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***Legalised prostitution and sex trafficking: evaluating the influence of anti-prostitution activism on the development of human trafficking policy***

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## **Abstract**

In recent policy debates on human trafficking, the relationship between prostitution and sex trafficking has been strongly contested. Many anti-prostitution activists argue that there is a causal relationship between the two. They claim that legalised or decriminalised prostitution leads to increased sex trafficking. This research explores the use of this claim in policy debates, and seeks to measure the impact the advocates of this claim have had on the development of anti-trafficking legislation. The nature of the claim itself, as well as the extent to which the claim has permeated trafficking discourse, is examined. A comparative case study approach is utilised, focusing on key public debates on human trafficking in Australia and the United States during and following the establishment of the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* 2000.

This research explores the ways in which the claim has been deployed, substantiated and refuted in policy debates, and assesses how influential the advocates of the claim have been in persuading decision-makers and subsequently shaping government policy. The key similarities and differences between the Australian and US debates are also explored with a focus on differing legislative systems and political cultures, the involvement of sex workers and faith-based organisations in debates, and the tactics used by advocates of the claim.

This thesis demonstrates that the claim that legalised prostitution leads to increased sex trafficking is derived from a set of key assumptions, arguments and policy proposals that form the 'anatomy' of the claim. Aspects of this anatomy, along with the claim itself, are clearly evident in trafficking debates in both Australia and the United States. This thesis argues that advocates of the claim have been more successful in shaping government policy in the United States than in Australia. In the US, decision-makers have explicitly accepted the claim as fact and established it as a basis for US government policy on human trafficking. This is largely the result of the creation of an assumed consensus supportive of the belief that legalised prostitution leads to an increase in sex

trafficking. By contrast, decision-makers in Australia attempted to avoid an explicit acceptance or rejection of the claim, though statements and actions indicate both some acceptance and some rejection. This is due, in part, to established systems of legalised prostitution in several states of Australia, differing sexual cultures, a stronger emphasis placed on fact-based evidence by decision-makers, and the active involvement of sex workers and sex workers' advocates in the decision-making process.

### **Keywords**

human trafficking, slavery, sex trafficking, sex work, prostitution, abolitionism.

### **Australian and New Zealand Standard Research Classifications (ANZSRC)**

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## **LIST OF ABBREVIATIONS**

ACC	Australian Crime Commission
AFAO	Australian Federation of AIDS Organisations
APJC	Australian Parliamentary Joint Committee
CATW	Coalition Against Trafficking in Women
CATWA	Coalition Against Trafficking in Women, Australia
CWLA	Catholic Women’s League of Australia
ECPAT USA	End Child Prostitution and Trafficking, United States of America
HRC	Human Rights Caucus
IHRLG	International Human Rights Law Group
IJM	International Justice Mission
ILO	International Labour Organisation
IOM	International Organisation of Migration
LCLC	Legal and Constitutional Legislation Committee
NSWP	Network of Sex Workers’ Projects
PICW	President’s Interagency Counsel on Women
TIP	Trafficking in Persons Office or Report
TVPA 2000	Trafficking Victims Protection Act 2000
TVPRA 2003	Trafficking Victims Protection Reauthorization Act 2003
TVPRA 2005	Trafficking Victims Protection Reauthorization Act 2005
UN	United Nations
USCCB	United States Conference of Catholic Bishops
US/USA	United States of America
WEL	Women’s Electoral Lobby

## CHAPTER ONE – INTRODUCTION

At the turn of the twenty-first century new concerns about human trafficking emerged in Australia, the United States and other western countries. These concerns centred on the fear that vulnerable women from developing countries were being lured to developed countries with false promises of a better income and a better life; using deceptive and coercive methods, women were recruited, transported and exploited for their labour. This concern that young women, and children, were being transported across international boundaries into exploitative labour focused strongly on the sex industry and the trafficking of women and girls for forced prostitution. Growing panic about women and children being traded as commodities in sexual slavery challenged the international community to act.

These concerns about a flourishing sex slave trade sparked renewed debate about the possible relationship between prostitution and trafficking. Some activists argued that in order to prevent trafficking, prostitution must be abolished. They claimed that legalised prostitution leads to an increase in sex trafficking.

The claim that legalised prostitution leads to increased sex trafficking is grounded in a belief that the cause of trafficking is directly related to prostitution, particularly legalised (or tolerated) prostitution. Advocates of this claim typically characterise the relationship between prostitution and sex trafficking as one of cause and effect – legalised prostitution creates the conditions for sex trafficking to flourish. As Janice Raymond, a founder of the Coalition Against Trafficking in Women (CATW) has declared, ‘when prostitution is accepted by society, sex trafficking and sex tourism inevitably follow’ (Raymond 1995, 2). A key assumption here is that legalised prostitution involves a social ‘acceptance’ of prostitution and that this will lead to an increase in the trafficking of women into the sex industry. At the heart of this claim is a fundamental belief that prostitution is not a legitimate form of labour. This is the subject of an ongoing dispute between two opposing perspectives. On the one

hand, anti-prostitution advocates (or 'abolitionists') argue that prostitution is always harmful and dehumanising and that 'rape and prostitution sex are undifferentiated for the women who are its vehicles' (Barry 1995, 37). On the other hand are those who advocate the sex work perspective, arguing that prostitution can be legitimate labour and should be regarded as work (Kempadoo 1998, 5).

The claim that legalised prostitution leads to increased sex trafficking appeared during the development of anti-trafficking legislation in both Australia and the United States, as well as in domestic debates in the Netherlands, the UK, Sweden and New Zealand (Outshoorn 2005, 144; West 2000; Swanstrom 2004). In Australia, decision-makers expressed some scepticism about the validity of the claim, however it was not explicitly rejected (APJC Report 2004, 60). In contrast, the claim has been endorsed by the US Government and is the basis for key aspects of anti-trafficking legislation and policies which seek to prohibit prostitution in order to combat trafficking (TVPRA 2005; NSPD 22).

These responses to the claim demonstrate differing degrees of acceptance of the argument that legalised prostitution leads to increased trafficking. However, it also demonstrates that in at least one case (the United States), the claim that legalised prostitution fuels sex trafficking has been accepted as fact and incorporated into legislative approaches to combating human trafficking.

This acceptance of the claim is puzzling, and disturbing, especially given the fact that there is very little evidence to support it (ILO 2006, 19). Despite a lack of evidence, abolitionist advocates have continued to put forward the claim, harnessing public concern about human trafficking in order to argue for the criminalisation of prostitution (Bernstein 2007, 148). As countries continue to review existing efforts to prevent human trafficking and introduce legislation in line with the 2000 United Nations *Protocol to Prevent, Suppress and Punish Trafficking, Especially Women and Children* in 2000, legislators must consider the merits of the claim in attempting to develop evidence-based policy.

This research project emerged out of a concern that interest groups (particularly advocates of the claim) were using the human trafficking debate to build support for an anti-prostitution agenda. In the process, an unsubstantiated claim was informing policy and being used to persuade decision-makers that efforts to combat human trafficking must involve a criminalisation of prostitution. This is not only potentially inaccurate and misleading, but is also a manipulation of the policy-making process that could result in ineffectual anti-trafficking legislation, and detrimental outcomes for workers in the sex industry. As this claim continues to feature in domestic and international debates on human trafficking, it is necessary to explore it further to understand the basis of the claim, as well as the influence it has in the development of anti-trafficking policy.

## **1.1 Definitions**

Human trafficking is typically defined as ‘the recruitment or movement of persons by means of coercion or deception into exploitative labour or slavery-like practices’ (Chuang 2006, 437). The term sex trafficking refers specifically to the trafficking of a person for the purposes of sexual exploitation including in prostitution<sup>1</sup>. Sex trafficking is, however, just one form of trafficking for forced labour. Other industries where workers are trafficked include the domestic, garment, manufacturing and agricultural sectors (GAATW 2010). Discussions concerning sex trafficking also focus almost exclusively on female victims, however men are also victims of human trafficking (Kangaspunta 2003, 94; Agustin 2005b, 108).

In the first research question, the term ‘legalised prostitution’ is utilised to encompass any state extension of legal or decriminalised prostitution. Legalisation usually refers to a combination of state regulations (which permit the operation of some prostitution related activities) as well as new criminal law (outlawing aspects of the prostitution industry such as street prostitution). However in this thesis, the term ‘legalised prostitution’ is also used to encompass

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<sup>1</sup> Sexual exploitation may also be involved in the trafficking of women and children for forced or early marriage, domestic labour, the production of pornography, sex tourism or pornographic performances (GAATW 2010; GAATW 2000, 87).

systems which are said to have undergone 'decriminalisation'. Decriminalisation usually refers to the repeal of all criminal laws addressed to prostitution (including street prostitution). However those who make the claim about a link between 'accepted' prostitution and increased sex trafficking typically do not draw a distinction; they argue that any form of tolerated prostitution including legalised and decriminalised systems lead to an increase in trafficking. For the purposes of this research, therefore, the terms 'legalisation' and 'decriminalisation' are used interchangeably as it is not necessary to consider the concepts separately when viewing a claim that considers all 'accepted' prostitution to be equally harmful.

## **1.2 Existing approaches**

There is a great deal of contemporary literature focused on sex trafficking (Agustin 2005a; Bales 2005; Barry 1995; Batstone 2007; Beeks and Amir 2006; Bertone 2000; Brown 2001; Clark 2003; Chapkis 2003; Farr 2005; Hughes 2000; Jeffreys 2008; Kara 2009; Kempadoo 2005; Maltzahn 2008; McCabe 2005; Segrave, Milivojevic, Pickering 2009; Sullivan 2003; Weitzer and Ditmore 2009). Only some of this literature investigates the relationship between prostitution and trafficking, and almost none has explored the claim that legalised prostitution leads to increased sex trafficking.

To date, research has not sought to measure the influence of this specific claim on anti-trafficking policy. However, research has focused more generally on how advocates of the claim have influenced trafficking policies in countries such as the United States and Australia, as well as during the negotiations leading to the establishment of the UN Trafficking Protocol in 2000 (Weitzer 2007a; Stolz 2005; Doezema 2002).

### **1.2.1 Research central to this thesis**

Weitzer (2007a) offers the most detailed analysis of the abolitionist ideology and its impact on policy-making through his research on the institutionalisation of a

'moral crusade'. He identifies seven key claims that characterise abolitionist campaigning on sex trafficking. I discuss these claims in more detail in Chapter Three. The seventh of these claims identifies the position of abolitionists on the relationship between legal prostitution and sex trafficking; abolitionists say that the legalisation of prostitution 'would make the situation far worse than it is at present' (Weitzer 2007a, 456). Weitzer's research is focused on assessing the overall impact of abolitionist ideology and does not seek to specifically measure the impact of the claim under investigation in this thesis. However, Weitzer does argue that this seventh claim is central to the abolitionist ideology (Weitzer 2007a, 456). He also establishes an effective framework through which to measure the institutionalisation of the abolitionist ideology. This framework is discussed and utilised in Chapter Five of this thesis.

Stolz (2005 and 2007) explores the role of interest groups campaigning during the development of human trafficking legislation in the United States. She provides an insight into the decision-making process in the United States with a case study on the involvement of interest groups during the debates leading to the establishment of the Trafficking Victims Protection Act 2000. Stolz (2007) looks at the human trafficking debate through 'the lens of symbolic politics' offering a useful history of the development of the legislation and the campaigning tactics of organisations. In earlier work, Stolz (2005), also looks more closely at the influence of those organisations in playing an 'educative role' for decision-makers, and in setting the agenda for the trafficking debate. This research provides an excellent analysis of the many ways in which organisations campaigned on the issue of trafficking. However, Stolz's work focuses on the roles interest groups play, and does not directly measure the success of their efforts. She also does not measure the influence of specific ideas that were put forward by these interest groups during their campaigns.

Saunders' (forthcoming) research into Australian policy debates has also considered the development of policy on trafficking over time and the role and influence of non-government organisations within those debates. Although both Saunders and Stolz assess the development of domestic legislation and the actions of interest groups, they do not reflect on the way in which the specific

claim that legalised prostitution leads to increased sex trafficking has been a factor in those debates.

Several studies have explored negotiations surrounding the establishment of the UN Trafficking Protocol (Doezema 2002; Doezema 2005; Jordan 2002; Raymond 2002; Simm 2004; Soderlund 2005; Sullivan 2003; Wijers and Ditmore 2003), with Sullivan (2003) offering an excellent critique of the feminist positions represented during the negotiations. Among these studies, two offer an analysis of the role abolitionist campaigners have played in influencing the UN negotiations, as well as US legislation. Ditmore's (2005) research focuses on the negotiations from the perspective of sex workers' rights groups and analyses some of the tactics and positions of abolitionist organisations involved in the drafting of the Protocol. She looks at the impact of ideology within US policy, focusing on the consequences of the inclusion of abolitionist ideology in the *Global AIDS Act 2003*<sup>2</sup>. Soderlund (2005, 68) also explores the impact of abolitionist ideology within US legislation by exploring the trend towards a 'raid and rehabilitation' approach to trafficking. Soderlund's research includes an analysis of the role some abolitionist interest groups played in the establishment of the *Trafficking Victims Protection Act 2000*, and offers useful insight into some of the tactics utilised by campaigners in persuading decision-makers. Both Ditmore and Soderlund offer an important analysis of the actions of abolitionist organisations in persuading decision-makers during the development of the UN Protocol and US legislation. However the specific claim, that legalised prostitution leads to an increase in trafficking, is not specifically explored, nor is the influence of advocates of this claim on decision-makers explicitly measured.

All of this research provides a rich tapestry of information about the influence of abolitionist and non-abolitionist interest groups in the development of anti-trafficking legislation. However, to date, research in this field has not investigated the influence of the specific claim that legalised prostitution leads to increased trafficking. This thesis seeks to address that deficit by exploring the

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<sup>2</sup> The United States *Global AIDS Act 2003* includes a condition on funding for AIDS outreach and prevention work that reflects an abolitionist ideology. It prevents any organisation that supports the decriminalisation or regulation of prostitution from receiving US Government funding (Ditmore 2005, 108).

claim in detail, and measuring the power of the advocates of the claim in shaping policy.

This dissertation will contribute to the growing field of research that assesses the role of 'abolitionist' and 'sex work' activists and is directly informed by the existing research addressing the influence of interest groups, and the adoption of ideas within policy.

### **1.2.2 Related research**

This thesis also engages with other relevant research on prostitution and trafficking. Two key debates are evident in this field and important for my research into the claim there is a link between legalised prostitution and trafficking. The first of these entails a consideration of the relationship between legalised prostitution and trafficking within a wider debate over the legitimacy of prostitution. The second involves ongoing efforts to prove or disprove a causal relationship between legalised prostitution and trafficking.

#### ***The legitimacy of prostitution***

There are clearly polarised positions on this issue. Jeffreys (1995) and Barry (1979 and 1995) argue that prostitution should be viewed as slavery. Doezema (2001) offers a counterpoint to this conceptualisation of prostitution, arguing that the conflation of prostitution with slavery perpetuates an 'injuring' of sex workers. Saunders and Soderlund (2003) and Kempadoo (2005) argue that prostitution should be viewed as sex work. In these debates, the claim that legalised prostitution leads to an increase in trafficking is not explored beyond the context of its role as part of a wider dispute over the legitimacy of prostitution.

These discourses have permeated domestic and international policy debates, where investigations into the development and impact of legislation have touched upon the question of a relationship between legalised prostitution and



trafficking. Sullivan (2003) assesses these discourses in her discussion of the development of the 2000 Trafficking Protocol. Saunders (2005) and Doezema (2005) also analyse the 2000 Trafficking Protocol in the context of the negotiations that took place in the development stages, and the tactics employed by various non-government organisations. Debate over the legitimacy of prostitution and its relationship to trafficking has also been considered in research investigating domestic approaches to trafficking. For example, Wijers (1998) considered the issue when investigating support strategies in place to assist trafficked women, while Munro (2006) compared different legislative strategies for fighting trafficking, including the establishment of legalised prostitution.

Within this research, the relationship between legalised prostitution and trafficking is considered as part of a wider debate concerning the legitimacy of prostitution, as well as discussions on the distinction between 'forced' and 'voluntary' prostitution. However, the claim that legalised prostitution leads to increased trafficking is not explored beyond recognition of its existence within these debates.

### ***The relationship between prostitution and trafficking***

The causal relationship between legalised prostitution and sex trafficking is an ongoing source of debate in the literature and indirectly bears on this thesis research. Some attempts have been made by advocates of the claim to offer statistical evidence of a link between the legalisation of prostitution and increased sex trafficking (Raymond 2003). International organisations have also investigated a possible causal link between legal prostitution and trafficking. However, the results of all these efforts have been inconclusive (ILO 2006, 19).

Several researchers argue that future attempts to substantively prove or disprove the claim will be restrained by definitional disputes, unreliable data and difficulties in gathering evidence about human trafficking (Choi-Fitzpatrick 2006). Several researchers also highlight the inherent challenges in measuring a phenomenon that remains largely hidden and undefined (Kelly 2002, Laczko

2007, Aromaa 2007 and Di Nicola 2007). Weitzer (2005) argues that many of the studies on prostitution utilise flawed theories and methodologies that are heavily influenced by political positions, so it is not possible to prove or disprove a causal link between legalised prostitution and trafficking.

In the absence of reliable data, many advocates of the claim have instead focused on proving their case through logical argumentation instead of statistical evidence. For example, Barry (1979 and 1995) argues that prostitution is always a form of female sexual slavery, and that the perpetuation of patriarchal dominance of sexuality will continue to encourage a 'trade in women'. Jeffreys argues that 'it is impossible to eliminate trafficking without tackling prostitution and curbing men's demand' (Jeffreys 1997, 328). Raymond (2003) supports these arguments and suggests that the 'government sanctioning' of the sex industry is at fault for an increase in trafficking.

These arguments have been countered by others. Kempadoo argues that the logic behind the belief that prostitution leads to an increase in trafficking is flawed because, 'traffickers take advantage of the illegality of commercial sex work and migration' (Kempadoo 1998, 17). Bindman (in Kempadoo and Doezema 1998, 68) supports this point of view by considering examples of situations where criminalisation of sex work victimises sex workers including those trafficked into the industry. Efforts to substantively prove a connection between legalised prostitution and increased trafficking are further explored in Chapter Four of this thesis.

### **1.3 Research questions and methodology**

In order to explore the impact the claim has had in debates on trafficking, two key research questions will be explored in this thesis:

- 1) What are the underlying assumptions and key arguments inherent in the claim that legalised prostitution leads to increased sex trafficking?
- 2) How influential have advocates of this claim been in recent policy decision-making about sex trafficking?

In order to answer these questions, four sub-questions were developed.

**Sub-question 1: How is the claim constructed?**

This question explores the construction of the claim by identifying the key assumptions that are implicit within the claim. These assumptions correlate to key arguments and policy proposals that, together, form the anatomy of the claim that legalised prostitution leads to increased trafficking.

**Sub-question 2: How has the claim been deployed within policy debates?**

This question considers the origins of the claim, the instances in which the claim has been deployed, and the tactics used to present the claim in formal decision-making processes within the Australian Parliament and the US Congress.

**Sub-question 3: How has the claim been substantiated within policy debates?**

This question first explores attempts to quantify the problem of human trafficking and identifies the key obstacles to obtaining reliable data. It then focuses on the ways in which advocates of the claim have attempted substantiation through statistical evidence or logical argumentation. How decision-makers valued evidence is also explored.

**Sub-question 4: To what extent have decision-makers accepted or rejected the claim?**

This question aims to measure the extent to which decision-makers have accepted or rejected the claim that legalised prostitution leads to an increase in trafficking. This measurement draws on the work of Kingdon (2003) and Weitzer

(2007a). It demonstrates the extent to which decision-makers have accepted or rejected the claim in three key aspects of agenda-setting: the recognition of a problem, the acceptance and establishment of policy, and the adoption of an ideology.

### **1.3.1 Research methods**

To answer these sub-questions, a mix of qualitative methods was employed including:

- A thorough interrogation of the existing literature regarding the link between prostitution and trafficking, the development of anti-trafficking policy, and the actions of advocates of 'the claim'. This review of the literature is incorporated into each of the following chapters (and thus there is no separate literature review chapter).
- Comparative case studies of Australia and the United States composed of:
  - Document analysis of parliamentary and congressional hearings, government statements and reports, and legislation about sex trafficking (see Section 1.3.4). Key documents were firstly analysed to identify the ways in which the claim had been deployed, substantiated, accepted or rejected within the legislative process. Document analysis is a useful technique as it provides valuable evidence of events and processes, and establishes routes of inquiry for the interview stage of the research (Patton 2002, 294). In particular, this analysis assisted in the identification of key aspects of the claim, as well as the ways in which advocates presented and substantiated key assumptions within the claim, allowing for a thorough description of the role the claim played within policy debates. In addition, a close analysis of responses from policy-makers during the hearings, as well as final trafficking legislation, offered an insight into the extent to which decision-makers accepted or rejected the claim. Document analysis also enabled the identification of key witnesses and advocates of the claim who took part in the congressional hearings and parliamentary inquiries.

- Interviews with 15 key informants in Australia and the United States about their views on 'the claim', and their experiences with the development of anti-trafficking policy. In addition to the analysis of the documentation, these semi-structured interviews (Aberbach and Rockman 2002) were conducted with key informants identified through the document review as being involved in the policy debates, including government officials and individuals from organisations who made submissions or gave witness testimony at the hearings or inquiries. Interview evidence was essential to capture the often ad hoc element (Kvale 1996) of policy-making that takes place through casual communication, and the building of coalitions and personal relationships. Interviews were utilised to confirm theories formed during the document analysis, as well as to identify the machinations of policy-making that were not recorded through official documentation.

In answering Sub-Question 4, it was necessary to also establish a framework through which to measure influence and establish causality between the advocacy of the claim and the establishment of government policy. Frameworks established by Kingdon (2003) and Weitzer (2007a) demonstrate how the impact of an idea (such as the claim that there is a causal link between legal prostitution and trafficking) can be measured according to specific policy-making processes and key indicators in government behaviour. Kingdon identifies the recognition of a 'problem', the adoption of proposed 'policy solutions', and the intricacies of 'politics' as the three key phases of the agenda setting and decision-making process (Kingdon 2003, 1). Weitzer's (2007) work on the institutionalisation of abolitionist claims identifies factors such as consultation, inclusion and collaboration as indicators of government adoption of ideology. These frameworks will be described in detail in Chapter Five.

### 1.3.2 Comparative approach

This research uses a comparative approach to explore the influence of the claim utilising case studies of Australia and the United States. A comparative approach has been chosen as it offers an excellent lens through which to examine political phenomena (Collier 1993, 5). Lijphart advocates the use of John Stuart Mill's 'method of difference' to explore cases. He argues this method is particularly useful in comparative research where the political phenomena being observed occurred in one case, but not the other, as the analysis of differences could highlight some of the causes of the occurrence (Lijphart 1971, 687). A 'method of difference' approach certainly offers an excellent critique in assessing legislative outcomes between the United States and Australia, as preliminary investigations indicated some divergence in the impact of the claim in each country. In the United States the claim appeared to have a strong impact, while in Australia the impact could not be so easily observed. Utilising a comparative approach, or method of difference, allows for a full exploration of the impact of the claim through the examination of both similar and different variables in two key cases. Comparative research helps to 'explain similarities and differences between social phenomena' (Becker and Bryman 2004, 390) and will be useful in exploring the different ways in which the claim has pervaded public debate in Australia and the US.

The selection of two case studies for this project also facilitates the exploration of causal relationships as 'they do not look for the net effect of a cause over a large number of cases, but rather how causes interact in the context of a particular case or a few cases to produce an outcome' (Bennett and Elman 2006, 458). This is particularly useful in this instance as the selection of two case studies will allow for a detailed analysis of each study, but also highlight key differences that have contributed to differing outcomes. Restricting the research to two case studies also enables 'close analysis of relatively few observations' (Collier 1991, 7), allowing for a detailed analysis, yet not limiting analysis to only one case. A comparative approach is also appropriate for this research as the study is concerned with a specific period of time in which policy-making has occurred. Mahoney argues that qualitative comparative analysis lends itself to an

exploration of 'critical junctures' (Mahoney 2007, 126), enabling an analysis of the specific impact the claim has had on the development of anti-trafficking policy within a specific timeframe.

In comparative studies researchers often argue for the need to compare 'like with like' in order to 'ensure comparability' (Carmel 204, 126). However, the need for a comparison of exact equals can be exaggerated, especially when comparative research is so often employed in order to determine the causal factors behind key differences in cases – using a 'method of difference'. While the comparison of cases that are exactly similar is not required, comparative analysis of similar, but not identical, cases can allow for what May (2003) describes as a 'salutary feature' of a comparative approach. She argues that the discovery that 'social problems may be differently perceived in different places' is an expected, and excellent, benefit of comparative research (May 2003, 20). Comparability problems can also be overcome by ensuring that the concepts being explored 'travel' from country to country without the meaning being changed or lost (Rose 1991). The selection of cases plays a key role in limiting comparability problems, and maintaining consistency of key concepts (Carmel 2004, 129) while also ensuring a diversity in the cases that allows for 'method of difference' analysis to be undertaken.

### **1.3.3 Selection of case studies – Australia and the United States**

Australia and the United States have been selected as case studies for this research primarily due to their relevance to international trafficking debates, and their dichotomous approaches to domestic prostitution.

The United States is a self-declared world leader against human trafficking (TIP Report 2009), and has utilised its extensive resources in providing funding to combat trafficking not only to organisations in the United States, but around the world. The US has also positioned itself as the world's watchdog when it comes to trafficking by establishing its annual Trafficking in Persons (TIP) Report, which rates nations according to their efforts in preventing and prosecuting trafficking. The US threatens to impose sanctions on those countries which

under-perform in this area. Thus the selection of the United States as a case study for this research is almost mandatory due to its self-declared status as the leader in efforts against human trafficking, and the significant influence it can wield over the approaches of other nations.

Australia has been selected as a point of focus for this study largely because of the nation's distinctiveness within sex work debates at present. Saunders (forthcoming) argues that Australia is a unique example of a destination country for trafficking due to the legalisation of prostitution across Australia's states and territories. This legalisation establishes a key point of difference between Australia and the United States as case studies. The differing legislative approaches to prostitution allow for an exploration of the impact of the claim within two different contexts. Australia is not the only nation with legalised prostitution, however it is one of the few designated 'destination countries' for trafficking with a legal sex industry, and has been identified by anti-prostitution advocates as evidence of the claim that legalised prostitution leads to increased trafficking (Jeffreys 2008). As a result, Australia is also of relevance to international trafficking debates.

Australia and the United States represent an interesting contrast in domestic approaches to prostitution, which is a useful variable to explore in terms of establishing factors contributing to the acceptance or rejection of the claim in each country. Australia is moving towards greater liberalisation of the sex industry through legalisation and decriminalisation in several states (Quadara 2008). In contrast, the United States remains largely committed to criminalisation, with the recent criminalisation of prostitution in Rhode Island (ABC News 2009) leaving Nevada as the only state with some regulated prostitution.

Australia and the United States also share political similarities that offer an essential common point when comparing the policy-making process. Australia's 'Washminster' political system (Thompson 1994, 97) is based, in part, on that of the United States, enabling a reasonable comparison of policy-making processes. Australia is essentially a hybrid system drawing on the political structures of



both the United Kingdom and the United States. While Australia has a Parliament, like the US it is also a federal structure that allows for division of responsibilities between the State and the Federal Governments. In both Australia and the United States, criminal law relating to prostitution is established at the State level, while responsibility for human trafficking legislation lies at the Federal level. Both nations have a bi-cameral system, with legislation required to pass through two houses of government. Both nations also utilised hearings and inquiries as an information-gathering tool in the development of anti-trafficking legislation. A key difference between the two countries is the role of the countries' political leaders. In the US the President sits separate to the House of Representatives and the Congress, while in Australia the leader of the parliamentary party is also the political leader (Prime Minister) of the country. The impact of this difference will be explored later in this thesis, however it is clear that Australia and the US have enough political similarities to justify a comparison.

Other studies on prostitution and trafficking have demonstrated that Australia and the US offer a good comparison. Outshoorn utilised a comparative method in her edited volume on *Women's Movements, Democratic States and the Globalisation of Sex Commerce* (Outshoorn 2004). Outshoorn's book encompassed Australia and the United States, along with 10 other countries that are 'destination countries' for trafficking. Outshoorn argues that a comparative method was most effective for this study of prostitution politics because it 'allows for a rich and detailed analysis of complicated processes with sufficient attention to different cultural contexts' (Outshoorn 2004, 14). In their exploration of government assistance to victims of human trafficking Gajic-Veljanoski and Stewart (2007) compared Australia with the United States as well as Canada, Germany, Italy, the Netherlands and the United Kingdom. Breckenridge (2004) also focused on Australia and the US in her comparison of child sex tourism laws, demonstrating that the two nations were active on the issue and implementing legislation aimed towards addressing similar problems. A decade before, Healy (1994) also chose Australia and the United States for a comparative study of child sex tourism. She also incorporated Sweden as a case

study in her exploration of nations' efforts to satisfy international law with domestic legislation (Healy 1994). Macklin (1998) also utilised a cross-national approach in a related field, exploring gender-related asylum claims in the United States, Canada and Australia.

### **1.3.4 Scope of the project and document selection**

Since the 1990s a very large number of legal and policy documents dealing with trafficking have been generated in both the United States and Australia. Moreover, the development and implementation of legislation on human trafficking are ongoing in both countries. In order to work with a manageable set of texts, the scope of this research focuses specifically on the impact of the claim in early efforts to establish anti-trafficking legislation in both of these countries. This early legislation has guided anti-trafficking efforts in these countries over the last decade and thus also set the basic framework for debate in the years that followed. I have therefore restricted the scope of this research to these early efforts. In Australia this encompasses inquiries and legislation in Australia between 2003 and 2005. In the United States the Congressional hearings between 1999 and 2005 and legislation establishing the *Trafficking Victims Protection Act 2000* and the Reauthorizations in 2003 and 2005 are explored.

#### **United States**

Transcripts from the Congressional hearings including the discussion, submissions and witness testimony related to the *Trafficking Victims Protection Act 2000*, the *Trafficking Victims Reauthorization Act 2003* and the *Trafficking Victims Protection Reauthorization Act 2005*:

- *Trafficking of Women and Children in the International Sex Trade*, US House of Representatives Hearing before the Subcommittee on International Operations and Human Rights, Committee on International Relations, 14 September 1999, 106 Congress, 1<sup>st</sup> Session.
- *International Trafficking in Women and Children*, US Senate Hearing before the Subcommittee on Near Eastern and South Asian Affairs,

Committee on Foreign Relations, 22 February and 4 April 2000, 106 Congress, 2<sup>nd</sup> Session.

- *Implementation of the Trafficking Victims Protection Act*, US House of Representatives Hearing before the Committee on International Relations, 29 November 2001, 107 Congress, 1<sup>st</sup> Session.
- *Monitoring and Combating Trafficking in Persons: How are we doing?* US Senate Hearing before the Subcommittee on Near Eastern and South Asian Affairs, Committee on Foreign Relations, 7 March 2002, 107 Congress, 2<sup>nd</sup> Session.
- *Foreign Government Complicity in Human Trafficking: A Review of the State Department's '2002 Trafficking in Person's Report'*, US House of Representatives, Hearing before the Committee on International Relations, 19 June 2002, 107 Congress, 2<sup>nd</sup> Session.
- *Trafficking in Women and Children in East Asia and Beyond: A review of US Policy*, US Senate, Hearing before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, 9 April 2003, 108 Congress, 1<sup>st</sup> Session.
- *Global Trends in Trafficking and the 'Trafficking in Persons Report'*, US House of Representatives, Hearing before the Subcommittee on International Terrorism, Non-Proliferation and Human Rights, Committee on International Relations, 25 June 2003, 108 Congress, 1<sup>st</sup> Session.
- *The Ongoing Tragedy of International Slavery and Human Trafficking: An Overview*, US House of Representatives, Hearing before the Subcommittee on Human Rights and Wellness, Committee on Government Reform, 29 October 2003. 108 Congress, 1<sup>st</sup> Session.
- *Trafficking in Persons: A Global review*, US House of Representatives, Hearing before the Subcommittee on International Terrorism, Non-Proliferation and Human Rights, Committee on International Relations, 24 June 2004, 108 Congress, 2<sup>nd</sup> Session.
- *Trafficking in Persons: The Federal Government's Approach to Eradicate this Worldwide Problem*, US House of Representatives, Hearing before the Subcommittee on Human Rights and Wellness, Committee on

Government Reform, 8 July 2004, 108 Congress, 2<sup>nd</sup> Session.

- *Combating Human Trafficking: Achieving Zero Tolerance*, US House of Representatives, Hearing before the Subcommittee on Africa, Global Human Rights and International Operations, Committee on International Relations, 9 March 2005, 109 Congress, 1<sup>st</sup> Session.
- Official statements by the government surrounding anti-trafficking efforts including the National Security Presidential Directive 22 and the Trafficking in Persons annual reports.

### **Australia**

- Submissions to the Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude 2003-2004*
- Transcripts of the Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude*
  - *The Trafficking of Women for Sexual Servitude*, Australian Parliament, Public Hearing of the Parliamentary Joint Committee on the Australian Crime Commission, 18 November 2003
  - *The Trafficking of Women for Sexual Servitude*, Australian Parliament, Public Hearing of the Parliamentary Joint Committee on the Australian Crime Commission, 25 February 2004.
- Final Report of the Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude 2004*
- Supplementary report of the Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude 2004*
- Government response to the Report of the Parliamentary Joint Committee on the Australian Crime Commission *Inquiry into the trafficking of women for sexual servitude June 2004*.
- Submissions to the Parliamentary Senate Legal and Constitutional Legislation Committee *Inquiry into Criminal Code Amendment (Trafficking*

in Persons Offences) Bill 2004

- Transcripts of the Parliamentary Senate Legal and Constitutional Legislation Committee *Inquiry into Criminal Code Amendment* (Trafficking in Persons Offences) Bill 2004, 23 February 2005
- *Report of the Parliamentary Senate Legal and Constitutional Legislation Committee on the Criminal Code Amendment* (Trafficking in Persons Offences) Bill 2004 [2005], March 2005
- Australian House of Representatives *Official Hansard*, 21 and 24 June 2005
- Official statements from the government on anti-trafficking efforts.

#### **1.4 Thesis argument**

This thesis argues that advocates of the claim (that legalised prostitution leads to increased sex trafficking) mobilised several key assumptions in order to establish their arguments and influence policy-making. Advocates of the claim have been more influential in the US, while not as successful in Australia.

In the United States, advocates of the claim have achieved almost total success. Decision-makers have explicitly accepted the claim as fact and established it as a basis for US government policy on human trafficking. Advocates of the claim in the United States cannot, however, claim total success as decision-makers have refrained from explicitly condemning or sanctioning nations with systems of legalised prostitution.

This success in the United States is largely the result of the creation of an assumed consensus supportive of the belief that legalised prostitution leads to an increase in trafficking. This was produced through the establishment of a strong, but limited, narrative of the 'truth' of trafficking, the creation of a powerful alliance between feminist and religious organisations, the silencing of any opposition to the claim, and a willingness of decision-makers to accept argumentation in the absence of evidence.

In Australia, advocates of the claim were heard, though were not as successful as their counterparts in the United States in persuading Australian decision-makers

that legalised prostitution leads to an increase in sex trafficking. Decision-makers in Australia made attempts to avoid an explicit acceptance or rejection of the claim, though statements and actions indicate both some acceptance and some rejection of the claims made by abolitionists. The failure of advocates to persuade decision-makers of the need to address legalised prostitution in order to prevent trafficking is due in part to a political culture more supportive of a liberalised approach to prostitution, a stronger emphasis placed on fact-based evidence by decision-makers, and the active involvement of sex workers and sex workers' advocates in the decision-making process.

