

**TRAFFICKING, MIGRATION,
AND THE LAW**
*Protecting Innocents,
Punishing Immigrants*

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The Trafficking Victims' Protection Act of 2000 has been presented as an important tool in combating the exploitation and abuse of undocumented workers, especially those forced into prostitution. Through a close reading of the legislation and the debates surrounding its passage, this article argues that the law makes strategic use of anxieties over sexuality, gender, and immigration to further curtail migration. The law does so through the use of misleading statistics creating a moral panic around "sexual slavery," through the creation of a gendered distinction between "innocent victims" and "guilty migrants," and through the demand that aid to victims be tied to their willingness to assist in the prosecution of traffickers. As a result, the legislation is less a departure from, than of a piece with, other recent antisex and anti-immigrant policies.

Keywords: prostitution; sexual slavery; immigration; law

Historically, poor women, especially those suspected of participation in prostitution, have been the object of state scrutiny and control. Indeed, the first federal immigration law in the United States, the Page Law of 1875, specifically barred entry by Asian women believed to be entering the country for "lewd and immoral purposes"; a few years later, additional legislation extended the ban to "those likely to become public charges" (Luibheid 2002, 2). Such hostility to poor women—especially those not white, not "native born," and not sexually restrained by

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marriage—has been a recurring theme in the United States. Recently, in 1996, the federal government approved a new round of sweeping welfare and immigration reforms (the Personal Responsibility and Work Opportunity Reconciliation Act and the Illegal Immigration and Immigrant Responsibility Act), which combined to further undermine the already precarious position of those groups.

Yet during the final months of the Clinton presidency in 2000, the U.S. House, Senate, and executive branch joined together to pass antitrafficking legislation, HR 3244, the Trafficking Victims' Protection Act. At first glance, this law appears to be an inexplicable if welcome break from the continuing series of anti-immigration, antipoor, and antiprostitution policies. Yet a closer study of the law reveals that rather than being a significant departure from previous approaches to immigration, poverty, and commercial sex, the new law actually serves as a soft glove covering a still punishing fist.

The Trafficking Victims' Protection Act of 2000 specifically exempts a small class of abused and exploited migrants—"victims of severe forms of trafficking"—from punitive immigration and welfare reforms measures. The legislation offers special protections and benefits including visas and work permits, welfare support, and even the possibility of permanent residency for qualified victims and their families. The question, then, is what motivated the near unanimous support for abused migrants and prostitutes under HR 3244 by legislators otherwise hostile to immigrants and poor women, especially those engaged in commercial sex? As I will argue in this article, the answer lies, in part, in the usefulness of the law in creating a politically strategic exception to a punishing rule.

Drawing on original research conducted in the 1990s with prostitutes' rights and antitrafficking activists in the United States and the Netherlands and on a close reading of debates surrounding the revisions and eventual passage of HR 3244 (expressed in legislative hearings and media reports), I argue that the law mobilizes anxieties surrounding sexuality and gender in the service of immigration control. As Eithne Luibheid (2002, 144) observed, feminist scholars must "examine how public discourses on sexuality legitimate the exclusion, condemnation, or acceptance of particular migrants . . . [and] how discourses about dangerous migrant sexualities legitimize the subordination of minoritized U.S. communities."

As I will demonstrate, in the case of the Trafficking Victims' Protection Act, language within and surrounding the legislation works to neatly divide "violated innocents" from "illegal immigrants" along the lines of sex and gender. Trafficking victims, described as vulnerable women and children forced from the safety of their home/homelands into gross sexual exploitation, are distinguished from economic migrants who are understood to be men who have willfully violated national borders for individual gain.¹ The law justifies offering protection to the former and punishment to the latter through the use of three sleights of hand. First, it relies on a repressive moral panic about "sexual slavery" created through slippery statistics and sliding definitions.² Second, despite offering symbolic support to the notion that all prostitution is sexual slavery, the law carefully differentiates between "innocent" and "guilty" prostitutes and provides support only to the innocent. And third,

by making assistance to even “deserving” victims contingent on their willingness to assist authorities in the prosecution of traffickers, the legislation further seals U.S. borders against penetration by “undeserving” economic migrants. Protections offered to the innocent help to reinforce the suggestion that the punishments meted out to the “guilty” are justified. I argue, then, that while proponents have presented the bill as important for the people it rescues, it may be that its more important hidden effect involves the people that it excludes.

