type of criminal activity could lead to a broader crackdown on the yakuza, interfering with their primary income generating activity in Hokkaido: illegally fishing for sea cucumbers at night and selling these to Chinese merchants to use in cooking.

There is clearly a discrepancy between these descriptions of the yakuza as bad boyfriends and sea cucumber poachers, and the TIP Report’s insistence that they were heavily involved in human trafficking—a discrepancy that the TIP Office seems to have ultimately come around to in the 2014 TIP Report, where they replaced the term “yakuza” with “sophisticated and organized prostitution networks” that “target vulnerable Japanese women and girls.”<sup>1139</sup> However, it is telling that the TIP Report had continued to insist for thirteen years that there was significant yakuza involvement in human trafficking in Japan even in the face of contrary evidence. It is also telling that the Japanese government largely ignored the Americans when it came to the yakuza. The term “*bōryokudan*”<sup>1140</sup> does appear in the 2004 Action Plan, but only in connection to their role as labour brokers. The term is absent in the 2009 and 2014 Action Plans.<sup>1141</sup> And aside from extending the provisions of the Act on the Punishment of Organized Crimes and the Control, etc., of Crime Proceeds to criminal activities linked to *jinshin torihiki*, none of the anti-trafficking measures taken by the Japanese government have been directed specifically at the yakuza.

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<sup>1139</sup> US Department of State, “2014 Trafficking in Persons Report,” 220.

<sup>1140</sup> “Violent groups.” This is the legal term for *yakuza* in Japan, and the only term used in official documents. See Appendix 1.

<sup>1141</sup> Task Force, “Kōdōkeikaku [Action Plan],” 4–5; “Jinshin Torihiki Taisaku Kōdōkeikaku 2009 [2009 Action Plan to Combat Trafficking in Persons]” (Tokyo: Cabinet Office, Government of Japan, December 16, 2009); “Jinshin Torihiki Taisaku Kōdōkeikaku 2014 [2014 Action Plan to Combat Trafficking in Persons]” (Tokyo: Cabinet Office, Government of Japan, December 16, 2014).

Similarly, despite the annual insistence—going back to 2001—on the part of the U.S. State Department that Japan engage in “demand reduction” in the sexual services industry, the Japanese government has largely resisted undertaking any sort of systematic suppression of the sex industry. The provisional English translation of the 2009 Action Plan did call for a “thorough crackdown on prostitution, etc.”<sup>1142</sup> However, the report also explained that this referred to cracking down on *fūzokuten* (legal sex shops) offering *baishun* (“sexual intercourse with an unspecified partner in exchange for compensation or the promise of compensation”) in contravention of the prostitution prevention act. This is better reflected in the original Japanese version of the 2009 Action, which called for “thorough control of crimes related to *baishun*” (*baishun jihan tō no torishimari no tettei*)<sup>1143</sup> or in the translation of the 2014 Action Plan, which called for “thorough control of prostitution.” This governmentality, which sees the sex industry as something to be managed rather than suppressed, also emerged in my interviews with the Japanese government and police, with one senior NPA official noting that:

If we try to change the Kabukichō area, they move to other places, you know ... the Ueno area and Kinshichō. Not only Tokyo, but in Chiba Prefecture or Kanagawa Prefecture. It’s because those needs [i.e., for recreational sex] remain.

Compare this with the Japanese government’s response to the TITP. The TIP Report first began criticising the TITP as a vector for a human trafficking in 2007, and although the Japanese government began making minor adjustments to the TITP in response to this criticism, Kumustaka’s Nakashima-san argued that the Japanese government does not really see the TITP as *jinshin torihiki*. The evidence seems to support him on this: The TITP was only mentioned in passing in the 2009 Action Plan, and as late as August 2014 some participants from the NPA and MOJ told me directly that they did not consider the TITP to be related to human trafficking or *jinshin torihiki*. However, despite this position, the TITP was included as a trafficking vector in the (December) 2014 Action Plan, which states that:

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<sup>1142</sup> Task Force, “2009 Action Plan,” 6.

<sup>1143</sup> Task Force, “Kōdōkeikaku 2009 [2009 Action Plan],” 6.

When expanding Technical Intern Training Program and utilizing foreign human resources, appropriate management must be carried out so that systems related to foreigners' work cannot be abused for trafficking in persons.<sup>1144</sup>

Six months after the release of the report, NFSJ's Yamaoka-san offered some cautious praise for this step, noting that:

They improved something about the foreign technical internship program. Because they saw it as a problem which is related to human trafficking. But in the past they didn't see it. So they did lots of... They're trying to improve the situation. So that's good.

Thus, while there are some examples where the Japanese government took action on an area of concern raised in the TIP Report despite earlier reluctance—the TITP, child pornography—there are others—like the alleged involvement of yakuza or the need to reduce the availability of commercial sex—where the report has had no discernible impact. This complicates the role of the TIP Report in governing Japan's response to human trafficking, because the areas where the TIP Report would seem to have been effective are also the areas in which civil society groups and/or non-American foreign governments have also played an active role. For example, Yamaoka-san described the tightening of the regulations of the entertainer visa as being a result of JNATIP's activities, while Consul General Tirol-Ignacio described this change as the outcome of consultations between the government of Japan and the governments of Thailand and the Philippines. Meanwhile, on the issue of child exploitation, Fujiwara-san mentioned not only American pressure on the Japanese government, but also Swedish pressure, and she highlighted former Swedish ambassador to Japan Kaj Reinius as a particularly prominent influence.

Here, there are three points worth highlighting. The first is that, as discussed in the previous chapter, Japan had been taking steps to govern activities described as "human trafficking"—such as the sale of child pornography or the exploitation of Thai migrant sex workers—before the first TIP Report was released, largely in response to pressure from domestic civil society groups. The second is that, while it seems clear that the TIP Report has had some

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<sup>1144</sup> Inter-Ministerial Liaison Committee Regarding Measures to Combat Trafficking in Persons, "2014 Action Plan," 4.



influence on the governance of human trafficking in Japan, the areas where the Japanese government has seemed to respond to the TIP Report have also been those areas where domestic civil society groups are active. And the third is that the TIP Office has only a limited ability to gather its own data, and instead relies on reports from civil society groups. Indeed, a number of my own respondents mentioned being asked for and giving information to the U.S. Embassy regarding how they see human trafficking in Japan.

This situation suggests some additional research questions that did not occur to me at the onset of my research; namely, whose governmentality does the TIP Report reflect, and who is using it as a technique for governance? While intuitively the answer to these questions would seem to lie somewhere in the locus of the TIP Office, the U.S. State Department, the broader American government and the various American “anti-trafficking” groups favoured by the government at a given time, their actual role here may be quite limited. The power of the TIP Report as an indicator ultimately rests on its ability to generate knowledge about human trafficking—to declare what the human trafficking situation in a given country *is* and to have these declarations accepted as fact. However, for the most part, this knowledge is not generated by the TIP Office or the American government or American activist groups, but by civil society groups and government agencies in the countries being evaluated.

A common complaint from the civil society groups that I spoke with was that the Japanese government did not listen to their concerns. On the other hand, they noted that the Japanese government paid attention to the TIP Report, and argued that Japan’s 2004 placement on the Watch List and its continued placement in Tier 2 have been major factors driving changes to the governance of human trafficking in Japan. Thus, by offering their own reports to the U.S. Embassy, these groups have an opportunity to govern the conduct of their own government in ways that seemed impossible otherwise. These groups and the TIP office are thus engaged in a process of iterative and interactive governance, where each serves to amplify the voice of the other. I shall therefor discuss this use of the TIP report, and its implications for the governance of human trafficking in Japan, in the next and final chapter.



## CHAPTER 8: DISCUSSION AND CONCLUSION

### DISCUSSION

On July 11, 2017, Japan at last acceded to UNTOC—sixteen-and-a-half years after signing the convention.<sup>1145</sup> This was well after my fieldwork and data collection had ended, and it was not something I would have predicted had I been asked about the possibility a year earlier, when I was still in the preliminary stages of writing this dissertation. Nevertheless, the government had clearly been making preparations since earlier in the year, with the Abe administration fighting for the passage of a law criminalising conspiracy. As a number of my participants had suggested, this move was met with considerable opposition. Opponents of the law argued that it was overly expansive, opened the door to police abuse, and violated human rights.<sup>1146</sup> Interestingly, in arguing for both the conspiracy law and the need to ratify UNTOC, the government did not focus on the risk of organised crime (the nominal focus of UNTOC), but rather the risk of terrorism, specifically citing terrorist attacks in the United Kingdom, Sweden and Belgium.<sup>1147</sup> These arguments allowed the ruling LDP to push the law through the Diet and ultimately pass it on June 15, 2017.<sup>1148</sup> Thus, ultimately it was by governing through security, and not by governing through crime, that the government was able to pass the anti-conspiracy law. This governing through security in turn opened the door to acceding to UNTOC and its optional protocols.

In fact, the very same day that Japan acceded to UNTOC, it also acceded to the Trafficking Protocol and the Migrant Smuggling Protocol, as well as the (unrelated to UNTOC) UN

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<sup>1145</sup> United Nations, “Chapter XVIII: Penal Matters: 12. United Nations Convention against Transnational Organized Crime.”

<sup>1146</sup> Colin P.A. Jones, “Conspiracy Theory Becomes Frightening Reality for Japan,” *The Japan Times*, June 14, 2017, <http://www.japantimes.co.jp/community/2017/06/14/issues/conspiracy-theory-becomes-frightening-reality-japan/>; “Japan Passes Controversial Anti-Terror Conspiracy Law,” *BBC News*, June 15, 2017, <http://www.bbc.co.uk/news/world-asia-40283730>; Mia Alberti, “Protests in Japan as Anti-Conspiracy Bill Passed,” *Al Jazeera*, June 16, 2017, <http://www.aljazeera.com/news/2017/06/protests-japan-anti-conspiracy-bill-passed-170615155758951.html>.

<sup>1147</sup> Norio Maruyama, “In Defense of the Conspiracy Bill,” *The Japan Times*, June 9, 2017, <http://www.japantimes.co.jp/opinion/2017/06/09/reader-mail/defense-conspiracy-bill/>.

<sup>1148</sup> “Japan Passes Controversial Anti-Terror Conspiracy Law.”

Convention against Corruption.<sup>1149</sup> The accession to the Trafficking Protocol went practically unreported, particularly in English media, where the only reporting I could find on Japan's accession was the Ministry of Foreign Affairs' own press release.<sup>1150</sup> Interestingly, Japan did not accede to—and, as of the time of writing, has not acceded to—the Firearms Trafficking Protocol, despite this being the only one of UNTOC's three optional protocols that Japan played a strong role in crafting.<sup>1151</sup> This is particularly striking given the widespread hostility to firearms in both Japanese law and public opinion,<sup>1152</sup> and it suggests that the Japanese government's accession to the Trafficking and Migrant Smuggling protocols was not a reflexive move accompanying its accession to UNTOC. This in turn suggests that the Japanese government deliberately set out to accede to specific optional protocols.

Japan's accession to the Trafficking Protocol came too late for the (June) 2017 TIP Report, which once again called on Japan to “accede to the 2000 UN Transnational Organized Crime Convention and the 2000 TIP Protocol.”<sup>1153</sup> This report once again placed Japan in Tier 2, where it has now been for sixteen of the seventeen TIP Reports—leaving open the question as to whether acceding to the Trafficking Protocol will finally be the step that brings Japan into Tier 1. Whatever the answer to this question, though, it seems clear that the TIP Report has played a role in convincing Japan to prioritise ratifying the Trafficking Protocol.

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<sup>1149</sup> United Nations, “Chapter XVIII: Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime”; United Nations, “Chapter XVIII: Penal Matters: 12. b Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime.”

<sup>1150</sup> Ministry of Foreign Affairs, Japan, “Press Releases: Deposit of the Instruments of Acceptance of Four Treaties, Including the United Nations Convention against Transnational Organized Crime (UNTOC),” Ministry of Foreign Affairs of Japan, July 12, 2017, [http://www.mofa.go.jp/press/release/press3e\\_000108.html](http://www.mofa.go.jp/press/release/press3e_000108.html). Even in Japanese, I found only one article mentioning the Trafficking Protocol (in the *Zaikai Shimbun*), and even this was only in the context of the accession to UNTOC. “TOC Jōyaku Jutaku o Kakugikettei, Jinshin Torihiki Giteisho Nado Mo Tero Tō Junbihan Shikō De,” *Zaikai Shimbun*, July 12, 2017, <http://www.zaikai.co.jp/article/20170712/384951.html>.

<sup>1151</sup> United Nations, “Chapter XVIII: Penal Matters: 12. c Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime.”

<sup>1152</sup> Miron, “Violence, Guns, and Drugs”; Spitzer, *The Politics of Gun Control*, 50–52.

<sup>1153</sup> US Department of State, “2017 Trafficking in Persons Report,” 225.

However, this and other changes to Japan's human trafficking governance seem to be primarily driven not by transnational actors like the TIP Office but by the domestic Japanese civil society groups that are supplying the US State Department with their data. In this case, it seems like a mischaracterisation to call the TIP Report—at least in the case of Japan—an instrument of “transnational” governance. Instead, it seems to be more of a form of indirect governance, and one that operates to govern the conduct of the government itself. This, though, still leaves the question as to whether this indirect governance has had any impact on the human trafficking governmentality of Japan's ministries and police—in other words, whether it has changed how these actors understand human trafficking as a problem in need of governance, how they understand the world that has produced this problem, and what techniques they understand to be appropriate to solving this problem.