### **1.5 Chapter outline**

In Chapter Two, the historical emergence of the claim of a link between legalised prostitution and sex trafficking is explored. International trafficking debates in the nineteenth and twentieth century are also examined. This chapter identifies the polarisation of perspectives about the legitimacy of prostitution and its relationship to trafficking. I outline where this polarisation has occurred during the negotiations surrounding the United Nations Protocol on Trafficking, as well as the political debates in Australia and the United States.

Chapter Three provides a detailed 'anatomy' of the claim that legalised prostitution leads to increased trafficking by identifying key assumptions implicit within the claim. This chapter also investigates the deployment of the claim in policy debates in Australia and the United States.

Chapter Four focuses on efforts to substantiate 'the claim'. Firstly, the challenges researchers face in quantifying both the size and nature of the human trafficking phenomenon that have an impact on efforts to prove or disprove the claim are identified. The attempts by abolitionist campaigners in Australia and the United States to substantiate the claim are then explored. These were important during congressional and parliamentary hearings prior to the introduction of new anti-trafficking laws.

Chapter Five explores the reactions of policy-makers to the claim through an analysis of their statements during the hearings and inquiries. This chapter also analyses the final anti-trafficking legislation in an effort to measure the extent to which decision-makers accepted or rejected the claim that legalised prostitution leads to increased trafficking.

Chapter Six examines some of the key similarities and differences between the Australian and US debates. This chapter explores the impact of different legislative systems and political cultures on the acceptance or rejection of 'the claim'. It also looks at the tactics used by abolitionist campaigners, and the involvement of sex workers' advocates and faith based organisations in the political debates.

Chapter Seven is a brief conclusion.

## **CHAPTER TWO – THE HISTORY OF THE CLAIM**

The claim that legalised prostitution leads to increased sex trafficking is not new. Abolitionist campaigners have long combined their opposition to prostitution with the campaign against human trafficking. They argue that any sort of tolerated or legal prostitution leads to more women and girls being trafficked for the purposes of prostitution.

This chapter argues that the claim that legalised prostitution leads to increased trafficking has been a persistent feature of trafficking debates throughout the nineteenth and twentieth century. It also argues that debate over the claim is characterised by a fundamental dispute concerning the legitimacy of prostitution, clearly represented by two opposing perspectives – the ‘abolitionist’ and ‘sex work’ perspectives. This chapter begins with a brief history of ‘the claim’ undertaken by examining international debates about trafficking in the late nineteenth and early twentieth century when the abolitionist position first emerged. It also explores the re-emergence of concerns about trafficking in the late twentieth century. The second section of this chapter discusses the key positions that can be identified in recent public debates about sex trafficking. The third section of this chapter explores these competing perspectives as they influenced the development of the UN Protocol. The final section outlines the emergence of the claim in anti-trafficking debates in Australia and the United States.

### **2.1 Campaigns against sex trafficking**

Concerns about the trafficking of women for sex first emerged in the late nineteenth century. Characterised as a ‘new’ slavery (Musto 2009, 284), or the ‘white slave trade’ (Jeffreys 1997, 10), sex trafficking was initially understood to be quite distinct from traditional slavery in which marginalised racial groups were the focus of exploitation. However, the public outcry against this ‘new’ form of slavery was extremely racialised, with public campaigns depicting victims as



innocent, virginal and white (Jeffreys 1997, 10). The concern was that white, western women were being seduced, abducted and exploited by 'South American, African or "Oriental" (non-white) men' (Doezema in Segrave, Milivojevic and Pickering 2009, 1). Evidence suggests that this concern was misplaced, as very few cases of either white or non-white women being abducted and exploited were uncovered during this period (Jeffreys 1997, 8).

Weeks suggests that concern surrounding sex trafficking in the late nineteenth century was more likely a reflection of social concerns linked to society's changing sexual mores and the desire for social control (Weeks 1981, 89). He argues that the 'panic' surrounding sex trafficking was a transference of concern around perceived threats to sexual morality posed by the increasing visibility of sexuality and promiscuity. The sex industry, as the most visible indicator of a liberalising sexuality and increasing 'permissiveness', became the focus of moral outrage (Weeks 1981, 88). Kempadoo (2005, x) suggests that concern about trafficking was also fuelled by increased migration. She argues that the globalisation of labour following the abolition of slavery in the mid-nineteenth century saw the movement of many women across borders, some of whom were working in prostitution. She says,

The ever-growing number of women travelling abroad for work and new life opportunities caused great anxiety and suspicion among middle-classes and elites, reinforcing ideologies about the entrapment and enslavement of, particularly, white, Western European, and North American women in prostitution (Kempadoo 2005, x).

Despite evidence that the women travelling for prostitution in the early 1900s were aware that they would be working in the sex industry (Jeffreys 1997, 8), public concerns were based on the belief that there was a large trade in women who had been kidnapped or deceived. Chapkis (2003) argues that the public's willingness to 'panic' about young women being 'lured' or 'kidnapped' was consistent with a history of imposing increased 'state scrutiny and control' on poor women involved in prostitution (Chapkis 2003, 923).

During the early twentieth century social purity campaigners began focusing their efforts on the issue of sex trafficking (Saunders 2005; Jeffreys 1997). Their campaigns encompassed wide areas of sexuality ranging from concerns about the age of consent, the abolition of prostitution, pornography and the gendered double-standard for sexual behaviour (Weeks 1981). During these campaigns, attacks on legalised, or regulated, prostitution were carried out under the banner of activism against sex trafficking. Jeffreys argues that, 'For feminists, campaigning against the White Slave Traffic was a way of gaining ground in their struggle against prostitution in general' (Jeffreys 1997, 8). Their efforts included lobbying for the closure of brothels and the establishment of 'rescue' missions to take women out of prostitution. Campaigners also opposed the legalisation or state regulation of brothels (Outshoorn 2005, 142), and aimed for the abolition of all prostitution.

These anti-trafficking campaigns ultimately led to the development of international conventions aimed at preventing the traffic in women. The first major international discussions on trafficking were held in London in the late 19<sup>th</sup> century, followed by international conferences in 1902 and 1910. This led to the creation of two separate international conventions (Jeffreys 1997, 12). International interest in preventing sex trafficking then peaked in the mid twentieth century, with the establishment of the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others* (hereafter referred to as the 1949 Trafficking Convention). The Convention adopted a clearly abolitionist approach to prostitution. Jeffreys says the Convention, 'provided for the punishment of anyone who kept or managed a brothel or in any way exploited the prostitution of another, and thus sounded the death-knell for licensed brothels' (Jeffreys 1997, 14).

Widespread international support for the Convention was not forthcoming, as many nations, including Australia and the United States, chose not to sign or ratify it. There is no commonly agreed explanation as to why countries did not sign, though Outshoorn suggests trafficking had 'simply faded from the public eye' by 1949 (Outshoorn 2005, 142). Jeffreys argues that 'changes in sexual

morality' during the 1950s and 1960s 'created a less sympathetic climate' for a focus on sex trafficking (Jeffreys 1997, 14).

Towards the end of the twentieth century interest in sex trafficking re-emerged and many radical feminists, who were involved in campaigns against pornography, began also to campaign against prostitution and trafficking. From this perspective there was a direct link between the sexual exploitation of women in pornography, prostitution and trafficking (Walkowitz 1980, 123). Some authors suggest the increasing movement of women across international borders was also partly responsible for increased international attention on trafficking. The collapse of the Soviet Union (Kara 2009, 24; Musto 2009, 282) along with increasing economic development and globalisation (Jeffreys 1997, 307) generated an increased supply of low-wage labour. Increasing numbers of women fleeing poverty in 'source' countries were now seeking employment opportunities in 'destination countries' (Brysk 2009, 9). Outshoorn (2005, 142) argues that these increases in international migration and tourism, along with a further 'liberalisation of sexual mores' and expanding sex industry, sparked a renewed political debate on prostitution and sex trafficking.

Concern surrounding the growing AIDS epidemic (Outshoorn 2005, 143) and sex tourism, as well as re-energised efforts by anti-prostitution advocates to renew the 1949 Trafficking Convention (Murray 1998, 51) added to the increasing international attention. In 1993 the Coalition Against Trafficking in Women (CATW) organised a conference to 'heighten awareness of the sex trade and to stem the sale of humans into bondage' (Asia Watch 1993, 149), and lobbied consistently for a new international forum to address trafficking. Awareness was certainly fuelled by growing media interest in sex trafficking, and the proliferation of films and documentaries portraying the plight of victims coerced into the sex industry (Brysk 2009, 11). Amid this resurgence of international interest in sex trafficking Asia Watch produced their report, *A Modern Form of Slavery* (Asia Watch 1993). The report and subsequent speaking tour in Australia about the trafficking of Burmese women and girls into the sex industry in Thailand, provoked further debate in Australia and South-East Asia about sex trafficking.

International efforts to develop a new Convention against human trafficking began to build at the United Nations Beijing Women's Conference held in 1995. At this conference, an attempt by CATW to establish a new Convention Against Sexual Exploitation failed (Sullivan 2003, 71), however momentum was building for the development of a new international agreement on trafficking.

Between 1995 and 1999 the United Nations adopted several resolutions focused on human trafficking and violence against women (Ollus 2002, 4) indicating a greater involvement in efforts to combat trafficking. The United Nations Commission on Crime Prevention adopted a resolution on Combating the Organised Smuggling of Illegal Migrants in 1995, a resolution on Trafficking in Children in 1996, resolutions on Violence Against Women in 1996 and 1997, and a draft resolution on Illegal Migrants and Trafficking in Persons in 1998 (Ollus 2002, 4). In December 1998 the United Nations General Assembly adopted a Resolution on Transnational Organised Crime, establishing an Ad Hoc committee with the responsibility of drafting a new treaty on human trafficking (Schloenhardt 2009a, 2). Between January 1999 and October 2000 the committee held a series of eleven meetings at the UN International Crime Prevention Centre in Vienna where country delegations and non-government organisations negotiated over the development of a new international agreement (Ditmore and Wijers 2003, 79; Raymond 2002, 491).

During the negotiations, CATW again pushed for the Convention to include an abolitionist requirement for states to dismantle sex industries and oppose legalisation of prostitution. However, despite fears from many that disputes over the legitimacy of prostitution would prevent the creation of a new Convention, the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* was established in 2000 in Palermo, Italy. The Protocol established a definition of trafficking in international law, and recommended the introduction of domestic laws to combat trafficking. Under the 2000 Protocol, trafficking in persons is defined as:

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 (2000 Trafficking Protocol).

The term 'exploitation of the prostitution of others' is undefined within the 2000 Protocol and, as Sullivan notes, is 'transported from the 1949 Trafficking Convention' creating significant ambiguity (Sullivan 2003, 81). The ambiguity lies in the interpretation of the exploitation of the prostitution of others as this could be interpreted as sex work both forced and voluntary.

Unlike the 1949 Convention, the 2000 Trafficking Protocol does not require signatories to dismantle sex work operations, however it does not condone prostitution either. It is reasonable to suggest that the anti-prostitution principle of the 1949 Convention has not been carried through to the 2000 Trafficking Protocol to the same stringent degree, but nor has it been completely set aside. Sullivan argues, 'it is a compromise definition of trafficking but one which takes no clear position on the relation between prostitution and trafficking' (Sullivan 2003, 81).

To date, 117 member states have signed the Protocol and 139 are parties to it (United Nations 2010). This suggests the Protocol has been widely accepted in the international community. It has also, however, perpetuated debate over the many possible permutations of the relationship between prostitution and trafficking.

In addition to the establishment of the Protocol, an increased focus on security and migration in the early twenty-first century contributed to putting the issue of human trafficking on national agendas. DeStefano notes that following the terrorist attack on September 11, resources were swiftly channelled towards counter-terrorism efforts as well as border control and increased scrutiny on migration issues (DeStefano 2007, 139). In an environment of rising security concerns related to migration, governments have increased their focus on

irregular migration, people smuggling and people trafficking as a key political concern (Lee 2007, 2). This increased focus on border control has not been limited to the United States (Hudson 2007, 212; Kempadoo 2007, 82), and has seen the convergence in a number of countries of trafficking prevention and migration control (Milivojevic and Pickering 2008, 37).

## **2.2 Perspectives on prostitution and sex trafficking**

The debates leading to the development of the UN Trafficking Protocol reflected the diverging viewpoints demonstrated by feminists during the 'sex wars' of the late twentieth century (Segrave, Milivojevic and Pickering 2009, 2). In the pornography debates of the 1970s and 1980s and in later debates about prostitution, a clear split was evident amongst feminist campaigners. A fundamental disagreement about sex and prostitution (Doezema 1998, 37) characterises competing positions, and has found its way into trafficking debates. The two opposing perspectives most evident in trafficking debates are the abolitionist perspective (calling for the abolition of all prostitution) and the sex work perspective (which views prostitution as a form of 'labour').

### **2.2.1 The abolitionist perspective**

Radical feminists believe that prostitution is always oppressive and exploitative, and is the ultimate expression of men's power over women (Barry 1995, 11). Often described as the 'oppression paradigm' (Weitzer 2010), or the 'sexual domination discourse' (Outshoorn 2005, 145), this viewpoint sees prostitution as inherently harmful and dehumanising to women.

Those holding a radical feminist perspective are typically strongly opposed to the state regulation or decriminalisation of prostitution. The claim that legalised prostitution leads to increased trafficking emerges from a radical feminist approach to prostitution, grounded in the belief that the sex industry is not legitimate. This position is most often put forward by campaigners who support the 'abolitionist' perspective. The term 'abolitionist' was previously applied to

those who oppose all human slavery. In recent trafficking debates, however, the term has been used to describe those who support the abolition of prostitution (Jeffreys 2009, 316). In this thesis, the term will therefore be used in the context of its current meaning as a label for those who support the abolition of prostitution as a way to combat trafficking.

Not all those opposed to some form of legalised prostitution make the claim that legalised prostitution promotes trafficking. However, those who do subscribe to the claim are universally opposed to legalised prostitution and can therefore be termed 'abolitionist'. Abolitionist campaigners are sometimes termed as 'neo-abolitionist' (Segrave, Milivojevic and Pickering 2009, 3) in an effort to distinguish contemporary campaigners from the anti-prostitution activism of the nineteenth and early twentieth centuries. Both movements focus on the policy goal of the abolition of prostitution, and are characterised largely by differences in the justification offered for the policy. While nineteenth century abolitionists relied on protection rhetoric, calling for women to be 'saved' (Outshoorn 2005, 145), contemporary or neo-abolitionist movements focus on arguing about the impossibility of consent in commercial sexual encounters (Sullivan 2003, 69). However, many modern-day abolitionists still call for (and, in some cases, enact) the 'rescue' of trafficked women, indicating a close connection with the ideology of the nineteenth century abolitionist movement.

Early abolitionism enjoyed widespread support from most feminist activists involved in debates on the 'white slave trade' (Outshoorn 2005, 145), while contemporary abolitionism has been under sustained attack from sections of the feminist movement, as well as from the international sex workers' movement (Sullivan 2003, 70). One major critique of the abolitionist perspective is that it denies women agency by rejecting the capacity of women to enter into sex work voluntarily (Limoncelli 2009, 262). Post-colonial critiques also accuse the abolitionist perspective of perpetuating racialised understandings of migrant work by assuming that migrant women are inherently vulnerable and in need of protection (Agustin 2003, 378).

Some of the groups identified as abolitionist in this study include the Coalition Against Trafficking in Women (CATW), the Protection Project, the International Justice Mission and Project Respect.

### **2.2.2 The 'pro-rights' or 'sex work' perspective**

Organisations and individuals that reject the abolitionist position that legalised prostitution increases trafficking often campaign for legalised or decriminalised prostitution. However they are a more diverse group than abolitionists, drawing their support from different perspectives. Some seek to legalise prostitution as part of a harm minimisation strategy (described in Sullivan 2004, 21). Supporters of a harm minimisation approach argue that while the existence of a prostitution industry may not be desirable, the harms associated (including the exploitation of trafficked women) could be minimised through a regulatory approach. Other viewpoints seek to separate the issues of prostitution and trafficking to a greater extent. Supporters of a liberal viewpoint see prostitution as an issue of sexual freedom and choice (Bell 1994). Advocates of the 'sex work' perspective do not necessarily view prostitution as a liberal issue of choice, acknowledging the importance of power relations in undermining choice (Sullivan 2003, 76). However, advocates of the sex work perspective view prostitution as a form of labour (Segrave, Milivojevic and Pickering 2009, 5).

The dominant perspective among anti-abolitionists is the belief that prostitution is and should be regarded as work (Kempadoo and Doezema 1998, 5). This perspective will thus be referred to as the 'sex work perspective'. The 'sex work' and 'liberal' perspectives are not necessarily mutually exclusive, though Outshoorn emphasises that 'not all those adhering to the sex work position set prostitution within the same feminist framework' (Outshoorn 2005, 146). Advocates of the sex work perspective argue that there is a need to shift

political (and feminist) debate away from an abstract consideration of exploitation, morality and ethics and towards a concrete consideration of the health and safety of workers, their wages, working conditions and power relations with employers (Sullivan 2003, 70).



Some of the groups and individuals identified in this thesis as being supportive of the sex work perspective include the Scarlet Alliance (Australia's peak body representing sex workers and sex worker organisations), the Network of Sex Work Projects and the Urban Justice Centre Sex Workers' Project in New York.

### **2.3 'The claim' in negotiations leading to the development of the UN Protocol**

Disputes between these competing perspectives have characterised international and domestic debate over the last twenty years. At the Beijing Women's Conference CATW clashed with the Global Alliance Against Trafficking in Women (GAATW) on the adoption of the CATW proposed Convention Against Sexual Exploitation (Sullivan 2003, 73). GAATW argued that the proposed Convention took an anti-prostitution stance, and criticised it for undermining the rights of sex workers. Negotiations between January 1999 and October 2000 leading to the development of the UN Protocol also reflected the disputes identified above. The questions of consent and coercion were key to the debate (Segrave, Milivojevic and Pickering 2009, 16), with disputes over the legitimacy of prostitution threatening to undermine the creation of a Protocol.

Distinct 'strands of thought' were evident amongst the lobbying efforts of non-government organisations throughout this period (Saunders 2005, 347):

- **Abolitionists**, led by the Coalition Against Trafficking in Women, argued that prostitution is sexual exploitation and that legalised prostitution promotes trafficking. This group also argued for the Protocol to focus only or at least primarily on the trafficking of women and children for sexual exploitation (as opposed to men and boys and the other forms of labour exploitation commonly involved in human trafficking).
- **Non-abolitionists**, represented primarily by the Human Rights Caucus in association with the Global Alliance Against Trafficking in Women (GAATW), argued that sex trafficking is a problem but that other forms are also important (including domestic, agricultural and factory work).

They opposed forced prostitution while maintaining their support for sex work – including migrant sex work – as a legitimate form of labour.

These perspectives are also evident in trafficking debates at the domestic policy-making level.

## **2.4 'The claim' in anti-trafficking debates in Australia and the United States**

In Australia and the United States, significant changes were made to trafficking legislation in the late twentieth and early twenty-first century. These changes were, in part, a response to the establishment of the UN Trafficking Protocol. They were also a response to the increase in public interest in the trafficking problem in both nations. The claim that legalised prostitution leads to increased trafficking was evident in public debate.

### **2.4.1 The United States**

In the United States, the claim appeared in testimony in public hearings, as well as in official government documents from 1999 onwards.

The United States signed the Trafficking Protocol on 13 December 2000, and ratified it on 3 November 2005. The *Trafficking Victims Protection Act of 2000* (hereafter referred to as the TVPA 2000), the *Trafficking Victims Protection Reauthorization Act of 2003* (TVPRA 2003), and the *Trafficking Victims Protection Reauthorization Act of 2005* (TVPRA 2005) form the bulk of the United States' legal efforts to combat trafficking to date.

Much of the debate surrounding the initial US legislation focused on the distinction between 'forced' and 'voluntary' prostitution, with the resulting TVPA 2000 establishing a two-tier definition of trafficking. Forced prostitution was defined as 'severe trafficking', punishable under law, while transportation for the purposes of consensual prostitution was defined as 'trafficking', with no criminal sanctions attached. However, this approach came under significant criticism in

following years and the claim that legalised prostitution leads to increased sex trafficking emerged more strongly in Congressional hearings and submissions between 2001 and 2005 (Stolz 2007, 319) For example, in 2003 Janice Raymond of CATW testified to the House of Congress that:

We have found that there is a fundamental connection between the legal recognition of prostitution industries and the increase in victims of trafficking. Nowhere do we see this relationship more clearly than in countries advocating prostitution as an employment choice; or who foster outright legalisation; or who support the decriminalisation of the sex industry (US Congress House, 29 October 2003, 58).

This view was certainly not subscribed to by all the special interest groups involved in the hearings surrounding anti-trafficking legislation. For example, the International Human Rights Law Group (IHRLG), now known as Global Rights, testified that legalisation of prostitution should be part of the effort to combat trafficking (Stolz 2005, 413). The United States annual reports on trafficking have clearly rejected this argument. The Report released in June 2008 most clearly expresses this rejection by declaring:

The United States government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels as contributing to the phenomenon of trafficking in persons, and maintains that these activities should not be regulated as a legitimate form of work for any human being. Those who patronize the commercial sex industry form a demand which traffickers seek to satisfy (US TIP Report 2008, 24).

#### **2.4.2 Australia**

Australia signed the United Nations Protocol on 11 December 2002, and ratified the Trafficking Protocol on 14 September 2005 with the passage of new anti-trafficking offences via the *Criminal Code Amendment (Trafficking in Persons Offences) 2005*, the approval of extradition regulations under the *Extradition Act 1998*, and mutual assistance regulations under the *Mutual Assistance in Criminal*

*Matters Act 1987*. These legislative changes built on previously existing legislation introduced in 1999 through the *Criminal Code Amendment (Slavery and Sexual Services) Act* which outlawed sexual slavery, but did not create a specific offence of 'trafficking in persons' (Tailby 2001, 2). The Parliamentary Joint Committee on the Australian Crime Commission (ACC) Inquiry into the Trafficking of Women for Sexual Servitude was established in 2003, following increased media attention on the issue of human trafficking (The Australian 2003; Maltzahn 2008; Saunders forthcoming) and in response to calls for Australia to ratify the UN Protocol. This Inquiry was instrumental in the movement towards ratification of the Protocol and legislative changes. In 2003 Australia allocated more than \$20 million to be spent over four years to combat trafficking.

During the 2004 Parliamentary Joint Committee on the Australian Crime Commission Inquiry into the Trafficking of Women for Sexual Servitude the Coalition Against Trafficking in Women Australia (CATWA) argued that legalised prostitution leads to an increase in trafficking. They were supported in this view by the Australian Chapter of the International Commission of Jurists, and also the Catholic Women's League who argued that:

Efforts to legalise prostitution must be understood as inhibitors to the prosecution of those running illegal brothels and trafficking women (Catholic Women's League APJC Submission 2003, 2).

A counter viewpoint was offered by the Scarlet Alliance (the peak national organisation of sex worker rights organisations in Australia) who argued that decriminalisation was essential to ending exploitation. In their submission to the APJC Inquiry they stated that,

The granting of employment rights for these [sex] workers ... [would] remove the criminality attached to these individuals and their work [and] it would effectively remove the current need for them to be 'underground'. This would result in these highly marginalised workers having increased access to information, support, health services,

protection from exploitation and access to victim of crime support services (Scarlet Alliance APJC Submission 2003, 23).

## **2.5 Conclusion**

The claim that legalised prostitution leads to increased trafficking has been a consistent feature of trafficking debates for over a century. Currently it is the source of heated debate between abolitionist campaigners, and those who advocate a sex work approach to prostitution. This chapter has charted the appearances of the claim in early anti-trafficking and anti-prostitution campaigns, through to modern day debates on changes to prostitution laws and the development of anti-trafficking conventions and legislation. The history of the claim demonstrates that it is typically employed in trafficking debates by those holding an abolitionist approach to prostitution, and by those who seek to use trafficking legislation to prohibit sex work. The claim has manifested itself in a number of different ways in recent debate, through the use of arguments questioning the legitimacy of prostitution, and assertions on the link between prostitution and trafficking. These manifestations of the claim, and its deployment in public debates, will be the subject of the next chapter.

## **CHAPTER THREE – DECONSTRUCTING THE CLAIM**

As indicated in the previous chapter, the claim that legalised prostitution leads to increased sex trafficking has been present in public debate on trafficking for a very long time. This chapter provides an analysis of several key assumptions within the claim. It then explores the case studies of Australia and the United States and identifies where the claim has been deployed in recent policy debate. Finally, the use of victim stories within the debates as a tactic of persuasion is also explored. This Chapter argues that campaigners have deployed the claim in policy debates by presenting key assumptions in order to lay the groundwork for the proposal of policy changes. A common narrative has also been deployed which depicts trafficking in a manner supportive of the assumptions contained within the claim.

### **3.1 The anatomy of ‘the claim’**

Weitzer argues that, ‘moral crusades often make grand and unverifiable claims about the nature and prevalence of a particular “social evil” (Weitzer 2007a, 450). The claim that legalised prostitution leads to increased trafficking is like this and forms a key part of the abolitionist crusade against prostitution. Weitzer argues that 7 core claims are usually evident in abolitionist campaigns on prostitution and trafficking:

Claim 1: Prostitution is evil by definition; Claim 2: Violence is omnipresent in prostitution and sex trafficking; Claim 3: Customers and traffickers are the personification of evil; Claim 4: Sex workers lack agency; Claim 5: Prostitution and sex trafficking are inextricably linked; Claim 6: The magnitude of both prostitution and sex trafficking is high and has greatly increased in recent years; Claim 7: Legalization would make the situation far worse than it is at present (Weitzer 2007a, 450-458).

Claim 7 is most closely related to the claim being examined in this thesis – that legalised prostitution leads to increased trafficking. Assessing the underlying assumptions and corresponding suggestions contained within this one claim is an effective way of exploring the abolitionist ideology encapsulated in Weitzer's seven claims. This analysis also offers a greater insight into the ways in which advocates of the claim have deployed it within trafficking debates.

Several of the claims identified by Weitzer are clearly identifiable within advocates' argument that legalised prostitution leads to an increase in trafficking. These claims are not made in isolation and it is clear that while they represent distinct units, they link together to support an overall agenda, or what I am going to call an 'anatomy' of a claim. The anatomy of the claim that legalised prostitution leads to an increase in trafficking is made up of several key assumptions that are justified by core arguments and imply specific policy responses. These assumptions and arguments can also be understood as what Kingdon (2003, 16) calls 'problem recognition' and the implied policy responses as 'policy proposals' for consideration by decision-makers. In Kingdon's framework for agenda-setting, the way in which a problem is recognised by decision-makers can have a significant impact on the solutions that are eventually imposed. In trafficking debates, advocates of the claim support key assumptions that shape the problem of sex trafficking according to the abolitionist perspective. Once the problem has been defined in this manner, key policy proposals that are consistent with accepted assumptions can then be presented.

### **3.1.1 Key assumptions**

The initial basis for the claim that legalised prostitution leads to an increase in trafficking is more an assertion than an assumption and is that sex trafficking is a significant problem which requires official attention from legislators. While this starting point does not refer explicitly to prostitution, it lays the groundwork for gaining political support by ensuring that decision-makers recognise the existence of a 'problem'. The implied solution or 'policy proposal' is simply that

something must be done about sex trafficking. However the assertion that sex trafficking is a significant problem is often disputed (Murray 1998, Sanders and Campbell 2008). Decision-makers are often very willing to accept that there is a need to address sex trafficking, and therefore this aspect of the claim can be more accurately seen as a pre-cursor to, rather than an intrinsic element of, the claim. At the stage of public debates on trafficking, decision-makers are typically already in agreement with abolitionist advocates that sex trafficking is a significant problem. The more detailed exploration of this assumption is therefore concluded in Chapter Four where attempts to quantify the problem of trafficking and to prove the claim that legalised prostitution leads to increased trafficking are analysed.

Three key assumptions form the bulk of the anatomy of the claim that legalised prostitution leads to increased trafficking. Each assumption is accompanied by an implied policy response, all of which support the abolition of prostitution.

***Assumption 1: Sex trafficking is a unique problem***

The first assumption is that sex trafficking is a unique problem. The implication here is that trafficking for sexual exploitation is distinct to trafficking for other forms of forced labour, and therefore needs to be addressed separately. This again does not necessarily imply a condemnation of legalised prostitution, however the uniqueness of sex trafficking is justified through arguments that the sex industry is not a normal or legitimate industry. Advocates of the claim argue that sex trafficking is different to other forms of labour in part because sex work should not be considered a form of labour because of what abolitionists believe is the 'inherently dehumanising' (Barry 1995; Raymond 2004; Farley 2004) and exploitative nature of sex work. While neither arguments imply that legalised prostitution is a cause of trafficking, they do contribute to building the perception that there is something inherently problematic in the practice of prostitution that does not exist in other sectors such as agriculture or garment manufacturing. Building this perception is certainly necessary in laying the



groundwork for claims that more explicitly attack the practice of prostitution, and the legal status of it.

***Assumption 2: Demand for commercial sex must be addressed***

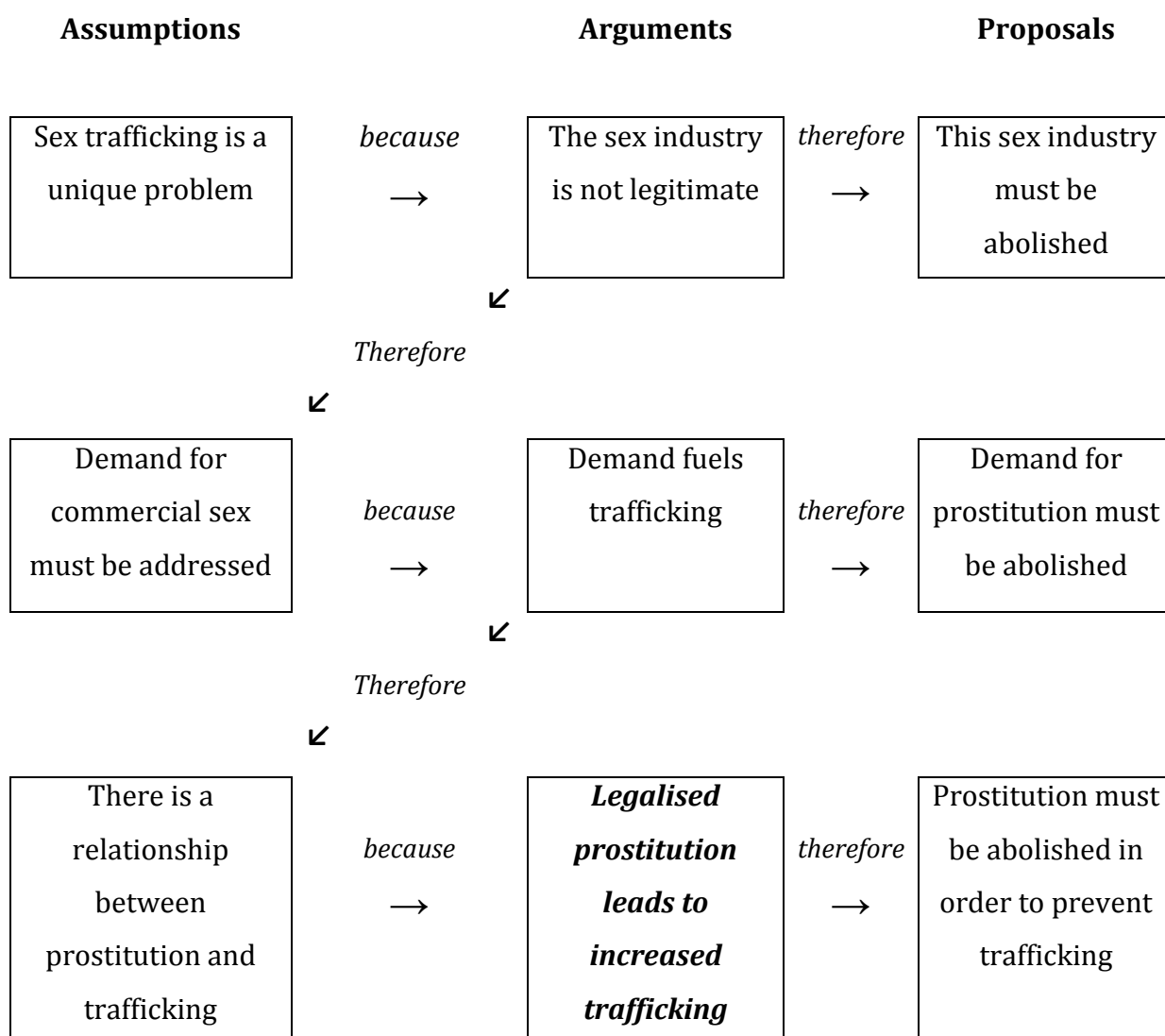
The second assumption inherent within 'the claim' is that men's demand for commercial sex services must be addressed in order to combat trafficking. This argument relies on the earlier assumption that the sex industry is distinct to other forms of labour as the demand for products such as footwear and orange juice is not attacked as a cause of trafficking, despite the existence of trafficking victims within the garment and agricultural industries. The assumption that demand must be addressed in order to prevent trafficking implies a specific policy solution, but only in the context of sex trafficking. It implies that it is necessary to abolish domestic prostitution in order to address sex trafficking.

***Assumption 3: There is a relationship between prostitution and trafficking***

The third assumption within the claim is that there is a relationship between prostitution and sex trafficking. Again, this assertion relies on the belief that the sex industry is unique, as other industries have not come under the same levels of scrutiny due to the existence of trafficked workers within them. In the anatomy of the claim, it is necessary to assume that there is a link between prostitution and trafficking in order to make the claim that legalised prostitution fuels trafficking.

The key assumptions and policy implications outlined above form the anatomy of the claim that legalised prostitution leads to increased trafficking. The following figure is a representation of how the assumptions link to key arguments and policy proposals contained within the claim.

### The anatomy of 'the claim' (Figure 1)



In what follows it is demonstrated that in both Australia and America, all these underlying assumptions were put forward during public debate about new trafficking laws. However, while the same assumptions, arguments and proposals are clearly evident, they are not necessarily presented in full or in the same way.

The next section of this Chapter will outline the deployment of the claim in the United States and Australia, utilising the anatomy identified above to

demonstrate the ways in which advocates presented not only the central claim, but also the key assumptions, arguments and policy proposals associated with the claim to decision-makers.

### **3.2 Deployment of ‘the claim’ in the United States**

The claim that legalised prostitution leads to an increase in trafficking was prevalent from the beginning of the Congressional hearings in 1999 that led to the development of trafficking legislation. Over the course of the next few years the claim manifested in different ways with a focus on certain aspects of the claim at different times.

#### **3.2.1 Sex trafficking is unique (because the sex industry is not a legitimate industry)**

The claim initially manifested itself in debate over whether or not prostitution should be considered as a form of labour, and whether or not trafficking for prostitution should be dealt with separately to trafficking for other forms of labour.

For example, Laura Lederer, a leading abolitionist speaking on behalf of the Protection Project, argued that the issue of sex trafficking was a special case. ‘I think I can speak safely for many women’s organisations when I say that they would believe that sex and labor aren’t the same and can’t be equated. They need to be separated’ (US Congress, House, 14 September 1999, 43). This position rejects the perspective of many sex workers and analysts that sex can also be regarded as work (Kempadoo and Doezema 1998). In later hearings, Professor Donna Hughes from the University of Rhode Island (a leading US abolitionist and member of CATW) also called for sex trafficking to be viewed as a special case, criticising the efforts of some campaigners to ‘legitimise prostitution as a form of work for women’ (US Congress, Senate, 9 April 2003, 20).

Jessica Neuwirth, Director of Equality Now (an abolitionist organisation), also argued against the legitimacy of the sex industry, urging the US government to avoid any policy initiatives that, 'legitimize the commercial sex industry' (US Congress, House, 29 November 2001, 55). In her testimony to Congress in 2003, Janice Raymond (co-founder of the Coalition Against Trafficking in Women and long time opponent to the legalisation of prostitution) linked the illegitimacy of the industry more closely to the claim that legalised prostitution leads to increased trafficking. She argued that in countries where prostitution is promoted as a form of employment, the links between prostitution and trafficking are more defined (US Congress, House, 29 October 2003, 58).