MORAL PANIC, SLIPPERY STATISTICS, AND SLIDING DEFINITIONS

HR 3244 was presented both to legislators and to the American public as a necessary response to a massive violation of innocent women and children by depraved sex traffickers. The key sponsor of the bill, a conservative Republican, Christopher Smith of New Jersey, had previously distinguished himself in Congress primarily as a supporter of the rights of religious minorities and of the “unborn.” Smith had exhibited relatively little concern for the plight of the poor, of migrants, or of women. As cochair of the House’s “Pro-Life Caucus,” Smith repeatedly authored legislation prohibiting U.S. financial support for family-planning clinics in Third World countries that provide abortion services. In the United States as well, poor women attempting to support large families on inadequate incomes did not seem to be of much concern to Representative Smith; he strongly supported both the immigration and welfare reform acts of 1996. The phenomena of forced migration and sexual slavery, however, struck a deep chord with Christopher Smith. Like an endangered fetus, women and children trafficked into the United States, especially for purposes of sexual exploitation, were innocent victims in need of protection. The problem, according to Smith, was a moral outrage of enormous proportions:

Each year, 50 thousand innocent women and young children are forced, coerced, or fraudulently thrust into the international sex trade industry with no way out. This brutal, demeaning and disgusting abuse of women and children is predicated on their involuntary participation in sexual acts. . . . The image of a young, innocent child being forcibly sold into the sex trade for the fiscal gain of one sick individual and the physical gain of another is tragic. The idea that we would allow it to go unpunished is even more so. (C. Smith 2000)

Smith was not alone in calling attention to this problem or positioning it as uniquely abusive. He was joined in the call for action by the National Organization for Women (NOW), the country’s largest feminist organization, which noted that “sex trafficking, referred to by many of us as the modern form of slavery, is thought to victimize 50,000 women and girls every year in the U.S. alone” (NOW 2000).

The figure of 50,000 victims of sex slavery is inaccurately based on data from a 1999 CIA briefing on global trafficking in which the CIA estimated that between 45,000 and 50,000 women and children are trafficked into the United States for

sweatshop labor, domestic servitude, agricultural work, and prostitution each year (O'Neill Richards 1999, 3). The misleading claim that all these exploited undocumented workers are "sex slaves"—and that global trafficking is all about women and children—was useful in rallying public support for victims of migrant abuse in a climate generally hostile to undocumented workers in America's factories and fields.

HR 3244's conflation of migrant abuse, trafficking, and sex slavery is a common rhetorical device in antitrafficking discourse (Barry 1979; Raymond 1998). Definitions of trafficking are as unstable as the numbers of victims. In some accounts, all undocumented migrants assisted in their transit across national borders are counted as having been trafficked.³ In others, "trafficking" refers exclusively to victims of sexual slavery. In some instances, all migrant sex workers are defined as trafficking victims regardless of consent and conditions of labor;⁴ in still others, abusive conditions of employment or deceptive recruitment practices in the sex trade are emphasized.⁵

One recent example of this problem of sliding definitions can be found in a statement by Pino Arlacchi, director of the United Nations Office for Drug Control and Crime Prevention, who argues that globally, "200 million people may now be, in some way, under the sway or in the hands of traffickers" (Corssette 2000, A-15). Here Arlacchi is making use of the most expansive definition of trafficking to strengthen the case for the enormity of the problem:

We don't just have economic slavery, which includes two things, forced labor and debt enslavement. We have also a lot of exploitation of migrants. And we have classic slavery. *If you put all this together under the same concept, you get the biggest violation of human rights in the world.* (Corssette 2000, A-15, emphasis added)

This potentially useful linking of the problems and interests of all exploited migrants is, however, primarily used by Arlacchi to argue for more effective policing of immigration to stop what he considers a "slave trade." Arlacchi emphasized the comparison with slavery by insisting that the modern manifestation of trafficking is an even more serious problem than the African slave trade: "Four centuries of slavery moved about 11.5 million people out of Africa, [while] in the last decade more than 30 million women and children may have been trafficked within and from Southeast Asia for sexual purposes and sweatshop labor" (Corssette 2000, A-15). By eliminating any distinctions between intentional (if exploitive) migration for work and forced enslavement of millions of Africans, Arlacchi creates a moral imperative to stop the flow of undocumented workers regardless of their desire to immigrate.