Based on the data presented in the previous chapter, the answer to this question is “yes,” with the caveat that the change has been subtle. As discussed previously, since 2000 Japanese regulators have clearly changed how they discuss human trafficking, adopting the term *jinshin torihiki* and defining this term to include the full range of practices covered by the Trafficking Protocol. However, my research suggests that in practice regulators tend to govern *jinshin torihiki* in ways similar to how they had governed *jinshin baibai* in the 19<sup>th</sup> and 20<sup>th</sup> centuries: as a phenomenon related primarily to the exploitation of women in commercial sexual labour. As a result, many of my participants from civil society groups expressed frustration at what they saw as a governmentality in Japan that defined “human trafficking” in excessively narrow terms. For example, Kumustaka's Nakashima-san stressed that even if the Japanese government's formal definition of trafficking was quite broad, the actual number of victims they identified remained quite low. Meanwhile, some of my participants from the Philippines noted that the nursing care service provider Juju Corporation, a major employer of Filipino migrants, could seemingly illegally exploit their workers<sup>1154</sup> and get away with only a slap on the wrist.

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<sup>1154</sup> For example by requiring employees to work 16 hour shifts without breaks, setting up contracts of indenture that made it impossible to change jobs, or forcing employees to sign contracts absolving Juju of responsibility in the even they died while on the job. See Kyodo, “Nursing Care Provider Drops Death Liability Waiver for Filipino Workers,” *The Japan Times Online*, July 16, 2014,

For some of these participants, the TIP Report and Japan's continued Tier 2 ranking represented potentially useful tools to push the Japanese government to reform its human trafficking governance by broadening its understanding of human trafficking—in other words, by reshaping its human trafficking governmentality. The TIP Report would seem to be particularly well suited to this task. Not only do negative rankings appear to influence Japanese policy making, but the TIP Report is itself based on a very wide definition of human trafficking, and one that is considerably wider than most interpretations of the Trafficking Protocol. However, using these transnational instruments is not without risks of unintended consequences.

One particular danger for anti-trafficking activists who rely on the TIP Report as a tool of governance is that it could—if the Japanese government were to become fixated on obtaining a Tier 1 rating—actually lead to *worse* outcomes for human trafficking victims. Recall that one of the early criticisms of the Japanese government's responses to human trafficking—coming from both JNATIP and the TIP Report—was that the police were treating victims like criminals. Many of the subsequent measures taken by the Japanese government—such as the terminology change from *jinshin baibai* to the more inclusive *jinshin torihiki*, or the changes to immigration regulations that ensured recognised victims of human trafficking could be granted temporary visas and would not be barred from re-entry—were designed to end this phenomenon. It seems to have worked, too: in 2005, the TIP Report claimed that, “Trafficking victims are no longer treated as criminals,”<sup>1155</sup> and the issue of victims being treated as criminals was never raised by any of my participants.

On the other hand, in the United States itself, people who are, according to official American definitions, victims of trafficking are routinely treated as criminals. Sex work, defined as “sex trafficking” in the TVPA, remains illegal in forty-nine out of fifty states, and it

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<https://www.japantimes.co.jp/news/2014/07/16/national/crime-legal/japanese-company-rewrites-death-liability-waiver-filipino-workers/>; Kyodo, “Filipino Caregivers Sign Away Their Rights,” *The Japan Times Online*, July 13, 2014, <https://www.japantimes.co.jp/news/2014/07/13/national/crime-legal/nursing-firm-obliges-filipino-women-to-waive-claims-for-own-deaths/>; “Nursing Care Firm to Compensate 10 Filipino Ex-Staff over Harsh Working Conditions,” *Mainichi Daily News*, February 3, 2017, sec. Japan, <http://mainichi.jp/english/articles/20170203/p2a/00m/0na/020000c>.

<sup>1155</sup> US Department of State, “2005 Trafficking in Persons Report,” 133.

is vigorously prosecuted.<sup>1156</sup> Up until as recently as 2014, New York City allowed possession of condoms to be used as evidence that someone was a sex worker—a law which discouraged sex workers from carrying condoms and put them at higher risk of contracting STIs.<sup>1157</sup> And in Hawaii, up until to 2014 the police could purchase sex from a sex worker and then use that as evidence to arrest them—a tactic which activists argue was used by the police to rape sex workers.<sup>1158</sup> More recently, New York has begun experimenting with “Human Trafficking Intervention Courts,” where women who have been charged as sex workers can plead that they were victims of trafficking and be sentenced to rehabilitation instead fines or jail.<sup>1159</sup> These are courts whose sole and explicit purpose is to try those it acknowledges to be victims—and yet the TIP Office has placed the United States in Tier 1 every year since 2010 (the first year it appeared in the report), suggesting that trying victims as criminals may be the type of “demand reduction” activity that Japan would have to undertake to bring itself up to Tier 1.

And there are past cases where we can see this American transnational human trafficking governance having a visibly negative impact. Here Cambodia offers a particularly striking example. Cambodia was an “early adopter” of contemporary human trafficking governance, passing anti-trafficking laws in 1996—four years before the passage of the UN’s Trafficking Protocol or the United States’ TVPA. This change followed earlier reports of an organised crime-controlled epidemic of human trafficking for sexual exploitation in Southeast Asia, and was motivated by a desire on behalf of the Cambodian government to secure badly-

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<sup>1156</sup> The exception is Nevada. See Olivea Myers, “Sex for Sale: The Implications of Lawrence and Windsor on Prostitution in the United States,” *Tennessee Journal of Race, Gender, & Social Justice* 5 (2016): i–112; Kari Lerum and Barbara G. Brents, “Sociological Perspectives on Sex Work and Human Trafficking,” *Sociological Perspectives* 59, no. 1 (March 1, 2016): 17–26, <https://doi.org/10.1177/0731121416628550>; Ronald Weitzer, “The Movement to Criminalize Sex Work in the United States,” *Journal of Law and Society* 37, no. 1 (March 1, 2010): 61–84, <https://doi.org/10.1111/j.1467-6478.2010.00495.x>.

<sup>1157</sup> Caroline M. Parker et al., “Social Risk, Stigma and Space: Key Concepts for Understanding HIV Vulnerability among Black Men Who Have Sex with Men in New York City,” *Culture, Health & Sexuality* 19, no. 3 (March 4, 2017): 323–37, <https://doi.org/10.1080/13691058.2016.1216604>.

<sup>1158</sup> Eliana Dockterman, “Hawaii Police Won’t Get to Have Sex With Prostitutes Anymore,” *Time*, March 26, 2014, <http://time.com/38444/hawaii-police-prostitutes-sex/>.

<sup>1159</sup> Aya Gruber, Amy J. Cohen, and Kate Mogulescu, “Penal Welfare and the New Human Trafficking Intervention Courts,” *Florida Law Review* 68 (2016): 1333–1402.

needed donor funding in the aftermath of over a century of colonialism, warfare and genocide and the return of the “civilising process.”<sup>1160</sup> The result was a fairly clear case of transnational governance, where Cambodia “enacted an anti-trafficking law that is one of the harshest laws in the country, punished as severely as premeditated murder,”<sup>1161</sup> which was aimed primarily at recruiters and managers in the sex industry. Then in 2008—following American pressure that was applied in part through the TIP Report—Cambodia passed a new anti-trafficking law that effectively broadened the types of means and forms of exploitation included under the definition of “trafficking.”<sup>1162</sup>

But as with many of the anti-trafficking regulations discussed above (including the Trafficking Protocol and the TVPA), the definitions of human trafficking in Cambodian law were vague in some of the areas where it mattered most. The result has been a regime of human trafficking governance that has applied criminal sanctions overwhelming to poor women with low levels of educational achievement, even though they themselves often meet the legal criteria for victims. Meanwhile, wealthier men who have been profiting from the sex industry or other forms of labour exploitation are able to avoid prosecution through a combination of bribes and government connections. The fact that the law often effectively operates to punish low-level traffickers, non-traffickers and even trafficking victims for the crime of being unable to pay a bribe, while leaving the “real” traffickers free, suggests that the net impact of transnational human trafficking governance on human trafficking in Cambodia has been negative. However, Cambodia has been able to maintain access to donor funding, and on most years has been placed in Tier 2 in the TIP Report Report—the same rank as Japan.<sup>1163</sup>

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<sup>1160</sup> Roderic Broadhurst, Thierry Bouhours, and Brigitte Bouhours, *Violence and the Civilising Process in Cambodia* (Cambridge: Cambridge University Press, 2015); Joanna Busza, “Sex Work and Migration: The Dangers of Oversimplification: A Case Study of Vietnamese Women in Cambodia,” *Health and Human Rights* 7, no. 2 (2004): 231–49, <https://doi.org/10.2307/4065357>.

<sup>1161</sup> Keo, *Human Trafficking in Cambodia*, 2.

<sup>1162</sup> Keo, 90–92; Larissa Sandy, *Women and Sex Work in Cambodia: Blood, Sweat and Tears* (Abingdon, Oxon: Routledge, 2014), 90–112.

<sup>1163</sup> Thomas M. Steinfatt, “Sex Trafficking in Cambodia: Fabricated Numbers versus Empirical Evidence,” *Crime, Law and Social Change* 56, no. 5 (December 2011): 443–62, <https://doi.org/10.1007/s10611-011-9328-z>; Keo et al., “Human Trafficking and Moral Panic in Cambodia”; Keo et al.



This outcome is not unique to Cambodia. Molland has documented, for example, how well-intentioned anti-trafficking activists well-versed in anti-trafficking best practices but with little knowledge of realities on the ground have had little success in their stated objectives: intervening in the social world where human trafficking takes place. Instead, they have effectively empowered the Thai and Cambodian governments in their governance of marginalised migrants.<sup>1164</sup> We can also see examples of negative outcomes from transnational anti-trafficking governance with the use of raids on brothels targeting voluntary sex workers in Thailand.<sup>1165</sup> Of course, Japan’s political and socioeconomic situation is not at all similar to those in Cambodia, Laos, and Thailand. Even in Singapore, though—a country that is closer to Japan in terms of development and governance indicators—we can see the negative impacts of American transnational human trafficking governance, as the police find themselves pushed to engage in raids on the red light districts that neither the government nor civil society groups believe are effective.<sup>1166</sup>

A number of the Japanese government officials I spoke with did express frustration with their continued Tier 2 placement. As discussed in the previous chapter, however, Tier 2 rankings in general are surprisingly stable, even over a five-year period. One explanation for this stability could be that the “minimum standards” of the TVPA—and even the TVPA’s basic definition of trafficking—have not been constant. As a result, there has been a constant moving of the goalposts, and a given country may find that an anti-trafficking program that would have put it in Tier 1 in 2005 is only enough to keep it off the Watch List in 2010. There is certainly some evidence that this has been true for Japan. The first six years of the TIP Report focussed heavily on the sex industry and the entertainer visa program. However, under Lagon and CdeBaca the TIP Report began to focus increasingly on labour trafficking. As a result, while Japan was expanding access to shelters for exploited sex

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<sup>1164</sup> Molland, *The Perfect Business?*, 232–36.

<sup>1165</sup> Melissa Ditmore and Juhu Thukral, “Accountability and the Use of Raids to Fight Trafficking,” *Anti-Trafficking Review*, no. 1 (June 2012): 134–48; Empower, “A Report by Empower Chiang Mai on the Human Rights Violations Women Are Subjected to When ‘Rescued’ by Anti-Trafficking Groups Who Employ Methods Using Deception, Force and Coercion”; Soderlund, “Running from the Rescuers”; Veronica Magar, “Rescue and Rehabilitation: A Critical Analysis of Sex Workers’ Antitrafficking Response in India,” *Signs* 37, no. 3 (March 1, 2012): 619–44, <https://doi.org/10.1086/662698>.

<sup>1166</sup> Chapman-Schmidt, “Sex in the Shadow of the Law.”

workers and reducing the number of Filipino entertainers entering Japan by 98%, the TIP Report began focussing increasingly on labour trafficking and the TITP.

However, it is also possible that once a country has been labelled as “deviant” in regards to human trafficking that this label ends up following them even as they address the underlying problems. This was a possibility that was suggested by my interview with participants at the MOJ. The 2014 TIP Report had come out a few months earlier, and, as discussed above, it criticised Japan for the continued existence of *enjo kōsai* and claimed that, “In a recent trend called *joshi-kosei osanpo* [sic], also known as ‘high school walking,’ girls are offered money to accompany men on walks, in cafes, or to hotels, and engage in commercial sex.”<sup>1167</sup> Curious about this “high school walking,” I asked my participants from the MOJ for more details, and they explained to me that there were men in Akihabara (a district largely dedicated to “otaku” subculture: comics, animation, video games and related merchandise) who paid girls in school uniforms to walk around with them while they bought comics or went to cafés. The participants noted that there had been investigations of this “JK *osanpo*,” and it appeared to be exactly as advertised: men were paying girls to walk around with them while wearing school uniforms. The participants noted (in English) that they themselves thought this was “weird,” but that it did not appear to be human trafficking.

What was striking about this case was that, while both the TIP Office and the MOJ agreed that there was something unusual about “JK *osanpo*,” for the MOJ it suggested that was something weird about the otaku of Akihabara. The TIP Report, on the other hand, simply stated that “JK *osanpo*” was a “trend” in Japan—with the implication that there was something weird about Japan as a whole. Historically, we can see a similar dynamic following the *enjo kōsai* moral panic, when a range of foreign media outlets picked up and broadcast stories about “Japanese school-girl prostitutes” for their home media markets.<sup>1168</sup>

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<sup>1167</sup> US Department of State, “2014 Trafficking in Persons Report,” 220.