The argument that trafficking for prostitution is different to trafficking for other forms of labour is a key part of the claim that legalised prostitution leads to an increase in trafficking. It works from the assumption that sex is not a legitimate form of work and should not be recognised as such in any legislation pertaining to trafficking. While this assumption does not necessarily imply that a legalised system of prostitution is the cause of trafficking, it does contribute to building the perception that there is something inherently problematic in the practice of prostitution that does not exist in other sectors such as agriculture or garment manufacturing. Building this perception is certainly necessary in laying the groundwork for claims that more explicitly attack the practice of prostitution, and the legal status of it.

To some extent legislators in the US Congress accepted the argument that sex work is a specific case that should be dealt with separately in legislation against trafficking. For example, Congressman Hyde acknowledged competing viewpoints on the legitimacy of prostitution, but declared that Congress had decided to reject 'any effort to legitimize prostitution by treating it as just another kind of work' (US Congress, House, 29 November 2001, 2). Hyde also declared that legislators had resisted efforts to incorporate a broad definition of trafficking which encompassed forced labour in all industries, and instead would only incorporate 'a few particularly brutal forms of worker exploitation' (US Congress, House, 29 November 2001, 2). This kept the focus clearly on sex trafficking as a unique form of exploitation. Conservative Republican

Congressman Chris Smith, a leading sponsor of the anti-trafficking legislation in the United States and supporter of the abolitionist perspective, confirmed the view that sex trafficking should be treated as a unique form of exploitation, declaring that, 'We want to combat slavery. We want a comprehensive effort to do so, especially sexual slavery. Emphatically the legislation rejects the principle that commercial sex should be regarded as a legitimate form of work' (US Congress, House, 29 November 2001, 8).

These sorts of arguments are clearly evident in the final legislation, the TVPA 2000. The legislation identifies and defines sex trafficking separately to 'severe forms of trafficking', which is declared to be an offence relating to trafficking for all forms of labour, including sexual exploitation (*Trafficking Victims Protection Act 2000*). This will be discussed in more detail in Chapter Five, which analyses the final legislation in the context of legislators' acceptance or rejection of 'the claim'. However, at this point, it is important to note that the acceptance of sex trafficking as a unique and 'special case' led to discussion in Congress about the ways that sex trafficking should be dealt with; different solutions were then proposed for preventing sex trafficking and trafficking for other forms of labour.

### **3.2.2 Demand must be addressed to prevent trafficking (and therefore we must prohibit domestic prostitution)**

Many advocates of the claim that legalised prostitution leads to an increase in trafficking first put forward the argument that demand was the central problem, and that domestic demand for prostitution should be dealt with as part of the government's attempt to tackle trafficking of people into the United States.

For example, Congressman Chris Smith agreed that the demand for prostitution was one of the central problems associated with sex trafficking when he stated, 'we also need to hold to account the customers, and that is certainly where the demand aspect of this is so apparent (US Congress, House, 29 November 2001, 85). Lederer argued that,

We have to deal with that demand issue as well as with the fact that the women and children may feel like they need to do this, or that their parents may be selling them into it. There are all those customers on that other end there that are creating the need for the supply (US Congress, House, 14 September 1999, 39).

Hughes agreed with Lederer. Three years after the 1999 hearings Hughes was continuing the argument that demand is the central problem that creates sex trafficking; condoned prostitution was responsible for fuelling this demand, and therefore for trafficking. She said,

The trafficking process begins with the demand for victims to be used in prostitution. Countries with legal or widely tolerated prostitution create the demand and are the destination countries, while countries where traffickers easily recruit victims are the sending countries (US Congress, House, 19 June 2002, 73).

Hughes also questions the 'choice' by women to enter prostitution, again focussing on demand as the basis of the trafficking problem. She argued:

Unless compelled by poverty, past trauma or substance addiction, few women will voluntarily engage in prostitution. Where insufficient numbers of local women can be recruited, brothel owners and pimps place orders with traffickers for the number of women and children they need. In destination countries, pimps, organized crime groups, corrupt officials, and even governments devise strategies to protect the profits derived from the sale of women and children, which depends on maintaining the flow of foreign women to the brothels (US Congress, House, 19 June 2002, 73).

Congresswoman Diane Watson agreed with Hughes that demand was a problem, however she argued that addressing the relationship of demand to trafficking was not restricted to trafficking for sex. 'I wonder if we are doing enough to address the demands of sex tourism, commercial sex, human servitude, and inexpensive labor here in the United States' (US Congress, House, 19 June 2002, 42). Despite this attempt to consider the issue of demand as it relates to all forms

of human trafficking, the focus continued to remain on the problem of demand for prostitution, and how this could be addressed.

Gary Haugen of the International Justice Mission, along with others who gave testimony from different organisations, described the problem that demand creates as follows: ‘The demand certainly comes from those who visit the brothels for sex, but the brothel keeper can meet that demand through two different labor sources. They can entice with money or they can enslave with force, and to enslave with force is cheaper. So as long as they have a viable option of using a slave labor force, they will choose to do that’ (US Congress, House, 29 November 2001, 85).

In this argument Haugen stops short of advocating for the closure of brothels, simply making the argument that where demand exists there are two ways of meeting that demand, and the more profitable option will always be more appealing. This argument that demand will always result in exploitative choices, combined with an accepted paradigm that sex is not work, established a framework of assumptions that puts the practice of prostitution at the centre of the problem of sex trafficking.

### **3.2.3 There is a relationship between prostitution and trafficking (which is that legalised prostitution leads to increased trafficking)**

In the years immediately following the introduction of the *Trafficking Victims Protection Act* in 2000, the United States expanded its focus on the trafficking problem to also consider the approaches taken by other countries around the world. The Office to Monitor and Combat Trafficking in Persons was established with a primary role of investigating the extent to which nations around the world were combating trafficking. The TVPA 2000 mandated that the Office would compile an annual Trafficking in Persons report which would detail the efforts of other countries and assign to them a tier-ranking based on the efforts each country made to combat trafficking (TIP Report 2001). Countries deemed to have a ‘significant number of victims’ (which is defined as an estimate of more than 100 victims of trafficking), are automatically included in the rankings. Tier 1

nations are those that have criminalised trafficking, provide assistance to victims and continue to take action to prevent and prosecute trafficking. Tier 2 countries are those deemed to be taking action in some areas, but negligent in others (for instance a state that successfully prosecuted traffickers could be placed in Tier 2 for failing to provide support to victims). Tier 3 countries are those which are seen as not 'making significant efforts' to address trafficking (TIP Report 2001). Countries in Tier 3 can be subject to sanctions from the United States, 'principally termination of non-humanitarian, non-trade related assistance' (TIP Report 2001).

This increased focus on other nations brought with it a debate over the legalisation versus criminalisation of prostitution. Although this debate had also emerged at times during earlier hearings, criminalisation of prostitution in the United States (with the exception of several counties in Nevada) probably meant that advocates of the claim focused on other aspects of the debate such as the legitimacy of sex work and the problem of demand. Attacking legalised prostitution would have been seen as largely irrelevant due to the existing criminalisation of prostitution. However, many advocates clearly wished for greater efforts to be directed towards the abolition of prostitution. They may also have wanted to steer legislators away from following the lead of the Netherlands in decriminalising prostitution as part of efforts to minimise trafficking. As a result, campaigners initially called for a clear government position rejecting the legitimacy of sex work, and committing to efforts to reduce demand for commercial sex.

John Miller, a former Director of the TIP Office, reported in interview that the initial efforts of the TIP Office and the first TIP Report generated a great deal of debate over the legitimacy of prostitution due to the administration's decision not to condemn nations such as the Netherlands, Australia and Germany for their legalised systems of prostitution (Miller interview 2008).

Between 2001 and 2003, several witnesses at the hearings argued strongly that legalised prostitution leads to an increase in trafficking, challenging what they viewed as a failure of the Office to Monitor and Combat Trafficking in Persons to



properly address legalised prostitution as a cause of trafficking. For example, in 2001 Jessica Neuwirth of Equality Now explicitly put forward the claim that legal prostitution promotes sex trafficking and called on the US administration to clarify its position over legalised prostitution:

It is our hope that the legislation, as it relates to sex trafficking, will be implemented in the spirit of understanding with the commercial sex industry as a whole promotes trafficking ... Equality Now considers that the policy of the Administration on sex trafficking, as it relates to prostitution and the commercial sex industry as a whole, should be clarified. My understanding of the current policy is that it is intended to reflect a position of so-called neutrality on the question of legalization of prostitution. This position is not consistent with the understanding expressed in the legislation of the growth of the sex industry as a whole is related to the growth of sex trafficking (US Congress, Senate, 29 November 2001, 54).

Supporting this call for clarity, Congressmen Pitts and Smith questioned then-Under Secretary for Global Affairs Paula Dobriansky on the Administration's position on the legitimacy of prostitution. Congressman Smith noted that the Clinton Administration had only included forced prostitution in the legislation, thereby given tacit legitimisation to consensual prostitution. He asked Dobriansky to clarify the Bush Administration's position (US Congress, House, 29 November 2001, 19). She answered, 'Very simply, we oppose all forms of prostitution ... as well as the legalization of prostitution' (US Congress, House, 29 November 2001, 19). Smith later asked Neuwirth if she was satisfied with the answer. She replied:

We were very pleased with the answer. I think the challenge, though, is to get that answer from everyone in the State Department and everyone in the embassies. That is why we would really like to see some kind of formal policy articulated (US Congress, Senate, 29 November 2001, 79).

This request for a formal policy was joined by other calls from abolitionist advocates for the administration to declare that they did not support legalised

prostitution. These calls were eventually answered in the National Security Presidential Directive 22 (NSPD 22) issued on 25 February 2002 which declared prostitution to be 'inherently harmful and dehumanizing' and not a 'legitimate form of work for any human being' (NSPD 22, 16 December 2002). NSPD 22 required organisations receiving US government funds for trafficking or AIDS prevention to declare that they did not support the legalisation of prostitution. The origins and impact of NSPD 22 (hereafter called the Anti-Prostitution Pledge) will be further discussed in Chapter Five.

Despite NSPD 22 the advocates of the claim continued to exercise strong pressure on Congress to enact further legislation to directly address prostitution on a domestic level, as well as internationally. In 2002, for example, Hughes questioned the administration's opposition to legalised prostitution by attacking the then-Director of the TIP Office, Ambassador Nancy Ely-Raphel, for questioning the link between legalised prostitution and trafficking. Hughes said at the Congressional hearing:

Ambassador Ely-Raphel has said that the connection between legalised prostitution and trafficking is only anecdotal. I believe that view is either naïve or a lack of political will to face up to what the trafficking and the sex trade is all about. There is a connection between prostitution and trafficking ... The 2002 TIP Report profoundly fails to grasp the scope, magnitude, and causal factors of trafficking, and what efforts are needed to hold countries accountable for their complicity in the trafficking. The trafficking of women and children for prostitution will decrease when two things happen: one, there are sufficient arrests and convictions, with sentences commensurate with the severity of crimes to deter traffickers and corrupt officials from engaging in the buying and selling of victims; and two, there is a reduction in the demand for women and children to be used in prostitution (US Congress, House, 19 June 2002, 74).

Mohamed Mattar, Co-Director of the Protection Project, and Linda Smith, former Congresswoman and Founder of Shared Hope International, echoed Hughes'

criticism then called on the TIP Office to condemn nations with systems of legalised prostitution. Mattar testified that:

The TIP Report must take into consideration the scope of the problem of trafficking in a particular country, so that a country does not get a 'passing grade' in spite of the government's legalisation of prostitution which encourages the demand for commercial sexual exploitation which thus contributes to trafficking infrastructure (US Congress, House, 19 June 2002, 15).

Smith agreed with this position:

I encourage the administration to consider countries with legalised or tolerated prostitution as having laws that are insufficient efforts to eliminate trafficking. Studies now show that where there is a strong adult sex industry, the commercial sexual exploitation of children and sex slavery increases. Our observations confirm this as we see that (sic) where there is tolerated prostitution it provides cover for the traffickers to exploit the most vulnerable in the population, especially children. Criminalizing prostitution should not be limited to child prostitution but should include adult prostitution as well (US Congress, House, 19 June 2002, 66).

Similarly, Janice Raymond argued that:

Globalization of the sex industry means that countries are under an illusion if they think they can address trafficking without addressing prostitution ... We believe that state-sponsored prostitution is a root cause of trafficking. We call legalised or regulated prostitution state-sponsored, and many of these systems vary somewhat. But the common element, of course, is that the state becomes tolerant and accepts the system of prostitution and, in most cases, benefits from it. We have found that there is a fundamental connection between the legal recognition of prostitution industries and the increase in victims of trafficking. Nowhere do we see this relationship more clearly than in countries advocating prostitution as an employment choice; or who foster outright legalization;

or who support decriminalization of the sex industry (US Congress, House, 29 October 2003, 57-58).

Mattar supported Raymond's position at this hearing, arguing that, 'Demand for sexual services tends to be highest in areas of legalized or decriminalized prostitution. In order to fulfil the needs of customers of prostitution, traffickers seek out vulnerable victims, and use deception and force to keep them in prostitution' (US Congress, House, 29 October 2003, 93).

From the initial hearings in 1999 which shaped the TVPA 2000, through to the hearings up to 2003 which assessed the success of the legislation and those between 2003 and 2005 which looked to Reauthorisations of the Act, the claim had been advanced that legalised prostitution leads to an increase in trafficking. Initially advocates of the claim focused on persuading decision-makers that sex work was not a legitimate form of labour and that sex trafficking should, in some ways, be considered separately to trafficking for other forms of labour. Advocates of the claim then moved the debate on to a discussion about the need to address demand for prostitution, building on the established assumption that sex work was not legitimate. Finally, the claim that legalised prostitution leads to an increase in trafficking was made more explicit as congressional debate began to focus on the anti-trafficking efforts of other nations, and the administration's implementation of the TVPA through the Office to Monitor and Combat Trafficking.

### **3.3 Deployment of 'the claim' in Australia**

In Australia, the claim that legalised prostitution leads to an increase in trafficking appeared in relation to two key Parliamentary Inquiries held between 2003 and 2005. Aspects of the claim that were evident in the US hearings were also evident in the Australian inquiries.

### **3.3.1 Sex trafficking is unique (because the sex industry is not a legitimate industry)**

The Australian Parliamentary Joint Committee Inquiry in 2003 established the assumption that sex trafficking is unique by framing its inquiries solely on trafficking for the purposes of sexual exploitation. Several witnesses to both the 2003 and 2005 inquiries put forward the argument that the sex industry is not legitimate. For example, Kathleen Maltzahn, the founder of Project Respect (an anti-trafficking organisation in Australia), called into question the legitimacy of sex work. She raised the issue of choice and consent by arguing that, 'Prostitution can be an industry where women who have few choices find their lack of choices compounded and men exercise power over women' (Parliament of Australia, APJC Hearing, 18 November 2003, 49).

The Australian Catholic Migrant and Refugee Office drew on the Pope's views in their submission to the Senate Inquiry. They attached a letter from Pope John Paul II on the issue of trafficking to their submission, in which the Pope declares:

The disturbing tendency to treat prostitution as a business or industry not only contributes to the trade in human beings, but is itself evidence of a growing tendency to detach freedom from the moral law and to reduce the rich mystery of human sexuality to a mere commodity (Australian Catholic Migrant and Refugee Office, LCLC Submission, 2005, 3).

These sorts of views were challenged by a number of Australian organisations supporting sex workers' rights. For example, in their submission to the Senate Inquiry the Network of Sex Work Projects argued that, 'trafficking is not synonymous with sex work and this distinction is particularly important in Australia where sex work is decriminalised in a number of states and territories.' They argued that a 'broad approach' viewing sex work as a legitimate form of labour alongside other work was essential. They also argued that Australia did not need to include specific references to abuses in particular industries (such as the sex industry) in order to ratify the United Nations Trafficking Protocol (NSWP, LCLC Submission, 2005, 1).

The Scarlet Alliance also expressed concern that trafficking legislation might imply that the sex industry was a special case or somehow not a legitimate industry. They argued that:

Definitions of trafficking, deceptive recruiting and debt bondage need not specify the sex industry or sexual services as well as labour. Sex work is recognised as labour in Australia. Laws to address exploitation of any worker by default include sex work and exploitation through commercial sex work (Scarlet Alliance, LCLC Submission 2005, 5).

This issue was explored in detail during the 2005 Senate Inquiry, with the Scarlet Alliance again arguing that including mention of 'sexual service' or 'personal service' within the definition of trafficking would single out the sex industry. They proposed instead that:

if trafficking is the economic and migrant issue we all understand it to be, the definition should cover all industries, all work and all exploitation that arises from the involuntary movement of individuals or the trafficking of individuals and not just specifically relate to sex work (Scarlet Alliance, LCLC Submission, 2005, 17).

The Australian Federation of Aids Organisations echoed the Scarlet Alliance's concerns regarding the singling out of the sex industry. They suggested that 'special sanctions' for trafficking crimes relating to the sex industry 'only compounds the stigma associated with sex work' (AFAO, LCLC Submission, 2005, 2).

However, other organisations wanted a definition of trafficking that would single out the sex industry as a particular case of exploitation. World Vision was in favour of such a definition, though they also wished to have other forms of exploitation specified such as forced adoption and marriage (World Vision, LCLC Submission, 2005, 2).

A discussion about the inclusion of debt bondage<sup>3</sup> in the anti-trafficking legislation also raised differing perspectives on the legitimacy of the sex industry and whether or not sex trafficking is different to trafficking for other forms of labour. The Scarlet Alliance were concerned that the definition of trafficking to include debt bondage would restrict the ability of migrant sex workers to travel to Australia and would incorrectly view many migrant sex workers as trafficking victims. They argued:

In South East Asian countries such as Thailand, it is common to engage in a veritable agreement of payment in return for assistance in securing employment. This 'contract labour' (an agreement to make payment once work begins) is incorrectly defined as "Debt Bondage" in the Bill (Scarlet Alliance, LCLC Submission, 2005, 4).

The Sexual Service Providers' Advocacy Network also argued that the debt bondage sections of the legislation would restrict 'the ability of sexual service providers to arrange work through fairly negotiated contracts with sex industry businesses' (SSPAN, LCLC Submission, 2005, 1).

This concern seems warranted as other organisations were strongly in favour of debt bondage being included in the definition of trafficking. Project Respect submitted that, 'Debt bondage for sexual servitude is a unique circumstance and different to the selling of labour in other contexts ... If a contract exists for sexual services then the act of sex – or any sexual services provided – cannot be clearly consensual' (Project Respect, LCLC Submission, 2005, 7). The Coalition Against Trafficking in Women Australia (CATWA), the dominant abolitionist organisation in Australia represented by the leading Australian abolitionist Sheila Jeffreys, supported this position arguing that, 'debt bondage should apply specifically to "sex workers"' (CATWA, LCLC Submission, 2005, 2).

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<sup>3</sup> Debt bondage is a term used to refer to a system of contract slavery whereby a migrant worker agrees to repay a debt (usually incurred for arranging their transportation and employment in the destination country) through their labour. While definitions of debt bondage differ, typically a situation of debt bondage is seen to exist where the individual's debt is not adequately decreased as a result of their labour or where additional fees are added to the debt (Farr 2005, 25). Under Australian legislation, debt bondage is also seen to have occurred in situations where the original fee is deemed 'unreasonable' (*Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*).

Senator Mason also raised concerns as to whether or not any contract for work could meet the criteria established by the definition of debt bondage. He asked, 'Can anyone, from a Third World country at any rate, freely enter into an agreement when there is that sort of unequal bargaining power?' (Parliament of Australia, LCLC Hearing, 23 February 2005, 8).

The Scarlet Alliance also argued that resistance to their suggestion that work visas should be available to migrant sex workers indicated the sex industry was still not seen as equivalent to other labour industries in Australia. They declared that they viewed:

the practice of denying sex worker visas as discriminatory and ultimately very dangerous ... By denying sex workers visas to enter Australia, the federal government has created de facto sex industry law. Even though sex industry law is currently determined by states and territories, the status of migrant sex workers is in the hands of the federal government and will be further criminalised under these proposed amendments (Parliament of Australia, LCLC Hearing, 23 February 2005, 14).

The legitimacy of prostitution, and whether or not sex work should be singled out from other forms of labour where trafficking occurs, were clearly key issues during the Australian debates. However, in Australia many organisations also sought to challenge the assumption that sex trafficking was unique, while in the United States advocates of the claim were faced with little opposition to this assumption.

### **3.3.2 Demand must be addressed to prevent trafficking (and therefore prostitution must be abolished)**

In the Australian Parliamentary Inquiry the Swedish model<sup>4</sup> was presented at several points as an example of how addressing demand could help to prevent trafficking. Both Project Respect and CATWA advocated for the adoption of the

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<sup>4</sup> Identified in Chapter Two as a regulation of prostitution whereby the client is criminalised and the sex worker decriminalised.



Swedish model during the 2003 Inquiry. CATWA continued their calls for legislation to address demand during the 2005 Inquiry. Their submission called for the adoption of the Swedish model but expressed frustration that demand was unlikely to be addressed as, 'the right of men to buy women seems to be an important value in Australian political culture'. Thus they declared that, 'Other measures to reduce demand such as public education campaigns against men buying women for sex should be implemented immediately. We recommend that some measures to reduce demand for prostitution should go into the Bill as it is that demand that trafficking fulfils' (CATWA LCLC Submission 2005, 4).

Two submissions to the 2003 Inquiry also raised the question of the relationship between legalisation of prostitution and trafficking by focusing on the issue of demand. Brian Iselin, former Australian Federal Police Officer, argued in his submission that:

Trafficking for sexual servitude is very much about demand. While legalised prostitution on the one hand acts as an outlet for demand, it also creates demand by legitimising it in the minds of 'clients' that sex can be bought. And what can be bought can be sold ... We must take steps to reduce the perception that sex can be a legitimate commodity, freely bought and sold like a packet of cigarettes' (Iselin APJC Submission 2003).

Melinda Tynan from the Australasian Council for Women and Policing took a different approach to the issue. She identified demand as a problem, but proposed alternative restrictions on customers to address the demand for trafficked women:

Australian police services should focus their attention on the demand for trafficked women by the clients of brothels ... If brothels exist in our community, brothel users should be required to register their identity (e.g. drivers license) when using brothels (ACWP APJC Submission 2003).

Maltzahn also mirrors the argumentation of Jeffreys, CATWA, and US advocates of the claim by focusing on the issue of demand. Maltzahn states,

The other thing that I think is absolutely fundamental is the issue of demand for trafficking. If all we talk about is stopping the flow and fixing the problem after it has happened, we will have a lot of work for a long time (Parliament of Australia, APJC Hearing, 18 November 2003, 47).

Unlike Jeffreys, however, Maltzahn does draw a distinction between a demand for trafficked women versus women who may have voluntarily entered into prostitution. Jeffreys argues that, '...there is no separate demand for trafficked women. Male buyers do not make a special demand for trafficked women to use; they simply demand to buy prostituted women' (Parliament of Australia, APJC Hearing, 18 November 2003, 56). However Maltzahn says:

I do think we have to ask questions about why there is a demand for women who cannot refuse certain sexual acts, numbers of sexual acts, certain customers and sex without a condom. We have to start asking questions about what people are buying when they buy trafficked women (Parliament of Australia, APJC Hearing, 18 November 2003, 47).

This question implies that there is a distinction between women who have been trafficked for sex work, and those who have entered the industry voluntarily, particularly with regard to how much power those women have to reject certain customers and certain acts. Maltzahn makes this distinction clear by arguing that:

Part of what you sell with a trafficked woman is someone to whom you can do anything you want ... So I think it is absolutely true that trafficked women are made to do a whole lot of other things that other women in the industry may be able to say no to (Parliament of Australia, APJC Hearing, 18 November 2003, 47-48).

Project Respect's view with regard to addressing demand highlights that they do see sex trafficking as different to trafficking for other forms of labour. In their Submission to the Senate Inquiry, Project Respect recommends that men should be penalised for buying sex from a trafficked woman, and businesses should be penalised for knowingly engaging trafficked women (Project Respect, LCLC Submission, 2005, 11). However, no mention is made of punishing businesses of

other types for engaging trafficked workers, nor is there a suggestion that the purchasers of items or services in other industries (such as the garment or agricultural industry) that utilise trafficking victims should be penalised for their actions. This may be due to the fact that the Joint Parliamentary Inquiry limited its focus to trafficking for sexual servitude, however the draft legislation explored through the Senate Inquiry addressed all forms of trafficking. It is also possible that Project Respect would support this legislation because their organisational focus is on exploitation of women in the sex industry. However, their recommendations do also seem to be consistent with the view that the sex industry is a special case. Moreover, Maltzahn argues that trafficking still exists despite legalisation. She claims, 'in Victoria, certainly in our experience, most of the trafficking we know about goes into legal brothels' (Parliament of Australia, APJC Hearing, 18 November 2003, 48). So despite the apparent divergence between Project Respect and CATWA on demand, they end up in a very similar position.

### **3.3.3 There is a relationship between prostitution and trafficking (which is that legalised prostitution leads to increased trafficking)**

In the Australian Inquiries the claim that legalised prostitution leads to increased sex trafficking appeared regularly in submissions from women's organisations, researchers and campaigning organisations. Several membership-based groups who put forward submissions explicitly argued that the legalisation of prostitution leads to an increase in trafficking including the National Council of Women, the Catholic Women's League Australia and the Australian Section of the International Commission of Jurists.

The National Council of Women of Australia submitted that:

The legalising of brothels and the official acceptance of prostitution as legitimate business or 'an industry' in many Western countries are fuelling the demand for sexual services ... The signing of the UN Law on Trafficking will only make a difference if there is effective Australian law to curb prostitution. At present brothels both legal and illegal are

increasing in Australia and this fuels demand for workers (NCWA APJC Submission, 2003).

The same opinion is expressed by Peg McEntree on behalf of the Catholic Women's League Australia during the 2003 Inquiry. She says:

The sexual exploitation of women and young girls is a severe adversity that is representative of an expanding 'demand' for sexual servitude, aided by a profitable and legalised prostitution industry ... Efforts to legalise prostitution must be understood as inhibitors to the prosecution of those running illegal brothels, and trafficking women. Providing a shield to pimps, traffickers and buyers to escape or lessen penalties, such legislation functions to perpetuate this vicious cycle (CWLA APJC Submission 2003, 2).

To the Senate Inquiry, the Catholic Women's League Australia submitted that,

The prerequisite for the trafficking in women for sexual servitude is a profitable prostitution industry, aided through its legalisation ... Efforts to legalise prostitution must be understood as inhibitors to the prosecution of those running illegal brothels, and trafficking women. Providing a shield to pimps, traffickers and buyers to escape or lessen penalties, such legislation functions to perpetuate this vicious cycle (CWLA LCLC Submission 2005, 2).

Elizabeth Evatt, on behalf of the Australian Section of the International Commission of Jurists, acknowledges both sides of the debate in her submission, but supports advocates of the claim, even referencing Equality Now's position on the legalisation of prostitution. She says:

Some take the view that the decriminalisation of prostitution not only makes it easier to operate the commercial sex industry but also helps to promote and support international trafficking. NGOs in the US have emphasised the need to avoid legitimising the sex industry and to provide real employment alternatives for women rather than making the industry safe and legal ... This submission notes that while the decriminalisation of

prostitution is not a direct cause of trafficking, it does appear that the relaxation of legal prohibitions may enable exploitation of trafficked women to occur, without undue interference by legal authorities (Evatt APJC Submission 2005).

These individuals and organisations did not give testimony at later hearings, however their submissions were taken into account (*APJC Final Report 2004*). At the hearings the claim that legalised prostitution leads to an increase in trafficking was made by only two organisations – Project Respect and the Coalition Against Trafficking in Women Australia.

At the 2003 Inquiry the position of CATWA was represented by Sheila Jeffreys, the leading Australian abolitionist. Jeffreys focused on the issue of legalisation of prostitution as the key issue in her submission. She recommended that, ‘the legalisation of brothel prostitution in four Australian states should be reconsidered in light of the increased trafficking of women associated with the growth of prostitution as an economic sector.’ She argued that:

The demand that leads to the trafficking of women and girls into ‘sex slavery’ is the demand of the men who want to buy women and girls for sexual use ... The traffic in women to supply the legal and illegal brothels is an inevitable result of legalisation (CATWA APJC Submission 2003, 1).

Jeffreys’ argument for how legalised systems of prostitution promote trafficking shares much in common with the claims made by campaigners in the United States. She challenged the legitimacy of sex work as labour, identified demand as a key problem that must be addressed through legislation and argued that the legalisation or decriminalisation of prostitution simply fuelled this demand, leading to an increase in the number of trafficking victims (Parliament of Australia, APJC Hearing, 18 November 2003, 56-57).

In the CATWA submission to the 2005 Inquiry, Jeffreys (along with Jen Oriel, Carole Moschetti and Krishna Rajendra) argued that, ‘The toleration or legalisation of brothel prostitution increases and condones the demand for sexual services’ (CATWA LCLC Submission 2005, 4).

Jeffreys put forward four recommendations:

first, that Australia should ratify the 2000 protocol on trafficking; second, Australia should commit itself to fulfilling its commitments under article 9, which are towards ending the demand; third, Australian states and territories should be encouraged to look again at their policies of legalisation, which lead to huge increases in the legal and illegal sex industries and create the demand for trafficking; and, fourth, the Swedish model should be examined as a way forward for Australia (Parliament of Australia, APJC Hearing, 18 November 2003, 57).

The Swedish model was also advocated by the Catholic Women's League of Australia in their submission to the 2005 Senate Inquiry. Project Respect also mentioned the Swedish model, although they did not focus on this as their sole solution. Project Respect addressed a range of issues including prevention, prosecution and victim support. Moreover, Project Respect's discussion of the relationship between legalisation and trafficking stopped short of an outright declaration that legalised prostitution leads to an increase in trafficking, although they do argue for more consideration of the role that legalised prostitution has to play when formulating anti-trafficking legislation. For example, in Project Respect's submission to the hearing Maltzahn does make reference to cases of trafficking being discovered in a legal brothel in Melbourne (Project Respect APJC Submission 2003), calling into question whether or not legalised brothels are 'immune' from the problems associated with trafficking. She also argues that anti-trafficking legislation should not ignore the nature of the sex industry in destination countries. She says:

Project Respect believes that as a destination country, Australia should give particular consideration to "pull" factors – that is, the factors that cause women to be brought to Australia for prostitution. It is important to note that regardless of how poor or desperate a person might be, if there is no market for them in a destination country, they will not be trafficked ... An integrated and effective government response must address these "pull" factors (Project Respect APJC Submission 2003, 9).

This argument is reiterated by Georgina Costello of Project Respect who declared to the Parliamentary Inquiry that, 'It is hard to avoid looking at how prostitution laws and prostitution regulation are affected,' (Parliament of Australia, APJC Hearing, 18 November 2003, 32). These statements request an exploration of current legislation relating to domestic prostitution, without making demands for a particular approach. So, while Project Respect is not as explicit about their opposition to legalised prostitution as CATWA and Jeffreys, their arguments during the Parliamentary Inquiry in November 2003 share certain hallmarks of the anti-legalisation arguments put forward by Jeffreys.

### **3.4 Similarities and differences in the deployment of 'the claim'**

The claim that legalised prostitution leads to an increase in trafficking has been deployed in both the Australian and US hearings and inquiries, with similar elements of argumentation appearing in both.

Amongst advocates of the claim that legalised prostitution leads to an increase in trafficking there was much commonality over whether or not sex was a legitimate form of labour. In the United States advocates put forward this argument strongly and early in the process, creating a key assumption that would allow for further arguments against legalisation. In Australia CATWA and Project Respect both questioned the level of choice women faced when entering the sex industry, however they diverged on the issue of demand. While both organisations recognised that demand was a 'pull' factor for trafficking, CATWA denied that there was a distinction between demand for trafficked or non-trafficked women, while Project Respect believed that the demand for enslaved women could have different hallmarks to that for non-trafficked women. On the issue of legalisation, advocates of the claim in the US were strongly united in their position, calling for a clearer position domestically and greater action to be taken internationally against the legalisation of prostitution. In Australia, CATWA echoed this call, focusing almost exclusively on the legalisation of prostitution as the key problem in Australia's response to trafficking. Project Respect stopped short of an outright declaration of the claim. It argued that the legalisation of

prostitution in Australia did not provide sufficient protection against trafficking; so Project Respect urged legislators to look at state laws relating to prostitution as part of their recommendations for preventing sex trafficking.

The Australian experience differs from the US experience as advocates of the claim in part due to the structure of the Inquiries. In the United States hearings were conducted at regular intervals over a series of five years, whereas in Australia advocates of the claim were only able to build their case against legalised prostitution at two specific and limited inquiries. Advocates of the claim in Australia presented their case both through written submissions and at the hearings in 2003 and 2005. While the same key assumptions and policy proposals associated with the claim in the United States were presented in the Australian hearings, the approach taken by advocates of the claim differed slightly. In Australia, explicit attacks on legalised systems of prostitution emerged very early in the process, with less attention given to this issue towards the end of the development of legislation. This is probably due to the fact that the final report of the APJC Inquiry (2004) indicated that Parliament was unlikely to engage with the issue of the legalisation of prostitution. The subsequent LCLC Inquiry focused only on the draft trafficking legislation, leaving less scope for the exploration of related issues (such as the legitimacy of prostitution) during the hearings. Despite these limitations, the key assumptions and proposals implicit in the claim were evident in both the submissions and testimony of organisations. At times the claim was made explicitly, but aspects of the claim were also evident within discussion of the draft legislation and policy alternatives.

### **3.5 The use of 'true stories' in deployment of the claim**

The narratives of trafficking victims were used as a persuasive device by witnesses at public hearings on sex trafficking in Australia and the United States. Lazos (2007) argues that the 'research, study and understanding of trafficking leaves two polar choices or orientations open: generalization or "true stories from the field"' (Lazos 2007, 101). During the hearings in Australia and the



United States, interest groups played an important role in educating decision-makers about the nature of human trafficking, often relating true ‘stories from the field’ to illustrate their arguments. Stolz (2007) describes this as the ‘educative role’ of interest groups, who helped to set the agenda through their description of trafficking worldwide. This chapter has already explored the ways in which abolitionists advocated key assumptions and arguments in putting forward the claim that legalised prostitution leads to increased trafficking. This section examines one of the most common tools of deployment — the use of emotive stories to persuade decision-makers. This was far more prevalent in the hearings in the United States. While witnesses to the Australian hearings did utilise ‘true stories’ to educate decision-makers on the nature of trafficking, these were typically used to challenge pre-existing concepts of trafficking, rather than to generate a dominant narrative supporting of abolitionist claims.

This section will firstly look at the use of ‘true stories’ as an educative tool. It will then identify key commonalities in the stories used to support the claim. Finally, this section will discuss the impact the use of story-telling tactics had on the development of ‘the claim’ within the decision-making process in Australia and the US.

### **3.5.1 ‘True stories’ as a political tool**

Much of the educative role of interest groups can take place behind the scenes through NGOs’ briefing of politicians. Holding educational forums and media briefings (Stolz 2007, 318) are also an excellent opportunity for interest groups to persuade decision-makers about how the problem should be understood. This is part of Kingdon’s ‘problem recognition’ phase of policy development. In an interview conducted in 2008, a prominent member of the Clinton Administration indicated the importance of this sort of agenda setting. She said:

I think there are a variety of approaches [to campaigning]. Certainly the most important one if you’re trying to get a parliament or congress or government officials to respond is to show that there’s a need to address a problem. And then to determine what the best tools of government are

or the role, the specific role that government can play in addressing a problem that affects the community (Clinton Administration Official interview 2008).