From this perspective, abuse of migrants becomes fully the fault of traffickers who must be stopped, not the by-product of exploitive employment practices, restrictive immigration policies, and vast economic disparities between rich and poor nations. Attempts to restrict immigration can then be packaged as antislavery

measures; would-be migrants are would-be victims whose safety and well-being are ostensibly served by more rigorously policing of the borders.

This reasoning resonates especially strongly when sex trafficking is the focus. Antiprostitution legislation, which criminalizes all parties to the commercial sexual transaction, is generally presented as a strategy to stop the exploitation of vulnerable women—even when it entails their incarceration or deportation. The Trafficking Victims' Protection Act of 2000, which strengthens law enforcement and increases penalties against those defined as traffickers, will increase the risk and cost of doing business for smugglers, a price that undoubtedly will be passed on to the victims the law is designed to protect.

Fortunately, HR 3244 does not simply intensify prosecution of traffickers, it also promises assistance to victims. It is this element of the law that helped to mobilize feminist and other progressive support for the legislation—and led conservatives to demand that the law be carefully amended to restrict the numbers of qualified victims. In the writing and rewriting of the legislation, eligible “victims of trafficking” became increasingly narrowly defined. In the final version of the law, there are two distinct categories of victim: “victims of trafficking” and “victims of a severe form of trafficking.” Victims of trafficking are all those whose presence in the United States is due to “sex trafficking,” which is defined without reference to force, coercion, or deception. A victim of trafficking includes anyone who has received assistance with migration for the purposes of prostitution (*Trafficking Victims' Protection Act*, sec. 103 [9]).

Significantly, however, while this category appears in the legislation, it is also made otherwise irrelevant to it. The law, in fact, covers violations only of a different sort: those involving a “severe form of trafficking.” Severe forms are defined as either “sex trafficking in which a commercial sex act is induced by force, fraud or coercion” (or in which the person performing the act is younger than 18), or “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” (*Trafficking Victims' Protection Act*, sec. 103 [8]).

In other words, “severe trafficking” deals with the conditions of labor coupled with abusive or deceptive forms of recruitment, whereas “sex trafficking” simply refers to the kind of labor to be performed (i.e., prostitution). All assistance under the new law is restricted to victims of so-called severe forms of trafficking. Despite the fact that sex trafficking itself is not covered by HR 3244, it is used to set a tone within the legislation. The repeated mention of sex trafficking reinforces the notion that migrant abuse is largely a problem of the sexual violation of women and children.

In addition, the inclusion of voluntary migration for purposes of prostitution helps to swell the numbers of victims (although not those eligible for assistance) and thereby contributes to the claim of a massive moral and legal crisis. This focus on sex adds both urgency and drama to the demand that something be done. It also

offers a symbolic nod to the concerns of antiprostitution feminists who were instrumental in getting the proposed legislation before lawmakers.

For antiprostitution feminists, anyone involved in performing prostitution is by definition a victim regardless of consent or conditions of labor. NOW (2000), for example, demanded that HR 3244 cover "all traffickers who lure or force women into prostitution regardless of whether or not their victims 'consent.'" Victims are defined here not by abusive conditions but by the form of labor they may have been "lured" into performing. As the quotation marks around the term "consent" suggest, from this perspective, in the context of commercial sex, consent is understood to be meaningless or impossible.⁶