<sup>1168</sup> See for example Michael Stroh, “Girls Who Offer Sex Upset Japan,” *Los Angeles Times*, September 30, 1996; Valerie Reitman, “Japan’s New Growth Industry: Schoolgirl Prostitution,” *Wall Street Journal*, October 2, 1996, Eastern edition; Associated Press, “Phone Clubs Create Callgirls, Public Outcry,” *The Ottawa Citizen*, October 5, 1996; Andrew Higgins, “Teenage Kicks: Sex with Schoolgirls Is

Exporting the moral panic led to a shift in its target: whereas in Japan, stories of *enjo kōsai* labelled specific individuals or groups as deviant, outside of Japan these stories labelled an entire nation as deviant.<sup>1169</sup> Both *enjo kōsai* and JK *osampo* moved from being events that happened in Japan to facts about Japan—facts that spoke to its fundamental character. These “facts” would in turn join “cartoons that depict tentacle rape” and “vending machines that sell used ladies’ underwear”<sup>1170</sup> as evidence that Japan, as a nation, is sexually deviant. As Parry put it, discussing reactions in the foreign media to Lindsay Hawker’s murder in 2007:

How many times foreigners—in Japan and in Britain—commented on “how Japanese” Lindsay Hawker’s death was, without ever being able to say exactly why. The case spoke to unarticulated but deep-seated stereotypes. A jumble of images and ideas were called to mind, involving stalkers, repressed and perverted sexuality, pornographic comic books, and notions about the way Japanese men regarded Western women.<sup>1171</sup>

And though Parry touched particularly on the sensationalised coverage of the tabloids magazines, we can see it just easily in the coverage of national papers of record like the New York Times, which claimed in 1997 that Japan had a “national obsession” with sex with minors,<sup>1172</sup> or that of progressive late night television satirists like John Oliver, who blithely refers to Japan as “Earth’s pervert uncle.”<sup>1173</sup>

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a Booming Industry in Japan,” *The Guardian*, October 30, 1996; Michael A. Lev, “In Japan, Schoolgirls Accepted as Porn Objects,” *Chicago Tribune*, February 16, 1997; Nicholas Kristof, “A Plain School Uniform as the Latest Aphrodisiac,” *New York Times*, April 2, 1997.

<sup>1169</sup> Kinsella, *Schoolgirls, Money and Rebellion in Japan*, 18–19.

<sup>1170</sup> At most, there were only ever a small handful of these during a very brief window. See Brian Ashcraft, “Japan’s Panty Vending Machines: The Unreal Hyperbole (and Honest Truth),” Kotaku, October 2, 2012, <http://kotaku.com/5948143/japans-panty-vending-machines-the-unreal-hyperbole-and-honest-truth>. However, this has not stopped non-Japanese—including scholars of Japan—from claiming they suggest something about Japan’s character. See West, *Law in Everyday Japan*, 189.

<sup>1171</sup> Richard Lloyd Parry, *People Who Eat Darkness: The True Story of a Young Woman Who Vanished from the Streets of Tokyo—and the Evil That Swallowed Her Up* (London: Vintage, 2012), 349.

<sup>1172</sup> “Schoolgirls as Sex Toys,” *The New York Times*, April 6, 1997, <https://www.nytimes.com/1997/04/06/weekinreview/schoolgirls-as-sex-toys.html>.

<sup>1173</sup> John Oliver, “Season 1, Episode 10,” *Last Week Tonight*, July 13, 2014.

However, I also discussed the JK industry with some of my other participants, including Yamaoka-san from NFSJ. During our interview, she told me that:

Well, for me, [the JK industry] is weird. But for a lot of men, and for a lot of young girls, young women, it's... It's not normal, but it's a phenomenon. It's a kind of trend that people in Japan take for granted. But to be labelled as human trafficking, that's rather sensational, and shocking, and that makes the general public in Japan think about it again: "Well, it can be a human trafficking issue, and it can be criticized by the other governments." And that's a good thing, to view our culture as something not okay.

Here, Yamaoka-san used the same (English) word to describe the JK Industry as the MOJ: "weird." And she also noted that labelling it as trafficking was sensational. However, unlike the MOJ, who had disputed the use of the term "trafficking" to describe the JK industry, Yamaoka-san welcomed it, suggesting that it would force the general public to rethink their acceptance of the JK industry. Thinking back on this comment later, I was reminded of the panopticon from Foucault's *Discipline and Punish*—only here it was an entire nation being disciplined.<sup>1174</sup> The problem is, as Molland points out, that the "Weberian technical-rational clarity" that is supposed to accompany this panopticon is largely an illusion.<sup>1175</sup> Instead, we have a governance largely guided by the imaginations of Anglo-European donors, government agencies and civil society groups. And when it comes to the governance of sexualised Asian female bodies, this imagination is frequently guided by the discourses of Orientalism.<sup>1176</sup>

As discussed in Chapter 2, Said argues that the discourses of Orientalism serve not only to highlight Oriental moral deficiency, but also to argue in favour of Occidental moral

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<sup>1174</sup> Foucault, *Discipline and Punish*, 195–230.

<sup>1175</sup> Molland, *The Perfect Business?*, 229.

<sup>1176</sup> L. Hyun-Yi Kang, "The Desiring of Asian Female Bodies: Interracial Romance and Cinematic Subjection," *Visual Anthropology Review* 9, no. 1 (March 1, 1993): 5–21, <https://doi.org/10.1525/var.1993.9.1.5>; Aki Uchida, "The Orientalization of Asian Women in America," *Women's Studies International Forum* 21, no. 2 (March 1998): 161–74, [https://doi.org/10.1016/S0277-5395\(98\)00004-1](https://doi.org/10.1016/S0277-5395(98)00004-1); Murali Balaji and Tina Worawongs, "The New Suzie Wong: Normative Assumptions of White Male and Asian Female Relationships," *Communication, Culture & Critique* 3, no. 2 (June 1, 2010): 224–41, <https://doi.org/10.1111/j.1753-9137.2010.01068.x>.

superiority.<sup>1177</sup> Orientalism in effect rejects the Eliasian idea of the civilisation coming through the processes of socio- and psychogenesis, in particular through the sensitisation to violence.<sup>1178</sup> Instead, it sees the process of civilisation as what Kipling (urging the United States to colonise the Philippines) called the “White Man’s burden”: “Savage wars of peace” that will “serve [the] need” of “new-caught, sullen peoples, / Half-devil and half-child.”<sup>1179</sup> And though Said’s own work focussed on West Asia, we can see the same dynamic he described in both the historical relations between Anglo-Europeans and Japan and in contemporary analyses of those relations, as discussed in Chapters 5 and 6.

Thus, if the TIP Report is following the same pattern as previous Orientalist discourses, then we should understand the TIP Report not only as a tool for governing human trafficking, but also as a technique for establishing the moral inferiority of certain nations—for example, those in the “Orient”—and simultaneously to establish the moral superiority of the “Tier 1 countries,” especially the United States. Establishing American moral superiority on the particular issue of human trafficking—its position, in the words of Secretary of State Rex Tillerson, as a “leader in the fight against human trafficking”<sup>1180</sup>—is necessary for the report to function, for absent American moral superiority the governmentality underlying the report would crumble and all that would be left is demands and threats. However, establishing American moral superiority on human trafficking also serves as a statement on American moral authority more generally; in this way, the TIP Report helps support the broader project of American imperialism.

It is unclear, though, that placing countries like Thailand, Laos and Cambodia in Tiers 2 and 3 is enough to accomplish this purpose. The differences in wealth, infrastructure, criminal justice systems and health outcomes between these countries and Anglo-European countries means that this comparison would largely only affirm the *material* superiority of Anglo-European countries—with the underlying assumption that if Thailand were as rich as

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<sup>1177</sup> Said, *Orientalism*, 72, 246–48.

<sup>1178</sup> Elias, *The Civilizing Process*.

<sup>1179</sup> Rudyard Kipling, “The White Man’s Burden,” in *Modern History Sourcebook* (1899; repr., Fordham University, 1997), <https://sourcebooks.fordham.edu/halsall/mod/kipling.asp>.

<sup>1180</sup> US Department of State, “2017 Trafficking in Persons Report,” ii.

the United States, it too would have Tier 1 response to human trafficking. However, by placing wealthy non-Christian, non-White countries such as Japan and Singapore consistently Tier 2, the TIP Report is able to affirm the moral superiority of the materially-similar-but-culturally-distinct Tier 1 countries—which happen to be largely White and Christian. In particular, it would affirm the moral superiority of the United States, a self-anointed “leader” in human trafficking governance.

One potential rebuttal to the accusation of orientalism is that the list of countries that appear most often in Tier 1 is not quite entirely composed of White, Christian countries, and that there is one Asian country that made that list—specifically, South Korea, which is in the unique position of enjoying a continued presence in Tier 1 after first being placed in Tier 3 in 2001.<sup>1181</sup> South Korea makes for an especially interesting comparison with Japan, since not only has their shared histories led to a certain degree of cultural and economic similarity between the two nations, but they also share a number of characteristics highlighted by the TIP Report as being problematic: a prolonged period of not ratifying the Trafficking Protocol,<sup>1182</sup> an early lack of a specific anti-trafficking law,<sup>1183</sup> a significant presence of organised crime groups,<sup>1184</sup> a large number of female migrants drawn primarily from Southeast Asia involved in intimate and erotic labour such as hostessing and sex work,<sup>1185</sup>

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<sup>1181</sup> There is in fact one other case of a country being promoted directly from Tier 3 to Tier 1—specifically, the U.A.E. in 2003. However, the U.A.E. fell to Tier 2 in 2004 and then back into Tier 3 in 2005; it has subsequently settled into a two-step shuffle between Tier 2 and the Watch List. This suggests that, unlike South Korea with its subsequently unblemished Tier 1 record, the U.A.E.’s upgrade was a mistake in the eyes of the TIP Office.

<sup>1182</sup> United Nations, “Chapter XVIII: Penal Matters: 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.”

<sup>1183</sup> US Department of State, “2002 Trafficking in Persons Report,” 86.

<sup>1184</sup> Yook Sang Jung, “Organized Crime in Contemporary Korea: International Implications,” *International Journal of Comparative and Applied Criminal Justice* 21, no. 1 (March 1, 1997): 91–102, <https://doi.org/10.1080/01924036.1997.9678587>; Yong Kwan Park, “Transnational Organized Crime and the Countermeasures in Korea,” UNAFEI Resource Material Series, no. 58 (2001); Seungmug Lee, “Organized Crime in South Korea,” *Trends in Organized Crime* 9, no. 3 (March 1, 2006): 61–76, <https://doi.org/10.1007/s12117-006-1003-x>.

<sup>1185</sup> Lee, “The Construction of U.S. Camptown Prostitution in South Korea,” 185–224; Joon K. Kim and May Fu, “International Women in South Korea’s Sex Industry: A New Commodity Frontier,” *Asian Survey* 48, no. 3 (June 1, 2008): 492–513, <https://doi.org/10.1525/as.2008.48.3.492>; Sealing Cheng,

and program to bring in international “trainees” as a migrant workforce to offset the rising cost of domestic labour and the aging population.<sup>1186</sup>

It is not entirely clear how South Korea managed to leap from Tier 3 to Tier 1 while Japan struggles to get out of Tier 2. The 2002 TIP Report claims that South Korea had “made extraordinary strides since the last report,”<sup>1187</sup> and notes specifically that it had established both a Committee for Countermeasures to Prevent Trafficking in Persons and a Joint Task Force on Trafficking in Persons. However, the TIP Report is unclear about what precisely these agencies had done to earn such a significant upgrade,<sup>1188</sup> and identical steps taken by Japan in 2004 were only enough to bring it back to Tier 2 in 2005 after being placed on the Watch List in 2004.<sup>1189</sup> This could be a function of the shifting standards discussed earlier, meaning that actions that were enough to merit a Tier 1 placement in 2002 were no longer sufficient to merit Tier 1 placement in 2005. This, however, suggests that South Korea must have been engaged in additional efforts of its own in this period to avoid a similar downgrade.

So what might those efforts have been? An IOM report on trafficking in South Korea released the same year, argues that the Korean terminology used for “trafficking” (at least at the time) was synonymous with “prostitution,” suggesting that whatever actions had been taken by the South Korean government had been entirely directed at “sex trafficking.”<sup>1190</sup> This focus on sex, though, is not surprising: the Americans have also been primarily focussed on sex-related trafficking cases during much of this period, while in Japan

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*On the Move for Love: Migrant Entertainers and the U.S. Military in South Korea* (Philadelphia, PA: University of Pennsylvania Press, 2010).

<sup>1186</sup> Su Dol Kang, “Typology and Conditions of Migrant Workers in South Korea,” *Asian and Pacific Migration Journal* 5, no. 2–3 (June 1, 1996): 265–79, <https://doi.org/10.1177/011719689600500206>; Jin-kyung Lee, *Service Economies: Militarism, Sex Work, and Migrant Labor in South Korea* (Minneapolis, MN: University of Minnesota Press, 2010), 185–232; Keiko Yamanaka, “Civil Society and Social Movements for Immigrant Rights in Japan and South Korea: Convergence and Divergence in Unskilled Immigration Policy\*,” *Korea Observer; Seoul* 41, no. 4 (Winter 2010): 615–47.

<sup>1187</sup> US Department of State, “2002 Trafficking in Persons Report,” 12.

<sup>1188</sup> US Department of State, 86.