Weitzer sees the telling of personal stories as an essential part of establishing the importance of a problem and argues that 'They [moral crusaders] typically rely on horror stories and "atrocious tales" about victims in which the most shocking exemplars of victimization are described and typified' (Weitzer 2007a, 448). He argues that it is an effective strategy and notes that, 'several members of Congress — including the sponsors of trafficking legislation in the House and Senate — have stated that they became interested in trafficking only after hearing a particular victim's testimony' (Weitzer 2007a, 463). Sullivan (2008) also argues that representations of trafficking victims typically tell the story of 'innocent and powerless' women who have been exploited and abused (Sullivan 2008, 98). These depictions of women generate powerful images that aid in the construction of a problem of sex trafficking problem requiring urgent and extreme action.

Campaigners certainly agree that story-telling is an effective tactic of persuasion. Carol Smolenski, Director of End Child Prostitution and Trafficking USA, believes that the best way to convince legislators of a problem is to establish a central narrative. In interview she explained:

We try to come up with an anecdote that crystallizes the problem ... I'm trying to find a way to boil it down to its most, in some ways emotional essence but the heartening, the compelling story that makes people really understand the problem (Smolenski interview 2008).

This approach was used by advocates of the claim in trafficking debates in both Australia and the United States.

### 3.5.2 Narrative commonalities

In the public hearings preceding the introduction of anti-trafficking legislation in both the United States and Australia, personal stories were told by trafficking victims or by campaigners and service providers. These stories possessed key commonalities that contributed to the building of a consistent perception of the nature of human trafficking.

#### ***Commonality 1: Trafficking is mainly for sexual exploitation***

The first of these commonalities was that trafficking was mainly for sexual exploitation. In the United States, all of the stories presented by representatives from the International Justice Mission, Shared Hope International and the Protection Project at congressional hearings between 1999 and 2003 focused on young women and girls who were trafficked into brothels. These included the experiences of Anita Sharma Bhattaria (US Congress, House, 14 September 1999, 35-36), a survivor of trafficking working with the International Justice Mission, and 'Inez' (US Congress, Senate, 22 February 2000), a contact of the Protection Project. Both of these women were forced to work in brothels, and related their experiences in testimony to the US Congress.

In later hearings stories of people trafficked for other forms of labour began to emerge. These included the experiences of 'Vi', a woman from Vietnam trafficked to the United States where her labour was exploited and she was sexually abused by the traffickers (US Congress, House, 25 June 2003). In 2004 a representative from World Vision testified about the forced labour of several victims of trafficking (US Congress, Senate, 7 July 2004), and TIP Office Director John Miller included the story of 'Tina' who was forced into domestic labour as part of his testimony to Congress (US Congress, House, 24 June 2004). These stories of trafficking for forms of labour other than sex were certainly in the minority, as most discussion centred around the experiences of women who were trafficked into the sex industry.

In Australia, the scope for the presentation of stories was much more limited. Firstly, this is due to the fact that the 2003 Parliamentary Inquiry was directed only at sex trafficking so it was unnecessary for organisations to persuade decision-makers that trafficking for sexual exploitation was a problem. Also, during the 2005 Inquiry it is likely that many witnesses felt story-telling was unnecessary or even unwelcome, as this Inquiry was strongly focused on debating key elements of the draft trafficking legislation. While there was still an opportunity to challenge assumptions about trafficking, decision-makers had clearly moved beyond the stage of 'problem recognition'.

Public narrative about sex trafficking was already well developed prior to the 2003 Inquiry. This public narrative was the result of a series of articles written by Elisabeth Wynhausen and Natalie O'Brien, journalists from *The Australian*. These were based initially on the life of Puongthong Simaplee, a woman who died in the Villawood Detention Centre at the age of 27 who may have been a victim of trafficking. The Simaplee case became a central focus for organisations and individuals interested in trafficking throughout the coronial inquiry into her death. Project Respect, on the advice of human rights advocate Charandev Singh, sought legal standing to appear before the inquest as 'a person of sufficient interest in the subject matter' (Singh in Maltzahn 2008, 61). Maltzahn reports that although they had hoped to address the question of whether or not the Department of Immigration knew that Simaplee was a trafficking victim, the coroner informed them that this was not part of the inquiry. He told the court, "This is not an inquiry into the sex industry," (Maltzahn 2008, 62).

Singh then put Maltzahn in touch with Elisabeth Wynhausen as part of a media strategy to bring attention to the issue of trafficking. Maltzahn says that, 'by the time the coronial inquiry [into Simaplee's death] began in early 2003, Wynhausen was ready to go' (Maltzahn 2008, 64). The stories produced by Wynhausen and O'Brien initially focused on the story of Puongthong Simaplee and described how she was 'sold into sexual slavery and trafficked to Australia as a child prostitute at the age of 12' (*The Australian* 14 March 2003, 3). The story of Simaplee, and subsequent stories by Wynhausen and O'Brien focusing

only on trafficking for sexual exploitation became the dominant narrative on trafficking in Australia.

The impact of articles from *The Australian* in shaping the trafficking narrative dominant at the Parliamentary Inquiry can be seen in the references made to it by submissions to the Australian Parliamentary Joint Committee Inquiry. Jim Hyde from the NSW Public Health Association directly references the articles written by Wynhausen and O'Brien (NSW Public Health Association APJC Submission 2003, 1). Marion Smith from the National Council of Women also quotes them in her Submission (NCWA APJC Submission 2003, 3). The authors of the articles also indicate a belief that their work pushed the Government to announce action against human trafficking. The articles commenced in March 2003, and by April politicians were acting on the issue. In their article, 'Sex slave industry "shames" Canberra' the authors indicate that the Federal Opposition had been encouraged by their articles to push the government for action (*The Australian* 3 April 2003, 6). The following day *The Australian* heralded the Federal Government's announcement of a review into the prevention of sex trafficking (*The Australian* 4 April 2003, 6). By the next week, a report in *The Australian* credited the Wynhausen and O'Brien articles with sparking the review, declaring that, 'their revelations provoked a political flurry' (*The Australian* 12 April 2003).

The 2003 Inquiry demonstrates the influence of a narrative focusing solely on sexual exploitation. The Parliamentary Inquiry's terms of reference dealt only with sex trafficking, and ignored trafficking for other forms of forced labour. Later in the year the Government announced a \$20 million package to combat people trafficking. While this package did not focus solely on sex trafficking, it promised a response to 'people trafficking and sexual exploitation' (Australian Government media release, 13 October 2003), thereby identifying trafficking for sexual exploitation as a key priority for the government.

***Commonality 2: Trafficking has ‘good’ victims and ‘bad’ victims***

In trafficking discourse, victims are often depicted as ‘innocent’ victims who have been abducted and abused. This depiction ignores a large group of victims who do not fit the mould of ‘innocent’ or ‘virginal’ (as discussed in Chapter Two) and yet find themselves the victims of traffickers (Sullivan 2008, 98). This creates a dichotomy between ‘good’ and ‘bad’ victims – those who have done nothing wrong, and those who are seen to have put themselves in harm’s way.

A second aspect of the narrative put forward by abolitionist organisations relates to this dichotomy, and in particular the methods of force, fraud and coercion employed by traffickers to force innocent women into sexual exploitation. In the United States, two explanations were dominant, presented through the stories of victims. The first of these was that women were either drugged and kidnapped, or sold to traffickers, before being placed in brothels where they were held prisoner. The experience of Anita Sharma Bhattaria (US Congress, House, 14 September 1999) followed this pattern. The hypothetical story of ‘Lydia’ told by Lederer also followed a pattern of drugging, kidnapping and imprisoning. Lederer explained that the story was a manufactured composite of many of the experiences of victims and said, ‘Now, take Lydia’s story and multiply it by hundreds of thousands, and you can get a picture of the scope of the problem’ (US Congress, Senate, 14 September 1999, 35-36). Haugen’s story of Jayanthi (US Congress, House, 14 September 1999, 41; US Congress, Senate, 22 February 2000, 36), as well as John Miller’s story of ‘Nina’ (US Congress, House, 25 June 2003, 3) also followed this pattern.

The stories of ‘Gina’, ‘Ganga’, and ‘Shoba’ told by Linda Smith, founder of Shared Hope International, all followed the pattern of being sold into prostitution as young girls (US Congress, House, 19 June 2002, 63). John Miller’s story of ‘Bopha’ also depicts a woman whose agency is taken away from her as Bopha’s experience was of marrying a man in Cambodia who then sold her to a brothel (US Congress, House, 24 June 2004, 3-4).

The other explanation offered for how women were trafficked into sexual exploitation was delivered through numerous stories of women who were

offered well-paying jobs in restaurants, bars or in domestic labour, and were instead forced to work in prostitution. Lederer facilitated the testimony of several witnesses who described their experience of being offered lucrative jobs, but in reality having their passports taken away, being forced into debt-bondage working as a prostitute, and receiving threats of violence against themselves or their family if they tried to escape without first 'repaying' their debt. (US Congress, Senate, 4 April 2000; US Congress, House, 29 November 2001).

This was also the experience of 'Inez' who personally testified (US Congress, Senate, 22 February 2000). After being offered a job in a restaurant in America and travelling to the United States she says that on arrival 'I was told I owed a smuggling fee of \$2,500 and had to pay it off selling my body to men.' Gary Haugen also related similar stories of the experiences of 'Sumita' (US Congress, Senate, 22 February 2000, 37) and 'Balamani' (US Congress, House, 25 June 2002, 62). John Miller also frequently depicted this form of trafficking, telling the similar stories of Sasha, Mercy and Dacey who were all offered jobs in restaurants before being forced into prostitution (US Congress, House, 25 June 2003, 3).

The stories told of trafficking victims by Gary Haugen and Linda Smith related exclusively to women who had been trafficked into countries other than the United States, while witnesses and stories provided by Lederer included victims who had been trafficked into the United States, as well as other countries.

All of these stories establish a clear Madonna/whore dichotomy whereby the victims most deserving of assistance are only those who are deemed 'innocent' by virtue of the fact that they never agreed to work in the sex industry. Jordan suggests that 'Women trafficked into forced prostitution are treated as "madonnas" (innocent, vulnerable) who need assistance and support or as "whores" (conniving, tainted) who need redemption and rehabilitation' (Jordan 2002, 30). Doezema argues that narratives white-washing the existence of trafficking victims who have chosen to work in the sex industry, and depicting only 'innocent' and 'virginal' victims have pervaded trafficking discourse since

the 19<sup>th</sup> century. She offers an excellent account of the continuation of this narrative into contemporary trafficking debates, and argues that:

The effect of these motifs of deception, abduction, youth/virginity, and violence is to render the victim unquestionably “innocent”. Desperately poor, deceived or abducted, drugged or beaten into compliance, with a blameless sexual past, she could not have “chosen” to be a prostitute ... The construction of a “victim” who will appeal to the public and the policy makers demands that she be sexually blameless (Doezema 2000, 36).

The willingness of the media to depict extreme examples of trafficking helps to confirm this understanding of the victims of sex trafficking in both the minds of decision-makers and the general public (Farrell and Fahy 2009, 623).

In attempting to create a blameless Madonna, these depictions have created a narrative that ignores women who choose to work in the sex industry (but are also exploited or trafficked) as well as both women and men who are trafficked for other forms of labour. Chapkis (2003) argues that a focus on the issue of consent in trafficking discourse is partly responsible for the creation of this dichotomy (Chapkis 2003, 929).

While the ‘innocence’ of women who have been trafficked is a narrative most often put forward by abolitionist groups, the Madonna/Whore dichotomy has also been criticised by them. Dorchen Leidholdt, a founder of the Coalition Against Trafficking in Women, criticised the *Trafficking Victims Protection Act* 2000 for adopting this dichotomy and stated, ‘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’ (Leidholt 2000 in Chapkis 2003, 929).

None of the stories related by individuals and organisations in the United States included women who may have chosen to accept a job working in the sex industry of a foreign country, but who on arrival were forced into debt bondage or other exploitative working conditions. Regan Ralph of Human Rights Watch questioned the dominance of cases of women being kidnapped or sold into slavery, arguing that, ‘The most common form of coercion that Human Rights



Watch has documented is debt bondage. Women are told that they must work without wages until they have repaid the purchase price advanced by their employers, an amount far exceeding the cost of their travel expenses' (US Congress, Senate, 22 February 2000, 44). She also questions the truth of the narrative that suggests that trafficking victims have been given false promises of jobs in other industries before being forced into prostitution. She says, 'There are women who are making choices to migrate. They may not be making choices to migrate into sex work, but in some cases they may be' (US Congress, Senate, 22 February 2000, 58).

Despite Ralph's testimony that debt-bondage was the most common form of coercion, or that some women may have chosen to work in the sex industry but were still suffering from severe exploitation, the vast majority of stories focused on the central and well-defined narrative described above.

While these stories depict harrowing experiences, the perception created does not necessarily reflect the many differing forms of trafficking and the differing experiences of victims. DeStefano argues that the tendency to focus on sex trafficking over other forms is due in part to the media's willingness to report these stories (DeStefano interview 2008).

Similarly, Soderlund argues that, 'Activist strategies centred around the "victim subject" — often embodied in personal testimonials from the most abject sufferers — are not only more likely to draw governmental and media attention to a cause, but also serve as a point of commonality' (Soderlund 2005, 69). She agrees that these stories are more likely to become accepted as the central narrative as they are 'frequently selected by journalists because of their sensationalistic qualities' (Soderlund 2005, 71).

In Australia, the narrative established by Wynhausen and O'Brien also strongly depicted victims of trafficking as 'innocent' women who were abducted, sold or duped. The story that Simaplee was sold and came to Australia as a child were later shown to be untrue (Maltzahn 2008, 64; Saunders unpublished). However this story certainly had an impact on public and political perceptions about trafficking. As Maltzahn argued, 'The child trafficking claim pulled in media

outlets that might not ordinarily have bothered with a death-in-custody story' (Maltzahn 2008, 64). Just as in the US experience, stories of abused children and imprisoned women were most popular with the media. Maltzahn acknowledges that most media outlets 'lost interest' in the Simaplee case when it became clear that she had not been trafficked as a child, but Wynhausen and O'Brien persisted with their investigations into trafficking (Maltzahn 2008, 66).

Later articles by Wynhausen and O'Brien described other cases of trafficking, focusing on the narrative of women who had been promised work in other industries, only to be forced into the sex industry (*The Australian* 2003: 22 March, 13; 12 April 2003, 17). The articles did not include discussion of cases of women coming to Australia to work in the sex industry who were subsequently exploited.

However, in stark contrast to the United States experience, the Australian inquiries included a questioning of the dominant victim narrative. For example, some submissions highlighted cases of women who were not sold or kidnapped, or women who came to Australia specifically to work in the sex industry but were then exploited.

Anne Gallagher, a former Advisor on Trafficking to the Office of the UN High Commissioner on Human Rights, highlighted the differences between what she called the 'classic migrant smuggling situation' and trafficking. She said many victims were not sold into slavery or kidnapped from their home country, but initially put themselves in the control of traffickers:

In a classic migrant smuggling situation, the relationship between migrant and smuggler is a voluntary, short-term one – coming to an end upon the migrant's arrival in the destination country. However, some smuggled migrants, including (as noted by the AFP), some smuggled to Australia, are compelled to continue this relationship in order to pay off vast transport debts. It is usually at this late stage that the end-purposes of trafficking (debt bondage, extortion, use of force, forced labour, forced criminality, forced prostitution) will become apparent (Gallagher, APJC Submission, 2003).

Project Respect's submission also painted a broader picture of the nature of trafficking. Maltzahn described the various stages of trafficking – recruitment, transport, pre-ordering, on-selling and 'auctioning', 'breaking in', prostitution violence and exploitation, detection, escape, end of contract-post contract vulnerability. She related one true story of a victim to emphasise the failures in the immigration system in identifying victims of trafficking. She also provides a hypothetical story of a woman called 'Lisa' who willingly accepted the promise of a job to work in the sex industry in Australia, but was then subjected to serious sexual exploitation (Project Respect, APJC Submission 2003).

Elizabeth Hoban, the author of a report on trafficking commissioned by Project Respect, also offered a narrative that differs to the one established by Wynhausen and O'Brien. She refers to women coming to Australia with the intention of working in the sex industry, who then become victims:

Some women come to Australia because they are promised work in the sex industry (which they are often told is legal) that will earn large sums of money, such as \$100.00 a 'job', like local sex workers, which is far in excess of the money they earn in the sex industry in their own country. Other women are told they will be working in restaurants and factories and will be paid large sums of money and much more money than they can earn in low-wage jobs in their home country, such as in laundries and departments stores or as farmers ... Women believe this to be true until they arrive in Australia and find out that they were lied to (Hoban, APJC Submission 2003).

At the Inquiry Detective Senior Sergeant Ivan McKinney also provided examples of women in a similar situation. He said:

I would have spoken to 20 or 25 at the detention centre in Melbourne. Every one of those ladies knew that they were coming here to be prostitutes or work in the sex industry and 90 per cent of them were already working in the sex industry prior to coming to Australia (Parliament of Australia, APJC Hearing, 25 February 2004, 35).

He adds that these women were under debt bondage, and reports that there were bars on the windows and locked gates at their accommodation. 'They were classified as either contract girls – they actually call themselves contract girls or free girls,' he said (Parliament of Australia, APJC Hearing, 25 February 2004, 25). This reference to bars on windows and locked gates is reminiscent of much of the testimony in the United States which draws upon imagery of women being held physically captive. However in Australia the bulk of the testimony focused on other ways in which women were kept 'captive' through debt bondage, intimidation, and threats made against women and their families.

### **3.6 Impact of stories on deployment of 'the claim'**

In the United States 'testimonials from the most abject sufferers' do not directly support campaigners in their claim that legalised prostitution leads to an increase in trafficking. In fact, most of the stories told in the US hearings describe women who have been trafficked into illegal brothels in countries where prostitution remains illegal. However, the stories did have an impact on how the claim that legalised prostitution leads to increased trafficking was deployed through the congressional hearings.

The telling of personal stories assisted advocates of the claim in their efforts to persuade decision-makers by appropriating the experiences of trafficking victims to advance the argument that the relationship between prostitution and trafficking must be part of attempts to address trafficking.

For example, Gary Haugen from the International Justice Mission put the issue of domestic prostitution on the agenda by utilising victim stories. He offered numerous examples of sex trafficking cases where the local government or police refused to act, or acted very slowly (US Congress, House, 14 September 1999, 63-69). He argued that this sort of tolerance by foreign governments of forced prostitution must be addressed by the United States. While Haugen is not talking about legalised prostitution, he has used the experiences of trafficking victims to compel decision-makers to consider the relationship between domestic sex industries and trafficking.

Jessica Neuwirth of Equality Now was more explicit in her efforts to use stories to link prostitution with trafficking. She testified that:

Our staff expert on trafficking is currently in India where yesterday she went to visit a home for rescued girls, from 12 to 16 years old. She asked them what they thought should be done to end trafficking. Without missing a beat, one of the girls said, “shut down the brothels and punish the pimps, traffickers and madams.” In this regard, Equality Now considers that the policy of the Administration on sex trafficking, as it relates to prostitution and the commercial sex industry as a whole, should be clarified (US Congress, House, 29 November 2001, 55).

By telling this story, Neuwirth has created a compelling face of the plea for prostitution to be abolished.

The Protection Project, Shared Hope International and the International Justice Mission have all presented the stories of suffering and exploitation from victims of trafficking alongside a call to end legal or condoned prostitution, creating the impression that all victims of trafficking would welcome a crackdown on domestic prostitution.

Soderlund argues that this narrative is strongly reflected in President Bush’s rhetoric during 2003, particularly in his address to the United Nations. She argues:

Bush’s rhetoric drew on historically and institutionally embedded ways of telling stories about trafficking. Indeed, if news reports and policy documents are any indication, there appear to be few ways to talk about sex trafficking that do not include dramatic readings of the captivity narrative’s well-rehearsed scripts: the prison-like brothel, the lured or deceived female victim, and her heroic rescuers. (Soderlund 2005, 77).

She argues that this rhetoric was developed from ‘captivity narratives that equate brothels with prisons’ (Soderlund 2005, 77).

This prison narrative was certainly enhanced by Gary Haugen’s actions in 2000 when he presented Senator Brownback with the padlock off the door of a brothel

in South East Asia where children were being held. Brownback attached great importance to the lock, stating that:

Gary, you have been in my office giving me a lock off of a brothel door that bound behind it a 14-year-old girl, and that sort of work that you are doing on the ground for people is just really appreciated (US Congress, Senate, 22 February 2000, 59).

The use of this lock by Haugen, and the symbolic importance attached to it by Brownback, reflect the narrative described by Soderlund of all brothels as prisons, reinforcing the perception of a consistent experience of enslavement for not only all victims of trafficking, but all women involved in prostitution.

This dominant narrative, and the rhetoric that accompanied it, depicts the entire sex industry as a particular evil that is responsible for the suffering experienced by the victims whose stories were told during the congressional hearings. This perception certainly contributed to an overall assumption that the prostitution industry per se, rather than those who exploit women within that industry, was part of the problem of trafficking and must be addressed through anti-trafficking initiatives.

In Australia, the Scarlet Alliance submission questioned this assumption so prevalent in the United States hearings, and in the Wynhausen and O'Brien articles that all of the women are waiting to be rescued (*The Australian* 5 April 2003, 19). In their submission to the APJC Inquiry in 2003 they include the story of women who were in contact with Empower Foundation, a Thai organisation that promotes opportunities for women in the entertainment industry. The story reports on the negative impacts of rescue and raid style approaches, specifically the story of a raid on a brothel in Thailand with the support of the International Justice Mission in May 2003. The submission reports that:

Five days after the "rescue" four women who had escaped the rescue team came to Empower Chiang Mai. They were still shaken and very worried about their friends and their own safety ... Each of the women were emphatic that all workers were well informed before coming, had made satisfactory salary arrangements with the employer, had the

freedom to leave and all were 19 years and over ... All the women being held plan to return to work as soon as possible after their inevitable deportation (Scarlet Alliance, APJC Submission, 2003).

There is also a growing field of literature that challenges the 'rescue' approach, questioning the success of these endeavours and criticising them for failing to recognise the agency of women involved in sex work (Busza 2004; Soderlund 2005; Agustin 2006).

As suggested above, however, other testimony and submissions during the Australian inquiries did draw upon the dominant narrative in discussing the role the domestic sex industry plays in trafficking. But it is notable that other possibilities for story-telling also emerged in the Australian context.

Abolitionist organisations are not the only groups that utilised the tactic of story-telling during parliamentary and congressional hearings. However, the narrative created in the United States worked to establish a limited understanding of the true nature of trafficking. By contrast, while the Australian understanding of trafficking was also informed by elements of this narrative, organisations also used story-telling to question assumptions and to broaden the understandings of trafficking. Saunders and Soderlund argue that the abolitionists' use of story-telling is particularly problematic because:

Of course selection of the best materials to build a convincing case against human rights violation is something that all NGOs, not just abolitionists, do. Yet reports of extreme violence, including sexual violation, as the norm among sex workers are too readily accepted as irrefutable (Saunders and Soderlund 2005, 350).

This is certainly true of the United States where few challenged this dominant narrative of sexual exploitation as the norm.

### **3.7 Conclusion**

This chapter has explored the nature of the claim that legalised prostitution leads to increased trafficking by analysing the anatomy of 'the claim'. Key assumptions contained within the claim were identified alongside the policy proposals that they imply. The assumptions that sex trafficking is a problem, that sex trafficking is unique (because the sex industry is not legitimate), that demand for commercial sex must be addressed, and that there is an intrinsic relationship between prostitution and trafficking all build towards an acceptance of the claim that legalised prostitution leads to increased trafficking. These assumptions imply the need for policy solutions that support the prohibition of prostitution.

The second section of this chapter identified the incidents of deployment of 'the claim' during policy debates in Australia and the United States. Informed by the framework of assumptions identified above, the efforts of advocates to put forward 'the claim' were clearly evident. Each of the key assumption were put forward by advocates in both case studies however the claim itself was far more prevalent in hearings in the United States than in Australia.

The final section of this chapter explored a tactic employed by several witnesses to the US and Australian hearings, and particularly by advocates of the claim. The telling of victims' stories was a key feature in the US hearings, though less prevalent in Australia. In both cases, narrative was used as a political tool in an effort to define the problem of trafficking according to abolitionist beliefs. Key commonalities in the narrative included the depiction of trafficking as primarily for sexual exploitation, and the construction of a dichotomy between 'good' and 'bad' victims. While these commonalities informed the dominant narrative in the United States, in Australia this construction was challenged and narrative used largely as a tool to alter incorrect perceptions about sex trafficking.



## **CHAPTER FOUR – SUBSTANTIATION OF THE CLAIM**

In Chapter Three, the anatomy and deployment of the claim that legalised prostitution leads to increased trafficking was examined. The thesis now moves to a consideration of the evidence used by advocates of this claim. This chapter argues that attempts to substantiate the claim are undermined by the lack of valid data about human trafficking. In the absence of this, advocates have resorted to logical argumentation, which they claim substantiates a causal link between legalised prostitution and trafficking. This chapter explores these attempts and demonstrates their failure. It also explores the impact of evidence in persuading decision-makers to support new anti-trafficking legislation. Advocates of the claim have had very limited success in Australia due to a reluctance amongst policy-makers to accept argumentation without strong supporting evidence. Advocates of the claim in the US appear to have experienced greater success, as decision-makers were less concerned about the lack of credible evidence. However, even if better evidence was available, it seems unlikely that US policy-makers would change their perspective on a link between prostitution and trafficking.

The first section of this chapter identifies some of the significant contemporary challenges in researching human trafficking, demonstrating that efforts to substantiate the claim exist within the context of ongoing uncertainty about the true size and nature of the trafficking phenomenon. The second section of this chapter outlines attempts made in the United States and Australia to quantify the problem of human trafficking overall, in the context of research limitations. The third section analyses the efforts campaigners have made to substantiate the claim that legalised prostitution leads to an increase in trafficking through both statistical evidence and logical argumentation. The final section of this chapter investigates the extent to which politicians have been interested in statistical evidence and logical argumentation, and whether or not this evidence had an impact on their acceptance or rejection of the claim.

## **4.1 Challenges in measuring human trafficking**

The scope of the problem of human trafficking is consistently disputed amongst government departments, non-government organisations and international agencies. The United Nations Office on Drugs and Crime, tasked with monitoring the world's response to human trafficking, declared in the 2009 *Global Report on Trafficking in Persons* that the magnitude of the problem of trafficking on the international scale is still 'one of the key unanswered questions' (UNODC 2009, 12). The International Labor Office has also reported difficulties in establishing a robust estimate on the number of trafficking victims (ILO 2006, 16). The ambiguity surrounding estimates of the trafficking problem is a result of the many challenges researchers face in attempting to measure this phenomenon. These challenges include differing definitions of a trafficking victim, limitations in the identification of victims and sampling difficulties, and an over-representation of sex trafficking.

### **4.1.1 Definitions**

It is extremely difficult to build a comprehensive picture of human trafficking worldwide due to inconsistent definitions. The way in which each nation defines the crime of trafficking and characterises trafficking victims has a direct impact on the collection of data about the crime, undermines the comparability of international data (Aromaa 2007, 20), and calls into question the reliability of statistics available concerning trends in human trafficking. The UNODC identifies definitional disputes as problematic for measuring trafficking due to the resulting differences in legislation (UNODC 2009). The definition of a trafficking victim informs the legislation adopted by each nation, and can have a substantial effect on the way in which data is collected in each country. The UNODC says that as a result of differing legislation, it is difficult to find comparable research on human trafficking because the data is 'clearly affected by the existence, scope and moment of entry into force of such legislation' (UNODC 2009: 18). In

addition to differing national definitions, two key definitional disputes greatly undermine the validity and comparability of trafficking data — the dispute over the difference between smuggling and trafficking, and the dispute over the meaning of the term ‘exploitation of prostitution of others’.

### ***Smuggling versus trafficking***

Being able to distinguish between a person whose illegal entry into another country has been facilitated by a third party (typically referred to as a smuggled person), and those who have been transported forcibly or faced with exploitative and coercive conditions in return for their transport (typically referred to as a trafficked person) (Laczko 2007, 40) is a problem that plagues law enforcement officials, prosecutors, policy-makers and researchers. Kelly (2002, 14) argues that legal definitions create unhelpful distinctions when a realistic picture indicates there is significant overlap between smuggled people and victims of trafficking. As Kelly argues, ‘The boundaries between help, facilitation, smuggling, trafficking and exploitation are not as clear as many conceptualisations imply’ (Kelly 2002, 14). Research by the International Office for Migration (IOM) suggests the exploitation of migrant labour should be viewed on a continuum, rather than as a simple dichotomy whereby migrants are classified as either illegally smuggled or forcibly trafficked (IOM 2003, 9). National definitions of trafficking victims exist right along this continuum. The IOM research suggests that, ‘The precise point along this continuum at which tolerable forms of labour migration end and trafficking begins will vary according to our political and moral values’ (IOM 2003, 9).

The differentiation between trafficked and smuggled people is further complicated by disputes over the consent of the trafficking victim. Carrington and Hearn (2003) warn against the exclusion from trafficking definitions of migrant women who have consented to working in the sex industry in Australia as, ‘many women who believe they are migrating (legally or illegally) to work in the sex industry nevertheless find themselves victims of sexual servitude and

slavery and other forms of exploitation such as debt bondage' (Carrington and Hearn 2003, 7).

### ***'Exploitation of prostitution of others'***

An additional challenge in establishing uniform definitions to compare trafficking data comes from the ambiguity contained within the UN Trafficking Protocol regarding the trafficking of people for prostitution. This is not a problem that is encountered when defining trafficking for other forms of labour. Fergus (2005) notes that,

Whilst "forced labour, slavery and servitude" are defined in international law, the phrase "exploitation of the prostitution of others or other forms of sexual exploitation" is not. As a result, there is much debate as to the interpretation of this last phrase (Fergus 2005, 5).

Sullivan (2003) argues that this definition within the UN Protocol causes great confusion:

On the one hand, the Protocol would appear to penalise all third parties who use force to obtain labour, including sexual labour. On the other hand, the Protocol may also apply to non-forced or even overtly consensual activities that are seen to fall into the realm of "sexual exploitation". It is certainly not clear whether prostitution and other commercial sexual practices are always to be regarded as "exploitative" (Sullivan 2003, 81).

This ambiguity in the definition of trafficking arose as a result of strong disagreement during the Protocol negotiations over the legitimacy of prostitution. The term 'exploitation of prostitution of others' was intentionally left undefined in order to move on from a debate over prostitution that could

have derailed the negotiations, and to enable individual nations to choose how to address the issue of the legitimacy of prostitution (Gallagher 2001, 986).

However, ongoing disputes about the definition of the 'exploitation of the prostitution of others' constrain research due to the confusion over and politicisation of this definition. Abolitionists argue that there should be no distinction between prostitution and trafficking (Raymond 2002, 492) while others argue that not all prostitution is exploitative and instead should be viewed as legitimate work (Kempadoo 1998, 5). The International Organisation for Migration (IOM) has recognised that while the term 'exploitation of the prostitution of others' remains undefined in international law,

This makes it virtually impossible to specify who has or has not been "trafficked" into the commercial sex trade without becoming embroiled in the more general debate about the rights and wrongs of prostitution — a debate which is both highly polarised and hugely emotive (IOM 2003, 7).

One of the results of this ambiguity is that the term 'trafficking victim' is often applied too willingly to individuals or groups who would not identify themselves as such, or would not be identified as a trafficking victim according to many national definitions. In particular, some campaigners often group all migrant sex workers under the category of 'trafficking victims' because they do not recognise a distinction between 'free' and 'forced' sex work (Doezema 2002, 21). As a result, women working in the sex industry are not viewed as being at different points along the continuum discussed above, nor are they differentiated as either a 'smuggled' or 'trafficked' person.

Some of the issues here are evident in the recent discussions of the size of the trafficking problem in the Netherlands. Abolitionist organisations such as the Coalition Against Trafficking in Women (Raymond interview 2008; Jeffreys interview 2008) and Equality Now (Kirkland interview 2008) indicated during interview that they believe approximately 80 per cent of women working in prostitution in the Netherlands have been trafficked since the sex industry was

decriminalised. However, the Dutch National Rapporteur reports that although the number of trafficking victims identified has risen in recent years, it certainly does not constitute 80 per cent of the sex industry (Dutch National Rapporteur 2007, 47). This difference in estimates most likely occurs as a result of a refusal by most abolitionists to distinguish between sex workers who have migrated, possibly illegally, from other countries, and women who have been transported to the Netherlands and forced into sex work through threats, intimidation and debt bondage.

#### **4.1.2 Research limitations**

Definitional disputes are not the only factor that influences the validity of data on human trafficking. First, researchers find it very difficult to produce valid sampling data that is representative of the phenomenon of human trafficking due to the hidden nature of the crime. Di Nicola (2007) argues that trafficking victims belong to a 'hidden population' and that 'Statistically speaking, it is not possible to define a sampling frame for a hidden population' (Di Nicola 2007, 53). Although this challenge has not prevented attempts to calculate the scope of the problem and measure the influence of variables, it is clear that there are still significant limitations on the ability of researchers to produce reliable statistics. Consequently, some researchers rely on prosecution data and samples drawn from those who have come into contact with the criminal justice system. In Australia and the United States information is collected on the number of visas granted for victims of trafficking, as well as the prosecutions that result from trafficking investigations. However, the UNODC believes that an over-reliance on criminal justice statistics typically results in under-reporting of the crime (UNODC 2009, 25), particularly as many trafficking victims never come into contact with law enforcement. This is because they are often reluctant to report crimes or to seek assistance due to 'the fear of retaliation by traffickers or deportation authorities' (Kangaspunta 2007, 30; Di Nicola 2007, 56; Dutch Rapporteur 2007, 5). Even if they do come into contact with law enforcement, often criminal justice statistics refer only to the number of prosecutions, or

convictions, on trafficking offences, which excludes the number of trafficking victims who may have interacted with law enforcement on matters that did not lead to criminal charges. Prosecutions are also limited as potential witnesses are often deported before they can assist, or victims are unwilling to cooperate with law enforcement due to a lack of protection (Carrington and Hearn 2003, 3).

Researchers have also reported difficulties in obtaining truly representative statistics on the number of trafficking victims in each country due to the misleading categorisation of cases. Laczko (2007) and Kangaspunta (2007) argue that under-reporting occurs when crimes are not properly categorised as trafficking cases and are instead prosecuted as people smuggling or other crimes associated with trafficking. Laczko argues that, 'Here the problem is not so much a lack of data, but a failure to fully interpret and analyse statistics which may be relevant to understanding trafficking in persons' (Laczko 2007, 4).

Typically sampling is an effective way to extrapolate a small pool of data to predict the size and characteristics of a wider phenomenon. However, it is difficult to draw valid conclusions about human trafficking when, as shown above, it is very difficult to establish a reliable sample. It is also difficult to project the size of the wider population from samples that might be reliably constructed. In order to accurately predict the scope of the problem of trafficking, it is necessary for researchers to determine the ratio between the total number of trafficking victims and the number of victims who come into contact with law enforcement or service providers (from whom samples are typically drawn). The Dutch National Rapporteur on Trafficking refers to this as the 'dark number' of cases that remain unreported (Dutch Rapporteur 2007, 5). Laczko (2007, 39) argues that this ratio remains unknown due to the hidden and illegal nature of the crime. Researchers are certainly aware that there is a substantial gulf between the estimates of the number of human trafficking victims and reported cases (Putt 2007, 3). However without being able to accurately predict the ratio between reported and unreported cases, it is extremely difficult to predict the full scope of the problem, even if reliable sampling could be achieved.

### **4.1.3 Mischaracterisation of human trafficking**

In addition to the challenges researchers face in establishing samples that will help to accurately predict the total size of the problem, there are also concerns about the ways in which researchers draw conclusions about the nature of trafficking. Data on trafficking can become skewed due to both politicised data collection, and a primary focus on trafficking for sexual exploitation instead of all forms of forced labour. While the limitations on sampling typically suffer from an under-reporting of the crime of trafficking, the skewing of data can result in the over-reporting of certain types of trafficking, often resulting in the mischaracterisation of the nature of trafficking.