DIVIDING THE INNOCENT FROM THE GUILTY

The issue of consent has been a central problem in discussions of prostitution. Are all sex workers "victims," including those who consciously enter the trade? Are only those who are forced into prostitution "innocent" when faced with abuse? Certainly, few workers in any trade fully consent to their labor, if by consent we mean freely choosing it from among an expansive range of occupational (or even survival) options. However, as sex workers' rights advocates have noted, making consent irrelevant in prostitution can further undermine the well-being of those in the sex trade by, for example, making the rape of a prostitute no more than redundant. Furthermore, by defining prostitution itself as violence, its prohibition and criminalization can be justified as "for the workers' own good" (much as anti-immigration policies are presented as measures taken in the migrants' best interest). Sex workers and their clients thereby become criminals suffering additional abuse at the hands of the state. For these reasons, since the 1970s, sex worker's rights activists have objected to the notion that all sex workers are victims and have challenged the idea that those who pay for their services, or who assist them in securing work or arranging for migration, should indiscriminately be defined as perpetrators, pimps, and traffickers (Chapkis 1997; Delacoste and Alexander 1998; Nagle 1997; Pheterson 1989; Shrage 1994; Weitzer 2000). They have insisted that antiprostitution legislation be focused on forced prostitution, not commercial sex per se.

In recent years, sex worker's rights activists have become as concerned as antiprostitution feminists with the dangers of the "forced" and "free" distinction, especially when it is used to determine which prostitutes deserve protection from abuse (Doezema 1998, 34-50). As prostitution researcher Jo Doezema (1998, 45) pointed out, laws focusing only on victims of forced prostitution leave most sex workers outside of their protective umbrella: "It is one thing to save innocent victims of forced prostitution, quite another to argue that prostitutes deserve rights."

Thus, despite passionate ideological differences among feminists on the question of decriminalization of commercial sex, both antiprostitution activists (who

see all sex workers as victims) and sex worker's rights activists (who demand rights for all those engaged in prostitution) have come to agree that consent should never be a factor in determining which victims of abuse deserve assistance. Sadly, this unusual consensus among feminists failed to find expression in the Trafficking Victims' Protection Act of 2000.

As passed, the law relies heavily on the distinction between "innocent victims" of forced prostitution and "guilty sex workers" who had foreknowledge of the fact that they would be performing sexual labor. As such, the law neither empowers most migrant prostitutes by protecting their rights as workers nor offers any assistance to the majority of abused sex workers interested in leaving the trade. As Dorchen Leidholt (2000), director of the antiprostitution organization the Coalition against Trafficking in Women, noted, "The bill reinforces a distinction feminists have fought for decades: the good victims deserve assistance and protection versus the bad girls who have chosen their fate and are on their own."

Feminists failed to secure a law fully responding to their concerns in part because of a strategic decision to join forces with powerful conservative religious and political groups. The alliance behind HR 3244 was always, in the words of Michael Horowitz of the Hudson Institute, "an amazing, somewhat vulnerable, but remarkably cohesive coalition of feminists and church groups" (Carnes 2000). When the interests of the two partners conflicted, antiprostitution and anti-immigration conservatives seem to have won out.

The problematic distinction written into the final version of the law separating the innocent from guilty reflects concerns of conservatives who feared that, unamended, the legislation would redefine abuse "until it is a catch-all phrase for expanding immigration" (Carnes 2000). Mark Krikorian, the executive director for the Center for Immigration Studies, warned that the law could become part of "an ongoing trend to expand the grounds for asylum, especially for women. . . . The feminists as well as the homosexual rights organizations have begun to use asylum as another vehicle for promoting their interests" (Carnes 2000). Amendments restricting eligibility of victims to only the most severely abused and the most purely innocent were put forward by anti-immigrant representatives such as Lamar Smith from Texas. Smith justified the restrictions on the grounds that they would "prevent hundreds of thousands of people claiming to be trafficking victims . . . [leading] to a massive amnesty for illegal aliens" ("Debate over immigration" 2000).