<sup>1189</sup> US Department of State, “2004 Trafficking in Persons Report,” 96–97; US Department of State, “2005 Trafficking in Persons Report,” 132–33.

<sup>1190</sup> June J.H. Lee, “A Review of Data on Trafficking in the Republic of Korea,” *IOM Migration Research Series*, no. 9 (2002): 12–13.

the term *jinshin baibai* refers, in modern Japanese, to sex-related offenses. Moreover, while South Korea's focus on sex to the exclusion of labour exploitation has not escaped the notice of the TIP Office, who even in the most recent report claim to have observed that "[Korean] officials' understanding of human trafficking was sometimes limited and inconsistent,"<sup>1191</sup> this focus has clearly not prevented Korea from obtaining and maintaining a Tier 1 status. This, in turn, suggests that the TIP Report's more recent discussions of Japan's TITP program are something of a red herring, and that the explanation for the difference in tier ratings between the two countries must be related to the nature of their commercial sex industries or their responses to those industries.

One possibility, then, is that South Korea has been able to stay out of the lower tiers by virtue of the fact that one of the most significant groups of consumers of commercial sex in South Korea is United States Forces Korea (USFK). American soldiers were a primary source of demand during post the post-WWII and post-Korean War growth periods of the South Korean sex industry,<sup>1192</sup> and the *gijichon* remain significant sites for purchasing commercial sex in South Korea.<sup>1193</sup> Sometimes the TIP Report has acknowledged the role of USFK in South Korea's sex industry, with, for example, the 2003 and 2004 reports both praising South Korea for its cooperation with USFK in "identifying brothels suspected of exploiting trafficking victims and barring American soldiers access to them."<sup>1194</sup> However, this line somewhat gives the game away: it establishes at once that South Korea was allowing brothels suspected of trafficking to continue to operate, and that they were doing so with American knowledge; that American soldiers were being allowed to visit brothels in Korea,

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<sup>1191</sup> US Department of State, "2017 Trafficking in Persons Report," 236.

<sup>1192</sup> Moon, *Sex among Allies*; Lee, "The Construction of U.S. Camptown Prostitution in South Korea"; Na Young Lee, "The Construction of Military Prostitution in South Korea during the U.S. Military Rule, 1945-1948," *Feminist Studies* 33, no. 3 (2007): 453-81, <https://doi.org/10.2307/20459155>; Grace M. Cho, *Haunting the Korean Diaspora: Shame, Secrecy, and the Forgotten War* (Minneapolis, MN: University of Minnesota Press, 2008).

<sup>1193</sup> Sallie Yea, "Marginality, Transgression, and Transnational Identity Negotiations in Korea's Kijich'on," in *Sitings: Critical Approaches to Korean Geography*, ed. Timothy R. Tangherlini and Sallie Yea (Honolulu, HI: University of Hawai'i Press, 2008), 186-204; Cheng, *On the Move for Love*, 15-20; Elisabeth Schober, *Base Encounters: The US Armed Forces in South Korea*, Anthropology, Culture and Society (London: Pluto Press, 2016), 85-171.

<sup>1194</sup> US Department of State, "2004 Trafficking in Persons Report," 99; US Department of State, "2005 Trafficking in Persons Report," 136.



violating South Korean laws and committing sex trafficking according to the TVPA; and that the American response to these activities was, far from the aggressive prosecutions the report demanded elsewhere, simply to ask the Korean government to stop their (the United States') own soldiers from continuing their involvement in human trafficking. Notably, this came *after* a Fox News expose showed American military police being used as escorts and guards at drinking establishments they (the military police) openly speculated were involved inhuman trafficking.<sup>1195</sup>

Of course, none of this conduct suggests that South Korea, or—more importantly—the United States belongs in Tier 1, according the “minimum standards” laid out by the TVPA. Understandably, subsequent reports were more circumspect, alluding only vaguely to “cooperation” between the Korean government and American forces, and tiptoeing around the situation in the *gijichon*. The 2017 TIP Report only notes that, “Some foreign women on E6-2 entertainment visas—mostly from the Philippines, China, and Kyrgyzstan—are subjected to forced prostitution in entertainment establishments near ports and U.S. military bases,”<sup>1196</sup> a wording that carefully avoids laying any responsibility for this situation on the American forces. Taken together, this suggests that one of the reasons that South Korea is in Tier 1 is that the United States could not realistically downgrade South Korea to Tier 2 without discussing the *gijichon*. Since the *gijichon* are a sensitive topic in the South Korea and have been subject to protests,<sup>1197</sup> and labelling the United States Forces Korea as a primary actor in human trafficking would undermine the moral authority that the TIP Report otherwise works to establish, they have disappeared from TIP Report; and this absence may explain South Korea’s presence in Tier 1.

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<sup>1195</sup> Sealing Cheng, “Muckraking and Stories Untold: Ethnography Meets Journalism on Trafficked Women and the U.S. Military,” *Sexuality Research & Social Policy* 5, no. 4 (2008): 6–18, <https://doi.org/10.1525/srsp.2008.5.4.6>.

<sup>1196</sup> US Department of State, “2017 Trafficking in Persons Report,” 237.

<sup>1197</sup> Katharine H. S. Moon, “Resurrecting Prostitutes and Overturning Treaties: Gender Politics in the ‘Anti-American’ Movement in South Korea,” *The Journal of Asian Studies* 66, no. 1 (February 2007): 129–57, <https://doi.org/10.1017/S0021911807000046>; Seungsook Moon, “Protesting the Expansion of US Military Bases in Pyeongtaek: A Local Movement in South Korea,” *South Atlantic Quarterly* 111, no. 4 (October 1, 2012): 865–76, <https://doi.org/10.1215/00382876-1724246>; Cho, *Haunting the Korean Diaspora*, 89–128.

If that is true, though, then it does not offer a meaningful pathway for Japan to reach Tier 1. While Japan does also host a sizeable contingent of American armed forces, these are heavily concentrated in Okinawa, a region that is both culturally and geographically displaced from Japan's main population centers; consequently, many of the discussions about exploitation and sexual violence around the American military bases are confined to Okinawa proper.<sup>1198</sup> None of my research participants noted significant American military involvement in the sex industry of Japan's mainland, nor does it emerge as a major issue in the TIP Report.

Assuming, then, that the American military presence is not the (sole) reason for South Korea's Tier 1 placement, then we have to look at the South Korean state's governance of sex work. Under the Japanese occupation, South Korea had a system of licensed prostitution; however, as with Japan, this was abolished by the American occupation during the 1940s. Subsequently, South Korea passed a Prostitution Prevention Act in 1961 formally forbidding the sale of sex, inducing others into commercial sex acts and providing a place for commercial sex.<sup>1199</sup> This act was probably inspired by Japan's Prostitution Prevention Act, passed five years earlier, and as with Japan's law, South Korea's Prostitution Prevention Act did not stop the commercial sex industry from turning into a big business.<sup>1200</sup> In fact, even after passing this act, the South Korean government itself continued to actively promote South Korea as a destination for sex tourism, via the so-called *gisaeng* tours.<sup>1201</sup> Thus—and

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<sup>1198</sup> For more on Okinawa, see McCormack and Norimatsu, *Resistant Islands*; Ayako Mizumura, "Reflecting (on) the Orientalist Gaze: A Feminist Analysis of Japanese-U.S. GIs Intimacy in Postwar Japan and Contemporary Okinawa" (University of Kansas, 2009), <https://kuscholarworks.ku.edu/handle/1808/7770>; Yumiko Mikanagi, "Okinawa: Women, Bases and US-Japan Relations," *International Relations of the Asia-Pacific* 4, no. 1 (February 1, 2004): 97–111, <https://doi.org/10.1093/irap/4.1.97>; Linda Isako Angst, "Loudmouth Feminists and Unchaste Prostitutes: 'Bad Girls' Misbehaving in Postwar Okinawa," *U.S.-Japan Women's Journal*, no. 36 (2009): 117–41.

<sup>1199</sup> Prostitution Prevention Act, Act No. 771 of Nov. 9, 1961, repealed by the Act on the Punishment of Arrangement of Commercial Sex Acts, Act No. 7196 of Mar. 22, 2004. Available at <http://www.law.go.kr/lsInfoP.do?lsiSeq=4248#0000> [Korean only]

<sup>1200</sup> Ji Hye Kim, "Korea's New Prostitution Policy: Overcoming Challenges to Effectuate the Legislature's Intent to Protect Prostitutes from Abuse," *Pacific Rim Law & Policy Journal* 16 (2007): 496; Cheng, *On the Move for Love*, 59–61.

<sup>1201</sup> Hanochi, "Japan and the Global Sex Industry," 142; Moon, "Japanese Tourists in Korea," 152; Muroi and Sasaki, "Tourism and Prostitution in Japan."

again paralleling Japan—declining female participation in the sex services industry later in the 20<sup>th</sup> century was largely in response to growing economic opportunities for women rather than law enforcement governance.<sup>1202</sup>

This would change in the early-21<sup>st</sup> century. In 2000, a fire broke out in a brothel in Gunsan, killing five women; later that year, another fire killed four sex workers in Busan City. In 2002, another fire broke out in a drinking establishment in Gunsan, this time killing fourteen women. In all cases, the deaths of the women was a result of their having been locked in their rooms and being thus unable to escape. These deaths, along with a subsequent court case holding the Gunsan police to be negligent, helped to fuel widespread demonstrations from women’s groups, who demanded both increased enforcement of existing laws, as well as new laws that would take a harder line on the sex industry.<sup>1203</sup> These protests in turn led to the enactment of two new laws in 2004: the Act on the Punishment of Arrangement of Commercial Sex Acts [the Commercial Sex Act], and the Act on the Prevention of Sexual Traffic and Protection, Etc. of Victims Thereof.

The latter of these is largely a supplementary act,<sup>1204</sup> but the Commercial Sex Act introduced significant changes to South Korea’s governance of sex work. It replaces the term *yullak*, “ruining one’s body by degrading oneself,” with *seong maemae*, “buying and selling of sex,”<sup>1205</sup> which it defines as ““sexual intercourse [or] pseudo-sexual intercourse using parts of the body, such as the mouth and anus, or implements [with] an unspecified person or becoming a partner thereof in return for receiving or promising to receive money,

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<sup>1202</sup> Schober, *Base Encounters*, 83–84; Ruth Barraclough, “A History of Sex Work in Modern Korea,” in *Routledge Handbook of Sexuality Studies in East Asia*, ed. Mark J. McLelland and Vera Mackie (Abingdon, Oxon: Routledge, 2015), 299; Cheng, *On the Move for Love*, 65.

<sup>1203</sup> Kyungseok Choo and Donald Rebovich, “Migrant Sex Workers: An Analysis of Transnational Crime Displacement and Antitrafficking Measures,” *Victims & Offenders* 9, no. 2 (April 3, 2014): 206–7, <https://doi.org/10.1080/15564886.2013.872743>; Barraclough, “A History of Sex Work in Modern Korea,” 301; Kim, “Korea’s New Prostitution Policy,” 493–94.

<sup>1204</sup> The Act on the Prevention of Sexual Traffic and Protection, Etc. of Victims Thereof, Act No. 7212 of Mar. 22, 2004, as last amended by Act No. 10997 of Aug. 4, 2011. Available in English at [http://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=40974&type=lawname&key=ACT+ON+THE+PREVENTION+OF+COMMERCIAL+SEX+ACTS+AND+PROTECTION%2C+ETC.+OF+VICTIMS](http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=40974&type=lawname&key=ACT+ON+THE+PREVENTION+OF+COMMERCIAL+SEX+ACTS+AND+PROTECTION%2C+ETC.+OF+VICTIMS)

<sup>1205</sup> Both definitions from Cho Joo-hyun, “Intersectionality Revealed: Sexual Politics in Post-IMF Korea,” *Korea Journal* 45, no. 3 (2005): 101.

valuables or other property gains.”<sup>1206</sup> True to this terminology, the new law extends penalties to customers of commercial sex while still keeping them in place for sex workers as well. What makes this law particularly interesting, however, is that the official translation provided by the government-funded Korea Legislation Research Institute translates *seong maemae* as “sex trafficking,” and the TIP Report from 2005 suggests that this is how they translated *seong maemae* when communicating the law and its impact to the TIP Office.<sup>1207</sup> This means that, from an English-language perspective—the perspective of the authors of the TIP Report—the Commercial Sex Act defines all sex work as “sex trafficking.”

This equation of all sex work with trafficking makes it in some respects similar to the TVPA, which goes a long way to explaining its palatability to the TIP Office. However, a crucial difference lies in the fact that, according to the Commercial Sex Act, it is the sex worker *themselves* who are committing “sex trafficking” through the sale of sex. As such, they are subject to arrest and may even be punished by “imprisonment with labor for not more than one year, by a fine not exceeding three million won, or by misdemeanor imprisonment, or by a minor fine.”<sup>1208</sup> The law does make a distinction for “victims of sex trafficking,” but defines these as those individuals who had been forced to “traffic sex” against their will or who were a juvenile (i.e. below the age of 19<sup>1209</sup>) at the time that they engaged in sex trafficking.<sup>1210</sup> In other words, this is a law targeted at prohibiting the sale of sex, with penal exemptions carved out for few “victim” groups.

The new law was, by all measures, vigorously enforced, with a sudden spike in raids being observed starting in the early-2000s, a rapid and continuous increase in the number of women being charged as sex workers, and the wholesale destruction of red light districts.