#### ***Politicised data collection***

ILO researchers suggest that the most reliable data is produced by national police forces in conjunction with service organisations and international agencies which come into direct contact with trafficking victims (ILO 2006, 10). However, most domestic assessments of the problem are typically produced by 'unofficial sources' — academic researchers and non-government organisations (ILO 2006, 10). As demonstrated above, it is necessary to look beyond criminal justice data. This does not, however, guarantee more reliable and comprehensive information, as one of the weaknesses of relying on other sources is that many of the organisations producing data on trafficking victims are influenced by politics. The legitimacy of prostitution has been, and still is, the topic of much heated debate. Organisations that work with victims of trafficking and provide advice to decision-makers on policy are expected to have a position on the legitimacy of prostitution, especially in the United States where the Anti-Prostitution Pledge has polarised the debate. Therefore, when NGOs collect and analyse data, there is a risk that political interests will influence outcomes (Di Nicola, Orfano, Cauduro and Conci 2005).



Ann Jordan, former Director of the Global Rights Anti-Trafficking Initiative, argues that giving preference to research by anti-prostitution organisations has led to the production of one-sided reports. She said in interview that, 'The fact is some of the research funding has produced research that is not well grounded in evidence' (Jordan interview 2008). Nina Vallins from Project Respect believes that the politicised nature of the debate over prostitution and trafficking will typically result in biased research. In interview she said, 'It is a highly politicised field, which can certainly influence how questions are framed, how research is interpreted' (Vallins interview 2008).

The skewed data produced by some NGOs also occurs for reasons that are not political. Di Nicola argues that survey samples of trafficking victims often suffer from 'severe selection bias' because the nature of the service provided by the agency has an impact on the type of victims who use the service.

If the sample is selected from, say, victims who come into contact with the judicial system during the prosecution of their traffickers, these victims will have specific characteristics reflecting the institutional view of the problem (Di Nicola 2007, 59).

Similarly, organisations that provide services only to a specific group of people will obviously only record data on that group. Kangaspunta (2007) argues that many cases of trafficking involving men are overlooked in data collection because, 'Many victim support organisations provide services only for women and child victims. So it could be assumed that the number of male victims particularly trafficked for forced labour is under-estimated (Kangaspunta 2007, 30).

This phenomenon of statistical data skewing towards the interests of service agencies is not new. Weitzer argued a decade ago that data on prostitution and related activities often offered only a sample of women who experienced the most exploitation and victimisation in the industry because these were the

women who most frequently came into contact with the police or contacted service agencies who recorded data (Weitzer 1999, 84). Due to the way in which the data is collected, it remains very difficult to produce a random sample of trafficking victims which can be accurately assumed to represent the population of trafficking victims.

Jordan also indicates that much of the research on human trafficking is unreliable because the methodology for collecting the data cannot be replicated. In interview she said,

The only numbers I have any confidence in are the ILO's numbers in their forced labour report and the only reason I have any confidence in them is because they are quite explicit about their methodology. Somebody could go out and replicate it (Jordan, interview, 2008).

Melissa Ditmore from the New York Urban Justice Centre Sex Workers' Project agrees that there is a concern about the validity of research where the methodology is unclear (Ditmore interview 2008). She particularly calls into question research conducted by Melissa Farley (2004) which is relied upon as evidence by several abolitionist campaigners including Equality Now (Kirkland interview 2008), and the former Director of the TIP Office (Miller interview 2008).

The validity of research from NGOs has also been questioned in Australia. Janelle Fawkes, CEO of the Scarlet Alliance has questioned research produced by Project Respect during the Australian Parliamentary Inquiry. Project Respect's 'One trafficking victim is one too many' report (2004) estimated that there were at least 300 victims of trafficking for sexual servitude in Australia by asking interviewees to indicate how many people they knew who had been affected by trafficking. In interview Fawkes said:

So those first people then referred to a group of people they thought might have been, or they knew who may have been affected by the issue

... So let's say that there were five people in that workplace and each one of those five people referred to knowing five people. Then that makes 25 people. So actually the methodology was flawed for this type of research. And a lot of researchers were saying that. But that research has gone on to inform policy in Australia (Fawkes interview 2008).

Scarlet Alliance also faces limitations on their ability to conduct research, as they rely on the willingness of brothel managers and owners to grant access to sex workers in order to provide support services. This places an inevitable restriction on the extent of research into exploitation in the sex industry in Australia.

### ***Focus on sex trafficking***

One of the most common ways in which the data about human trafficking has become skewed is by focussing only on sex trafficking and ignoring other forms of trafficking. This often results in the skewing of data to over-represent the number of victims trafficked for prostitution. As Feingold (2005) argues, despite a great deal of public and political attention placed on sex trafficking, the ILO estimates that only 10 per cent of the victims of forced labour in Asia are trafficked for prostitution (Feingold 2005, 26). The skewing of data has occurred for several reasons. Firstly, in many countries trafficking legislation deals exclusively with sexual exploitation (Kangaspunta 2007, 30) and anti-trafficking measures introduced by governments typically focus on sex trafficking and not forced labour (Phillips 2008, 11). In addition, nations often focus their efforts exclusively on addressing trafficking in women and children, and ignoring the trafficking of men for forced labour. Feingold (2005) notes that 'Men are excluded from the trafficking statistics gathered in Thailand because, according to its national law, men cannot qualify as trafficking victims' (Feingold 2005, 26). This legislation has now been altered to include men in the definition of a trafficking victim, however attitudinal change has been slow in many countries to recognise a wider group of people who are vulnerable to trafficking.

The possible over-representation of victims trafficked for sexual exploitation versus other forms of labour is also a result of an institutional focus on sex. Di Nicola (2007) argues that, 'It is above all trafficking in women and girls for sexual exploitation that has caught the interest of academia. This may be because international and national political debate and the media concentrate on this sector' (Di Nicola 2007, 52). This is further exacerbated through the distribution of government funding for services. Most governments have prioritised funding for victims of trafficking for sexual exploitation (Di Nicola 2007, 66) over victims of trafficking for other forms of forced labour, resulting in a statistical representation that indicates the majority of victims are trafficked for prostitution.

#### **4.1.4 Perpetuation of false statistics**

The persistent ambiguity surrounding trafficking data causes substantial problems for legislators, who inevitably make policy on the basis of unreliable or unsubstantiated information. Anne Gallagher, Advisor on Trafficking at the Office of the UN High Commissioner for Human Rights, warned the Australian Parliamentary Inquiry that the use of poor quality data was widespread in policy-making on trafficking. She argued that, 'Rather than acknowledging or confronting these inadequacies, much contemporary trafficking research unquestioningly accepts and promulgates unverified data' (Gallagher, APJC Submission 2003). The unfortunate result of the ambiguity surrounding human trafficking data is most often the perpetuation of poorly researched, unrepresentative, or misleading statistics that fill the void left by researchers who are unwilling to make estimates or predictions based on research that is unreliable. Policy is then informed by flimsy estimates, drawn from unsubstantiated newspaper claims, or research that does not carefully articulate the definitions and methodology that inform the study.

Di Nicola argues that, 'Especially when taken from the media, research may be anecdotal or based on stereotypes, and the validity of sources may be difficult to control' (Di Nicola 2007, 54). Some organisations may even have an interest in supporting false statistics, even when they are aware that these estimates may have been exaggerated or inflated. Di Nicola suggests that this occurs because sometimes 'the main goal of those presenting these numbers is to feed figures to the press or to provide politicians with "inflated" figures, the purpose being to induce them to divert resources and to increase their efforts in the "war on trafficking"' (Di Nicola 2007, 61).

This perpetuation of false statistics is clearly evident in human trafficking debates. Figures mentioned at hearings in the United States have become accepted as truth, despite a lack of evidence to support them. There is agreement on both sides of the ideological divide that a deficit in research can lead to the perpetuation of false statistics. Raymond argues that, 'The lack of quantitative data and the enormous difficulties in producing accurate assessments of trafficking have resulted in many commentators repeating statistics from groups or governments that are often extrapolations from other crime contexts or unverified numbers' (Raymond 2002, 492). Jordan noted during interview that even numbers purportedly coming in the past from the United Nations have been unreliable but have been accepted as fact:

In one case a researcher found that somebody speaking at a UN conference had cited a number and that became the UN number even though it was not produced by the UN or through research; it was simply stated at a UN conference (Jordan interview 2008).

Miller also agreed, declaring in interview that despite 'thousands of articles' on the topic of trafficking, they 'mostly quote each other' and as a result 'I think we know less' (Miller interview 2008).

The use of misleading or unreliable data as the basis for legislation on human trafficking has the potential for damaging consequences. While the full impact of

human trafficking legislation in Australia and the United States is yet to be measured, there are two potential harms that could, in particular, emerge from an over-focus on trafficking for sexual exploitation versus trafficking for other forms of labour. The possible over-representation of sex trafficking cases within the wider population of human trafficking may result, firstly, in policies that lead to the harassment and mistreatment of all migrant sex workers. Recently sex workers have reported increased harassment as a result of 'rescue raids' undertaken by government and non-government organisations operating under the banner of 'saving' trafficking victims. Busza (2004) reports that raids of this type in Cambodia forced women into custody where they later had to 'bribe their way out' of either prison or forced rehabilitation centres before returning to sex work (Busza 2004, 243). In the United States efforts to address sex trafficking have veered towards a focus on the entire sex industry with the introduction of the *Trafficking Victims Protection Reauthorization Act 2005*. More commonly referred to as the 'End Demand Act', the legislation introduces measures designed to achieve a reduction in demand for commercial sex including increased funding to law enforcement to support raids on brothels (*Trafficking Victims Protection Reauthorization Act 2005*, 11). This will be further explored in Chapter Five.

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

It is also likely that the perpetuation of this mischaracterisation of trafficking adds weight to the arguments made by advocates of 'the claim'. As noted in Chapter Three, persuading decision-makers that sex trafficking is unique and the sex industry is illegitimate helped to build the core claim that legalised

prostitution leads to increased trafficking. The argument that trafficking for prostitution is the most significant aspect of the trafficking problem also enhances campaigners' efforts to convince politicians of the need to increase scrutiny of the sex industry.

## **4.2 Trafficking estimates in Australia and the United States**

In both Australia and the United States, the process of determining the scale of the trafficking problem has been fraught with inconsistencies, competing claims and unproven estimates. Despite persistent ambiguity in the estimates of the number of trafficking victims worldwide, witnesses to the Australian Inquiry and US Congressional hearings attempted to quantify the problem. Both the scope and nature of human trafficking were subject to discussion.

### **4.2.1 Australian estimates**

During the 2003 Inquiry in Australia several organisations made an effort to identify how many trafficking victims were brought to Australia annually. Project Respect first identified an estimate of up to 1,000 trafficking victims in Australia. Despite arguing that there was a need for greater research and indicating that it was the role of the Australian Federal Police, and not Project Respect, to offer a national estimate on the problem, Project Respect Director Kathleen Maltzahn declared that, 'We think that 1,000 women at any one time is a reasonable number.' She also indicated that a contact of the organisation, police officer Paul Holmes, had suggested that he would be surprised if the number was as low as 1,000 (Parliament of Australia, APJC Hearing, 18 November 2003, 38-39).

The Scarlet Alliance and Sex Workers Outreach Project offered a competing estimate on the scope of the problem in Australia, drawing on evidence from 'organisations in every state outreaching to virtually every workplace that advertises, which is the majority of the sex industry' (Parliament of Australia,

APJC Hearing, 25 February 2004, 19). Their submission to the APJC reported an estimation that 'there are less than 400 sex workers entering Australia in any one year on a contract, the majority of whom knowingly consent to the work (Scarlet Alliance, APJC Submission 2003). They argued that while it is difficult to know the exact number of trafficked women, they estimated that of the approximately 300 to 400 women who enter Australia each year,

Our organisations know of only 10 individual cases over the last 10 months to two years where the women themselves have indicated that they were deceptively recruited, they did not know they were going to work in the sex industry, or the conditions of their employment varied to such an extent that they were very unhappy with the circumstances and attempted to leave the workplace (Parliament of Australia, APJC Hearing, 25 February 2004, 19).

In addition to compiling this estimate from outreach networks, Scarlet Alliance also drew upon Department of Immigration and Multicultural Affairs figures from 1996-1997 reporting a detection of a total of 21 sex workers operating illegally. It is unknown how many of these women experienced coercion or deception associated with their arrival into Australia and subsequent work in the sex industry. The Scarlet Alliance commented that the figure of 21, 'Hardly represents a problem of the scale the community might imagine' (Scarlet Alliance, APJC Submission, 2003).

Other witnesses to the APJC challenged Scarlet Alliance's estimate that trafficking victims represented only a very small proportion of migrant women working in the sex industry. Detective Senior Sergeant McKinney declared, 'I think we are naïve if we say there would not be 100 [trafficking victims] in Australia at any one time' (Parliament of Australia, APJC Hearing, 25 February 2004, 37), though this estimate is obviously significantly lower than the 1,000 figure provided by Project Respect.



Government agencies demonstrated greater reluctance than non-government organisations (NGOs) when pressed to provide an estimate to the APJC on the overall scope of the problem. Offering evidence in her role as the Sex Discrimination Commissioner for the Human Rights and Equal Opportunities Commission, Sally Moyle was willing to estimate that the majority of human trafficking worldwide was for the purposes of sexual exploitation. However, she seemed reluctant to commit to definitive statistics, blaming the lack of agreement on the overall scope of the problem.

I think internationally the various percentages are 80 to 90 per cent for sexual exploitation of women and 20-odd per cent for labour exploitation that may engage men as well. Again, I do not think that is something anybody can really definitively decide (Parliament of Australia, APJC Hearing, 25 February 2004, 60).

The Australian Federal Police were also reluctant to estimate the scope of the problem. John Lawler, the Acting Deputy Commissioner at the time, declared that,

The AFP would prefer that the figures that we present to the committee are sustainable figures based on evidence and solid information. We have solid, sustainable evidence and information to support 14 victims that have come to notice for slavery and sexual servitude (Parliament of Australia, APJC Hearing, February 2004, 4).

The final report of the Joint Committee Inquiry reflected the disagreement evident in the hearings regarding the scale of the overall problem. The Committee avoided declaring their own estimate of the size of the trafficking problem in Australia. However, the report did agree with the stance of Project Respect to some extent, quoting Kathleen Maltzahn and confirming her belief that, “It is a significant enough problem that we need to take it seriously. I do not think it is just a few aberrations that we are finding” (Maltzahn in APJC Report, 2004, ix). They also demonstrated some acceptance of the perspective of the Scarlet Alliance, noting that there is a distinction between women who had been

trafficked using coercion or deception, and women who had come to Australia voluntarily to work. They also acknowledged that there were doubts about how large this first group actually was (APJC Report 2004, 10).

Overall, the committee indicated that there was a lack of consensus among the witnesses at the hearing about the scale of the actual problem and agreed that there are still enormous challenges in correctly quantifying the problem of trafficking. They indicated that, 'Recognising these problems, the Committee is cautious in attempting any definitive conclusions in this respect' (APJC Report 2004, 20). They resolved that the uncertainty regarding the overall scope of the problem and trends influencing trafficking had two outcomes: 'this uncertainty underlines the continuing importance of the ACC's [Australian Crime Commission's] intelligence gathering and analysis role for informing the Australian government's response to the problem' and 'this uncertainty also poses problems for Australian policy' (APJC Report 2004, 22).

During the subsequent Senate Inquiry, less attention was devoted towards establishing an estimate, however Grant Edwards from the Australian Federal Police did provide evidence in an attempt to advise decision-makers of the overall scope of the problem. He said,

In terms of the intelligence, looking at whether you can balance the Project Respect numbers of 1,000 or the Scarlet Alliance numbers of 300, at the moment we are sitting with a total of 38 people we have quantifiably identified as victims of trafficking for the purposes of sexual exploitation (Parliament of Australia, LCLC Hearing, 23 February 2005, 52).

Vincent McMahon from the Department of Multicultural and Indigenous Affairs suggested to the Senate Inquiry that figures have been escalated due to the United States TIP Report's declaration that Australia had more than 100 trafficking victims and therefore need to be placed in Tier 1 of their annual report. McMahon declared, 'There is no way, in respect of any set of statistical

data, that we can come near 100' (Parliament of Australia, LCLC Hearing, 23 February 2005, 54). Unlike the final report of the Joint Committee Inquiry, the Senate Inquiry did not comment on the scale of the trafficking problem, as the report was focused primarily on making recommendations for changes to the draft legislation.

The magnitude of the problem in Australia still remains largely undefined, with recent reports continuing to rely on the range identified at the 2004 Parliamentary Inquiry. A report recently prepared for the Australian Parliament estimates between 300 and 1,000 trafficking victims brought to Australia annually (Phillips 2008, 3). However, it also calls this figure into question, noting that between 1999 and 2005 only 133 cases of suspected trafficking were referred to the Australian Federal Police, with just 10 prosecutions by the Department of Public Prosecutions (Phillips 2008, 9; 14). Fiona David, reporting on trafficking for the Australian Institute of Criminology, argues that investigation and prosecution statistics do not necessarily provide an accurate picture of trafficking in Australia as, 'while they present information about the level of government activity on trafficking in persons in Australia, they provide limited insight into the incidence of trafficking in Australia' (David 2008, 6).

#### **4.2.2 United States estimates**

In the initial US Congressional hearings leading to the development of the *Trafficking Victims Protection Act 2000*, the figure most often cited as the number of trafficking victims brought into the United States each year was 50,000. Theresa Loar, Director of the President's Inter-Agency Counsel on Women put forward that, 'It is estimated that there are over 1 million women and children trafficked every year, over 50,000 into the United States' (US Congress, House, 14 September 1999, 14). This estimate of 50,000 was most likely drawn from research conducted by Amy O'Neill Richard on behalf of the State Department, in which she declared that, 'government and non-governmental experts in the field estimate that out of the 700,000 to two million women and children who are

trafficked globally each year, 45,000 to 50,000 of those women and children are trafficked to the United States' (O'Neill Richard 1999, 3). Initially the 50,000 figure remained unscrutinised, though the worldwide estimate of 1 million was challenged by Lederer. She testified that 'UNICEF is estimating that 1 million children are forced into prostitution in South-East Asia alone and another million worldwide' (US Congress, House, 14 September 1999, 38).

This disparity was recognised by members of the Committee, with Representative Faleomavaega expressing disbelief that the State Department's figures differed so greatly from Lederer's. 'If they don't even have the accurate figures, how can they possibly declare a policy that is accurate and correct' (US Congress, House, 14 September 1999, 47-48). Despite this questioning, the figure of 50,000 trafficking victims brought into the US each year remained unchallenged, and was repeated by Senator Brownback in a Senate hearing on trafficking in early 2000 (US Congress, Senate, 22 February 2000, 2). Although the estimate initially referred only to women and children trafficked into the US, it became the estimate quoted in the hearings in reference to all victims trafficked into the United States. At the Senate hearing in April of 2000, Under-Secretary Dobriansky retained the 50,000 figure, but relied on a slightly lower figure of 700,000 victims of trafficking worldwide each year (US Congress, Senate, 4 April 2000, 22).

Over the next few years, however, the 50,000 figure has been progressively downgraded. In 2003 the then-Director of the Office to Monitor and Combat Trafficking in Persons (also known as the TIP Office) John Miller declared that, 'We now estimate that this modern-day slavery also includes 18,000 to 20,000 victims who enter the United States annually' (US Congress, House, 29 October 2003, 58). By 2004, the figure was downgraded even further, with Senator Russell D. Feingold telling a Senate hearing on trafficking that 'Estimates of the number of people trafficked in the United States each year range from 14,500 to 17,500' (US Congress, Senate, 7 July 2004, 5). This lower figure also appeared in a Department of Justice Report produced in early 2006 (Newman 2006, 5), though in that same year US Attorney General Alberto Gonzales reduced the

estimate further, suggesting that government estimates of between 15,000 and 20,000 victims each year may have been too high (Washington Post 2007, A1).

Sister Dougherty, testifying on behalf of the United States Conference of Catholic Bishops (which received much of the US Government's funding for support for victims of trafficking) bemoaned the ongoing changes in the estimates of the scope of the trafficking problem:

It is interesting to me that in 1999, the study that was put out by the State Department — I think it was commissioned by the CIA of Amy O'Neill Richard as an independent researcher — that study that was behind the passing of the law said 50,000 people. And 2 years later, we drop from 50,000 people to 20,000 people, and now we have dropped from 20,000 people to 17,000 people being trafficked into the United States (US Congress, Senate, 7 July 2004, 30).

While Sister Dougherty believed that the numbers were being underestimated, even these downgraded estimates have been challenged due to the relatively small numbers of victims identified over the last decade. Feingold (2005) argues that 'even with a well-trained law enforcement and prosecutorial system, less than 500 people have been awarded T visas, the special visas given to victims in return for cooperation with federal prosecutors' (Feingold 2005, 30). Chacon (2006) notes that 'the number of people who had been certified by the Department of Health and Human Services as eligible for services as victims of trafficking was also stunningly low' (Chacon 2006, 3018). This demonstrates that either investigations are failing to identify trafficking victims, or that the scale of the problem is not as large as first estimated. Only 1,362 victims have been identified between 2000 and 2007 (Washington Post 2007, A1). This substantial disparity between the estimated and identified number of victims was so stark that the Bush administration hired a public relations firm, Ketchum, to assist in the effort to 'find' victims (Washington Post 2007, A1).

A 2006 report by the United States Government Accountability Office also strongly questioned the global and US estimates on trafficking. The report declared that, 'The accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies' (GAO 2006, 2).

### **4.2.3 Research problems plaguing Australian and US estimates**

Estimates of the size and nature of the trafficking problem in both Australia and the US are unreliable due to the many challenges involved in measuring human trafficking (see 4.1). In particular, the Australian inquiries and US hearings discussed the impact on estimates of disputes over the definition of trafficking victims, and a focus on trafficking for sexual exploitation.

#### ***Definition of smuggling versus trafficking***

During the LCLC Inquiry in Australia, the Human Rights and Equal Opportunities Commission urged legislators to ensure that legal definitions would 'avoid overlap between people smuggling and people trafficking offences' (HREOC, LCLC Submission 2004, 6). The APJC Members certainly showed a wish to understand whether estimates about the size of the problem were operating under a definition that included all victims of people smuggling, or only those who were coerced in coming to Australia. Committee member Sercombe asked Project Respect, 'You are not including in the estimate women who may be here on, say, a student visa or a fraudulently obtained visitors' visa who have not been deceived? Or are you including all women? (Parliament of Australia, APJC Hearing, 18 November 2003, 39). Maltzahn declared that the estimate covered women under the UN definition who 'have been either deceived about the conditions or subjected to threat, violence et cetera. If women are just in the sex industry and they have breached their visa conditions, we really do not care' (Parliament of Australia, APJC Hearing, 18 November 2003, 39).

The Chair of the Australian Parliamentary Joint Committee, in discussing the scope of the problem with the Australian Federal Police representative, stated,

I think the Scarlet Alliance were suggesting that the number of people they had dealt with was a figure closer to yours, while Project Respect were saying that they thought it was several hundred. It was interesting that HREOC [Human Rights and Equal Opportunities Commission] thought that the two were just debating the parameters of the question in terms of the contract and whether they knowingly went into a contract understanding that it was for sexual prostitution or whether they were led to believe they were going into restaurants or bars where choice would be exercised. Your 14 [identified victims] would be where there is clear evidence they were misled about the nature of the contract, so I think that is part of definitional terms (Parliament of Australia, APJC Hearing, 26 February 2004, 5).

This definition of a trafficking victim as a person who has been deceived is distinct from the approaches of many campaigners in the United States who argued that all migrant women who are in the sex industry could fit the United Nations definition of trafficking for the purposes of sexual exploitation. In Australia, this was also evident with some organisations widening their definition of trafficking victim. The Australian Chapter of the International Commission of Jurists argued to the APJC that, 'the particular vulnerability of women and girls in developing countries to offers of employment in rich countries like Australia means that agreements to procure their services in the entertainment or sex industry can seldom be considered as agreements entered into by equals. Rather, they are frequently the result of coercion or deception, or even of sheer desperation' (ICJ, APJC Submission 2003, 3). This submission subscribes to the view that all migrant sex workers are vulnerable by their nature, and therefore under some form of coercion regardless of the individual circumstances of their arrival and work in Australia.

In the United States, however, Congressional representatives did not demonstrate the same degree of interest in clarifying whether or not estimates incorporated only those who had experienced force, fraud or coercion, or those who could be more accurately described as a 'smuggled person'. Congressman Chris Smith, a leader in the creation of the *Trafficking Victims Protection Act 2000*, did recognise that there was some confusion about the definition of a trafficking victim in regard to research from Europe, stating, 'it is unclear how many of those are by force or some form of coercion are there' (US Congress, House, 29 October 2003, 105). However, Smith saw this lack of clarity only as a problem for the researchers, and not a limitation on using the data to inform policy.

Many other countries still do not attempt to differentiate between a smuggled person and a trafficking victim when collecting data on illegal immigration. Laczko reports that, 'In many countries it is still common to mingle data relating to trafficking, smuggling and irregular migration' (Laczko 2007, 40). This makes it very difficult to compile accurate, comparable data that can be used to support an estimate of the trafficking problem worldwide, or to measure the progress of individual nations in dealing with the problem.

### ***Definition of the 'Exploitation of prostitution of others'***

The differentiation between a migrant sex worker and victim of trafficking was also the topic of some discussion during the inquiries and hearings, although this issue received less attention than the definition of smuggling versus trafficking.

In Australia, CATWA urged the LCLC Inquiry to adopt a definition that would not differentiate between migrant sex workers and trafficking victims. They argued that, 'The Bill distinguishes between "forced" and "free" trafficking. Such distinction is contrary to the definition of "trafficking" in the UN Protocol' (CATWA, LCLC Submission 2005, 1). As noted above, the definition in the Protocol is open to interpretation on that issue. The Joint Committee Inquiry



recognised that the way in which trafficking was defined and how the sex industry was perceived had an influence over the research. In the final report of the AJPC the Committee confirmed their belief that the differences in the statistics offered by organisations, particularly the Scarlet Alliance and Project Respect, were the result of differing definitions. They acknowledged, however, that the definitional differences emerged mostly as a result of the way in which the sex trade and migrant sex workers were viewed by those conducting the research. The final report declared that, 'Resolving these questions in many ways comes down to the fundamental question of the legitimacy of the sex trade' (APJC Report 2004, 22).

In the United States, the recognition of a dispute over the definition of the 'exploitation of prostitution' was less explicit. Representatives did acknowledge a competing view about the legitimacy of the sex industry (US Congress, House, 29 November 2001, 1), however this was not linked to discussions about the estimates being offered on the size of the trafficking problem.

### ***Focus on sex trafficking***

The focus on sex trafficking versus other forms of labour was identified as a problem during the Australian Parliamentary Inquiry. The Scarlet Alliance questioned the validity of the Government's focus on sexual servitude over other forms of forced labour, arguing that laws:

single out one industry and target that one industry for the incidence of illegal migrant workers ... Sex servitude offences appear to single out sex work as an occupation where women are sexually exploited. Scarlet Alliance contends that in the context of sex work it is the labour of some sex workers which is exploited (Scarlet Alliance, APJC Submission 2003).

David (2008) also indicated that a focus on trafficking for sexual exploitation in Australia could divert attention from trafficking for other forms of labour. She argued that this focus was likely to correct itself over time.

While Australian anti-trafficking laws cover all forms of trafficking in persons, it is nonetheless reasonable to expect that popular perceptions will increase awareness, visibility and focus on particular forms of trafficking. As awareness of trafficking grows, it is very likely the statistics will reflect a broader cross-section of cases (David 2008, 7).

The US GAO report also argues that data on trafficking may over-represent victims of trafficking for sexual exploitation.

In most countries where trafficking data are gathered, women and children are seen as victims of trafficking, and men are predominantly seen as migrant workers, reflecting a gender bias in existing information. Men are also perceived as victims of labor exploitation that may not be seen as a crime but rather as an issue for trade unions and labor regulators. Thus, data collection and applied research often miss the broader dimensions of trafficking for labor exploitation (GAO 2006, 15).

It is clear that the challenges researchers face when attempting to quantify and characterise trafficking worldwide were evident during the development of anti-trafficking legislation in Australia and the United States. It is in this context that advocates of the claim attempted to substantiate their belief that legalised prostitution leads to increased trafficking.

### **4.3 Substantiating 'the claim'**

Many of the challenges that researchers face in measuring the overall scale and trends in trafficking have also applied to attempts to measure variables

associated with trafficking. In particular, some researchers have focused their attention on the role that 'push' and 'pull' factors play. Socio-economic factors in source countries such as poverty, gender inequality and lack of employment opportunities (Farr 2005) are seen as 'push' factors that not only encourage the migration of women, but also support a profitable market for a trade in human labour. 'Pull' factors in destination countries typically include the promise of a more affluent lifestyle, the availability of employment opportunities and the demand for cheap labour. Farr argues that 'there is an increasing demand in affluent Western countries for domestic and caretaking labor, filled in part by local minority women, but also by foreign women migrating specifically for wage-paying jobs' (Farr 2005, 139). During the Parliamentary Inquiry in Australia and the Congressional hearings in the United States, campaigners who advocated the claim that legalised prostitution leads to an increase in trafficking attempted to move beyond discussion about the scale of the problem itself, and provide evidence about what they saw as one of the main causes of that problem. They argued that 'pull' factors such as demand for prostitution, and the sanctioning of demand through legalised prostitution, fuelled an increase in trafficking. They offered both statistical evidence and logical argumentation to support their claim.

#### **4.3.1 The deployment of statistical evidence**

In Australia, very few organisations offered evidence of a link between legalised prostitution and an increase in trafficking. The Catholic Women's League of Australia attempted to substantiate the claim in their submission to the APJC Inquiry. They highlighted the efforts of Sweden to address demand for prostitution by criminalising the buyers while decriminalising the sellers of sex. The League argued that attacking demand in this way was a successful approach for dealing with trafficking, declaring that since Sweden introduced the new legislation, 'the number of trafficked women has not increased' (CWLA, APJC Submission, 2003, 3). To the LCLC Inquiry, the League offered evidence from Sister Lynda Dearlove who argued that the Swedish model had 'ensured that 60

per cent of women in Sweden have left the prostitution industry' and that 'notably, the number of trafficked women has not increased since the implementation of the legislation' (CWLA, APJC Submission, 2005, 3-4). This evidence is challenged by others who argue that the Swedish model has simply resulted in a movement of women to illegal brothels and indoor prostitution. Phoenix argues that 'Such a move leaves these women more isolated than before, exposing them to greater risks of 'punter' violence and exploitation at the hands of brothel keepers' (Phoenix 2007, 8). Sanders and Campbell also agree that a displacement, rather than removal, of the market for prostitution has occurred in Sweden as reports indicate that there has been an increase in internet-based sex work. It is also likely that clients are now seeking sexual services outside of Sweden, indicating that the criminalisation of demand has done little to reduce it (Sanders and Campbell 2008, 171).

The Coalition Against Trafficking in Women Australia also offered the APJC Inquiry statistical evidence in support of its claim that legalised prostitution leads to an increase in trafficking. Jeffreys of CATWA presented evidence regarding Victoria's sex industry, arguing that a

growing sex industry results in greater trafficking. She indicated that, before legalisation in Victoria there were 60 to 70 illegal massage parlours that were functioning as brothels. We now have 100 legal and an estimated 400 illegal brothels. So I do think there has been an increase (Parliament of Australia, APJC Hearing, 18 November 2003, 59).

The argument that an expansion of the industry is likely to fuel trafficking appears in several CATW documents, and in the work of fellow CATW member Janice Raymond who argues that an increase in the sex industry in Australia since legalisation is likely to fuel trafficking (Raymond 2004, 1163). Jeffreys also offered evidence from Europe:

it is estimated that 80 per cent of prostituted women in Amsterdam and London are trafficked; in Madrid, where pimping and procuring were decriminalised in 1995, 70 per cent of the 90 per cent of that city's

prostituted women who are from other countries are considered to be trafficked (Parliament of Australia, APJC Hearing, 18 November 2003, 56).

In her first attempt to substantiate the claim, Jeffreys does not point to a direct link between legalised prostitution and an increase in trafficking, rather she relies on the assumption that growth in the sex industry will result in growth in all sectors of the sex industry, including those which exploit victims of trafficking. In her second substantiation, Jeffreys relies on evidence from the Netherlands, which was also heavily utilised in the United States.

Many campaigners have offered the Netherlands and other European countries such as Germany and Sweden as evidence of the link between legalised prostitution and an increase in trafficking. Hughes testified to Congress that

There are few Dutch women in the brothels, the traffickers control 50 percent of the women. The situation is similar in Germany, where there are an estimated 400,000 women in prostitution; 75 percent of those women come from other countries (US Congress, House, 19 June 2002, 74).

Janice Raymond from CATW also focused on the Netherlands, stating that 80 per cent of women working in the sex industry in the Netherlands have been trafficked (US Congress, House, 29 October 2003, 58). These statements from Hughes and Raymond differ, with Hughes arguing that 50 per cent of women are trafficked and Raymond saying the number is as high as 80 per cent. Raymond references this figure to 'several reports' including one for the Budapest Group. This highlights that even within abolitionist circles, there is a great deal of inconsistency on estimates about trafficking. Raymond's 80 per cent figure is most often repeated, however, with several abolitionist organisations including Equality Now (Kirkland interview 2008; Raymond interview 2008), relying heavily on this estimate from the Netherlands to support their claim that legalised prostitution leads to an increase in trafficking. As suggested above, Jeffreys also used the 80 per cent figure in her evidence before the Australian Inquiry.

In attempting to substantiate a link between legalised prostitution and an increase in trafficking by focusing on the Netherlands example, witnesses failed to draw a distinction between migrant sex workers and trafficking victims. As noted previously, while it is more realistic to consider migrant workers as existing on a continuum of experiences that range between voluntary and coerced (or deceived) entry into work in the sex industry, not all migrant sex workers are trafficking victims. In testimony provided by Hughes in 2002, she offered evidence indicating the number of foreign women working in prostitution in countries of the EU. The increase from 1997 to 1999, according to Hughes, is caused by the legalisation, decriminalisation or toleration of prostitution. However, she does not take account of other factors that have influenced the movement of people across EU borders such as the establishment of the Schengen Agreement under European Union (EU) auspices in 1997 which allows nationals from several EU nations to settle and work in other European countries. Nor does Hughes allow for the possibility that not all of the women counted as foreign workers have been coerced or deceptively recruited into the sex industry.

Congressman Chris Smith recognised that there were some problems using the Netherlands data as an indicator. As noted above, he acknowledged that of the 80 per cent figure most often quoted, 'it is unclear how many of those are by force or some form of coercion are there' (US Congress, House, 29 October 2003, 105). However, he sees this lack of clarity as a problem for the Netherlands government to address, and not as a limitation on the use of Netherlands data to argue a link between legalised prostitution and trafficking.

#### **4.3.2 Attacking the 'pull' factors**

In both the Australian Inquiry and the US hearings, limited statistical evidence was offered to support the claim that legalised prostitution leads to an increase in trafficking. This may be a symptom of some of the challenges identified earlier in measuring the phenomenon of trafficking. To overcome the lack of statistical

evidence to support the claim, campaigners have offered logical argumentation to attack the 'pull' factors of trafficking — demand and legalisation.

### ***Demand***

Project Respect's submission to the Parliamentary Inquiry emphasised the importance of addressing 'Push' and 'Pull' factors, arguing that 'Australia should give particular consideration' to 'pull' factors such as demand. They argued that

the demand for trafficked women is fuelled by: a lack of women in Australia prepared to do prostitution; "customer" demand for women seen as compliant; "customer" demand for women who they can be violent towards; racialised ideas that Asian women have certain qualities, for example that they are more compliant and will accept higher levels of violence (Project Respect, APJC Submission 2003).