Given these concerns, depictions of the model victim relied heavily on very graphic accounts of extreme sexual violation of innocent women and children. Even progressive Democrats described victims not as "ordinary" abused migrants but rather as those who

are found behind dark, padlocked doors and hidden corridors. The deprivations of food, the beating with electrical wires, metal rods and leather straps, the cigarette burns, and the brutal rapes are conducted in the hidden rooms and upper floors where, if you can get to them, you can find women and children locked in literal cages. ("Minority views" 1999)

Such gothic portrayals of the problem allowed action to be taken against the abuses of (sexual) slavery while leaving in place policies that continue to punish the majority of "ordinary" abused and exploited migrants. In fact, HR 3244 serves to further cement the division between victims deemed deserving of sympathy and support and those categorized as eligible only for detention and deportation. The limited exception for victims of a severe form of trafficking helps to prove the rule that good women and men do not intentionally violate national borders and certainly not to intentionally engage in prostitution. In this way, the Trafficking Victims' Protection Act helps to define "compassionate conservatism": a willingness to provide assistance and protection for a few by positioning them as exceptions, proving the need for punitive measures used against the many. The law thus symbolically and legally separates trafficking victims from economic migrants who are understood to have unfairly benefited from facilitated migration.

But, in fact, making such distinctions is difficult at best. Amy O'Neill Richards, a State Department analyst with the Bureau of Intelligence and Research, noted that more than a million people are arrested each year by the U.S. Immigration and Naturalization Service (INS). She argued that, among this group, "it is tough to determine who has been severely victimized and trafficked" (O'Neill Richards 1999, 36). Indeed, according to O'Neill Richards, the INS "finds it is hard to 'play favorites' because there are countless other illegal aliens who are exploited by unscrupulous employers, and it is not easy to know where you draw the line in terms of who is being exploited" (p. 36). The need to "draw the line" at all is justified by the belief that not all can be deserving victims: "Protection and assistance afforded the victims differ depending upon where the victims fall within the spectrum" (p. 25).

Innocence becomes a key element in separating the violated from violators, but convincing the INS that any migrant is innocent may be an uphill battle:

Distinctions regarding trafficking in women, alien smuggling, and irregular migration are sometimes blurred with INS predisposed to jump to the conclusion that most cases involving illegal workers are alien smuggling cases instead of trafficking cases. One INS agent recently stated that there are no innocent victims, they are all willing participants. Consequently, their focus is on deporting the women once they are discovered. (O'Neill Richards 1999, 31)

HR 3244, then, attempts to counter the expectation that all migrants are guilty by creating an utterly passive, entirely pure, and extremely vulnerable victim who is above reproach. Victims are portrayed as no more than unwilling goods exchanged between unscrupulous men. In the words of one antitrafficking activist, they are just "commodities, they are nothing more than commodities . . . bodies exchanged on a market" (Barry 1992). Another antitrafficking activist echoed this description, arguing that trafficked women are "goods and services in an industry without borders" (Raymond 1998, 5). "Innocent victims," in other words, are much more likely to be depicted as objects of exchange than as exploited workers. As such, they are not even guilty of ambition.

The innocence of trafficking victims is further established by the constant linkage of women and children, a phrase suggesting a special shared vulnerability. Women and children outside their home/homeland are separated from individuals and institutions described as necessary to their safety. HR 3244 explicitly warns that “traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries, away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable” (*Trafficking Victims’ Protection Act*, sec. 102 [b] 5). No acknowledgment is made that the “protections” offered by family and religious institutions might be oppressive or abusive in their own right. Another unfortunate effect of such rhetoric is, as sociologist Kamala Kempadoo (1998, 12) pointed out, that Third World prostitutes become positioned “as incapable of making decisions about their own lives, forced by overwhelming external powers completely beyond their control into submission and slavery.”