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<sup>1206</sup> Act on the Punishment of Arrangement of Commercial Sex Acts, Act No. 7196 of Mar. 22, 2004, art. 2, sec. 1, as last amended by Act No. 12349 of Jan. 28, 2014 [cited below as “Commercial Sex Act”] English text available at

[https://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=33012&type=part&key=9](https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=33012&type=part&key=9)

<sup>1207</sup> US Department of State, “2005 Trafficking in Persons Report,” 136–37.

<sup>1208</sup> *Ibid.*, art. 21.

<sup>1209</sup> According to the Juvenile Act, Act No. 4057 of Dec. 31, 1988, art. 2, as last amended by Act No. 13524 of Dec. 1, 2015. English text available at

[https://elaw.klri.re.kr/eng\\_service/lawView.do?lang=ENG&hseq=37128](https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=37128)

<sup>1210</sup> Commercial Sex Act, art. 2, sec. 4.

These measures, in turn, have led in a displacement of commercial sex from brothels to massage parlours, karaoke bars, private residences and the internet; an increase in the number of Korean women travelling abroad to engage in sex work; and a spike in observed rates of STI infections among sex workers.<sup>1211</sup> This is not, to put it lightly, an approach that follows “international best practices” when it comes to human trafficking. Although there remains an acrimonious divide between prohibitionist groups like CATW on the one hand and human rights-oriented NGOs like GAATW and Amnesty International on the other, all these groups are nevertheless in agreement that sex workers themselves should not be subject to penal provisions.<sup>1212</sup> Sex workers in South Korea have themselves fought against these laws, both through strikes<sup>1213</sup> and constitutional challenges,<sup>1214</sup> but with no success.

Despite the problems with these laws, they garnished praise from the TIP Office, who noted that, “In 2004, the South Korean Government showed leadership by passing and implementing sweeping anti-trafficking and anti-prostitution laws, which provided stiff

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<sup>1211</sup> Yoonseock Lee and Youngjae Jung, “The Correlation between the New Prostitution Acts and Sexually Transmitted Diseases in Korea,” 2009, <http://s-space.snu.ac.kr/handle/10371/69833>; Kyungseok Choo, Kyung-Shick Choi, and Yong-Eun Sung, “The Police Crackdown in Red Light Districts in South Korea and the Crime Displacement Effect After the 2004 Act on the Punishment of Intermediating in the Sex Trade,” *British Journal of Community Justice; Sheffield* 8, no. 3 (2010): 79–96; Hoan Suk Choi, “The Influence of Hard Line Policies on Victimless Crime: By Analyzing Influence of The Anti Prostitution Law of South Korea” (Pennsylvania State University, 2014), <https://etda.libraries.psu.edu/catalog/21317>; Choo and Rebovich, “Migrant Sex Workers”; Minsoo Jung, “Effects of Implementing the Act of Prohibition on Sex Trafficking on Female Sex Workers’ Sexually Transmitted Infections,” *PLOS ONE* 12, no. 8 (August 9, 2017): e0182465, <https://doi.org/10.1371/journal.pone.0182465>.

<sup>1212</sup> CATW, “Who We Are,” Coalition Against Trafficking in Women, 2011, <http://www.catwinternational.org/WhoWeAre>; GAATW, “Basic Principles,” The Global Alliance Against Traffic in Women, accessed March 4, 2018, <http://www.gaatw.org/about-us/basic-principles>; Amnesty International, “Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers,” May 26, 2016, <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

<sup>1213</sup> Sealing Cheng, “Korean Sex Trade ‘victims’ Strike for Rights,” *Asia Times*, December 22, 2004, <http://www.atimes.com/atimes/Korea/FL22Dg01.html>; Kim, “Korea’s New Prostitution Policy,” 506–8.

<sup>1214</sup> Sang-Hun Choe, “South Korean Court Upholds Ban on Prostitution,” *The New York Times*, March 31, 2016, sec. Asia Pacific, <https://www.nytimes.com/2016/04/01/world/asia/south-korea-upholds-prostitution-ban.html>; Tong-Hyung Kim, “South Korea Upholds Tough Anti-Prostitution Laws,” *The San Diego Union-Tribune*, March 30, 2016, <http://www.sandiegouniontribune.com/sdut-south-korea-upholds-tough-anti-prostitution-laws-2016mar30-story.html>.

sanctions for trafficking and prostitution and established an infrastructure of social, legal, and medical support for victims.”<sup>1215</sup> Subsequently, the TIP Report has continued to sing the praises of the law, which, despite repeated amendments, continues to criminalise the sale of sex. The most recent TIP Report claimed that South Korea demonstrated “serious and sustained efforts during the reporting period,”<sup>1216</sup> even while independent researchers have argued that the South Korean legal system deliberately turns a blind eye to certain classes of exploited migrants and conflates sex work prosecutions with trafficking offenses in order to submit a high prosecution count to the American TIP Office.<sup>1217</sup>

Taken together, these patterns of governance suggest that South Korea’s targeting of sex workers for criminal sanction is not only approved by the TIP Office, but that this approval is enough to outweigh inaction in other areas the TIP Office is nominally concerned with. This is not, however, all that surprising, given that these laws largely mirror the situation in the United States itself. Despite the TVPA’s claim that all sex work is a form of “sex trafficking” in which sex workers are victimised, all states but Nevada (specifically, a number of counties in Nevada) currently criminalise the act of selling sex.<sup>1218</sup> Attempts to bridge the contradiction between a desire to criminalise the sale of sex and a need to label the sellers of sex as victims have only served to heighten them, with New York going so far as to create special courts whose stated purpose is trying victims of sex trafficking.<sup>1219</sup> Meanwhile, issues of labour trafficking typically go unaddressed in the United States, despite laws and funding

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<sup>1215</sup> US Department of State, “2005 Trafficking in Persons Report,” 136.

<sup>1216</sup> US Department of State, “2017 Trafficking in Persons Report,” 238.

<sup>1217</sup> Yoon Jin Shin, *A Transnational Human Rights Approach to Human Trafficking: Empowering the Powerless* (Leiden: Brill Nijhoff, 2017), 125–65; Ayla Weiss, “Ten Years of Fighting Trafficking: Critiquing the Trafficking in Persons Report through the Case of South Korea,” *Asian-Pacific Law & Policy Journal* 13 (2011): 304.

<sup>1218</sup> Weitzer, “The Movement to Criminalize Sex Work in the United States”; Myers, “Sex for Sale”; Lerum and Brents, “Sociological Perspectives on Sex Work and Human Trafficking.”

<sup>1219</sup> Audacia Ray and Emma Caterine, “Criminal, Victim or Worker? The Effects of New York’s Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offences” (New York: Red Umbrella Project, October 2014); Gruber, Cohen, and Mogulescu, “Penal Welfare and the New Human Trafficking Intervention Courts”; Amy J. Cohen and Aya Gruber, “Governance Feminism in New York’s Alternative ‘Human Trafficking Intervention Courts,’” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, March 2, 2017), <https://papers-ssrn-com.virtual.anu.edu.au/abstract=2926393>; Meredith Dank, Jennifer Yahner, and Lilly Yu, “Consequences of Policing Prostitution” (Urban Institute, April 2017).

nominally in place to address them.<sup>1220</sup> Thus for the TIP Office, praising South Korea's response to human trafficking also serves as a reification of the United States government's own approach—an affirmation that arresting sex workers is indeed the correct response to human trafficking.

Ultimately, the overall similarities Japan and South Korea on labour and migration governance combined with the specific similarities between South Korea and the United States on the governance of sex strongly suggests that the reason for South Korea's Tier 1 placement is largely located in their criminalisation of the sale of the sex. This is not to say that the criminalisation of sex is a sufficient precondition to getting a Tier 1 ranking, since the presence of USFK and their status as major customers in the sex industry may also have helped South Korea maintain its Tier 1 rating. Nor is it to say that the criminalisation of sex work is a necessary pre-condition for any country to get a Tier 1 ranking; the Netherlands and Germany—both countries where the sale of sex is legal<sup>1221</sup>—are among the countries who have made the most frequent appearances in Tier 1. However, the Orientalism that appears to underlie the report means that the criminalisation of sex work may well be a precondition for an *Asian* country to be admitted to Tier 1. It is not just Japan that has struggled

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<sup>1220</sup> Colleen Owens et al., "Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States" (Boston, MA: Urban Institute, 2014); Denise Brennan, *Life Interrupted: Trafficking into Forced Labor in the United States* (Durham, NC: Duke University Press, 2014); Denise Brennan, "Myths Meet Reality: How We Are Not Fighting Trafficking or Supporting Trafficking Survivors Innovations in the Fight against Human Trafficking," *New York Law School Law Review* 60 (2016 2015): 605–14; Sheldon X. Zhang et al., "Estimating Labor Trafficking among Unauthorized Migrant Workers in San Diego," *The ANNALS of the American Academy of Political and Social Science* 653, no. 1 (May 1, 2014): 65–86, <https://doi.org/10.1177/0002716213519237>.

<sup>1221</sup> Rebecca Pates, "Liberal Laws Juxtaposed with Rigid Control: An Analysis of the Logics of Governing Sex Work in Germany," *Sexuality Research and Social Policy* 9, no. 3 (September 1, 2012): 212–22, <https://doi.org/10.1007/s13178-012-0092-3>; Jenny Künkel, "Gentrification and the Flexibilisation of Spatial Control: Policing Sex Work in Germany," *Urban Studies* 54, no. 3 (February 1, 2017): 730–46, <https://doi.org/10.1177/0042098016682427>; Maite Verhoeven, "Sex Work Realities Versus Government Policies: Meanings of Anti-Trafficking Initiatives for Sex Workers in the Netherlands," *Sexuality Research and Social Policy* 14, no. 4 (December 1, 2017): 370–79, <https://doi.org/10.1007/s13178-016-0264-7>; Maryann Seals, "Worker Rights and Health Protection for Prostitutes: A Comparison of The Netherlands, Germany, and Nevada," *Health Care for Women International* 36, no. 7 (July 3, 2015): 784–96, <https://doi.org/10.1080/07399332.2013.850085>; Wim Huisman and Edward R. Kleemans, "The Challenges of Fighting Sex Trafficking in the Legalized Prostitution Market of the Netherlands," *Crime, Law and Social Change* 61, no. 2 (March 1, 2014): 215–28, <https://doi.org/10.1007/s10611-013-9512-4>.

here, either, as Singapore has also found itself pushing back against American pressure to criminalise sex work in order to improve its TIP ranking.<sup>1222</sup> All of this suggests that, as long as Japan respects the human rights of its sex workers, it may well find a Tier 1 ranking out of reach.

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<sup>1222</sup> Chapman-Schmidt, "Sex in the Shadow of the Law."



## CONCLUSION

Historically, the closest parallel we can find to “human trafficking governance” in Japan has been the governance of *jinshin baibai*, the “buying and selling of human beings.” In ancient Japan, during the period when the Tang Dynasty-inspired *ritsuryōsei* was the dominant political system, this referred to the nominally forbidden practice of selling family members into caste slavery as *nuhi*. As the caste system disappeared from Japan, *jinshin baibai* came instead to refer to selling kin into non-caste bonded labour—sometimes, but not always, on a hereditary basis. During Japan’s tumultuous Warring States period, selling kin or captured war slaves became increasingly common, and a number of these were even purchased and taken overseas by the Portuguese. Following the reunification of Japan under Hideyoshi and then the start of the Edo Period, these practices were once more formally forbidden.

Ultimately, changes to the labour market following reunification effectively put an end to indentured manual labour. However, these changes were also accompanied by a boom in the sex industry, and this in turn led to an increase in indentured sexual labour in brothels. Thus when a newly-formed constitutional monarchy reiterated the ban on *jinshin baibai* in the late 19<sup>th</sup> century, this was targeted primarily at indentured workers in the sex industry. Moreover, despite this ban, the use of contracts of indenture for Japanese sex workers—both those working in Japan and those working overseas—continued into the early 20<sup>th</sup> century. As a result of these trends, even today “*jinshin baibai*”—the official translation for “human trafficking” in a number of major treaties in the 20<sup>th</sup> century—remains associated with the sale of daughters or young wives into indentured brothel labour.

This history contributed to new efforts to govern areas linked to human trafficking in Japan following WWII. For example, the linkage between *jinshin baibai* and the sex industry was used to successfully push for a new law criminalising prostitution. Ultimately, however, Japan’s long history of tolerationist governance of sex work meant that this law was deliberately crafted to be highly narrow in scope, and subsequent to its passage, a legal and regulated sex industry continued to flourish in Japan. On the other hand, concern in Japan over the possibility of children selling sex has led to a gradual expansion of regulations—both at the national and local level—prohibiting sexual activities with minors. Campaigns

against sex tourism have been more limited in their success, but these did help establish new civil society groups and transnational networks. These groups in turn have contributed to further changes in Japan's governance, for example by helping to push for bans on the sale—and, more recently, the possession—of child pornography.

Meanwhile, Japan's status up until the late 20<sup>th</sup> century as a country with net emigration meant that there was never any need to develop the social or legal institutions to absorb new migrants. However, Japan's economic boom in the late 1980s, along with an end to the supply of excess labour in the countryside, created a demand for migrant labour that the country was ill-equipped to handle, and this situation has been further exacerbated in the 21<sup>st</sup> century by a shrinking labour force and an aging population. The demand for labour has been particularly concentrated among jobs that are "dirty, difficult and dangerous," a category that can include both Japan's *mizu shōbai* (nighttime entertainment) and sex industries. The result has been a flow of migrant female entertainers and sex workers that at times has rivalled the number of workers entering Japan for non-sexual labour.