Project Respect advanced this argument at the hearings, further demonstrating why legalisation might fuel the trafficking in women. As noted in Chapter Three, they posed the question of 'what people are buying when they buy trafficked women', suggesting that 'there is a demand for women who cannot refuse certain sexual acts, numbers of sexual acts, certain customers and sex without a condom.' Maltzahn argued that, 'I think that brings up very difficult questions about the sex industry but we need to have such conversations. Internationally, more and more people are saying, "We've got to look at this issue of demand"' (Parliament of Australia, APJC Hearing, 18 November 2003, 47).

Jeffreys, testifying on behalf of the Coalition Against Trafficking in Women Australia, contradicted this argument slightly by suggesting that there is no separate demand for trafficked women. However, she supported Project Respect's overall call for a focus on demand fuelling trafficking (Parliament of Australia, APJC Hearing, 18 November 2003, 56).

In the United States, many witnesses asserted that demand should be addressed when arguing that legalised prostitution leads to an increase in trafficking.

However, only a few witnesses offered testimony detailing the ways in which they believe demand to be directly leading to an increase.

Lederer argued that demand was clearly a cause of trafficking, stating that, 'There are all those customers on that other end there that are creating the need for the supply' (US Congress, House, 14 September 1999, 39). However, when Lederer was questioned by Representative Hilliard about the prevalence of the sex trade in the United States, she was unable to quantify the size of the industry, (US Congress, House, 14 September 1999, 51) calling into question her statement that there are 'all those customers' generating demand for trafficking victims. As noted in an earlier chapter, Representative Diane Watson also blamed demand for the trafficking problem; in relation to trafficking she said:

Simple economics teaches us that without demand there is little need for supply. Therefore Mr. Chairman, I wonder if we are doing enough to address the demands of sex tourism, commercial sex, human servitude, and inexpensive labor here in the United States (US Congress, House, 19 June 2002, 42).

Arguments about demand fuelling trafficking are consistently applied to the sex industry (Raymond 2003, Leidholdt 2003, Jeffreys 2009). However, demand is very rarely accused of fuelling the trade in human beings for forced labour in industries such as agriculture and garment manufacturing.

Consumers who buy the product of the labour of "trafficked" women, children and men in the form of T-shirts, diamonds, processed meat, etc. are not normally identified as part of the "trafficking chain" (IOM 2003, 10).

Many of the challenges that researchers face in measuring the overall scale and trends in trafficking have also applied to attempts to measure variables associated with trafficking. In particular, some researchers have explored whether or not demand operates as a key variable. Researchers for the International Organisation of Migration have argued that there is no distinct demand for a 'trafficked person'. They suggest that,



It is hard to imagine an abusive plantation manager or sweatshop owner turning down the opportunity to subject a worker to forced labour or slavery-like practices because s/he is a “smuggled person” rather than a “victim of trafficking”, and harder still to imagine a client refusing to buy the sexual services of a prostitute for similar reasons (IOM 2003, 9).

Through this argument, they are suggesting that there is no distinct demand for a trafficked person, just an exploitable person.

The same study also questioned whether or not there is a strong demand for exploitable people, particularly in the sex industry. They found that amongst ‘clients’ there is a ‘reluctance to buy sex from prostitutes who work in the most visibly exploitative conditions’. However, this reluctance is sometimes reduced when clients are intoxicated or short of money (IOM 2003, 26). The study shows that there is a greater demand for sex workers who clients perceive as being ‘free’ and voluntarily choosing to work in the sex industry, while migrant sex workers are ‘viewed by some clients as a “poor man’s substitute” for more desirable and “classier” local sex workers’ (IOM 2003, 23).

This client preference challenges the assumption made by some abolitionists that demand for women who are ‘more compliant and will accept higher levels of violence’ is responsible for fuelling the trade in trafficking victims in the sex industry. The report from the IOM also argues that it is likely that the availability of sex workers generates demand, rather than demand originating with clients (IOM 2003, 41). Della Giusta’s study of the complex factors surrounding demand for sexual services found that a client’s fear of a damaged reputation due to the public stigma surrounding prostitution had a direct impact on their willingness to pay for sex. While this suggests that prohibitionist or abolitionist policies should decrease demand for prostitution due to increased stigma, Della Giusta admits that evidence indicates criminalisation has not reduced demand (Della Giusta 2008, 127). The review by Di Nicola and Ruspini (2009) of studies focused on clients of sex workers led them to the conclusion that there is very little evidence of abolitionism, non-regulationism or prohibitionism eradicating trafficking. They argue instead that there is great potential to capitalise on some

clients' willingness to differentiate between free and forced prostitution. They say, 'the chance of getting free and non-exploited commercial sex could represent a strong tool against trafficking' (Di Nicola and Ruspini 2009, 233).

### ***Legalisation***

In Australia, the impact of legalised prostitution was also discussed during the APJC Inquiry with witnesses agreeing that victims of trafficking were present in both legal and illegal brothels (Parliament of Australia, APJC Hearing, 18 November 2003, 9; 36; 76).

The Mayor of the City of Yarra, Greg Barber, noted that the first charges laid under the federal legislation to address trafficking were in a legal brothel. 'It was literally right there in a visible location, yet that turned out to be the place where the AFP first acted' (Parliament of Australia, APJC Hearing, 18 November 2003, 3). Simon Overland, at the time Acting Deputy Commissioner for the Victoria Police, suggested that it was not helpful to view trafficking as distinct in the legal and illegal sex industry. 'We prefer to think of it as a sex industry that does operate — some of it is regulated, some of it is unregulated — and illegal activity cuts across that' (Parliament of Australia, APJC Hearing, 18 November 2003, 24).

Jeffreys devoted most of her testimony to the role that legalisation plays in fuelling trafficking, further developing her argument (noted above) that a growing sex industry leads to more trafficking. She argued,

As the sex industry in Western countries grows, it requires women for male buyers. It is hard for brothels to find enough women locally because often women are not sufficiently impoverished or desperate; thus women are sourced from overseas with the help of organised crime (Parliament of Australia, APJC Hearing, 18 November 2003, 56).

Jeffreys added that legalisation has led to a 'real acceptance of men's rights to buy women,' further fuelling demand for trafficking victims (Parliament of Australia, APJC Hearing, 18 November 2003, 60).

Jeffreys also argued that countries which have resisted legalisation have had greater success in addressing trafficking. She pointed to the example of Sweden, of criminalising buyers and explained that, 'Trafficking in women has been greatly reduced in that country because traffickers want to place women where there are the least restrictions' (Parliament of Australia, APJC Hearing, 18 November 2003, 57).

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

It is commonly assumed that, in states where prostitution is legal, trafficked women are found predominantly in illegal brothels. In Victoria, this is not the case — trafficked women have been located in a number of legal brothels (Project Respect, APJC Submission 2003).

The Scarlet Alliance challenged the attack on legalised prostitution in their Submission to the Inquiry, arguing instead that a system of decriminalisation could have significant benefits in preventing trafficking and empowering migrant sex workers. They argued that criminalisation was likely to 'drive migrant workers to the most marginal fringes of the sex industry making them difficult to access and isolated from access to support services' (Scarlet Alliance, APJC Submission 2003, 24).

The issue of legalisation of prostitution was not as heavily discussed in the hearings in the United States as it was in Australia. Clearly this was mostly due to the fact that prostitution remains largely criminalised in the United States, and witnesses did not feel the need to offer a review of how legalisation of prostitution may have influenced trafficking into the United States. It is also possible that in later hearings the Anti-Prostitution Pledge made it unlikely that witnesses, or even Congressional representatives, would openly contest the

claim that legalised prostitution leads to an increase in trafficking. The issue of legalisation fuelling trafficking did, however, come up in the context of the ways in which the TIP Office should deal with countries that have systems of legalisation. Janice Raymond of CATW was strongly critical, terming the legalisation of prostitution as 'state-sponsored prostitution' (US Congress, House, 29 October 2003, 58). Raymond's article '10 reasons for not legalizing prostitution' also puts forward the argument that legalised prostitution fuels trafficking. In this article she offers details of the number of foreign workers in the sex industry in European countries such as the Netherlands and Germany where prostitution is legal. She argues, 'The sheer volume of foreign women who are in the prostitution industry in Germany, by some NGO estimates now up to 85 per cent, casts further doubt on the fact that these numbers of women could have entered Germany without facilitation' (Raymond 2003, 3). In this argument, Raymond does not distinguish between trafficking victims and migrant sex workers.

In her testimony to Congress in 2002, Donna Hughes also provided a detailed argument in support of the belief that demand for prostitution operated as a pull factor. In Chapter Three, it was noted that Hughes put forward the claim that legalised prostitution leads to increased trafficking by arguing that:

The trafficking process begins with the demand for victims to be used in prostitution. Countries with legal or widely tolerated prostitution create the demand and are the destination countries ... Where insufficient numbers of local women can be recruited, brothel owners and pimps place orders with traffickers for the number of women and children they need (US Congress, House, 19 June 2002, 73).

This testimony from Hughes clearly constitutes a strong attempt to cast legalisation as a pull factor that directly contributes to the phenomenon of trafficking.

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

Because many Dutch women do not want to be in prostitution anymore, the Dutch Government has decided to make the market bigger by actively searching for women in prostitution, who will come into the country to service the market, basically. So this means that they are, to a certain extent, looking for women who will populate the brothels (US Congress, House, 29 October 2003, 102).

Government sanctioning of the sex industry, in this case, was viewed as a 'pull' factor for trafficking.

The assertion by abolitionists that legalised, decriminalised or state sanctioned prostitution leads to an increase in trafficking has been challenged in studies conducted by the International Organisation for Migration and the International Labour Office. The IOM report suggests that variations influencing the demand for different types of sexual services (exploited versus 'free' women) are more likely to be explained by societal norms. These variations, they argue, are:

more readily explained by the very different sets of socially agreed standards regarding the right and proper way to act in the commercial sex market (ideas that are reinforced by the state's response – or lack of it – to phenomena such as violence by clients and employers against prostitutes, the exploitation of under-age and "trafficked"/unfree prostitutes, and so on) (IOM 2003, 42).

This finding could be interpreted in a number of ways. Abolitionists might argue that legalising prostitution cements social norms that sanction the purchase of women for sex, leading to exploitation (Jeffreys 2009, 174-175). In contrast, advocates of legalisation and decriminalisation would argue that the illegal nature of the industry allows for the establishment of norms where sex workers are subject to exploitation and violence. This is in part due to their lack of recourse to legal protection in the workplace. The IOM report indicates that the illegality of the sex industry may well be fuelling greater demand for 'exploitable' people than legalisation could. They argue that,

Three related factors are key to explaining the exploitative conditions experienced by many migrant and domestic sex workers: (a) The

unregulated nature of the labour market segments in which they work; (b) the abundant supply of exploitable labour and (c) the power and malleability of social norms regulating the behaviour of employers and clients (IOM 2003, 44).

The state sanctioning of an industry is not identified as a 'pull' factor for trafficking.

The International Labour Office also studied the supply and demand factors involved in human trafficking. The ILO found that there is a relationship between the incidence of prostitution and the number of trafficking victims (ILO 2006, 19). This was determined based on a comparison of aggregate data regarding the incidence of trafficking and estimates of prostitution activity within each country. However, while a larger prostitution sector was accompanied by a higher number of victims of trafficking, the ILO report declared, 'We have not found any correlation between legalised prostitution and trafficking' (ILO 2006, 19).

#### **4.4 Assertion versus evidence**

In assessing the efforts of campaigners to substantiate 'the claim' it is also necessary to question whether or not decision-makers were interested in evidence, or convinced by assertion. All informants interviewed for this thesis agreed there was a lack of research on the issue of trafficking. As DeStefano suggested, there is a great deal of anecdotal information about trafficking, but 'apart from the anecdotal to get really specific stuff is difficult' (DeStefano interview 2008). The lack of information about trafficking was also highlighted by several witnesses at the Parliamentary and Congressional hearings.

In her submission to the APJC Inquiry, Anne Gallagher highlighted the challenges in getting accurate data. She argued that,

There is very little quality trend evidence available and almost no cross-referencing or external verification of data. Where statistics on trafficking cases do exist, their value has been seriously undermined by the lack of a

consistent definition of trafficking and the absence of uniform collection procedures (Gallagher, APJC Submission 2003).

Simon Overland, who at the time was Acting Deputy Commissioner (Operations), Legal Policy Unit, Victoria Police and is now the Commissioner, testified to the Committee that there is a lack of evidence about the trafficking industry in Australia.

One of the difficulties that we have encountered is finding hard, empirical evidence that supports that. There is a lot of anecdotal evidence: some it might be accurate; some of it we suspect is not. So we have focused on trying to have a clear understanding of what the problem is because we think it is important to get that understanding before thinking about the policy and legal consequences that flow from that (Parliament of Australia, APJC Hearing, 18 November 2003, 23).

Despite the fact that many advocates of the claim use statistical information to support their arguments, even they freely admit both in hearings and interviews that there is a deficit of information on trafficking. Laura Lederer admitted in her testimony,

We have so very little information on this subject in the country and other countries, so very few facts, and we have no mechanisms right now for gathering them. What we are doing now is comparing apples to oranges. We have one NGO that says it is this, and then in another country another NGO that may be collecting facts in a very different manner. So you really cannot get a global perspective or even a perspective in any one country of what is going on ... We don't know how prevalent it [the sex industry] is' (US Congress, House, 14 September 1999, 51).

Dr Lauran Bethell of the New Life Centre in Thailand also admitted that there is very little certainty in the figures surrounding trafficking. 'The numbers are just so fluid. The statistics are all over the place as far as what kind of numbers we are dealing with in Thailand' (US Congress, Senate, 4 April 2000, 103).

In Australia Nina Vallins of Project Respect argues that there is a particular gap in the research when it comes to looking at the role demand plays (Vallins interview 2008). Jocelyn Farmer also added her concerns about the reliability of data. She testified in a private capacity at the hearings, though is involved with Soroptimist International Australia (an abolitionist organisation). Farmer used her concerns over the validity of data to emphasise a key dispute between abolitionist and non-abolitionist organisations. She questioned the credibility of the Scarlet Alliance, arguing that

they appear to underestimate the problem of trafficking and indeed provide some vestige of acceptability by referring to the women involved as “contract women” ... As such organisations also service mainstream prostitutes they could be viewed as having a vested interest (Parliament of Australia, APJC Hearing, 18 November 2003, 14).

In Farmer’s view, Project Respect was the NGO best placed to address trafficking.

#### **4.4.1 Do decision-makers require evidence?**

In the context of admissions by numerous abolitionist and non-abolitionist organisations that there is a lack of knowledge about the true nature and size of the trafficking problem, it is interesting to assess whether or not politicians were concerned about the validity of the evidence offered to them. During the Australian hearings there appeared to be a greater effort to establish a clear understanding of the problem.

In Australia, most witnesses to the inquiries were asked to provide evidence about the size of the trafficking problem. There was also a willingness to further explore the comments witnesses made regarding the legitimacy of the sex industry. Senator Duncan Kerr, Federal Member of Parliament in the Labor Party and Australian Parliamentary Joint Committee member, asked Project Respect,

If this is a general and large-scale problem it requires massive reorientation of resources and a refocusing of the Australian Crime Commission and a whole range of things. If it is a couple of individual



instances, albeit terrible ones, then it requires more needle like addressing and more targeted intervention. We have been given different impressions about the degree to which this is a live issue. In your experience — because you are obviously going in and talking to people — to what degree do you say this is a live issue? (Parliament of Australia, APJC Hearing, 18 November 2003, 38).

As noted earlier, Project Respect answered this question by indicating that it was the place of the Australian Federal Police to offer an estimate. However Maltzahn did indicate that Project Respect had estimated that there were approximately 1,000 victims of trafficking in Australia (Parliament of Australia, APJC Hearing, 18 November 2003, 38-39).

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

The issue of illegal workers working in slave like conditions is also well understood in the textile, clothing and footwear industry. I wonder about the extent to which the sex slaves tag is unfairly put onto the sex industry when actually it applies to a wider range of people in Australia in any case who are exploited in other workplaces (Parliament of Australia, APJC Hearing, 25 February 2004, 13).

Ferris added,

We are trying as a committee to get an understanding of the breadth of this problem, and it seems that much of the evidence is anecdotal. I am simply asking whether you would agree or disagree with what appears to be quite reasonable evidence from this alliance of sex workers that say they have access to almost 100 per cent of the workplaces in capital cities (Parliament of Australia, APJC Hearing, 25 February 2004, 13).

The Committee also sought to learn more about men and boys being trafficked into Australia, asking Sally Moyle, the Sex Discrimination Commissioner, if any attempts had been made to provide gender and age breakdowns in research on trafficking (Parliament of Australia, APJC Hearing, 25 February 2004, 60).

Nina Vallins of Project Respect says that requests for evidence from government officials are ongoing. In interview she said,

There is always a request for data, and it doesn't matter – you know, before they want to fund us to do work they want evidence and so on ... They say they won't give us money to do our work until we can provide them with evidence (Vallins interview 2008).

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

This indicates that Australian decision-makers did not necessarily accept assertions, and sought evidence to support the claims made by witnesses to the Inquiry. By contrast, decision-makers in the United States showed less interest in seeking statistical evidence beyond anecdotal information, however some Members of Congress did question the data provided. For example, during the US hearings a number of Congressional representatives requested more statistical information surrounding trafficking. Senator Brownback asked one witness, Dr Bethell, to provide information about the scale of the problem in Thailand (US Congress, Senate, 4 April 2000, 103). Nancy Ely-Raphel, at the time the Director of the TIP Office, was also asked 'What is the approximate total dollar value, Madam Ambassador, worldwide on the forced prostitution and forced trafficking employment that goes on?' (US Congress, House, 29 November 2001, 49). Sister Dougherty, of the United States Conference of Catholic Bishops, was also questioned on the reliability of the data on trafficking. Chairman Cornyn declared,

We have heard estimates of the number of people in this country who are victims of human trafficking, but I wonder how in the world we have any

confidence in those numbers, given the nature of the crime and the reluctance of the victim to come forward (US Congress, Senate, 7 July 2004, 30).

Some were also interested in looking more closely at the sex industry in the context of testimony that blamed the sex industry for fuelling trafficking. Representative Hilliard asked Lederer, 'How prevalent is the sex trade here in this country?' to which Lederer admitted that 'We don't know how prevalent it is' (US Congress, House, 14 September 1999, 51).

However, ultimately little more than anecdotal evidence was offered to support the claim and other generalisations made regarding human trafficking. In interview, Jordan indicated that it is important to produce concise, reliable research for members of Congress. She said, 'Members of Congress do not have time to read lengthy research and so they respond to testimony by a limited number of individuals'. She added, 'some members of Congress don't even have time to read the legislation they're voting on' (Jordan interview 2008). Carol Smolenski of ECPAT also indicated in interview that research does not necessarily drive policy in the United States. She believes that due to a lack of research on the topic, legislators are more likely to act on the justification that, 'I've heard this thing happened, this is a bad thing so let's do something about it. And that's what I think has been driving a lot of the legislation' (Smolenski interview 2008). Not all interviewees agreed, however. One interviewee who has been on both sides of the lobbying process, serving as a Government official during the Clinton administration and a campaigner for women's rights during the Bush administration, argued that sometimes US politicians were interested in statistics. 'I think you can have lots of logical arguments and they say well what are the numbers?' (Clinton Administration Official interview 2008).

Even if US decision-makers were interested in trafficking statistics, some interviewees indicated it was unlikely that they would change their minds on the link between prostitution and trafficking. One interviewee argued that even when politicians ask for research, it does not necessarily sway their view. Dr Mattar of the Protection Project suggested that research which disproved a link

between legalised prostitution and increased trafficking would not necessarily result in a change of US policy. He says the existence of research would not,

convince me that we should legalise prostitution ... I don't think that's the purpose of the research. I think the research would have to be — maybe it won't change the minds of those who think, well, prostitution is an evil, but it would help us understand more things and that's what we need. Whether it would change minds, I don't know (Mattar interview 2008).

When asked during interview, John Miller, Former Director of the TIP Office, said he believed that research questioning a link between legalised prostitution and trafficking would have some impact on decision-makers, however he also questioned whether or not it would lead to a change in policy. 'I don't know whether the United States would turn around because obviously there are issues here, principles involved, there is the moral dimension and this and that' (Miller interview 2008).

#### **4.5 Conclusion**

This chapter has explored the efforts of campaigners to substantiate the claim that legalised prostitution leads to increased trafficking. These efforts during the US hearings and Australian inquiries took place within the context of much ambiguity surrounding human trafficking. This chapter demonstrated that researchers face numerous challenges in quantifying and characterising the trafficking phenomena. These challenges include ongoing disputes surrounding the definition of trafficking victims, limitations in research sampling and the politicisation of data. In the absence of reliable information, a perpetuation of false and unreliable statistics has occurred.

These problems plagued attempts to develop credible estimates of the scope of the trafficking problem in Australia and the United States. They also undermine the efforts of campaigners to use statistical evidence to substantiate the claim that legalised prostitution fuels trafficking. This chapter demonstrates that the evidence presented by advocates of the claim remains unconvincing. Decision-

makers in Australia showed a greater interest than US decision-makers in scrutinising the evidence presented to them, indicating that ideology may have a stronger influence over US policy.

## CHAPTER FIVE – ACCEPTANCE AND REJECTION OF THE CLAIM

This chapter explores the ways in which decision-makers have accepted or rejected the claim that legalised prostitution leads to increased sex trafficking. This chapter demonstrates that decision-makers in the United States have demonstrated an almost absolute acceptance of the claim. This is evidenced through the acceptance of the key assumptions and arguments inherent in the claim. It is also evident in the policy proposals that have been adopted in response to the problem of trafficking. Decision-makers in the United States have also demonstrated a clear acceptance of the central claim itself, adopting this claim as fact in key legislation and government documents. Legislators in the US have only stopped short of complete adoption of the abolitionist claim where diplomatic relationships with nations that have legalised systems of prostitution are at stake. Australian decision-makers have, in contrast, persistently avoided an explicit acceptance or rejection of the claim, and its inherent assumptions, by refusing to take an official position in response to abolitionist arguments. There is some evidence in the statements of Members of Parliament as well as in Government actions of a rejection of the abolitionist position, as well as some support for legalisation. However, in the enactment of legislation and the development of anti-trafficking programs, it is clear that decision-makers are not fully supportive of either legalisation or abolition.

Two key frameworks have been utilised to assist in the measurement of the acceptance or rejection of the claim in policy debates in Australia and the United States. The first framework, developed by Kingdon (2003), explores agenda-setting and the inclusion of ideas within legislative priorities. Kingdon's framework aims to expose the stakeholders and structures behind 'an idea whose time has come' (Kingdon 2003, 1). He argues that the inclusion of a particular idea within legislative priorities occurs as a result of three factors, or processes – problem recognition, policy proposals and politics (Kingdon 2003, 18). Stolz has also utilised Kingdon's framework in her analysis of trafficking debates in the United States. She argues that viewing policy-making through the

lens of the 'three streams' provides a comprehensive approach to measuring change (Stolz 2005, 412).

The first section of this chapter focuses on the 'problem recognition' stage of the policy process. According to Kingdon, 'problem recognition' refers to the recognition and definition of a key problem requiring legislative action. Kingdon argues that the definition of a problem is highly politicised, as the characterisation of an issue leads directly to the adoption of a policy approach. He argues:

Getting people to see new problems, or to see old problems in one way rather than another, is a major conceptual and political accomplishment. Once a particular problem comes to capture the attention of important people, some whole classes of approaches come into favor and others fall from grace (Kingdon 2003, 115).

Therefore, measuring the extent to which decision-makers have accepted the 'problem' as characterised by abolitionists is essential in measuring the overall impact of advocates of the claim. In this section, the extent to which decision-makers 'recognised' the 'problem' of trafficking as characterised by abolitionist activists is explored. This is achieved through an assessment of whether or not decision-makers accepted the assumptions inherent within the claim (identified in Chapter Three) that legalised prostitution leads to increased trafficking.

The second section of this chapter focuses on the 'policy proposals' stage of the decision-making process. Kingdon argues that 'the specification of alternatives from which a choice is to be made' (Kingdon 2003, 2) is an essential aspect of the decision-making process as it determines the future direction of policy. He also argues that the process of selecting policy proposals involves an inherent acceptance of certain ideologies as, 'People sometimes advocate proposals because they want to promote their values, or affect the shape of public policy' (Kingdon 2003, 123). In this context, the acceptance or rejection of key policy proposals can offer a clear indication of the government's position on the purported link between prostitution and sex trafficking. This section considers the extent to which decision-makers have accepted policy proposals that are

grounded in the claim (identified in Chapter Three) versus proposals that instead call for a liberalising approach to prostitution.

The third section of this chapter focuses on Kingdon's third aspect of agenda-setting, 'politics'. The politics of the decision-making process, Kingdon argues, can include factors such as the public mood, government ideology, and pressure group campaigns (2003, 145). It is therefore necessary to explore how the tenor of ideas in the political domain impacts on decision-making. Chapter Six of this thesis offers a more comprehensive analysis of the 'politics' aspect of decision-making by exploring key political factors in the anti-trafficking debates in Australia and the United States.

This section of Chapter Five will focus only on the government ideology aspect of 'politics'. In order to explore this aspect of Kingdon's 'politics', and the extent to which the claim has been accepted within government ideology, an additional framework that offers an effective method for measuring influence will be utilised. Weitzer (2007a) analyses the development of anti-trafficking legislation in the United States by measuring the 'institutionalization' of the abolitionist ideology. Weitzer identifies several categories of institutionalisation, arguing that abolitionist approaches become institutionalised in the United States in a number of ways including: consultation with key stakeholders; inclusion of campaigners through ongoing collaboration; government funding of organisations; and concrete changes in government discourse, policy and law (Weitzer 2007a, 459-461). This section of the chapter explores these forms of institutionalisation in order to assess the extent to which the claim has been accepted within government ideology. In this section, Kingdon's term 'politics' will be replaced with the title of 'ideology' in order to more fully reflect Weitzer's framework as well as the competing ideologies at play within trafficking debates.



## **5.1 Policy makers' 'recognition' and acceptance of the 'problem' of human trafficking**

Throughout the hearings on trafficking in Australia and the United States it is clear that the degree of acceptance and rejection of the claim by decision-makers has followed a pattern consistent with both Kingdon and Weitzer's analysis. This section focused on the 'problem recognition' and definition stage of the policy process by assessing the extent to which decision-makers accepted the assumptions inherent in the claim. Firstly, the acceptance of sex trafficking as significant and unique is considered. Secondly, the acceptance of the assumption that the sex industry is not legitimate is explored. Thirdly, the legislative definitions of trafficking are analysed in order to demonstrate the degrees of acceptance of key assumptions in the claim. Finally, the acceptance of the assertion that there is an inherent relationship between prostitution and trafficking is assessed.

### **5.1.1 Sex trafficking is significant and unique**

As demonstrated in Chapter Three, the argument that sex trafficking is a significant and unique problem is an important part of the abolitionist position. In both the United States and Australia, abolitionists encouraged decision-makers to accept that sex trafficking was a large problem that required their action, and that it was a problem distinct to trafficking in other forms of labour. This section demonstrates that decision-makers in Australia were reluctant to explicitly accept this aspect of the claim that legalised prostitution leads to increased trafficking. However, in the development of legislation there was a clear indication that decision-makers did see trafficking as unique in comparison to other forms of trafficking and forced labour. In the United States, decision-makers adopted this aspect of the claim explicitly and completely. Decision-makers were keen to demonstrate agreement with the assumption that sex trafficking is unique and this is reflected in the anti-trafficking legislation that was adopted.

## ***Australia***

In Australia decision-makers demonstrated more scepticism towards the estimates about the size of the problem, as indicated in Chapter Four. Due to the terms of reference of the Joint Committee Inquiry, there was little discussion concerning forced labour in other industries. However, the fact that the initial Inquiry was formed to consider only trafficking for sexual servitude is indicative of the Federal Government's position. By establishing a specific Inquiry focused on sex trafficking and ignoring other forms of trafficking the Government indicated that it considered sex trafficking to be a unique problem. This acceptance was largely the result of feminist activism around violence against women, but also partly due to a campaign undertaken by Project Respect to bring the problem of sex trafficking to the attention of the public and the Government (see Chapter Three). Maltzahn argued that the work of Project Respect and journalists O'Brien and Wynhausen played a 'key role in putting the issue back on the national agenda' (Parliament of Australia, LCLC Hearing, 23 February 2005, 33). Despite the clear view of the Joint Committee Inquiry that sex trafficking was distinct from other forms of trafficking, there was some discussion of this issue during the hearings. In particular, the Scarlet Alliance argued (in both 2003 and 2005) that the sex industry was being unfairly targeted in the trafficking debate. The Chair of the Joint Committee Inquiry recognised that there was a tension between the ways in which trafficking for sex and trafficking for other forms of labour was dealt with. He declared, 'So you can come in as a fruit-picker, but you cannot come in as a sex worker' (Parliament of Australia, APJC Hearing, 25 February 2004, 41). However, this recognition of a double-standard was not further discussed during the Joint Committee and Senate Inquiries.

The Australian legislation ultimately did treat trafficking into the sex industry as separate to trafficking for other forms of labour. Section 271.2 of the legislation repeatedly makes reference to trafficking in persons 'for purposes that involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage' (*Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*). By explicitly referencing sexual services alongside

other exploitation, the legislation assumes that trafficking into the sex industry is distinct to trafficking into other industries. In comparison, very little attention is given to trafficking for forced labour.

### ***United States***

In the United States, there was also a demonstration in the early stages of the debate that decision-makers accepted the idea that sex trafficking was a unique problem. The hearings established by Congressman Chris Smith focused exclusively on sex trafficking. However, as efforts continued towards the establishment of the legislation that would ultimately become the *Trafficking Victims Protection Act 2000*, debate arose over whether or not trafficking for other forms of labour should also be included. The legislation favoured by Senator Wellstone called for a comprehensive approach that included all forms of human trafficking. These efforts were originally resisted by Congressman Smith, who argued that his draft legislation (H.R. 1356) was addressed to the far more serious crime of trafficking, and not to labour exploitation per se,

We believe that by focusing on this particularly egregious practice, the forcible or fraudulent trafficking of women and children for commercial sex purposes, we can stop it sooner than if we had tried to address the far broader range of evils. H.R. 1356 is by far tougher on the criminals and far more generous to the victims than would be appropriate if we were trying to legislate about working conditions in legitimate industries rather than punish rapists and protect rape victims (US Congress, House, 14 September 1999, 3).

Ultimately, the *Trafficking Victims Protection Act 2000* incorporated trafficking for all forms of labour, however it established a tiered definition of trafficking, specifically identifying trafficking in the sex industry as egregious. The offence contained within the law refers to a 'severe form of trafficking' which incorporates forced labour in all industries. However, sex trafficking is then defined as another form of trafficking, which can occur without force, effectively defining all migrant sex work as trafficking.

The Act establishes a 'severe form of trafficking in persons as'

(8) Severe forms of trafficking in persons – the term “severe forms of trafficking in persons” means:

(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.

Sex trafficking is subsequently defined as follows:

(9) Sex trafficking – Term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act’.

This definition establishes that the primary cases of “severe forms of trafficking” relate to sexual servitude, while trafficking for forced labour is a less serious crime. The definition of sex trafficking also indicates the government’s acceptance of other aspects of ‘the claim’. This will be discussed later in this chapter.

### **5.1.2 The sex industry is not legitimate**

As argued in Chapter Three, an underlying assumption in the arguments put forward by advocates of the claim was that the sex industry was not a legitimate industry. Particularly in the United States, this was one of the reasons given for why sex trafficking was unique and different to other forms of labour. In Australia and the United States the degree of acceptance given to this assumption varied substantially. In the United States, decision-makers consistently demonstrated their agreement with campaigners who argued that the sex industry is illegitimate and therefore sex trafficking is unique and

problematic. However, in Australia, the Joint Committee and the Senate Committee explicitly stated it would take no position in this issue. However, the committee also occasionally demonstrated clear ambivalence; at various times it presented both a subtle acceptance and rejection of the argument that the sex industry was not legitimate.

### ***Australia***

As noted in Chapter Three, arguments attacking the legitimacy of the sex industry were not a key feature of the Australian hearings. Jeffreys on behalf of CATWA did pursue this line of argument. Her attempt to question the legitimacy of the sex industry was acknowledged in the final report of the Joint Committee. However, the report argued that it was not within their terms of reference to take a position on this issue. The Report highlights two competing approaches to the issue of legitimacy, declaring that:

On one view, prostitution is a legitimate career choice, which should remain legalised and properly controlled. On the other view, prostitution is a form of exploitation, which should never be legitimised. This is a somewhat broader (and older) debate, that the Committee does not intend to enter into and which is, in any case, beyond its terms of reference (APJC Report 2004, 60).

It is clear in this statement that the Joint Committee was trying to avoid entering into the debate on the legitimacy of prostitution. However, declaring it outside of the terms of reference of the Committee did not end speculation by legislators about the legitimacy of the sex industry. During the Inquiry itself, Committee members demonstrated that they had opinions on the issue and argued there was a need for a consistent policy stance on the legitimacy of the industry. For example, the Chair of the Joint Committee agreed that there was inconsistency between state laws that legalised prostitution, and attitudes towards the industry at the federal level. 'Part of this problem is because we are caught halfway, with an industry that is legalised at the state level but which the federal

level has not really caught up with' (Parliament of Australia, APJC Hearing, 25 February 2004, 41).

Kerr also questioned Jeffreys on the issue, putting forward an alternative argument and clearly rejecting her arguments against the legitimacy of the industry. He suggested that, 'Many in the industry would argue the contrary [i.e. that prostitution is not inherently exploitative], and many women take a different view' (Parliament of Australia, APJC Hearing, 18 November 2003, 60).

The Chair of the Joint Committee also briefly entered into the debate when Detective Senior Sergeant Ivan McKinney expressed frustration with a system that is legal, but which still treated workers in the sex industry differently to those in other industries. He argued that when criminal justice visas have been offered to trafficking victims, the Commonwealth Attorney-General has demanded that they not engage in prostitution. McKinney suggests that:

We cannot tell someone what they can do in a legal industry. It is a real conflict because we are saying that we are saving these women or assisting them out of this industry, and they turn around and go: "But we still want to work there" (Parliament of Australia, APJC Hearing, 25 February 2004, 41).

It is clear that decision-makers were unwilling to condemn the sex industry as illegitimate, and recognised that the legalisation of the industry had not necessarily resulted in acceptance of its legitimacy. However, Committee members also indicated some acceptance of the assumption that the sex industry should be dealt with separately to other forms of labour in trafficking legislation. This was particularly evident in discussion about the definition of a trafficking victim, and will be explored in more detail later in this Chapter.

### ***United States***

In the United States, decision-makers took a much clearer position on the issue of the legitimacy of the sex industry, demonstrating none of the reluctance evident in Australia. During the hearings, Congressman Smith acknowledged

there had been competing claims on the legitimacy of the sex industry, and indicated that the drafters of the legislation strongly accepted the argument that the sex industry was not legitimate. In a hearing in 2001 he even credited one abolitionist organisation, Equality Now, with influencing policy on the issue. He declared that,

Emphatically the legislation rejects the principle that commercial sex should be regarded as a legitimate form of work. And that was no small issue last year, as Members will recall. And I remember when Equality Now did a very strong statement to the previous Administration taking them to task as a UN Protocol was being debated that we not allow, however unwittingly, this type of sexual exploitation to go on and somehow to be shunted aside as we go after the more extreme forms of exploitation (US Congress, House, 29 November 2001, 8).