That victims should be seen as defenseless is, in any case, striking given that the United States, like most nations, has many laws prohibiting kidnapping, rape, forced servitude, and debt-bondage that could be used to prosecute those who abuse migrants, including those engaged in prostitution. Yet language within the bill suggests that such laws are impotent in the face of sex trafficking. HR 3244 asserts that “even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment” (*Trafficking Victims’ Protection Act*, sec. 102 [b] 14). One explanation for why this might be true is that offenses against prostitutes and illegal aliens are routinely considered less serious than comparable crimes against “innocent victims.” In HR 3244, it is specifically noted that because “victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves” (*Trafficking Victims’ Protection Act*, sec. 102 [b] 17). This acknowledgment of the extreme hostility and discrimination faced by most undocumented workers and prostitutes is left unaddressed in the legislation. As Doezema (1998, 46) observed, this is commonplace in laws and conventions on prostitution; tying punishment for abuse to the innocence of the victim

bears a frightening resemblance to rape trials in which victims’ chastity status will determine the severity of the crime. . . . Human rights organizations and bodies in the United Nations seem content to let governments trample on the rights of sex workers as long as the morals of “innocent” women are protected.

The line drawn between the innocent victim and the willful illegal immigrant used to determine punishment and protection is not only a dangerous one, but it is also a distinction that does not hold. Most trafficking victims are also economic migrants. Their victimization most often involves high debts and abusive working conditions, not outright kidnapping and imprisonment. O’Neill Richards (1999, 32) noted that many victims even of serious abuse actually resist assistance,

distrusting law enforcement and fearing deportation even more than continued exploitation. Similarly, Licia Brussa (interview by the author, 3 March 1994), director of the migrant prostitute project TAMPEP in Amsterdam, observed that victims of sex trafficking often tell project staff,

“I want to stop, I want to go back to my normal life—but with some money. Then I’ll be able to start something else.” The money is crucial; that is the reason they migrated in the first place. These are women with both serious economic problems and lots of ambition. . . . The thing is, the women in general are absolutely not interested in being defined as victims, even those like Eastern European women who certainly qualify. Even when we can guarantee that if they submit a complaint against a trafficker or a pimp that they’ll be given a shelter address, a temporary residency permit, and a welfare check, that doesn’t address their real need. Their real need is to make money in any way they can.

PAYBACK: PROTECTING THE BORDERS

Not only does antitrafficking legislation such as HR 3244 fail to benefit the majority of exploited undocumented (sex) workers, it also extracts a particular price from those it does assist: demanding their help in closing down smuggling networks used by other migrants. Participants in the program must assist in identifying, locating, apprehending, and prosecuting traffickers (*Trafficking Victims’ Protection Act*, sec. 107 [2] C 3 and sec. 107 [E] i-iii).⁷ Those seeking a T-visa must prove themselves “willing to assist in every reasonable way” in the investigation and prosecution of traffickers (*Trafficking Victims’ Protection Act*, sec. 107 [E]). But even those victims most willing to assist authorities in the prosecution of traffickers cannot assume they will be awarded permanent residency. For that, victims must also demonstrate that they would “suffer *extreme* hardship involving *unusual* and *severe* harm upon removal from the United States” (*Trafficking Victims’ Protection Act*, sec. 107 [F] ii, emphasis added). The T-visa, then, is designed not so much as a means to assist the victim as it is a device to assist prosecutors in closing down trafficking networks.

The names of those identified during the investigation as traffickers or suspected traffickers, or those believed to have aided, abetted, assisted, or colluded with a trafficker, are passed on to immigration officials who are authorized to deny them, their families, and their associates entry into the United States (*Trafficking Victims’ Protection Act*, sec. 111 [d]). Since much illegal migration is “chain migration,” this may work to pit friends and family members against one another as the state pressures illegal immigrants to reveal who trafficked them into the country in exchange for the (temporary) right to remain. In short, HR 3244 has many features of a protective law masquerading as a good cop to anti-immigration policies’ bad cop. As antitrafficking activist Marjan Wijers (1998, 77) warned,

We can distinguish between two types of strategies to combat trafficking in women. On the one hand, there are repressive strategies, including more restrictive immigration policies, more penalization and stronger and more effective prosecution. Repressive strategies have a strong tendency to end up working against women instead of in their favor. . . . At the same time, these repressive strategies are the most attractive for governments. . . . On the other hand, there are strategies that aim to strengthen the rights of the women involved, as women, as female migrants, as female migrant workers, as female migrant sex workers.