At the same time, new campaigns were underway internationally that called for transnational governance of "human trafficking," a term whose meaning originates in much older efforts within Anglo-European states to abolish the slave trade. The discourses that emerged from the anti-slavery movements were repurposed as part of campaigns to end the state systems of sex work regulation and to prohibit sex work more generally during the late-19<sup>th</sup> century. To this end, moral entrepreneurs deployed terms such as "the White slave trade" and "the traffic in women" in national and transnational "anti-trafficking" campaigns. However, despite this genealogical linkage, the campaigns against slavery and forced labour on the one hand and the campaigns against prostitution and trafficking on the other essentially ran parallel to each other for much of the early 20<sup>th</sup> century, before both were put on hold with the onset of the Cold War.

It was not until the end of the 20<sup>th</sup> century that these two campaigns were revitalised and began to merge once again, first under the label "human trafficking," and, more recently, under the term "modern day slavery." Building on these discourses, moral entrepreneurs developed new legal instruments and indicators for the transnational governance of human

trafficking. These include both international treaties like the UN's Trafficking Protocol of 2000 (an optional protocol to the Transnational Organised Crime Convention), as well as national legislation such as the American Trafficking Victims' Protection Act of 2000 and its accompanying Trafficking in Persons (TIP) Report. However, conflicts over whether the term "human trafficking" should include voluntary sex work and the extent to which it should include labour exploitation have made these instruments vague on several critical points and thus highly flexible in terms of what conduct they can potentially cover.

There have subsequently been changes to the way human trafficking is conceptualised and regulated in Japan—in other words, changes to Japan's human trafficking governmentality—that are clearly in response to these new transnational discourses. One prominent example of this has been Japan's response to the Trafficking Protocol. Although it was only in 2017 that Japan acceded to the protocol, the delay in accession was a result not of reluctance to ratify the protocol itself but because of an apparent inability to ratify its parent convention—this on account of UNTOC's Article 5's requirement that ratifying states criminalise conspiracy. In the interim, the Japanese government made efforts to be in compliance with the Trafficking Protocol, including by creating the term "*jinshin torihiki*" ("trafficking in human beings") as the new official translation for human trafficking.

Defined according to the UN's Trafficking Protocol, *jinshin torihiki* is theoretically much broader than *jinshin baibai*, and officially *jinshin baibai* is now categorised as a sub-type of *jinshin torihiki*. This new definition has, for example, re-categorised female migrant sex workers who had not been literally sold to a brothel (as *jinshin baibai* required) but were nevertheless still being exploited as victims of *jinshin torihiki* rather than as illegal economic migrants. However, the fixation on sexual exploitation has carried over from the governance of *jinshin baibai* to the governance of *jinshin torihiki*. As a result, even though the definition of *jinshin torihiki* encompasses both trafficking for labour exploitation and trafficking for sexual exploitation, in practice almost all the cases of *jinshin torihiki* that have been identified by the Japanese government or police have been related to sex and involved female victims.

The other major source of transnational governance of human trafficking in Japan has been the American TIP Report. The report's consistent criticism of the Japanese government's response to human trafficking, particularly its 2004 edition that placed Japan on its "Watch List," appears to have played a significant role in pushing Japan to change its governance of human trafficking. However, the areas where the TIP Report was the most successful in changing the conduct of the Japanese government were also the areas where Japanese civil society groups were actively pressuring the government. In these cases, it seems likely that the TIP Report's coverage of Japan was also based largely on information provided by these same civil society groups. On issues where Japanese civil society groups have been less vocal—for example, treating the yakuza as the main driver of human trafficking in Japan—the report has had less of an impact. As such, the TIP Report's governance of human trafficking in Japan seems to reflect the governmentality of Japanese civil society groups to a greater extent than it reflects the governmentality of the State Department or its TIP Office.

Based on these findings, my hypothesis that historical factors—rather than transnational factors—are decisive in determining how human trafficking is governed appears to be partially confirmed. It is true that many of the civil society groups in Japan have themselves been heavily influenced by transnational actors, networks and ideas. For example, as discussed in Chapters 3 and 4, Lighthouse was founded as a branch of the American NGO Polaris, an NGO that was briefly led by former head of the TIP Office Mark Lagon, and Not For Sale Japan was inspired by both an American book and an American NGO. Meanwhile, both Kumustaka and ENCOM were founded with the assistance of non-Japanese clergy. However, the actual impact that groups like Lighthouse and NFSJ have had on human trafficking governance in Japan—for example, pushing the police and other regulators to focus more on Japanese women and children being exploited in the sex industry—reflects both longstanding ideas in Japan about what human trafficking (both *jinshin baibai* and *jinshin torihiki*) is, as well as longstanding goals of Japanese civil society groups.

On the other hand, the success of these groups in not only changing the governance of human trafficking in Japan, but in changing the way that the police and government officials think about human trafficking in Japan, suggests that my second hypothesis—that these

changes in human trafficking governance would only be “window dressing” designed to placate transnational actors—is false. It is clear in reviewing the anti-trafficking data and talking to participants both within and outside of the government in Japan that there have been real and substantive changes to how the Japanese government regulates human trafficking during the 2000–2014 period. My mistake in formulating this hypothesis, then, lay in believing that an indicator like the TIP Report could only be a tool of those who were actually writing or vetting the report. In fact, it seems to be precisely the semi-collaborative nature of this indicator—with civil society groups providing much of the raw data that the TIP Office relies on to craft the report—that makes it an effective tool for governance.

Thus, in response to the question, “How do transnational ideas, actors and networks influence the local governance and governmentality of human trafficking in a given country (if at all)?” I can now say that, in Japan, transnational ideas, actors and networks influence the local governance and governmentality of human trafficking only with the complicity and cooperation of local actors. These local actors’ understanding of “human trafficking” is contingent on the history of human trafficking and anti-trafficking in Japan. As such, local historical trafficking discourses will always play a much greater role in Japan’s response to human trafficking than transnational discourses.

Moreover, given that Japan is being used here as a pathway case, this study also suggests that these dynamics will hold true more broadly. In a case like Cambodia, for example, this dynamic might be weaker on account of its colonial legacy and the power accorded to aid agencies, a consequence of Cambodia’s dire economic situation in the aftermath of a prolonged period of intense violence.<sup>1223</sup> However—assuming that Japan is a suitable pathway case—this dynamic should still be present, and may explain why previous efforts to implement a donor-directed anti-trafficking program have failed. More broadly, these findings cast doubt on the possibility of any truly “global” governance, since any such governance will eventually require implementation and monitoring—both of which require

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<sup>1223</sup> Including the Indochina wars, the Cambodian Civil War, the Khmer Rouge, and Cambodian-Vietnamese War. See Broadhurst, Bouhours, and Bouhours, *Violence and the Civilising Process in Cambodia*.

the input of local actors, who may have fundamentally different understandings of the problem in need of governance.

At the same time, these findings also suggest that local civil society groups can make use of these efforts at global and transnational governance as a means to govern their own government—although my research also suggest that these groups should be very cautious in doing so. This is because these transnational actors are moral entrepreneurs who, in the best case, have an idealised perspective of the problem that often ignores local realities. In the worst case, however, these moral entrepreneurs’ motivations are coloured by Orientalism. These actors see the country in question as inherently inferior to their own due to cultural defects, and as such see said foreign culture itself as the problem in need of governance. These discourses turn transnational governance into a reiteration of the “White Man’s burden,”<sup>1224</sup> where Anglo-Europeans see themselves as morally bound to assert dominance over a country as a means of establishing their own moral superiority. In these cases, transnational governance becomes just another form of neo-colonialism.

By the same token, national governments—including Japan’s—that are concerned about their ranking in global indicators should focus on engaging with their own civil society groups rather than trying to appease transnational actors. These are ultimately the groups that those transnational actors rely on for the information they use to craft their indicators. By looking at the final indicator, rather than the concerns of the group originally supplying the information that went into that indicator, these state actors are exposing themselves to transnational governmentalities that—for the reasons outlined above—may ultimately be counter-productive or actively hostile to their interests. On the other hand, actively engaging with civil society groups may at least blunt some of their criticism, and in doing so deprive some of those indicators of a key source of their legitimacy. This will likely not put an end to those indicators (publishing the TIP Report, for example, is required by the TVPA), but it may at least curb their potential for the unwelcome side effects that can accompany transnational governance.

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<sup>1224</sup> Kipling, “The White Man’s Burden.”

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## APPENDIX 1: GLOSSARY OF JAPANESE TERMS

*Note: Translations written with reference to the EDICT database,<sup>1225</sup> the online dictionary Weblio,<sup>1226</sup> and the Japanese Law Translation Council's Standard Legal Terms Dictionary,<sup>1227</sup> discussions with experts during fieldwork, and the broader literature as discussed in the body text of this dissertation.*

**Asobime (遊び女):** Literally, “a wandering woman,” “an idle woman,” or a “playful woman.” Refers to Heian and Kamakura era entertainers heavily associated with compensated sex. Sometimes given as simply *asobi*. See also *yūjo*.

**Baishun (売春, 買春):** “Prostitution.” Given specific legal meaning by the *Baishun Bōshihō*, which defines it narrowly as acts involving sexual intercourse with unspecified partners. Other sexual services are often referred to euphemistically as *seifūzoku*. The term can be written using either the characters 売春 (“selling sex”) or 買春 (“buying sex”). Traditionally the former has been more common, but moral entrepreneurs have pushed to have the latter used instead. Since there is no distinction between the two in spoken Japanese, activists came up with the alternative reading *kaishun* for the latter version.

**Baita (売女):** Literally, “Sold woman.” A derogatory term for a female sex worker.

**Bakufu (幕府):** Literally, “Tent government.” The military governments, headed by shoguns, which ruled Japan 1185–1867.

**Bakuto (博徒):** “Gamblers,” though more specifically the violent gangs that monopolised gambling and other illicit trades. One of the ancestors, along with the *tekiya*, of the modern-day *yakuza*.

**Bōryokudan (暴力団):** “Violent groups.” The preferred term for the police and government officials for *yakuza* groups, and the only term used to refer to these groups in official documents. This term was given legal status by the *Bōtaihō* (see Appendix 2).

**Bunmei Kaika (文明開化):** “Civilisation and Enlightenment.” A Meiji era slogan calling for the adoption of various elements of Anglo-European technology, culture, or political and moral philosophy. Also sometimes translated as “Westernisation.”

**Deriheru (デリヘル):** “Call girl/call boy service.” A contraction of *deribarī herusu* (a Japanese rendering of the English words “delivery health”), referring to *seifūzoku* businesses where a sex worker is dispatched (or “delivered”) to private residences or hotel

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<sup>1225</sup> See Jim Breen, “The EDICT Dictionary File,” accessed August 11, 2017, <http://www.edrdg.org/jmdict/edict.html>.

<sup>1226</sup> Available at: <http://ejje.weblio.jp>

<sup>1227</sup> Kashiwagi, *Standard Legal Terms Dictionary*.

rooms. In theory, *deriheru* excludes *baishun*, though in practice these transactions are harder to monitor than those taking place in fixed location.

*Dōhan* (同伴): Literally, “accompaniment,” but it can also refer to paid dates with women working at hostess clubs. Traditionally has involved little more than actually accompanying hostesses to the club, but depending on the club these dates could lead to sexual activity, and in some cases they have been used as a front for commercial sex work.

*Dorei* (奴隸): “Slave.” The conventional Japanese translation for the English word “slave.” Slavery in the United States of America, for example, would be translated as *Amerika gasshūkoku no dorei seido*. See also *nuhi*.

*Enjo kōsai* (援助交際): “Compensated dating.” As the name suggests, going on dates with someone in exchange for financial compensation. May or may not include, as an explicit or implicit condition of payment, various levels of sexual activity. Can be practiced by any age group and between members of any gender, but most commonly associated with older male clients paying for dates with adolescent females. As such, often mistranslated or misdescribed as “school girl prostitution.”

*Fudai* (譜代): “Hereditary.” Can be used either as a prefix (i.e., *fudai genin*, *fudai shōju*) or standalone term to refer to a person whose position is hereditary. This could include both the upper echelon of feudal lords during the Edo period (the *fudai daimyo*), as well hereditary servants, slaves and labourers throughout Japan’s history. See also *genin*, *shōju*.

*Fukoku Kyōhei* (富国強兵): “Rich country, strong army.” A Meiji era slogan promoting economic development and investment in the military.

*Fūzoku* (風俗): Literally, “manners; customs; public morals.” However, often used as an abbreviation for *seifūzoku* as a way to refer to the legal sex industry.

*Fūzoku eigyō* (風俗営業): Literally, “businesses affecting public morals,” but generally translated as “amusement businesses.” According to the *fūeihō* (Appendix 2), these include bars, nightclubs, pachinko (Japanese slots) parlors and arcade centers, as well as the *seifūzoku* industry.

*Fūzokuten* (風俗店): See *seifūzokuten*.

*Geisha* (芸者): Literally, “artist.” Currently refers to traditional female performing artists supported by wealthy patrons. Depending on the time and place, however, it has also referred to male performing artists, female performing artists who sold sex to support themselves, and female sex workers who had or feigned having skill in the performing arts. Also given in Japanese as *geigi* or *geiko*.

*Genin* (下人): “Low people.” In the medieval era, bonded labourers whose primary function was agricultural labour, often owned by wealthy members of the farming caste. Later a more generic term for bonded labourers and indentured servants. *Genin* could be bonded for short periods, long periods, a lifetime or even hereditarily (*fudai*). See also *shōju*, *zōnin*, *hōkōnin*.