At the same hearing, Smith also questioned then-Under Secretary Dobriansky about the Administration's position on the legitimacy of the sex industry. As noted earlier in this thesis, Dobriansky asserted the Administration's opposition to prostitution confirming 'All forms including legalized prostitution' (US Congress, House, 29 November 2001, 19). This exchange indicates that the Administration accepted the abolitionist viewpoint that the sex industry is illegitimate. It also demonstrates the extent to which abolitionist activists, and their supporters in Congress such as Christopher Smith, sought to maintain a government stance against accepting prostitution as legitimate labour. As noted in Chapter Three, advocates of the claim such as Hughes and Raymond used their testimony at the hearings as an opportunity to ask that the Administration clarify their position on the legitimacy of prostitution. By pushing Dobriansky to respond specifically to the question of legalised prostitution, Congressman Smith was fulfilling the wishes of Raymond and Hughes. This demonstrates the importance of the argument that the sex industry is illegitimate as part of the wider attack on legalised prostitution.

The US Government's annual Trafficking in Persons Report also provides evidence of the US Administration's acceptance of the argument that prostitution

is an illegitimate industry. Each TIP report frequently distinguishes between trafficking for 'prostitution' and trafficking for 'labor', clearly indicating a division of the two concepts. The 2003 Report provides a good example of this:

Trafficking victims, as they are being moved through transit countries, may not know that they will be forced into prostitution or labour when they arrive in the destination country (TIP Report 2003, 7).

The reference to prostitution 'or labour' clearly indicates the TIP Office's acceptance of the belief that prostitution is not a legitimate form of labour.

### **5.1.3 Definition of a trafficking victim**

Advocates of the claim that legalised prostitution leads to an increase in trafficking also attempted to influence the definition of a trafficking victim. The aim of advocates was to advance the abolitionist position that sex work cannot be consented to, and that therefore trafficking for sexual exploitation need not involve elements of deception or coercion. In the United States, abolitionists had some success in lobbying for a definition that aligns with the key assumptions contained in the claim. However, the definition finally adopted also represents a compromise position that accepts abolitionist assumptions but resists their calls for the removal of the 'force' elements within the legislation. In Australia, the definition of a trafficking victim indicates some acceptance of the abolitionist viewpoint that the sex industry is distinct to other forms of labour. However, the incorporation of abolitionist assumptions within Australia legislation has occurred to a significantly lesser extent than in the United States.

#### ***United States***

The abolitionist perspective is very prevalent throughout discussion of the definition of a trafficking victim during the United States hearings between 1999 and 2005. However, advocates of the claim that legalised prostitution leads to



increased trafficking achieved only partial success in persuading decision-makers to 'recognise' the 'problem' of trafficking as defined by abolitionists.

When the first *Trafficking Victims Protection Act* was passed in 2000, the Clinton administration resisted abolitionists' efforts to declare all migrant women working in the sex industry as trafficked, regardless of the presence of force, fraud or coercion. Weitzer (2007a) notes that while the TVPA refers to sex trafficking, which can be entered into voluntarily, the Act only applies to 'severe trafficking', which must involve force, fraud, or coercion, or be perpetrated against people under the age of eighteen. This was contrary to the wishes of the abolitionist movement which argued against a differentiation between migrant women engaged in forced prostitution and those involved in consensual sex work (Weitzer 2007a, 461).

However, as noted above, the *TVPA 2005* explicitly defines consensual sex work as a form of sex trafficking. It defined sex trafficking as, 'the recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act' (*TVPA 2005*, 1470). This clearly incorporates all sex work, regardless of whether or not it has been consented to. However, the legislation penalises only 'severe forms of trafficking' in which a commercial sex act has been 'induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age'. So, while decision-makers were willing to incorporate all migrant sex workers under a definition of 'sex trafficking', the legislation will only punish those involved in 'sex trafficking' where 'force, fraud or coercion' has been used to achieve compliance. Abolitionist advocates have consistently fought for the 'force, fraud or coercion' element to be removed from the legislation.

Following the change of administration from Bill Clinton to George W. Bush, advocates renewed their efforts to remove 'force, fraud and coercion' from the definition of sex trafficking. These efforts were led in the House of Congress by Congresswoman Carolyn Maloney. The House version of the *TVPA* Reauthorization discussed in Congress in 2008 removed the terms 'force, fraud and coercion' from the definition of sex trafficking. This change effectively

defined all migrant sex work as trafficking for prostitution. However, the Senate refused to accept the removal of these terms from the legislation, effectively blocking passage of the Reauthorization Bill. During an interview for this research, Antonia Kirkland, from the abolitionist organisation Equality Now, argued that the Senate Bill was therefore 'much weaker' and confirmed that 'there are people resistant' to the abolitionist perspective that all migrant sex work can be defined as trafficking (Kirkland interview 2008). Former Director of the TIP Office John Miller wrote a New York Times opinion piece in which he attacked then-Senator Joe Biden for his resistance to the House version of the Bill, which removed the force, fraud and coercion elements from the definition of trafficking (Miller 2008). This attack by Miller will be discussed further in Chapter Six when exploring the tactics used by abolitionists.

### ***Australia***

In Australia, debate on the definition of a trafficking victim was somewhat limited. Throughout both the Parliamentary Joint Committee and Senate Committee Inquiries, the abolitionist perspective was largely absent during discussions on the definition of a trafficking victim. Vincent McMahon, testifying on behalf of the Department for Immigration and Multicultural and Indigenous Affairs acknowledged the abolitionist perspective, but reiterated the government's commitment to definitions that incorporated some aspect of deception as a precondition for trafficking. McMahon said:

There are many people in the community who would regard any woman who is brought to Australia for the purposes of sex as a trafficked person. That is not the definition in the UN Protocol. Our analysis has always been around what would constitute trafficking in terms of that Protocol. It requires three things: movement across borders, which is almost always satisfied; coercion/deception, which happens sometimes, and exploitation (Parliament of Australia, APJC Hearing, 26 February 2004, 32).

During the hearings, two key debates relating to the definition of a trafficking victim emerged that offer a broader indication of the Government's position on the legitimacy of the sex industry and 'recognition' of the 'problem' as characterised by abolitionists. Both of these debates took place during discussion of the definition of a trafficking victim and related to the understanding of debt bondage, and the inclusion of the term 'consent' within the definition of trafficking. Acceptance of abolitionist arguments about the legitimacy of sex work may have been limited, yet discussions regarding the definition of a trafficking victim allows a fuller view of decision-makers' acceptance or rejection of the claim.

During the Australian hearings Project Respect consistently argued for the inclusion of debt-bondage within trafficking definitions, despite concerns raised by other organisations that this would single out the sex industry (as noted in Chapter Three). CATWA favoured this approach, arguing that 'debt bondage should apply specifically to "sex workers"' (CATWA, LCLC Submission 2005, 2), while the Scarlet Alliance argued to the Senate Inquiry that:

The "Debt Bondage" amendments will effectively make working under contract illegal. This alone will severely affect a person working under contract from accessing assistance or services or disclosing their debt or contract relationship to anyone for fear of detection (Scarlet Alliance, LCLC Submission 2005, 10).

Ultimately the Senate Committee agreed with those organisations that debt bondage should be included in the legislation. The Committee recommended that the legislation should include an 'express reference' to deception about the size and terms of the debt 'owed' by the trafficking victim (LCLC Report 2005, vii). This means that any smuggled person who enters into a contract which is undefined or deemed 'unreasonable' by authorities, will be viewed as a trafficking victim. The final legislation included a broad definition of debt bondage. Subsection 270.7(1) of the *Criminal Code* declares

(2) In determining, for the purposes of any proceedings for an offence against subsection (1), whether a person (the *first person*) has caused

another person to enter into debt bondage, a court, or if the trial is before a jury, the jury, may have regard to any of the following matters:

(a) the economic relationship between the first person and the second person;

(b) the terms of any written or oral contract or agreement between the second person and another person (whether or not the first person;

(c) the personal circumstances of the second person, including but not limited to:

(i) whether the second person is entitled to be in Australia under the *Migration Act 1958*; and

(ii) the second person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and

(iii) the extent of the second person's social and physical dependence on the first person

(Subsection 270.7(1) of the *Criminal Code Amendment Act 2005*)

This definition establishes a very wide scope for debt bondage and thus trafficking. With this approach, concerns raised by the Scarlet Alliance that all contract arrangements could fall under the definition of debt bondage seem legitimate. In particular, by considering the economic relationship between the trafficker and the trafficking victim, it is almost certain that any sex worker entering Australia under a contract could be considered to be working under an arrangement of debt bondage. This is an extremely wide definition of debt bondage as it is likely that any person who facilitates the entry of a worker into Australia has financial power over that person, as they are in the better position to set the terms and details of contracts. While it is ultimately left to judicial discretion to determine whether or not a contract was exploitative, this definition establishes guidelines that could feasibly define all contract arrangements as exploitative.

The adoption of this definition of debt bondage can certainly be seen as an acceptance of Project Respect's perspective that many of the migrant sex workers in Australia are under debt bondage. It is a clear rejection of the Scarlet Alliance's argument that many of these contracts are consensual and that workers operating under these contracts would not identify themselves as trafficked.

The final report of the Joint Committee also included a clear acceptance of a wider understanding of the crime of trafficking and the practice of debt bondage. The report declared:

The effective degrees of control and "imprisonment" inflicted on the women goes far beyond the physical constraints of locked doors and someone guarding them. It is reinforced by physical violence, and the extent of the power the traffickers have over the women in other ways: the women may not speak English, they have no money or passport, and may not even know where they are (APJC Report 2004, 15).

Specifically the Joint Committee suggested, 'amending section 270(7) of the Criminal Code Act 1995 to broaden the offence of deception to include deception regarding not only the type of work to be done, but expressly the kind of services to be provided, whether of a sexual nature or not' (APJC Report 2004, xiii). This recommendation was largely accepted and the Government's response specifically noted that the new Act would amend the Criminal Code to include, 'a new debt bondage offence to supplement the existing broad slavery offence in section 270.3 of the *Criminal Code*' (Government response to APJC Report 2004, 5).

The definition of a trafficking victim was also a topic of debate at the Senate Inquiry, with disagreements between witnesses regarding which definition the legislation should adopt. The Scarlet Alliance argued that the definition needed to be constructed in a manner which did not assume that all sex work entailed exploitation. They argued, 'The use of the term exploitation must NOT be made synonymous with the occupation of sex work ("prostitution") in law' (Scarlet Alliance LCLC Submission 2005, 10). World Vision argued that the definition

should include details regarding the 'purpose of exploitation', while CATWA wanted a broad definition that did not draw distinctions between free and forced sex work (CATWA LCLC Submission 2005).

The Attorney General's Department resisted efforts to adopt the exact wording of the definition in the United Nations' Protocol. They argued that the Protocol definition allowed individual governments to establish their own meaning. Catherine Hawkins, representing the Attorney General's Department argued that:

There is a balance to be struck; we have to make sure that we have the essence of our international obligations put into Australian domestic legislation in a way that is clear and consistent with the approach taken in domestic laws ... the language of international obligations does give nation states a certain amount of latitude to implement, appropriate and consistently with their domestic practice, those obligations (Parliament of Australia, LCLC Hearing, 23 February 2005, 41-42).

This response indicates that the government was unwilling to interpret the UN definition with a broader approach incorporating both 'forced' and 'free' prostitution, as CATWA had requested. Also, while there was clearly debate regarding the definition of a trafficking victim, the ambiguity contained within the definition 'exploitation of prostitution of others' was not a key point of discussion.

The inclusion of the term 'consent' in the definition of trafficking was also a key topic of discussion at the Australian Senate Inquiry. The discussion centred around whether or not a person's consent to the conditions of their transportation and work was relevant in determining whether a person was trafficked. The final report of the Joint Committee did not include an explicit declaration on the issue of whether or not consent was an important distinguishing feature between trafficked and non-trafficked migrant sex workers. This may be because this was not a key topic of debate during the Inquiry. However, the report could be interpreted as offering a rejection of a definition of trafficking victim that would incorporate all migrant sex workers. In

characterising trafficking victims, the report noted that there were key differences between trafficked and non-trafficked women in the sex industry. 'As noted, a common feature of the sex work performed by trafficked women is that they have no right to refuse either clients, or particular sex acts' (APJC Report 2004, 16).

The legislation, however, does make references to the importance of a victim's consent. The Act refers to the 'compliance' of the victim, declaring that a person commits an offence of trafficking if, 'that use of force or threats results in the first person obtaining the other person's compliance' (*Criminal Code Amendment [Trafficking in Persons Offences] Act 2005, 6*).

With a wide definition of debt bondage, little room is left for migrant sex workers to assert that they have freely consented to their employment in the sex industry. However, the Government's decision to retain mention of compliance in the offence of trafficking demonstrates some rejection of the assumption that all migrant sex workers are trafficked. The legislation assumes that most migrant sex workers have been coerced into compliance, however there remains a possibility that sex workers can comply with arrangements made by someone facilitating their entry into Australia without that being the result of coercion.

The definition of a trafficking victim used in the final legislation offers limited insight into the government's 'recognition' of the 'problem' as defined by abolitionists regarding the legitimacy of the sex industry. The definition does not offer a clarification on the United Nation's use of the term 'exploitation of prostitution of others', however the legislation also does not adopt that term. The relevant definitions within the Act include the definition of a trafficking offence, and the definition of exploitation. They are defined as follows:

- (1) A person (the *first person*) commits an offence of trafficking in persons if:
  - (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
  - (b) the first person uses force or threats; and

- (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt (Criminal Code Amendment Act 2005, 6).

This section is supported by similar sections establishing the trafficking of persons out of and within Australia as offences. It also declares a trafficking offence occurs where 'in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt' (Criminal Code Amendment Act 2005, 6).

This initial definition is coupled with sections (2) and (2A) which further detail the offence of trafficking into and out of Australia. Section (2) declares:

- (2) A person (the *first person*) commits an offence of trafficking in persons if:
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
  - (b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Australia, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

This clause clearly articulates trafficking for sexual services as an offence. As noted above, it also singles out the sex industry for special mention. Clause 2B also deals with sex trafficking as a special case:

- (2B) A person (the *first person*) commits an offence of trafficking in persons if:
- (a) The first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Australia; and
  - (b) There is an arrangement for the other person to provide sexual services in Australia; and



- (c) The first person deceives the other person about any of the following:
- (i) the nature of the sexual services to be provided
  - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
  - (iii) the extent to which the other person will be free to cease providing sexual services;
  - (iv) the extent to which the other person will be free to leave his or her place of residence;
  - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services – the quantum, or the existence, of the debt owed or claimed to be owed.

Again, this clause is coupled with a clause relating to the trafficking of people out of Australia. No other form of trafficking is addressed in such detail in the legislation.

The definition of exploitation in the final legislation also singles out the sex industry as a special case, offering a clear acceptance of the central assumption in the claim that sex trafficking is unique. It declares:

*Exploitation*, of one person (the *victim*) by another person (the *exploiter*), occurs if:

- (a) the exploiter's conduct causes the victim to enter into slavery, forced labour or sexual servitude; or

This definition of exploitation does not justify the Scarlet Alliance's concerns that exploitation would be seen as synonymous with sex work, however it does explicitly label sexual servitude as a distinct form of exploitation alongside forced labour. If the Government had accepted the sex work perspective that prostitution is a legitimate form of labour, then there would be no need for sexual servitude to be explicitly referenced as a form of exploitation. The

reference to 'forced labour' would suffice. This demonstrates some acceptance of the aspect of the claim that the sex industry is not legitimate.

#### **5.1.4 Legalised prostitution fuels trafficking: (relationship)**

As noted in Chapter Three, one of the key elements of the claim that legalised prostitution leads to an increase in trafficking is the argument that prostitution and trafficking are inherently linked. The relationship between prostitution and trafficking was discussed in both the Australian and the US hearings, although there were differences in the degree of acceptance by decision-makers. In Australia, this argument was largely rejected by decision-makers, while in the United States the link between the two was assumed by many decision-makers and ultimately accepted by the Government.

##### ***Australia***

During the Australian Inquiry several organisations raised the issue of the relationship between prostitution and trafficking including Project Respect, the Catholic Women's League of Australia, the Australian Chapter of the International Commission of Jurists and the Coalition Against Trafficking in Women Australia. As discussed in Chapter Three, each of these organisations had their own perspective on the nature of that relationship, with the clearest abolitionist case being presented by Jeffreys from CATWA. Although this issue did not fall within the terms of reference of the APJC, the attitudes of committee members are evident at several stages of the hearings.

In response to Jeffrey's claim that legalised prostitution leads to an increase in trafficking, Senator Kerr offered a counter-point, arguing that an illegal industry is more likely to fuel exploitation. He says, 'I cannot help but believe that if you make an activity such as prostitution illicit you therefore increase the return to those prepared to risk. Undoubtedly, in this area, those prepared to risk are corrupt officials and organised crime' (Parliament of Australia, APJC Hearing, 18 November 2003, 59).

As noted in Chapter Three, Project Respect also urged the APJC to consider the relationship between prostitution and trafficking, declaring that it is difficult to address trafficking without investigating its links to the sex industry. The Committee members did not offer any rejection of this assumption either during the hearing or in the final report. However, the APJC also avoided an explicit acceptance of this assumption as they did not call for a review of the sex industry and relevant laws.

Although it seems that during the hearing decision-makers largely rejected the suggestion that there was a key link between legalised prostitution and trafficking, Janelle Fawkes argues that there have been changes in political debates over recent years that would indicate otherwise. In interview, Fawkes argued that that it is now virtually impossible to have a discussion on the sex industry without the issue of trafficking being raised as a linked issue:

We never enter into a sex industry law or policy discussion without this issue now being a core element of the discussion ... sex industry law reform discussion is no longer about the occupational health and safety of sex workers. It's no longer about incentives to comply. It's no longer about increasing safety or looking at the real issues for sex workers. It's not about this perceived set of issues. And one of them, a core one, is trafficking. So that is the way I think it is principally affecting policy development in Australia (Fawkes interview 2008).

### ***United States***

In the United States, the acceptance of the claim of an inherent link between prostitution and trafficking has been far more explicit. Weitzer (2007a) argues that the Clinton administration initially resisted abolitionist claims regarding a link between legalised prostitution and trafficking. In particular, the Clinton administration distinguished between forced and voluntary prostitution (Weitzer 2007a, 461). The Clinton Government's rejection of some abolitionist claims is clear in the US delegation's negotiation position during the development of the UN Protocol, as well as in the initial compromise definition

produced in the first *Trafficking Victims Protection Act*. Following the election of George W. Bush as President of the United States, abolitionists were far more successful in linking prostitution to the trafficking debate and advocating the claim that legalised prostitution leads to an increase in trafficking.

The 2005 *Trafficking in Persons Report* clearly declares a belief in the claim:

It is critical that governments take action to fight commercial sexual exploitation. For example, where prostitution flourishes, so does an environment that fuels trafficking in persons (TIP Report 2005).

The 2006 *Trafficking in Persons Report* continues to declare its opposition to prostitution and reaffirm the link between prostitution and trafficking. It states:

The U.S. Government opposes prostitution and related activities, including pimping, pandering, and maintaining brothels, as contributing to the phenomenon of human trafficking (TIP Report 2006).

The National Security Presidential Directive 22 (Anti-Prostitution Pledge) also contained a clear acceptance of the argument that the sex industry was illegitimate. The Directive stated, 'The United States Government position is that these activities should not be regulated as a legitimate form of work for any human being' (NSPD 22, 2002).

During his interview for this research, John Miller confirmed that recognition that legalised prostitution fuels trafficking enabled him to advocate in favour of the Swedish model, which decriminalises sex workers while penalising customers in an effort to ultimately eradicate prostitution. In his work as Ambassador-at-Large for Trafficking, Miller says his efforts to advocate the Swedish Model to other countries 'was blessed' by a Cabinet Council meeting on the issue of human trafficking. Miller said:

Even though it's not formally declared in any document we certainly, given the choice between the Swedish approach and the Dutch approach, have decided in our own minds in which direction to go (Miller interview 2008).

This declaration by Miller indicates that there was strong support in the Administration for an anti-legalisation approach to prostitution, and indicates some acceptance of the abolitionist claim that legalisation of prostitution was anathema to reducing sex trafficking.

There is, however, some evidence that members of the U.S. Administration rejected the claim that legalised prostitution leads to an increase in trafficking. Chapter Three highlighted the testimony of Hughes, reporting that Ambassador Nancy Ely-Raphel, during her time as Director of the TIP Office, said that the connection between legalised prostitution and trafficking was only anecdotal (US Congress, House, 19 June 2002, 74). Statements by Ely-Raphel that the alleged connection was merely anecdotal indicate some rejection of the central claim made by abolitionists. However, it is possible that this suggestion from Ely-Raphel may have contributed to her removal as Director of the TIP Office. Abolitionist activist Hughes fixated on this statement and launched an attack against Ely-Raphel in her testimony to Congress. Hughes argued that, 'this view is either naïve or a lack of political will to face up to what trafficking and the sex trade is all about. There is a connection between prostitution and trafficking' (US Congress, House, 19 June 2002, 74). The attack on Ely-Raphel, and her eventual removal as Director of the TIP Office, may demonstrate that her rejection of the claim was not supported by Congress and the rest of the US Administration.

By contrast, Ely-Raphel's replacement, John Miller, chose to characterise the problem of trafficking as inherently linked with domestic sex industries. He testified to the Senate that:

there wouldn't be sex trafficking without prostitution. I mean, that pretty much speaks for itself ... It is clear to me that when prostitution dramatically or substantially increases in a country, that sex trafficking will increase (US Congress, Senate, 9 April 2003, 19).

In this instance, Australia and the United States present quite contrasting cases. In the United States, decision-makers have accepted all of the assumptions inherent in the claim that legalised prostitution leads to increased trafficking. This acceptance has been explicit and fairly consistent. In Australia, decision-

makers have shied away from making explicit statements regarding both the legitimacy of prostitution and its suggested causal link to trafficking. However, this refusal to declare an explicit position does not imply a rejection of aspects of the claim. The actions of decision-makers during the inquiries and during the development of legislation indicate that while Australian legislators are not wholly supportive of the abolitionist perspective, they do not necessarily subscribe to the sex work perspective either.

## **5.2 Acceptance of policy proposals**

The second section of this chapter focuses on the influence of the claim that legalised prostitution leads to increased trafficking as evidenced through the acceptance or rejection of key policy proposals that affect the sex industry. Abolitionists put forward two key policy proposals consistent with a belief that legalised prostitution leads to an increase in trafficking. As discussed in Chapter Three, they called for efforts to address demand for sexual services, and they called for condemnation of legalised prostitution systems domestically around the world. This section demonstrates that in the United States, decision-makers demonstrated significant acceptance of the policy proposals linked to abolitionist arguments underpinning the claim that legalised prostitution leads to increased trafficking. In Australia, decision-makers were more resistant to abolitionist policy proposals, however they also did not offer a clear rejection of some of the key assumptions and arguments inherent in the claim. Australian decision-makers resisted policy proposals that offered an alternative approach to combating sex trafficking through criminalising sex work.

Firstly, this section considers the extent to which legislators accepted the proposal that demand for sex services must be addressed in order to fight trafficking. Secondly, this section highlights the ways in which decision-makers accepted or rejected proposals to condemn legalised prostitution. Finally, this section focuses on policy approaches that offer an alternative to combating sex trafficking through criminalisation of prostitution, considering the extent to which legislators have accepted or rejected these suggestions.

### **5.2.1 Need to address demand**

Throughout the hearings in Australia and the United States advocates of the claim argued strongly that demand was a key ‘pull’ factor in trafficking, and that efforts to prevent human trafficking must focus on ending demand for commercial sexual services. In Australia, decision-makers implicitly rejected this request, while in the United States an ‘attack on demand’ eventually became a key part of trafficking legislation. Abolitionist arguments calling for an ‘attack on demand’ form a central aspect of ‘the claim’, and decision-makers’ responses to this argument in the United States indicate support for a clear acceptance of the claim.

#### ***Australia***

As noted in Chapter Three, the strongest argument calling for efforts to address demand for prostitution was presented by Jeffreys on behalf of the Coalition Against Trafficking in Women Australia. Requests to attack demand were also made by the Catholic Women’s League of Australia and the International Commission of Jurists in their submissions to the Inquiry. These arguments were noted in the final report of the Joint Committee, however the report declared, ‘The suggestions aimed at addressing the demand for prostitution involve judgements about the legalisation of brothels, which are a matter for state and territory governments rather than the Commonwealth’ (APJC Report 2004, 59).

While this is clearly not an acceptance of the proposal by Jeffreys and others, it is also not an outright rejection. The Joint Committee chose to deal with this issue by emphasising that prostitution is a state, not a federal, issue. However, the Joint Committee did actually make some recommendations for law reform at the state and territory level. In the supplementary report it suggested there are several areas of law reform which should be addressed such as, ‘regulatory reform within the sex industry to detect, address and prevent the exploitation of foreign sex workers’ (APJC Supplementary Report 2005, 3).

Although this recommendation is non-specific about the requirement for 'prevention' (which might include addressing demand), it demonstrates that the Joint Committee was willing to comment on State and Territory matters. This could be an indication that decision-makers rejected the request to attack demand because they did not specifically recommend this for state law reform. However, the APJC Report is not specific about reforms to be made within the sex industry in order to prevent trafficking. So again it cannot be assumed that the Joint Committee is completely resistant to the suggestion that demand for prostitution should be attacked.

It is clear that decision-makers were unwilling to fully accept proposals that demand should be attacked, but were also unwilling to offer an outright rejection of this suggestion. In one area, however, the Joint Committee was explicit in accepting that demand was a key issue. As Fergus (2005) notes, there are differing interpretations of Article 9 of the UN Trafficking Protocol which declares that nations should take measures to prevent trafficking including focusing on demand. Fergus explains:

There have been two major interpretations of this word ['demand']. The more conservative interpretation is that states should educate men who use prostitutes to distinguish between those who have been trafficked and those who have not, and to prosecute those buyers who knowingly use trafficked women ... The second interpretation is that states should target demand for prostitution itself, as the same demand fuels supply of both trafficked and non-trafficked prostitutes, and that the men who use them are unable (and/or unwilling) to distinguish between them (Fergus 2005, 28).

The Australian Joint Committee seemed willing to accept the first interpretation. In the Supplementary Committee report a community awareness strategy was promoted as an essential element of fighting sex trafficking in Australia, focusing on addressing the demand for 'trafficked' sex services, not all sex services. The strategy was to focus on a target audience including 'people working in the sex industry, users of the sex industry and service providers' in an attempt to



improve the identification of victims of trafficking (APJC Supplementary Report 2005, 11).

### ***United States***

In the United States the proposals for anti-trafficking legislation to include an attack on demand were initially sidelined from the final legislation in the same way as they were in Australia. However, in subsequent reauthorisations of the *Trafficking Victims Protection Act*, a clear acceptance of the need to address demand for prostitution (and thus the claim), began to emerge.

The 2003 Reauthorization did not include a focus on addressing demand for prostitution, however it did call for further research to look into the causes of trafficking (TVPRA 2003, 10). In interview Dr Mattar from the Protection Project indicated that his organisation lobbied for the inclusion of this element, in order to enable further research into the relationship between prostitution and trafficking (Matter interview 2008). It is notable, however, that men's demand for sexual services is not listed as a possible cause of trafficking requiring further research. As the TVPRA 2003 is where the Anti-Prostitution Pledge is officially enshrined in legislation, it seems slightly inconsistent that there were no explicit calls for research into demand as a factor fuelling sex trafficking. The section of the legislation mandating further research thus avoids an explicit acceptance of the abolitionist perspective, even though it is stated clearly in later legislation.

It is in the 2005 Reauthorization that decision-makers show their clearest acceptance of the abolitionist claim that demand must be addressed in order to prevent trafficking. This legislation is often referred to as the 'End Demand Act' due to its significant focus on attacking demand. Firstly, the research provision of the legislation is expanded to include a call for research on 'sex trafficking and unlawful commercial sex acts in the United States' (TVPRA 2005, 10). In particular, a study is commissioned to focus on 'sex trafficking and unlawful commercial sex acts in the United States and shall include, but need not be limited to –

- (I) the estimated number and demographic characteristics of persons engaged in sex trafficking and commercial sex acts, including purchasers of commercial sex acts;
- (II) The estimated value in dollars of the commercial sex economy, including the estimated average annual personal income derived from acts of sex trafficking;
- (III) The number of investigations, arrests, prosecutions, and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts, by States and their political subdivisions; and
- (IV) A description of the differences in the enforcement of laws relating to unlawful commercial sex acts across the United States.

As sex trafficking is still defined as the recruitment and transportation of any person for the purposes of a commercial sex act (without the inclusion of the clause relating to force, fraud or coercion), this study is essentially to be conducted on migrant and domestic sex workers and clients within the United States. This is a clear indication of decision-makers' acceptance of the assertion that addressing demand is an essential element in addressing trafficking.

The TVPRA 2005 also calls for measures to address demand in both the United States and in other countries. Sec.104 includes an amendment to the TVPA 2005 which calls upon other countries to introduce 'measures to reduce the demand for commercial sex acts' (TVPRA 2005, 7). Most significantly, the legislation includes funding for a greater law enforcement focus on the commercial sex industry in the United States. The legislation declares that the 'Attorney General may make grants to States and local law enforcement agencies to establish, develop, expand or strengthen programs ... to investigate and prosecute persons who engage in the purchase of commercial sex acts' and 'to educate persons charged with, or convicted of, purchasing or attempting to purchase commercial sex acts' (TVPRA 2005, 14).

These aspects of the legislation assume a link between prostitution and the prevention of trafficking. While the bulk of the legislation still identifies only 'severe forms of trafficking' as punishable under the legislation, this allocation of funds towards policing of the domestic sex industry is clearly directed only at prostitution law enforcement, and not the identification of trafficking victims. This is the clearest indication of the United States' acceptance of the claim that addressing demand is essential to addressing trafficking. Dr Mattar of the Protection Project saw the TVPRA 2005 as a great success for advocates of the claim. During his interview for this research he argued that, 'For the first time we are addressing not only trafficking for the purposes of a commercial sex act, but trafficking *and* [emphasis added] a commercial sex act. So the commercial sex act was addressed separately for the first time under the 2005 Act. This is very helpful' (Matter interview 2008).

Some of the consequences of this approach are evident in the USA, for example, in increased police raids on brothels. A report by the Urban Justice Centre's Sex Workers' Project in New York discusses the use of raids in the fight against sex trafficking. It says:

Not only does this approach severely limit the possibility of locating and identifying individuals trafficking into domestic, agricultural, and service sectors, but approaching situations where trafficked individuals may be found from a perspective that prioritizes policing of prostitution undermines the identification of trafficked persons (SWP 2009, 20-21).

Melissa Ditmore from the Sex Workers' Project adds that the increases in raids are 'in part because of funding, but I think it's in part because it's a politically easy target' (Ditmore interview 2008).

The remit of the original *TVPA 2005* as envisaged by abolitionists and their supporters within Congress went far beyond brothels and sought to attack a much wider variety of commercial sex acts including lap dancing, stripping and pornography. There were also efforts made to attack legal brothel prostitution in Nevada (Weitzer 2007a, 465). While some of these provisions did not make it

into the final Act, the *TVPA 2005* did include funding incentives for state law enforcement to increase their raids on brothels (*TVPA 2005*).

In interview, Mohammed Mattar of the Protection Project declared that the *TVPA 2005* clearly demonstrated a shift in the Federal Government's policy. As in Australia, prostitution law in the US is a matter for state. However, Mattar argued that under the 2005 Act 'it was addressed for the first time as a federal issue making it an obligation on the federal government to enhance the capacity of states to do two things – one, conduct prevention campaigns and so on and two, prosecute' (Mattar interview 2008). Mattar argued that the 2005 Act was an indication of the success of the Protection Project's campaign for demand to be addressed, declaring that many of the amendments to the legislation proposed by the Protection Project were incorporated in the 2005 Act (Matter interview 2008).

Miller believes that the introduction of the *End Demand Act* was a strong indication that the United States could be moving towards the Swedish model. He also credits the introduction of 'Johns Schools' (whereby men arrested for prostitution-related offences are required to attend 'rehabilitation' classes to discourage them from offending again) with successfully addressing men's demand for sex services (Miller interview 2008).

The question of attacking demand for commercial sex was a much bigger feature of the US hearings than the Australian inquiries. In the United States, decision-makers again offered an explicit acceptance of the claim by establishing legislation aimed at addressing the demand not for trafficked women, but for all commercial sex. This demonstrates a clear acceptance of the belief that tolerated commercial sex has a causal relationship with increased trafficking. In Australia, decision-makers again resisted efforts by abolitionist advocates to persuade them of the claim. Legislators were reluctant to accept the need for policy that would address demand for commercial sex.

### **5.2.2 Need to attack legalised prostitution**

Advocates of the claim that legalised prostitution leads to an increase in trafficking were, of course, keen to see policy proposals that attacked legalised systems of prostitution. For advocates of the claim this would ideally include the removal of legalised systems everywhere. In Australia, demands for the removal of legalised prostitution were resisted by the APJC during the hearing and in the final report. In the United States legislators made a clear commitment to resisting legalised prostitution at home. However, they stopped short of the international condemnation asked for by abolitionists.

#### ***Australia***

It has already been noted several times in this chapter that the Parliamentary Joint Committee was reluctant to take any stand whatsoever on the legalisation of prostitution and its relationship to trafficking. This continued in response to abolitionist arguments calling for the prohibition of prostitution. The Joint Committee neither explicitly advocated legalisation as a preventative measure against trafficking, nor condemned it as a barrier to prevention of sex trafficking. The final report of the Parliamentary Joint Committee contained no recommendations on winding back legalised prostitution. However, some Committee members clearly had opinions on this matter.

During testimony from Jeffreys, the Australian representative of the Coalition Against Trafficking in Women Australia, Committee member Kerr continued to resist suggestions that legalised prostitution was a root cause of trafficking. In response to suggestions that legalised prostitution resulted in an expansion of the sex industry and a subsequent higher need for trafficked women, Kerr argued that, 'I am suggesting to you that the argument that we have seen an expansion of prostitution seems implausible' (Parliament of Australia, APJC Hearing, 18 November 2003, 58).

However this was not a position held by all of the Committee. As noted in the first section of this Chapter, the Chair of the Committee recognised that there

was inconsistency between state and federal attitudes towards the sex industry (*AJPC* 25 February 2004, 41). In addition, the supplementary report of the Committee recommends 'regulatory reform within the sex industry to detect, address and prevent the exploitation of foreign workers' (*APJC Supplementary Report* 2005, 3). This could be interpreted as support for the contrary view that legalisation can assist in regulating exploitation within the industry, though it cannot be assumed that this was the underlying assumption made by the Committee members in drafting the report. This recommendation was followed through in the establishment of the National Policing Strategy to Combat trafficking in Women for Sexual Servitude. The strategy declares that,

In those jurisdictions where prostitution is de-criminalised or legalised, review regulatory regimes and structures to offer recommendations for improvements to prevent and deter people trafficking for sexual servitude (*ACC, LCLC Submission*, 2005).

This indicates that although decision-makers are unwilling to officially comment on a possible link between legalised prostitution and trafficking, they do see it as necessary to scrutinise the legal sex industry for the purposes of making potential 'improvements'. This indicates some acceptance of the underlying assumption that there is a link between prostitution and trafficking.

Project Respect also indicated their belief that the Federal Government's draft legislation indicated a willingness to consider the link between prostitution and trafficking. During testimony to the Senate Inquiry Project Respect founder Kathleen Maltzahn said, 'One of the more substantial things, I think, is that the legislation puts us in line with the UN Protocol in terms of recognising that the perception around terms and conditions of prostitution is an important component of any anti-trafficking attempts' (*Parliament of Australia, LCLC Hearing*, 23 February 2005, 33).

The Scarlet Alliance argued during their testimony to the Senate Inquiry that the Federal Government's approach to the trafficking issue, 'singles out the sex industry' (*Parliament of Australia, LCLC Hearing*, 23 February 2005, 17). The report of the Committee again offered a very vague response which can be taken

as neither acceptance nor rejection of 'the claim'. They declared that although the concerns of the Scarlet Alliance were important, they did not justify any specific changes to the draft legislation (LCLC Report 2005, 28).