Some elements of the Trafficking Victims' Protection Act do attempt to strengthen the position of women by addressing the reality that trafficking is not primarily a problem of forced migration of unwilling women but rather of economic desperation. One section of the law specifically considers the need for economic alternatives to prevent and deter trafficking by enhancing opportunities in labor exporter nations (*Trafficking Victims' Protection Act*, sec. 106). The proposed initiatives include microcredit lending programs, training in business development and job counseling, programs to promote women's participation in economic decision making, programs to keep children—especially girls—in school, and grants to nongovernmental organizations to advance the political, economic, and educational roles of women (*Trafficking Victims' Protection Act*, sec. 106 [a] 1-5). Unfortunately, however, HR 3244 authorizes appropriations only of 15 million dollars over two years to fund all of these initiatives (*Trafficking Victims' Protection Act*, sec. 106 [a] 1-5). In contrast, the federal government spends nearly 1 billion dollars annually to patrol the U.S./Mexican border (G. Smith 2000, 68).

Grossly underfunded programs, however innovative and important, are highly unlikely to stem the flow of migrants. As Carolyn Sleightholme and Indrani Sinha (1996, xii) noted about economic alternatives to prostitution programs in India, "income-generating projects with sex workers reflect one of the prejudices that pushes women into sex work in the first place: the myth that women only require 'pin money,' a small income."

A more effective response to trafficking than underfunded programs in labor-exporting countries and limited protections and increased prohibitions in destination countries would involve reducing barriers to legal immigration. However, in contemporary "Fortress Europe" and anti-immigrant America, such a strategy seems remote at best. Indeed, challenges facing immigrants and would-be immigrants are only intensifying. The *San Francisco Chronicle* ("U.S. delays arrival" 2001, A5) reported that

as many as 20,000 refugees from across the world, cleared to come to the United States to escape persecution in their homelands, have had their arrival here delayed indefinitely in the aftermath of the September 11th terror attacks. . . . in effect, a temporary moratorium on refugee admissions [is in place].

This closed door will serve only to increase the problem of trafficking according to some activists. Widney Brown of Human Rights Watch argued that post-

September 11th, "as borders get tight in receiving countries, traffickers will tell desperate women they have ways to cross and they (the women) will find themselves as trafficking victims" (Casert and Shepard 2001, A2).

CONCLUSION

The Trafficking Victims' Protection Act does too little to strengthen the rights of most migrant workers whether in the sex industry or outside of it. Insofar as HR 3244 attempts to address the very real problem of migrant and sex worker abuse, it is an honorable if inadequate effort. But any truly effective response demands more than symbolic action against the gross economic disparities between the world's rich and poor⁸ as well as a recognition that the criminalization of migration and the labor associated with it seriously endangers the well-being of vulnerable workers. HR 3244 may lead to increased convictions of traffickers, but it is unlikely to challenge deeply held and hostile attitudes toward poor women, undocumented workers, and prostitutes.

In the past two years, following the passage of the law, 36 convictions against traffickers have resulted, a doubling of the number successfully prosecuted in 2001 (Marquis 2003). It may be significant, however, that the first recipient of a T-visa was not a prostitute nor an exploited undocumented worker. Rather, it was a four-year-old boy from Thailand named "Got." At age two, Got was used as a decoy to help create the illusion of a proper nuclear family by a smuggler attempting to bring a Thai prostitute into the United States on tourist visas; the boy apparently had been rented for the occasion from his mother (described in the media as an HIV-positive prostitute and heroin addict) for \$250 ("Boy used in smuggling scheme" 2001). He was taken into custody by the INS when they ascertained that the couple was not married, the child was not theirs, and the boy was HIV positive. The INS spent the next two years attempting to deport the child against appeals by the Thai American community in Los Angeles and antitrafficking activists. As one *Washington Post* reporter observed, the "Thai Elian Gonzales" became a cause célèbre:

For opponents of sex trafficking, Got was their spotted owl, their Polly Klaas . . . with trafficked women, there is always the question of their complicity. With a boy who cannot speak his own name yet, no one can say he agreed. (Rosin 2000, A-02)

After a federal judge blocked his deportation, Attorney General John Ashcroft declared that the boy would become the first recipient of a T-visa. Ashcroft described the child as the archetypical victim of trafficking: "Human trafficking victims are too often people like Got. Too young, too frightened, and too trapped in their circumstances to speak for themselves. This is a four year old child" ("Boy used in smuggling scheme" 2001).