*Hodō* (補導): “Correctional guidance.” A term that can refer to activities ranging from the legally mandated rehabilitation of female sex workers, to informal discussions between the police and young people on the streets, to the preventative detention or forced return home of juveniles.

*Hōkōnin* (奉公人): “Servants.” A generic term for servants, particularly in the Edo period, which did not necessarily imply ownership. See also *shōju*, *genin*.

*Ianfu* (慰安婦): Literally, “solace women” or “relaxation women,” but generally translated as “comfort women.” A euphemism for sex workers at the *ianjo*, many of whom were non-Japanese, and many of whom (particularly the non-Japanese), were coerced, deceived, abducted, abused, tortured, or otherwise suffered abuses to their human rights.

*Ianjo* (慰安所): Literally, “solace place” or “relaxation place,” but generally translated as “comfort station.” Referred to military brothels that held the *ianfu* during the Pacific War, as well as the brothels reserved for American usage after the war.

*Japayuki-san* (ジャパゆきさん): Literally, “Mr./Mrs./Ms. Going-to-Japan.” A term derived from *karayuki-san*, typically used to describe women from Southeast Asia (especially the Philippines) who have migrated to Japan to work in the *mizu shōbai* or sexual entertainment sectors.

*Jinshin baibai* (人身売買): “The buying and selling of human beings.” A crime in the Japanese penal code and the official translation for “human trafficking” pre-2000. Still more widely used than *jinshin torihiki*, the new official translation of “human trafficking.” Commonly associated with coerced prostitution, and officially classified as a subtype of *jinshin torihiki*.

*Jinshin torihiki* (人身取引): “Trafficking in human beings.” A translation that emerged post-2000 for “human trafficking,” in particular the broader definition of “human trafficking” used in the 2000 Trafficking Protocol. This is now the official term used by the government for “human trafficking,” although it is less understood than *jinshin baibai* among the general public.

*Joshi kōsei* (女子高生): “High school girl.” Often abbreviated as “JK,” particularly when referring to Japanese businesses built around the image of schoolgirls. For example, *JK osampo* literally means “taking a high school girl for a walk,” and refers to the practice of paying money to spend time with a uniformed female high school



student (or someone acting out the role of a female high school student), typically in the shops and cafes of the anime goods district of Akihabara in Tokyo.

*Kaishun* (買春): “Prostitution,” though literally, “buying sex.” An alternative reading for *baishun* created to disambiguate it from 売春 (“selling sex”). Used in laws such as the *Jidō kaishun, jidō poruno ni kakawaru kōi tō no kisoku oyobi shobatsu narabi ni jidō no hogo tō ni kansuru hōritsu* (see Appendix 2) to emphasise that criminal responsibility lies with the buyer of sex, not the seller.

*Karayuki-san* (からゆきさん): Literally, “Mr./Mrs./Ms. Going-to-China.” Originally a gender-neutral term in Kyushu for migrant workers going to continental Asia, later a term applied more specifically to female migrant sex workers (typically from Kyushu) going to China and Southeast Asia. See also *Japayuki-san*.

*Kunuhi* (公奴婢): State-owned *nuhi*.

*Mikajimeryō* (みかじめ料): Fees collected by the yakuza, including *shoba-dai* (“location fees”) and *yōjimbo-dai* (“bodyguard fees”). See also *nawabari*.

*Mitsunyūkoku* (密入国): Literally, “secret immigration.” When used as a verb in the active voice, refers to illegal migration; when used in the passive voice, refers to human smuggling.

*Mitsuyu* (密輸): “Smuggling” or “contraband,” from characters meaning “secret transportation.” *Hito no mitsuyu* (人の密輸, “smuggling human contraband”) was one term used for human trafficking, but was ultimately displaced by *jinshin torihiki*.

*Mizu shōbai* (水商売): “The water trade/business.” The nighttime entertainment industry, including restaurants, bars, host and hostess clubs. Tends to exclude sex-oriented businesses, which are referred to instead to as *seifūzokuten*, though in practice the line can be blurry.

*Nanshoku* (男色): “Male eros.” An archaic term for same sex activity between men, which tended to refer specifically to penetrative sex performed by an older male on a (sometimes much) younger male. Somewhat popular among the upper classes during the Edo Period.

*Nawabari* (縄張り): “Stretched rope.” One’s turf, domain, or influence. Often used to describe areas over which specific yakuza groups claim a monopoly on collecting *mikajimeryō* and other activities.

*Nikkeijin* (日系人): “Those of Japanese descent.” A term used to refer to foreign nationals of Japanese descent, who are sometimes accorded special treatment by the Japanese government. Sometimes abbreviated a *Nikkei*.

*Nuhi* (奴婢): “Hereditary servant or slave.” While this term is often translated into English as “slave,” it refers only to the slave castes under the old Confucian-inspired political systems of China, Korea and Japan. The term is a Sino-Japanese compound of 奴 (“male slave”) and 婢 (“female slave”). See also *dorei*.

*Ritsuryōsei* (律令制): “The system of administrative functions (*ritsu*) and penal statutes (*ryō*); the *ritsuryō* system.” A name given to the dominant system of governance in Japan from the 7<sup>th</sup> until about the 10<sup>th</sup> century.

*Seifūzoku* (性風俗): Literally “sexual manners/customs,” but often used to refer to the sex industry; e.g., *seifūzokuten* (“sex shop”), *seifūzoku sangyō* (“sex entertainment industry”). In theory, excludes *baishun*, but in practice the line is often blurred. Often abbreviated as simply *fūzoku*.

*Seifūzokuten* (性風俗店): “A store that sells *seifūzoku*.” Denotes establishments that sell sexual services ranging from stripping and live sex shows to the performance of sex acts. Legally speaking, *seifūzokuten* cannot offer *baishun*. In practice, many have found creative ways of skirting this restriction; some have been known to violate it entirely. Often abbreviated as *fūzokuten*.

*Senmin* (賤民): “Lowly/base people.” Under the *ritsuryō* system, a collective term for the five lower castes (*ryōko*, *kanko*, *kenin*, *kunuhi* and *shinuhi*) who all either bonded labourers or publically or privately owned slaves.

*Sengyō* (賤業): “The lowly/base occupation.” One of the preferred terms for sex work by moral reformers during the Meiji and inter-war periods in Japan. See also *shūgyō*.

*Sengyōfu* (賤業婦): “Women of the lowly/base occupation.” A derogatory term for a sex worker. See also *shūgyōfu*.

*Shinuhi* (私奴婢): Privately owned *nuhi*.

*Shojū* (所従): “Servant,” though specifically indentured labourers employed as servants in large households during Japan’s medieval period. They could be bonded for short periods, long periods, a lifetime, or hereditarily (*fudai*). One of the *zōnin*. See also *hōkōnin*, *genin*.

*Shūgyō* (醜業): “The unsightly occupation.” One of the preferred term for sex work by moral reformers during the Meiji and inter-war periods in Japan. See also *sengyō*.

*Shūgyōfu* (醜業婦): “Women of the unsightly occupation.” A derogatory term for a sex worker. See also *sengyōfu*.

*Tekiya* (的屋): “Street vendors” or “stall-keepers.” Itinerant merchants who sold goods along roads and at festivals and who had a reputation for selling fake or otherwise unreliable merchandise. Along with the *bakuto*, one of the forerunners of the modern *yakuza*.

*Tokushu Ianshisetsu Kyōkai* (特殊慰安施設協会): “Association for Special Comfort Facilities.” Also known in English as the Recreation and Amusement Association (RAA). A government-funded group established for running *ianjo* (brothels) for the use of Allied occupation soldiers in Japan.

*Tokushu Inshokuten* (特殊飲食店): “Special eating and drinking shop.” Officially sanctioned brothels that masqueraded as restaurants to circumvent a ban on licensed brothels promulgated by the Allied occupation forces in 1946.

*Torafikkingu* (トラフィックキング): A transliteration of the English term, “trafficking.” The term emerged as the usage of “trafficking” in English bifurcated from how *jinshin baibai* was understood in Japanese. Since the early 2000s, this term has been largely replaced by the Sino-Japanese neologism *jinshin torihiki*, but it is still used occasionally to draw a distinction in Japanese between the Japanese understanding of *jinshin torihiki* and a given Anglosphere understanding of “human trafficking.”

*Yakuza* (ヤクザ): The Japanese mafia. Organised crime groups that emerged from the *bakuto*, *tekiya*, and ultranationalist gangs in the aftermath of World War II. The name refers to the worst possible hand in an old Japanese card game, and speaks both to the origins of *yakuza* as gamblers and their desire to present themselves as underdogs who are doing their best with a losing hand.

*Yūjo* (遊女): Literally “diversion women.” An archaic term for sex worker, sometimes translated as “courtesan” on account of their associate with higher status customers and skills in non-sexual forms of entertainment. As it is written using the same characters as *asobime*, the term may have originated as a Sino-Japanese reading of that term.

*Yūkaku* (遊街): Literally “diversion quarters,” usually translated as “licensed quarter” or “red light district.” An enclosed district where sex work was permitted. Sex workers in the *yūkaku* were generally indentured to brothels and forbidden from leaving the *yūkaku* without permission.

*Zōnin* (雑人): Literally “miscellaneous people.” An archaic term for bonded labourers not classified as *nuhi*, such as *genin* and *shojū*.

## APPENDIX 2: JAPANESE LEGISLATION AND ADMINISTRATIVE ORDERS

*Bōryokudan-in ni yoru futōna kōi no bōshi nado ni kansuru hōritsu* (暴力団員による不当な行為の防止等に関する法) [Prevention of Unjust Acts by Organized Crime Group Members Act] Act No. 77 of May 15, 1991, as last amended by Act No. 79 of June 25, 2014.

Also known as *Bōryokudan taisaku hō* (暴力団対策法) [Anti-Organised Crime Act].  
Abbreviated as *Bōtaihō* (暴対法).

*Baishun bōshihō* (売春防止法) [Prostitution Prevention Act] Act No. 118 of May 24, 1956, as last amended by Act No. 63 of June 3, 2016.

*Fujin hodōin hō* (婦人補導院法) [Act on Women's Guidance Homes] Act No. 17 Of March 25, 1958, as last amended by Act No. 111 of July 1, 1972.

*Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu* (風俗営業等の規制及び業務の適正化等に関する法律) [Control and Improvement of Amusement Businesses Act] Act No. 22 of July 10, 1948, as last amended by Act No. 89 of November 28, 2016.

Previously known *Fūzoku eigyō torishimarihō* (風俗営業等取締法) [Amusement Businesses Regulation Act] and *Fūzoku eigyō tō torishimarihō* (風俗営業取締法) [Amusement Businesses, Etc. Regulation Act].  
Abbreviated as *Fūeihō* (風営法) [Amusement Businesses Act].

*Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu no ichibu o kaiseisuru hōritsu* (風俗営業等の規制及び業務の適正化等に関する法律の一部を改正する法律) [Act to Amend Part of the Control and Improvement of Amusement Businesses Act] Act No. 55 of May 8, 1998.

*Fūzoku eigyō tō no kisei oyobi gyōmu no tekiseika tō ni kansuru hōritsu no ichibu o kaiseisuru hōritsu* (風俗営業等の規制及び業務の適正化等に関する法律の一部を改正する法律) [Act to Amend Part of the Control and Improvement of Amusement Businesses Act] Act No. 119 of Nov. 7, 2005.

*Fūzoku eigyō tō torishimarihō no ichibu o kaiseisuru hōritsu* (風俗営業等取締法の一部を改正する法律) [Act to Amend Part of the Amusement Businesses, Etc. Regulation Act] Act No. 91 of June 30, 1966.

*Fūzoku eigyō tō torishimarihō no ichibu o kaiseisuru hōritsu* (風俗営業等取締法の一部を改正する法律) [Act to Amend Part of the Amusement Businesses, Etc. Regulation Act] Act No. 76 of August 14, 1984.

*Haigūsha kara no bōryoku no bōshi oyobi higaisha no hogo tō ni kansuru hōritsu* (配偶者からの暴力の防止及び被害者の保護等に関する法律) [Act on the Prevention of Spousal Violence and the Protection of Victims] Act No. 31 of April 13, 2001 as last amended by Act No. 28 of April 23, 2014.

*Intānetto isei shōkai jigyō o riyōshite jidō o yūinsuru kōdō no kisoku tō ni kansuru hōritsu* (インターネット異性紹介事業を利用して児童を誘引する行為の規制等に関する法律) [Act on the Regulation, Etc., of the Use of Internet Dating Sites to Entice Children] Act No. 83 of June 13, 2004 as last amended by Act No. 79 of June 25, 2014.

*Jidō kaishun, jidō poruno ni kakawaru kōi tō no kisoku oyobi shobatsu narabi ni jidō no hogo tō ni kansuru hōritsu* (児童買春、児童ポルノに係る行為等の規制及び処罰並びに児童の保護等に関する法律) [Act on the Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, as well as the Protection, etc., of Children] Act No. 52 of May 26, 1999 as last amended by Act No. 79 of June 25, 2014.

*Jidō fukushihō* (児童福祉法) [Child Welfare Act] Act No. 164 of Dec. 12, 1947 as last amended by Act No. 65, June 3, 2016.

*Jidō fukushihō no ichibu o kaiseisuru hōritsu* (児童福祉法の一部を改正する法律) [Act to Amend Part of the Child Welfare Act] Act No. 211 of June 15, 1949.

*Jidō kenshō* (児童憲章) [Children's Charter] enacted by the Conference to Enact a Children's Charter of May 5, 1951.