Despite Ashcroft's assertion, most victims of migrant and sex worker abuse can speak for themselves when allowed to do so. However, their accounts do not reduce

to simple morality tales; instead, in all of their complexity, they effectively challenge easy distinctions between innocence and knowing, between mere exploitation and severe abuse. Feminists should look critically at legislation such as the Trafficking Victims' Protection Act, which relies heavily on narratives of female powerlessness and childlike sexual vulnerability. Certainly no one should be forced to trade sex or safety to survive. The relevant social response, however, demands more open borders, not bigger fences, and more expansive state support for the poor, not its reduction or elimination. Addressing the abuses of women working in and outside of the sex industry requires an acknowledgment that women can consent to both economically motivated migration and to sex. The possibility of that consent, however, should never be used to excuse violation: There are no guilty victims. By institutionalizing such distinctions, the Trafficking Victims' Protection Act of 2000 runs the risk of reinforcing barriers to help rather than removing them.

NOTES

1. According to the most recent International Labor Organization figures, more than 50 percent of all labor migrants around the world are women (Wijers 1998).

2. For a more general discussion of the question of "moral panics," see Wagner (1997).

3. Representative Lamar Smith—responsible for most of the restrictive amendments to HR 3244—was one of the two key sponsors for the 1996 Illegal Immigrant Reform Act, which among other things, made "trafficking in humans" a felony punishable by up to 15 years imprisonment. Smith argued in favor of the new law by pointing out that "when we cracked down on drugs with harsher sentences, we inadvertently created an imbalance in the penal code that made immigrant smuggling more appealing. This law redresses that" (Gordy 2000, 5). Note that for Smith, "trafficking" is the definitional equivalent of "immigrant smuggling."

4. See, for example, materials by the Coalition against Trafficking in Women: www.uri.edu/artsci/wms/hughes/catw

5. See, for example, materials by the Global Alliance against Traffic in Women: www.inet.co.th/org/gaatw

6. Antiprostitution activists Cecilie Hoigard and Liv Finstad made this point in their study of Norwegian street prostitution when they argued against the relevance of the notion of consent in prostitution by asserting "it is not mere rhetoric to counter the absurdity of the demand for legalization of prostitution with 'Legalize rape and incest. Recognize these as normal activities'" (Hoigard and Finstad 1992, 183). The most important abolitionist legislation relating to trafficking in women is the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others adopted by the U.N. General Assembly in 1949. That document specifically prohibits and punishes 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*" (see Article 1 of the Convention, emphasis added). Recent international campaigns by American anti-prostitution activists are similarly focused on defining prostitution as abusive regardless of consent; see demands for a new U.N. Convention "Against All Forms of Sexual Exploitation" regardless of "age, consent, race, or geography" (Raymond 1998, 5, emphasis added).

7. In a number of ways, the "T-visa" provided to victims of trafficking resembles another program directed at undocumented immigrants: the so-called "snitch visa" that has gained prominence in post-September 11th America. In November of 2001, Attorney General John Ashcroft announced that visas would be available under the Responsible Cooperators Program to those who provide useful information on possible terrorists or terrorist activity (Lewis 2001). The program met with significant hostility in

immigrant communities. Renee Saucedo, director of the Day Labor Program in San Francisco, for example, noted, "The same government that supports rewarding people for reporting other people . . . is the same government that makes it virtually impossible for illegal immigrants to legalize. This encourages scapegoating fellow immigrants" (Ness and Kim 2001, A8).

8. For example, the 100 billion dollars in debt owed by the world's poorest nations to the world's richest through loans made by the World Bank, the International Monetary Fund, and Western nations could be erased. Now many destitute countries are spending more than half of their tax revenue on debt repayments (Pochina 2001, 2C).

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