*Jinshin baibai o kinshi sho hōkōnin nengen o sadame geishōgi o kaihōshi kore ni tsuite no taishaku soshō wa toriagezu no ken* (人身売買ヲ禁シ諸奉公人年限ヲ定メ芸娼妓ヲ開放シ之ニ付テノ貸借訴訟ハ取上ケスノ件) [Matters concerning the prohibition of human trafficking, determining the year limits on all servants, emancipating female prostitutes and performers, and not suing to recover debts] Grand Council of State Proclamation No. 295, Nov. 2, 1872. Abrogated by Act No. 11 of June 21, 1898.

Abbreviated as the *Geishōgi Kaihōrei* (芸娼妓解放令) [Emancipation Edict for Female Performers and Prostitutes] or as *Jinshin Baibai Kinshirei* (人身売買禁止令) [Ban on human trafficking].

*Joshi nenshōsha mono rōdō kijun kisoku*(女子年少者労働基準規則) [Labour standards ordinance for young girls and minors] Ordinance of the Ministry Labour No. 8 of October 31, 1947. Replaced by the Ordinance of the Ministry Labour No. 8 of June 19, 1954.

*Keihō* (刑法) [Penal Code] Act No. 45 of April 24, 1907, as last amended by Act. No. 54 of June 3, 2016.

*Keihō tō no ichibu o kaiseisuru hōritsu* (刑法等の一部を改正する法律) [Act to Amend Part of the Penal Code, etc.] Act No. 66 of June 22, 2005.

*Kenpō* (憲法) [The Constitution], Nov. 3, 1946.

*Minpō* (民法) [Civil Code] Act No. 89 of April 27, 1896 as last amended by Act No. 71 of June 7, 2016.

*Minpō shikō hō* (民法施行法) [Civil Code Enforcement Act] Act No. 11 of June 21, 1898.

*Miseinen inshu kinshi hō* (未成年者飲酒禁止法) [Act Prohibiting the Consumption of Alcohol by Minors] Act No. 20 of March 30, 1922 as last amended by Act. No. 152 of December 12, 2001.

*Nenrei keisan ni kansuru hōritsu* (年齢計算ニ関スル法律) [Act Regarding the Calculation of Age] Act No. 50 of Dec. 2, 1902.

*Rōdō kijun hō* (労働基準法) [Labour Standards Act] Act No. 49 of April 7, 1947 as last amended by Act No. 31 of May 29, 2015.

*Shōgi geigi ni kakawaru taishaku sonota jinshin baibai ni ruisuru shogyō no shobun* (娼妓芸妓ニ係ル貸借其他人身売買ニ類スル所業ノ処分) [Dealing with the debts related to prostitutes (*shōgi*) and geisha (*geigi*), as well as other acts related to *jinshin baibai*] Ministry of Justice Notice No. 22, Nov. 9 1872.  
Also known as *Gyūba kirihodoki rei* (牛馬切りほどき令) [Cattle and horses release act] or the *Gyūba kirihodoki ofure* (牛馬切りほどきのお触れ) [Notice of release of cattle and horses].

*Shokugyō antei hō* (職業安定法) [Employment Security Act] Act No. 141 of Nov. 30, 1947, as last amended by Act No. 47 of May 20, 2016.

*Shōnen hō* (少年法) [Juvenile Act] Act No. 168 of July 15, 1948, as last amended by Act No. 63 of June 3, 2016.

*Shōnen keisatsu katsudō kisoku* (少年警察活動規則) [Regulation on Juvenile-Police Activities] National Public Safety Commission Regulation No. 20 of 2002, as last amended by National Public Safety Commission Regulation No. 11 of May 15, 2018.

*Shōnensha rōdō kijun kisoku* (年少者労働基準規則) [Labour standards ordinance for minors] Ordinance of the Ministry Labour No. 8 of June 19, 1954, as last amended by Ordinance of the Ministry of Health, Labour and Welfare No. 25 of Feb. 25, 2016.

*Shutsunyūkoku kanri oyobi nanmin nintei hō* (出入国管理及び難民認定法) [Immigration Control and Refugee Recognition Act] Cabinet Order No. 319 of October 4, 1951, as last amended by Act No. 89 of November 28, 2016.

*Shutsunyūkoku kanri oyobi nanmin nintei hō dai nana jō dai ikkō dai ni gō no kijun o sadameru shōrei* (出入国管理及び難民認定法第七条第一項第二号の基準を定める省令) [Ministerial Ordinance to Provide for Criteria Pursuant to Article 7, paragraph (1), item (ii) of the Immigration Control and Refugee Recognition Act] Ordinance of the Ministry of Justice No. 16, May 24, 1990, as last amended by Ordinance of the Ministry of Justice No. 40, June 22, 2016.

*Shutsunyūkoku kanri oyobi nanmin nintei hō dai nana jō dai ikkō dai ni gō no kitei ni motozuki dōhō beppō dai ni no teijūsha no kō no karan ni kakageru chii o sadameru ken* (出入国管理及び難民認定法第七条第一項第二号の規定に基づき同法別表第二の定住者の項の下欄に掲げる地位を定める件) [Case for determining the status raised in the text following the clause “long term residents” in annexed table 2 of the Immigration Control and Refugee Recognition Act, based on Art. 7, para. 1, item 2 of the same law] Ministry of Justice Notice No. 132, May 24, 1990, as last amended by Ministry of Justice Notice No. 357, July 2, 2015.

*Soshikiteki-na hanzai no shobatsu oyobi hanzai shūeki no kisei tō ni kansuru hōritsu* (組織的な犯罪の処罰及び犯罪収益の規制等に関する法律) [Act on the Punishment of Organized Crimes and the Control, etc., of Crime Proceeds] Act No. 136 of August 18, 1999, as last amended by Act. 54 of June 3, 2016.

### APPENDIX 3: INTERNATIONAL TREATIES, CONVENTIONS AND RESOLUTIONS

*Note: Where applicable, I have included semi-literal back translations of the Japanese text for comparative purposes.*

Abolition of Forced Labour Convention (ILO C105), Geneva, 25 Jun 1957, *entered into force* 17 Jan 1959, available:  
[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105)

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, New York, 2 December 1949, 271 U.N.T.S. 96, *entered into force* 25 July 1951.

[Japanese title: *Jinshin baibai oyobi ta'nin no baishun kara no sakushu no kinshi ni kansuru jōyaku* (人身売買及び他人の売春からの搾取の禁止に関する条約), “Convention for the prohibition of the buying and selling of human beings and the exploitation of others through their selling of sex.” Full text of the MOFA’s official Japanese translation available from:  
[http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-427-3\\_1.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-427-3_1.pdf)]

Convention concerning Forced or Compulsory Labour (ILO C029), Geneva, 28 Jun 1930, *entered into force* 1 May 1932, available:  
[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029)

Convention on the Rights of the Child, New York, 20 November 1989, *entered into force* 2 September 1990, available:  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Convention to Suppress the Slave Trade and Slavery, Geneva, 25 September 1926, 254 L.N.T.S. 60, *entered into force* 9 March 1927.

Covenant of the League of Nations, Paris, 28 April 1919, *entered into force* 10 January 1920, Available: <http://www.refworld.org/docid/3dd8b9854.html>

International Agreement for the Suppression of the "White Slave Traffic," Paris, 18 May 1904, 83 L.N.T.S. 1, *entered into force* 18 July 1905.  
[Japanese title: *Shugyō o okonawashimuru tame no fujo baibai torishimari ni kansuru kokusai kyōtei* (醜業ヲ行ハシムル爲ノ婦女賣買取締ニ關スル國際協定), “International agreement for the control of the buying and selling of women for the purpose of forcing them to undertake the unsightly occupation.” Full text of the MOFA’s official Japanese translation available from:  
<http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-335.pdf>]

International Convention for the Suppression of the Traffic in Women and Children, Geneva, 30 September 1921, 415 L.N.T.S. 9, *entered into force* 15 June 1922.  
[Japanese title: *Fujin oyobi jidō no baibai kinshi ni kansuru kokusai jōyaku* (婦人及児



童ノ売買禁止ニ關スル國際條約), “International convention for the prohibition of the buying and selling of women and children.” Full text of the MOFA’s official Japanese translation available from:

[http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-373\\_1.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-373_1.pdf)]

International Convention for the Suppression of the Traffic in Women of Full Age, Geneva, 11 October 1933, 431 L.N.T.S. 150, *entered into force* 24 August 1934.

[Japanese title: *Seinen fujoshi no baibai kinshi ni kansuru kokusai jōyaku* (成年婦女子の売買の禁止に関する國際條約), “International convention for the prohibition of the buying and selling of women of full age.” Not ratified by Japan.]

International Convention for the Suppression of the White Slave Traffic, Paris, 4 May 1910, 278 L.N.T.S. 3, *entered into force* 18 Aug. 1912.

[Japanese title: *Shugyō o okonawashimuru tame no fujo baibai kinshi ni kansuru kokusai jōyaku* (醜業ヲ行ハシムル爲ノ婦女賣買禁止ニ關スル國際條約), “International convention for the prohibition of the buying and selling of women for the purpose of forcing them to undertake the unsightly occupation.” Full text of the MOFA’s official Japanese translation available from: <http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-C1-353.pdf>]

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000, 227 U.N.T.S. 2171, *entered into force* 18 January 2002.

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 Nov 2000, 507 U.N.T.S. 2241, *entered into force* 28 Jan 2004.

[Japanese title: *Kokusaiteki-na soshiki hanzai no bōshi ni kansuru kokusai rengō jōyaku o hosoku suru rikuro, kairo oyobi kūro ni yori idō o mitsunyūoku saseru koto no bōshi ni kansuru giteisho* (國際的な組織犯罪の防止に関する國際連合條約を補足する陸路、海路及び空路により移民を密入国させることの防止に関する議定書), “Protocol to prevent migrants from being brought secretly into countries by land, sea or air, supplementing the United Nations convention for the prevention of international organised crime.” Full text of the MOFA’s official Japanese translation available from: [http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/C-H17-2\\_2.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/C-H17-2_2.pdf)]

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 Nov 2000, 319 U.N.T.S. 2237, *entered into force* 25 Dec 2003.

[Japanese title: *Kokusaiteki-na soshiki hanzai no bōshi ni kansuru kokusai rengō jōyaku o hosoku suru hito (toku ni josei oyobi jidō) no torihiki o bōshi shi, yokushi shi oyobi shobatsu suru tame no giteisho* (國際的な組織犯罪の防止に関する國際連

合条約を補足する人(特に女性及び児童)の取引を防止し、抑止し及び処罰するための議定書), “Protocol to prevent, deter and punish the {dealing/transacting} in persons (especially women and children), supplementing the United Nations convention for the prevention of international organised crime.” Full text of the MOFA’s official Japanese translation available from:  
[http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/C-H17-1\\_2.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/C-H17-1_2.pdf)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956, 226 U.N.T.S. 3, *entered into force* April 30, 1957.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December, 1988, 95 U.N.T.S. 1582, *entered into force* 11 November, 1990.  
[Japanese title: *Mayaku oyobi kōseishin’yaku no fusei torihiki no bōshi ni kansuru kokusai rengō jōyaku* (麻薬及び向精神薬の不正取引の防止に関する国際連合条約), “The United Nations convention for the prevention of improper {dealing/transacting} in narcotic drugs and psychotropic drugs.” Full text of the MOFA’s official Japanese translation available from:  
[http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-H4-0175\\_1.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-H4-0175_1.pdf)

United Nations Convention against Transnational Organized Crime, New York, 15 Nov 2000, 209 U.N.T.S. 2225, *entered into force* 29 September 2003.  
[Japanese title: *Kokusaiteki-na soshiki hanzai no bōshi ni kansuru kokusai rengō jōyaku* (国際的な組織犯罪の防止に関する国際連合条約), “The United Nations convention for the prevention of international organised crime.” Full text of the MOFA’s official Japanese translation available from:  
[http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/C-H15-7\\_2.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/C-H15-7_2.pdf)

United Nations Economic and Social Council, 4<sup>th</sup> session. Resolution E/412 (1946).  
*Suppression of the Traffic of Women and Children*. Available:  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=E/437](http://www.un.org/en/ga/search/view_doc.asp?symbol=E/437)

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 331 U.N.T.S. 1155, *entered into force* 27 January 1980.

## APPENDIX 4: AMERICAN LEGISLATION

H.R. 1356, the Freedom from Sexual Trafficking Act of 1999, 106<sup>th</sup> Congress, first session,

Available at: <https://www.congress.gov/bill/106th-congress/house-bill/1356>

*Justice for Victims of Trafficking Act of 2015*, Pub. L. No. 114–22, 129 Stat. 227–267 (2015).

*Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. No. 108–193, 117 Stat.

2875–2887 (2003).

*Trafficking Victims Protection Reauthorization Act of 2005*, Pub. L. No. 109–164, 119 Stat.

3558–3573 (2006).

*Trafficking Victims Protection Reauthorization Act of 2013*, Pub. L. No. 113–4, 127 Stat. 54–

160 (2013).

S. 600, the International Trafficking of Women and Children Victim Protection Act of 1999,

106<sup>th</sup> Congress, first session, Available at: [https://www.congress.gov/bill/106th-](https://www.congress.gov/bill/106th-congress/senate-bill/600)

[congress/senate-bill/600](https://www.congress.gov/bill/106th-congress/senate-bill/600)

*Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106–386, 114 Stat.

1463–1548 (2000).

*William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, Pub. L. No.

110–457, 122 Stat. 5044–5091 (2008)