As noted earlier in this Chapter, the legislation ultimately did treat trafficking into the sex industry as separate to trafficking for other forms of labour. By focusing most of the legislation on deception and trafficking for the purposes of providing sexual services, the legislation demonstrates an acceptance that the sex industry is unique. It also singles out the sex industry within the definition of exploitation, again demonstrating some acceptance that the sex industry deserves particular attention within the legislation that is not required for other industries, with the notable exception of trafficking of human organs.

The Senate Committee steered clear of the debate regarding visas for sex workers in language reminiscent of the Joint Committee's declaration on the link between legalised prostitution and trafficking. The final Senate Inquiry report devoted a section to 'Alternative legislative approaches' where they outlined 'the claim' put forward by CATWA as well as the suggestions put forward by the Scarlet Alliance, SSPAN and AFAO for visas for migrant sex workers. The Committee's comment on it was brief and non-committal: 'The Committee acknowledges the concerns raised, and the often differing views expressed. In general, the issues are of a broader nature, and beyond the scope of this inquiry. The Committee considers that the concerns raised are not sufficient to prevent the passage of the Bill' (LCLC Report 2005, 43).

These inconsistencies and ambiguities make it difficult to determine whether or not legislators fully reject abolitionist proposals aimed at abolishing legalised prostitution. While decision-makers did not accept the policy proposals put forward by abolitionist advocates, they also refused an explicit rejection of the argument that demand must be addressed in order to prevent sex trafficking. As a result, it cannot be conclusively argued that the Australian Government has rejected this aspect of the abolitionist claim.

### ***United States***

By contrast, in the United States we have already seen a commitment to opposing legalised prostitution contained within the *End Demand Act*, as detailed above.

It was also noted in the first section of this chapter that the U.S. Administration has clearly stated several times that it opposed legalised prostitution. However, this opposition has been limited largely to domestic prostitution. There have been some efforts to curb legalised prostitution in other nations, largely undertaken through the introduction of the Anti-Prostitution Pledge and limits on HIV/AIDS funding (which will be discussed in more detail in the final section of this chapter). The Anti-Prostitution Pledge was first incorporated into legislation in the TVPRA 2003, which declared that 'No funds made available to carry out this division, or any amendment made by this division, may be used to promote, support, or advocate the legalisation or practice of prostitution' and that funds may not be granted to 'any organisation that has not stated in either a grant application, a grant agreement, or both, that it does not support, or advocate the legalization or practice of prostitution' (*TVPRA 2005*, 12).

This policy was also supported through the National Security Presidential Directive 22. The Directive declared:

Our policy is based on an abolitionist approach to trafficking in persons, and our efforts must involve a comprehensive attack on such trafficking, which is a modern day form of slavery. In this regard, the United States Government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels as contributing to the phenomenon of trafficking in persons. (*NSDP 22*, 2002).

Despite this clear acceptance of the claim that legalised prostitution fuels trafficking, the U.S. Government has consistently rejected calls to offer an outright condemnation of other nations who have legalised systems of prostitution (Miller interview 2008).



This cannot be viewed as a rejection of the view that legalised prostitution leads to increased trafficking. US reports have consistently stated support for 'the claim', and funding measures (to be discussed later in this chapter) indicate that the US Government is committed to a policy of opposing legalisation. The unwillingness of the US Government to condemn other nations with legalised systems is probably due to diplomatic reasons, rather than a rejection of the abolitionist perspective. Mr Loy, then-Under Secretary of State for Global Affairs, explained this clearly in his testimony to Congress. He argued that,

We want to focus on trafficking because it is every bit as bad as we have all heard and said today, and we recognize that if we seek to enlarge the concept and deal not only with trafficking as thus described but also with prostitution generally, that we will lose a number of key participants in the international effort to write this Protocol (US Congress, Senate, 22 February 2000, 20-21).

This position is reflected in the tier rankings contained within recent US Trafficking in Person's Reports. The last TIP Report prepared during the Bush Administration placed Australia, New Zealand, Germany and the Netherlands in Tier 1, the highest possible Tier placement that can be achieved (TIP Report 2008). This indicates that despite the legalisation of prostitution in these countries, the US State Department has still assessed these nations as performing extremely well in the prevention of human trafficking.

Within the Administration, some showed a willingness to alter the parameters of the TIP Report to enable the United States to condemn countries with legalised prostitution. In his testimony to Congress then-Director of the TIP Office John Miller argued that,

I am presently talking with our lawyers in the State Department as to how we can take that factor into account under the Act (US Congress, Senate, 9 April 2003, 19).

In interview, Miller clarified his position on the Tier rankings, arguing that the existence of legalised prostitution within a nation should not automatically disqualify it from being able to achieve a Tier 1 ranking if they can demonstrate

that trafficking has not increased. However, he also argued that he thought it unlikely that countries with legalised prostitution would be able to prove there had been no increase in trafficking and declared that, 'if they can't show that, and as I say based on what I've seen I don't think they can show it, so based on what I've seen I'm dubious about Tier 1 rankings for governments that have legalisation' (Miller interview 2008).

Despite calls from Miller and abolitionist advocates to change the Tier rankings to criticise governments with legalised prostitution, this change has not come about. This indicates that while abolitionist advocates have had great success in persuading decision-makers of the need to introduce key policy proposals consistent with the claim, there are limits to this acceptance.

The acceptance of policy proposals to attack legalised prostitution demonstrates the clearest instance of US decision-makers' acceptance of the claim. It is interesting to note that while legislators were willing to incorporate the claim within legislation, they were unwilling to jeopardise diplomatic relationships with countries such as Australia by condemning legalised prostitution. In Australia, decision-makers showed a fairly clear resistance to calls for a review of legalised prostitution. This resistance was evident in the comments of some Committee members during the hearings. The Government's position on the issue can only be judged through its inaction, rather than action, as the Australian Government did not recommend a rolling-back of legalisation of prostitution as a method to prevent trafficking.

### **5.2.3 Alternatives supporting legalisation**

Throughout the hearings in the United States, the focus remained strongly on addressing the demand for prostitution and legalised systems of prostitution as root causes of the trafficking problem. Due to the nature of the witnesses to the hearings (largely abolitionist), and the expressed position of decision-makers early in the hearings that they did not see sex work as a legitimate career, it is unlikely that alternative policy proposals that supported legalisation would have been considered.

In Australia, however, witnesses to the hearing did make a number of alternative proposals about how trafficking could be prevented that relied on the existence of legalised systems of prostitution. Both the Scarlet Alliance and the Sexual Service Providers Advocacy Network (SSPAN) suggested the establishment of visas for migrant sex workers. In particular, SSPAN felt that without the establishment of visas, the new legislation would expose migrant workers to exploitation. They argued, 'We are deeply concerned that the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 will make it more illegal and therefore more dangerous for sexual service providers from other countries to work in Australia' (SSPAN, LCLC Submission 2005, 1). The Joint Committee's response to this issue does offer some insight into whether or not decision-makers accepted or rejected the underlying principles in the claim that legalised prostitution leads to an increase in trafficking.

In the final Joint Committee report, the Committee responded to the proposal from the Scarlet Alliance:

In relation to the suggestions of the Scarlet Alliance, the Committee accepts that changes to the current restrictions on working visas may do much to enable women wishing to come to Australia for sex work to do so without recourse to the services of traffickers. At the same time, the Committee considers that even a substantial widening of the visa rules would not of itself solve the trafficking problem, since there will always be those who wish to enter Australia but cannot, and who will therefore fall victim to traffickers (APJC Report 2004, 59).

This statement does not offer a clear acceptance or rejection of the proposal by the Scarlet Alliance. However, by appearing to reject the proposal on the grounds that it does not solve the entirety of the trafficking problem, the Committee has set a very high bar for this policy to achieve. It is possible that the Committee's reluctance to embrace the visa proposal may be a result of an unwillingness to publically support legalised prostitution as a method of addressing human trafficking. This suggests that the Committee's position on legalised prostitution as a policy relating to trafficking is ambiguous.

The response of the Joint Committee was strongly criticised by the Coalition Against Trafficking in Women Australia, who perceived it as an endorsement of the visa proposal. CATWA linked their discussion of visas to their claim that legalised prostitution leads to increased trafficking. They argued, 'Issuing working visas would not be necessary in a country where the government sought to reduce the demand for prostitution. It can only be considered as a legitimate request in the current Australian context because the sale of women's bodies is protected by law in most States. The federal government should not seek to help the prostitution industry to satisfy the exponential demand by men that the legalisation of brothel prostitution has created' (CATWA, LCLC Submission 2005, 3).

Australian decision-makers were thus resistant to policy proposals from both the abolitionist and sex work perspectives. This demonstrates that while the Government did not fully accept the claim that legalised prostitution leads to increased sex trafficking, they were also unwilling to deny it by supporting policies reliant on a system of legalisation. In contrast, US decision-makers gave no attention to policies from the sex work perspective, and enacted several policies supportive of key assumptions within the claim. Policy proposals for demand reduction for commercial sex, as well as official opposition to legalised prostitution, were fully embraced by the US Administration.

### **5.3 Acceptance of ideology**

The third section of this chapter focuses on Kingdon's third aspect of agenda-setting, 'politics'. In particular it examines how decision-makers have incorporated 'the claim' (and its key assumptions) within government ideology. This analysis of the adoption of ideology by decision-makers in Australia and the United States utilises Weitzer's framework for measuring the influence of abolitionists on US policy. The benchmarks of influence established by Weitzer are explored to include the Australian experience and focus on adoption of the abolitionist claim that legalised prostitution leads to increased trafficking. Firstly this section analyses the consultation and inclusion of certain organisations and

perspectives within the decision-making process. Secondly, the adoption of a particular stance in both policy and rhetoric within government is analysed. Finally, collaboration with abolitionist groups is explored as a final assessment of the extent to which decision-makers have accepted or rejected the claim.

### **5.3.1 Consultation and Inclusion**

#### ***Australia***

In Australia a variety of different groups were consulted on the trafficking issue, including both abolitionist organisations and those supportive of legalisation of prostitution. During the Senate Inquiry, several organisations expressed their concern at the Attorney General Department's lack of a proactive approach to consultation on the legislation (Parliament of Australia, LCLC hearing, 23 February 2005, 26), however several organisations played a key role in informing the development of legislation during the Joint Committee Inquiry. The submissions presented to the Inquiry do not offer an insight into the input most valued by decision-makers as submissions were produced at-will. However, the witness list does provide an indication of the organisations whose contribution was most desired as these were the organisations that were invited to have further input into the process. In addition to government agencies, NGOs with differing ideological perspectives on the issue of legalised prostitution were invited to give testimony. The Scarlet Alliance, Project Respect and the Coalition Against Trafficking in Women Australia were all invited to give testimony to the Joint Committee. Today, these organisations have differing views of the extent to which their input was welcomed and accepted.

Jeffreys of the CATWA argued that the majority of her testimony was rejected due to a reluctance by decision-makers to listen to criticisms of legalised prostitution. When interviewed for this research, Jeffreys argued that, 'The men's privilege with their pornography and their prostitution and so on is just so firmly established here that they can just patronise women who want to say there's

anything wrong with it.' She declared that politicians see advocates who oppose legalised prostitution as 'just a wowser if you try and make any trouble of this kind,' (Jeffreys interview 2008).

At the other end of the political spectrum, Scarlet Alliance also says their perspective was rejected. Fawkes (2008) suggests this is in part due to a stigma attached to sex workers (this will be further explored in Chapter Six):

I think during the process there were people who were sympathetic and understood the position, and recognised the value of our recommendations. But, people would say pretty flatly to us the approaches we were putting forward [such as a visa program for migrant sex workers] which were aimed at – I think we called it pulling the rug out from under the people who were organising trafficking by providing people with legal opportunities to migrate were just seen as politically not viable, that there wouldn't be the political support for those kind of initiatives (Fawkes interview 2008).

Although the Federal Government has shied away from openly endorsing the approach of any individual organisation, there are some indications that the perspective of Project Respect was most valued at the hearings. The final report of the Joint Committee regularly quotes Project Respect in elucidating the recommendations of the Committee regarding matters such as the scope of the problem, definitions of trafficking and debt bondage. For example, the final report of the APJC quoted from the Project Respect Report 'One victim of trafficking is one too many' when discussing the scope of the problem (APJC Report 2004, 6). The report also quotes from Project Respect's submission when describing the processes of fraud and deception used in the trafficking process (APJC Report 2004, 8).

One of the reasons the perspective of Project Respect may have been so accepted by the Joint Committee could be due to the political climate of the debate surrounding legalised prostitution. While Project Respect opposes legalised prostitution, their testimony to the Committee only touched lightly on the connection between prostitution and trafficking. In interview, Nina Vallins of

Project Respect noted that although the organisation lobbies against the social acceptance of prostitution. 'We kind of separate a bit our lobbying on prostitution to our lobbying on trafficking.' Vallins explains that this is largely because the issue is so politicised. 'We feel this is divisive', she says. 'You don't need to have a position on prostitution in order to have a position on trafficking' (Vallins interview 2008).

Project Respect shied away from making too strong an attack on legalised prostitution due to concerns that their perspective would be dismissed (as was CATWA and Scarlet Alliance). However, they also had some success in persuading decision-makers about their view of the size and nature of the trafficking problem, demonstrating that their input was more respected than either CATWA or Scarlet Alliance.

### ***United States***

In the United States there was a distinct shift in political climate following the end of the Clinton administration and the beginning of the George W. Bush presidency. Milkis and Rhodes argue that Bush moved away from the 'incremental' and 'moderate' approaches to domestic policy favoured by Clinton (Milkis and Rhodes 2007, 467), while Conlan and Dinlan argue that Bush acted to centralise a lot of policy decisions, often encroaching on issues normally decided at the state level (Conlan and Dinlan 2007, 13). Acting on prostitution policy through the *End Demand Act* is a good example of this type of political change brought by Bush. Crossette (2004) indicates that a shift in social policy is also clearly evident from Clinton to Bush, with the social and religious conservatism of Bush demonstrated clearly in his decision to reinstate the Mexico City Policy on abortion funding (also known as the Global Gag Rule), which Clinton had rescinded (Crossette 2004). This shift towards neo-conservatism created an environment in which abolitionism flourished. Weitzer (2007a) argues that during this time of greater political support for religious and socially conservative politics, the institutionalisation of the abolitionist perspective

occurred through increasing consultation with a decreasing number of organisations:

Since George W. Bush took office in January 2001, the anti-prostitution movement's access to policy makers has steadily increased ... Groups that do not share the crusade's views have been denied access to these venues and to policy makers more generally (Weitzer 2007a, 459).

Wenchi-Yu Perkins, formerly of Vital Voices, offers an insight from the perspective of an organisation whose views were sought by both administrations. In interview, Perkins suggested that legislators were not persuaded by abolitionist arguments during the Clinton Administration. There was a greater willingness to listen to their perspective once Bush became President. 'I think people who were in government in the Clinton administration were perhaps not persuaded by groups who have been able to persuade the current [Bush] administration on this one' (Perkins interview 2008).

As in Australia, the list of witnesses called to give testimony to Congressional hearings offers an insight into the political perspective of decision-makers. Several abolitionist campaigners report that Members of Congress or the TIP Office had recommended that they be invited to testify. When interviewed for this research, Janice Raymond of the Coalition Against Trafficking in Women indicated that she was invited to testify by the Trafficking Office and explained that 'NGOs can also request to be heard at those hearings, but it's stronger if someone from the government, you know, is kind of pushing that this person be invited to testify' (Raymond interview 2008). Raymond indicates that although CATW have had some 'influence in terms of the administration's anti-legalisation policy' and recent Reauthorizations, they were not heavily involved in early Reauthorizations. She indicates that strong ties to congressional representatives aided some other organisations in influencing decision-makers. 'The people who were more influential in the Reauthorization of the actual Act were more conservative NGOs who had ties to many of the congressional, the conservative congressional' (Raymond interview 2008). Mohamed Mattar from the Protection Project confirms that the support of Members of Congress for an organisation's



perspective is important to campaigning for change. 'They were very receptive to us, Congress. Wonderful people to work with' (Mattar interview 2008).

Jordan reports that the exclusion of certain groups from government consultation on trafficking became even more formalised following the establishment of the TIP Office and the subsequent adoption of the Anti-Prostitution Pledge. During her interview Jordan reported that:

They [the Bush Administration] cut off everybody from any kind of contact with them who they didn't like, so myself and others. Many groups were blacklisted ... it wasn't published, but it was absolutely obvious. Many of our names were just removed. We stopped receiving emails from the TIP Office, we were never invited to events anymore ... Somebody reportedly said that the TIP Office "doesn't have a blacklist, we have a whitelist" (Jordan interview 2008).

The receptiveness of US decision-makers to the abolitionist perspective can also be evidenced through what Weitzer describes as 'inclusion'. He argues that 'this involves ongoing collaboration of a more formal nature' (Weitzer 2007a, 459). This has occurred both through the appointment of key abolitionists to roles within the Bush administration and through the responsiveness of the administration to abolitionist demands. Laura Lederer, formerly of the Protection Project and a leading abolitionist activist was appointed as a senior adviser within the TIP Office. Hughes (2006) credits Lederer with 'a key role in drafting the national-security directive [Anti-Prostitution Pledge] that President Bush issued in 2002 ... She was able to assist the Bush administration in drawing up a far reaching, visionary plan for the abolition of trafficking' (Hughes 2006 in Lopez, 5). Lederer's inclusion in the administration is an indication of both the administration's willingness to align with the abolitionist perspective, as well as an explanation of why the Trafficking Office would accede to the demands of abolitionist campaigners. Weitzer believes 'Lederer's inclusion within the government is part of the reason the State Department has adopted discourse and policies identical to those advocated by the Protection Project' (Weitzer 2007a, 459).

Inclusion of the abolitionist ideology within US decision-makers' approaches is also evident in the research utilised by the administration. John Miller says the research of Melissa Farley, an abolitionist activist, was prioritised on the issue of prostitution and trafficking (Miller interview 2008). In addition, Weitzer points to a grant of \$189,000 from the National Institute of Justice given to the Coalition Against Trafficking in Women to prepare a research report on trafficking (Weitzer 2007a, 460). Farley's research has been criticised by Jordan as failing to utilise a methodology that can be replicated and checked (Jordan interview 2008). Criticism of research sources favoured by the TIP Office has also come from within the US Government with the General Accountability Office expressing concern about the validity of the findings of research funded by the Trafficking Office (GAO Report 2006 cited in Weitzer 2007a, 460).

Another indication of the acceptance of decision-makers of the abolitionist perspective has been the Bush administration's responsiveness to demands made by advocates of the claim. As noted earlier, abolitionist activist Donna Hughes, and others, called for the removal of Ambassador Ely-Raphel from her position as Director of the TIP Office. Michael Horowitz, one of the leaders of the abolitionist coalition of religious and feminist groups, called Ely-Raphel an 'irretrievably disastrous choice' who had 'become the captive of all the people who opposed the anti-trafficking legislation' (Horowitz in Morse 2003). In addition, Hughes and Raymond also called for a suspension of funding to groups that supported legalisation of prostitution during their testimony to Congress (US Congress, House, 29 October 2003, 59). Senator Brownback directly asked Hughes to 'help us to identify some places where those funds are going' (US Congress, Senate, 9 April 2003, 36). This call for a ban on funding for certain groups ultimately resulted in the establishment of the Anti-Prostitution Pledge. Hughes' involvement in the creation of the pledge will be discussed later in this Chapter.

### 5.3.2 Stance adoption

Decision-makers' acceptance or rejection of the claim that legalised prostitution leads to an increase in trafficking is partly evident in the extent to which legislators have adopted the stance of campaigners. Kingdon argues that acceptance of an ideology by decision-makers can be essential in paving the way for policy change. He suggests that, 'support for an item allows it to be pushed, and may be solely responsible in some cases for its rise to agenda prominence, as in the phrase, "The squeaky wheel gets the grease"' (Kingdon 2003, 150). Weitzer sees this as part of what he describes as 'the ultimate type of institutionalisation' (Weitzer 2007a, 460). He argues that 'concrete changes in government discourse, policy and law' are indications of the institutionalisation of a particular ideology, in this case, an abolitionist ideology. Concrete changes in policy have been previously discussed in Chapter Three, as well as earlier in this chapter. They are also evident in ongoing collaboration with and funding of abolitionist organisations. However, this section will explore the extent to which decision-makers have shown an acceptance or rejection of the claim through the use of language and rhetoric, and through declarations of ideological positions governing policy and implementation.

In Australia, decision-makers explicitly avoided adopting a particular stance, however, there are some indications of acceptance and rejection of the claim in the hearings. In the United States, however, the abolitionist perspective has been incorporated into US discourse and policy positions as a driving ideology for future decision-making.

#### ***Australia***

The decision by the APJC Inquiry to refuse to take an explicit position on the issue of the legitimacy of prostitution is not the only indication of Australian decision-makers' acceptance or rejection of the claim. During the inquiries, the language used by some committee members and even the final report offers an insight into the extent to which the claim, and its underlying assumptions, were accepted or rejected.

Again, it was committee member Senator Kerr who offered the most resistance to the abolitionist ideology being advocated by CATWA. Kerr accused Jeffreys, founder of CATWA, of attempting to use the debate on trafficking to spark a change in prostitution policy. He said:

You are saying “Seize upon this as a way of winding back a social discussion that has been going on in Australia’, but it is largely in the other direction ... So our only response cannot be, “wind back the legalisation of prostitution”; we have to have a response that accepts that, at least in some Australian jurisdictions, there is going to be a regulated sector and an unregulated sector (Parliament of Australia, APJC Hearing, 18 November 2003, 60).

This response by Kerr indicates that there was some recognition that abolitionist advocates were attempting to conflate the issues of prostitution and trafficking. This recognition was not, however, limited to Kerr. As noted earlier in this thesis, the final report of the APJC Inquiry declares the issue of the legitimacy of prostitution to be ‘a somewhat broader (and older) debate’ (APJC Report 2005, 21). It is necessary to examine this declaration further in order to measure the extent to which legislators accepted or rejected the claim. It is possible to interpret this as an indication that the Committee saw the issue of the legitimacy of prostitution as beside the point in an inquiry into sex trafficking, and thus rejected arguments of an inherent link between prostitution and trafficking. It could also be viewed as simply an unwillingness on the part of the Committee to commit to either the abolitionist or the sex work perspective.

In their discussion of the trafficking issue, Australian legislators have largely avoided the wholesale adoption of a ‘discourse’, as Weitzer calls it, from any one organisation or perspective. The language used by the Government does, however, draw upon the rhetoric of Project Respect in one explicit instance. A news release in 2003 announcing the Government’s \$20 million package to combat people trafficking adopts Kathleen Maltzahn’s mantra that ‘one victim is one too many’ (Australian Government Media Release, 13 October 2003). This phrase was the title of a report produced by Project Respect ‘One victim of

trafficking is one too many: counting the cost of human slavery' (Project Respect, March 2004). While this is not a controversial phrase, it does indicate that Project Respect's campaigning has found some resonance with the government. This phrase was also later adopted by another organisation. World Vision's representative to the Senate Inquiry, Kayte Fairfax, declared that, 'World Vision and our submission partners agree 100 per cent with the government's view that one trafficking victim is one too many' (Parliament of Australia, LCLC hearing, 23 February 2005, 24).

The government's adoption of Project Respect's language on trafficking demonstrates that the perspective legislators seem most comfortable adopting is that held by Project Respect. As noted above, this may be due to the subtle approach to campaigning that Project Respect have taken, whereby their opposition to legalised prostitution has not been as explicit as CATWA. Alternatively, they do not advocate legalisation as strongly as the Scarlet Alliance. Their perspective as presented to committee members during the Inquiries could therefore be perceived as the most politically palatable.

There is only one clear instance of rhetoric adoption evident in the brief Parliamentary debate on the Criminal Code Amendment Bill. Labour Member of Parliament Jennie George references Jeffreys directly in her statement, and adopts much of the CATWA language in criticising the terminology used by organisations such as the Scarlet Alliance. In particular, she declares that, "Trafficked women are sometimes euphemistically called "migrant sex workers"" (Parliament of Australia, House, 21 June 2005, 42).

There is limited evidence of the Australian Government adopting the language of abolitionists. While one MP has adopted the abolitionist rhetoric of CATWA, the Australian Government has occasionally utilised the evidence and terminology of Project Respect. These restricted instances of language adoption do not provide a conclusive indication of the ideology most accepted by the Australian Government. However, the preferencing of Project Respect's approach to research and discussion of the trafficking issue does indicate some inclination on

the part of Australian decision-makers to accept some form of 'middle way' approach to the issue.

### ***United States***

In the United States, decision-makers' adoption of the abolitionist stance is much clearer. The language often utilised by abolitionist campaigners is clearly evident in the language used by politicians, in government reports and even in the legislation itself. Abolitionist campaigners often refer to prostitution as inherently harmful, degrading and dehumanising. Antonia Kirkland from Equality Now reports that these phrases have become commonplace in statements from President Bush and administration officials. In interview she said, 'The current administration is actually very strong in our view on sex trafficking and prostitution, and President Bush has said that prostitution is dehumanising and so on' (Kirkland interview 2008). Weitzer (2007a) argues that 'Movement claims and the very language used by activists regarding prostitution in general and sex trafficking in particular, are abundantly evident in official declarations and legislation during the Bush administration' (Weitzer 2007a, 461). One example of President Bush himself utilising abolitionist language includes his 2002 Presidential Directive. In declaring his opposition to any form of prostitution, he says, 'These activities are inherently harmful and dehumanizing' (NSPD 22, 2002), directly adopting abolitionist rhetoric. Weitzer argues that President Bush's use of this phrase and other abolitionist rhetoric in his address to the United Nations was 'the direct result of lobbying by evangelical leaders' (Weitzer 2007a, 462). Other members of the administration also adopted the abolitionist rhetoric. Kent Hill, then-Assistant Administrator at US Aid, declared in his testimony to Congress in 2003, 'We see prostitution as inherently degrading to those who are sexually exploited, and as a factor in fuelling the trade in humans' (US Congress, House, 29 October 2003, 23). Hughes declared to Congress her delight that US policy now mirrored the approach of abolitionist groups. She said:

Activists who have been working against the sexual abuse and exploitation of women and children for years are pleased that it is now U.S. policy that prostitution and related activities are considered inherently harmful and dehumanizing, and are recognized as contributing to the phenomenon of sex trafficking in persons and sex tourism (US Congress, Senate, 9 April 2003, 20).

The Bush administration has even issued directives designed to control the language used in reference to this issue. Weitzer reports that in 2006 John Miller, in his role as the Director of the TIP Office, 'issued a directive urging other US agencies, contractors, and other governments to avoid using the term "sex worker" because it wrongly implies that prostitution is work' (Weitzer 2007a, 462).

These statements are clear evidence of an acceptance of the illegitimacy of the sex industry and of sex work, and an indication of the extent to which decision-makers have adopted the language of abolitionism within the United States.

There has, however, been some resistance to this complete stance adoption called for by President Bush. Jordan argues that the Department of Justice has demonstrated resistance to the ideology by arguing against the removal of the 'force, fraud and coercion elements' of the TVPA. This is an indication that the abolitionist ideology has not necessarily been fully adopted throughout the entire US Government. She argues that the Department have indicated that they will not prioritise ideology over retaining high standards for prosecutions.

So the Department of Justice is sending the message that "the anti-prostitution ideology is not compatible with the U.S. 13<sup>th</sup> Amendment prohibition against slavery, which requires force, fraud or coercion. As prosecutors, we've got to take a stand to support Constitutional principles" (Jordan interview 2008).

### 5.3.3 Collaboration

Funding of specific organisations to carry out service delivery is also a key indicator of decision-makers' position on the claim. Weitzer (2007a) argues that 'government funding of movement organisations' is another way in which an ideology or 'moral crusade' becomes institutionalised (Weitzer 2007a, 460). In the United States the allocation of funding has not only demonstrated the government's preference for a particular ideology, but it has also been used as a political statement, demonstrating a strong acceptance of the claim that legalised prostitution leads to an increase in trafficking. In Australia, funding arrangements are not as telling.

#### *United States*

The introduction of the *Trafficking Victims Protection Act* 2000 and subsequent reauthorisations involved the establishment of funds for the delivery of services and research. The organisations that received funding for research, conferences and the provision of services to victims of trafficking indicate a preference for groups that maintain opposition to legalised prostitution. Weitzer says, 'Over the past five years, the U.S. Government awarded more than \$300 million to international and domestic NGOs involved in fighting trafficking and prostitution' (Weitzer 2007a, 460). The groups receiving funding have all strongly declared positions against the legalisation of prostitution, and many have been persistent advocates of the claim that legalised prostitution leads to an increase in trafficking. Abolitionist organisations that have received funding from the Federal Government include the Coalition Against Trafficking in Women, the Protection Project, the Salvation Army, the International Justice Mission and the Catholic Conference of Bishops (Department of Justice Report 2005). Shared Hope International is also favoured by decision-makers, receiving almost \$1million in federal funding between 2003 and 2004 (Shapiro 2004, 4). The organisation is run by former Congresswoman Linda Smith, who is also a member of the Assembly of God and the religious coalition that has lobbied on trafficking.



In the first half of the decade the majority of funding for the support of victims of trafficking was directed to the United States Conference on Catholic Bishops (USCCB) who then subcontracted the funding to other religious and/or abolitionist organisations. Jordan argues that the move to channel social services funding through the USCCB has not only ensured that organisations unwilling to sign the anti-prostitution pledge are not able to receive funding, it also resulted in a new limitation placed on the activities of funded organisations. In interview for this research, Jordan said:

They [the USCCB] required grantees to agree not to use any of the money to tell any trafficked client about any reproductive right issues, which was never a requirement prior to the USCCB controlling all the funding (Jordan interview 2008).

Ultimately it was through funding arrangements that the Bush administration gave their strongest indication yet of their outright acceptance of the claim that legalised prostitution leads to an increase in trafficking. While abolitionist groups were often favoured for grants, in 2002 the Bush Administration declared that funding would be restricted to only those groups who oppose legalised prostitution. This Presidential Directive formed the basis of the policy now known as the 'Anti-Prostitution Pledge'.

The pledge was established in response to the demands of abolitionists such as Donna Hughes and Janice Raymond to remove government funding from any organisations which do not explicitly oppose legalised prostitution. As early as 2001 abolitionists were placing pressure on decision-makers to restrict funding. Jordan reports Lederer, Hughes, Horowitz and Congressman Smith 'had a plan to expose everyone in the government who had gotten money for work on trafficking' in order to eliminate funding and support for non-abolitionist groups (Jordan interview 2008). Part of this plan involved questioning Dobriansky about funding for groups working on trafficking during Congressional hearings in 2001. This questioning is on the record:

Congressman Pitts: 'Just to clarify, in the past 8 years it appeared that some in the State Department supported the idea that prostitution could

be a legitimate form of labor. In fact, it is the position of some NGOs that prostitution should be safe and legal. They advocate this position as part of their anti-trafficking activities and apparently receive some support of various sorts from speaking engagements, to grants, to contracts, to subcontracts. Can you clarify the position of the State Department in this policy debate as to funding these groups?

Dobriansky: I believe I answered that very directly. This Administration's position is we do not support prostitution, all forms of prostitution, and when Congressman Smith asked me about legalized prostitution, I indicated that we do not support legalized prostitution.

Pitts: Is there a restriction on what they can promote with the funding and the arrangements you make with them as far as their promotion of prostitution being safe and legal?

Dobriansky: We haven't undertaken a specific review. That is going on actually in taking stock of all groups that have been funded, noting where we are and then determining where we go forward with this. (US Congress, House, 29 November 2001, 23)

Even after the implementation of the Pledge in 2002, Hughes persisted in abolitionist attempts to restrict funding from non-abolitionist groups, undertaking a campaign to 'expose the wolves' which she defined as non-abolitionist groups. In June 2002 she submitted to Congress a list of 'Individuals and groups that support legalised prostitution that received US Government funds from 1996 to 2001. She declared that, 'one of the ways that the TVPA is being subverted is by U.S. government funds being used to support individuals, groups, and projects that work in opposition to the law. They advocate for the acceptance and legalisation of prostitution, and fail to assist victims of trafficking, even when they come in contact with them' (US Congress, House, 19 June 2002, 79). This is a strong accusation to make against the many groups listed who work extensively with victims and do not necessarily support legalisation, but simply oppose an outright abolitionist approach. In the list Hughes criticises (among others): Medecins Sans Frontieres (Doctors without

Borders) for their project to empower sex workers in Cambodia; Ann Jordan for advocating the prosecution of sex traffickers under more comprehensive forced labour laws; Penelope Saunders for her calls for a regulated industry and sex workers' rights; La Strada in the Netherlands for supporting the right of migrant women to work in legal sex industries; and Empower Thailand for their work educating all women in prostitution (including children) on safe sex (US Congress, House, 19 June 2002, 79-82).

Jordan says, 'That was the list that was then used to go after all these people — Medicins Sans Frontieres, me, all these other organisations. And it was all a pack of lies. They went after poor Penny Saunders because she got \$800 once' (Jordan interview 2008). The submission of this list to Congress did not, however, put an end to abolitionists' efforts to remove funding from non-abolitionist groups. In 2003 Raymond continued to put pressure on the government to enforce the Pledge by declaring, 'We think we have a ways to go in terms of the funding of groups, feminist groups, faith-based groups, who do support the Presidential directive' (US Congress, House, 29 October 2003, 59).

The pledge appeared in both the 2003 and 2005 TVPA Reauthorizations. The policy was also extended to funding for international HIV/AIDS programs. The 2003 *Global AIDS Act* includes two key restrictions. The first 'prohibits funds from being spent on activities advocating for the legalisation or practice of prostitution and sex trafficking' although this does not necessarily prevent funds from being spent on healthcare for sex workers. The second restriction 'prohibits the use of funding to provide assistance to any organisation that does not have a policy opposing prostitution and sex trafficking' although the term 'opposing prostitution' remains undefined (*Policy and Advocacy* 2005, 1). Saunders argues that the pledge contained within the *Global AIDS Act* is 'analogous to the Global Gag Rule on reproductive rights that prohibits grantees' speech and political activities in support of legal abortion yet permits *anti-abortion* advocacy' (Saunders 2004, 182).

The inclusion of the pledge within funding for AIDS programs also demonstrates the extent to which decision-makers have been persuaded of the link between

prostitution and trafficking. Gary Haugen, founder of the International Justice Mission, testified to Congress that, 'I don't think anybody doubts that there's a tremendous nexus between prostitution and the spread of AIDS, and certainly between sex trafficking' (US Congress, Senate, 9 April 2003, 41).

The pledge has been strongly criticised by many working within the anti-trafficking sector who argue that it has undermined efforts to identify victims, support victims and even to fight the spread of HIV/AIDS (Ditmore in Crago 2003; Jacobson 2005; Crago 2006, 5; Women's Network for Unity 2006, 19; DeStefano interview 2008).

Although the pledge does not necessarily require organisations to declare their support for the abolitionist perspective, it does limit the work of many organisations which hold other perspectives, or even wish to remain neutral. Saunders argues that service providers who work closely with sex workers, but do not necessarily advocate legalisation, are likely to lose their funding for failing to offer the outright condemnation of prostitution of 'faith-based' organisations (Saunders 2004, 188).

Subsequent crackdowns on non-abolitionist groups receiving funding is one of the clearest indicators of the extent to which decision-makers accepted the claim that legalised prostitution leads to an increase in trafficking. Former Director of the TIP Office Miller crystallised the government's acceptance of the claim in his defence of the Pledge. When interviewed, he argued:

It seems to be absurd to give money to groups fighting sex trafficking, and then to give money to groups that are promoting prostitution that will lead to more sex trafficking victims. They're free to do what they want, but if our government policy is to try to reduce sex trafficking I don't think we should be giving money to both sides of this issue (Miller interview 2008).

## *Australia*

The approach to funding in Australia has been far less indicative of decision-makers' attitudes towards the claim that legalised prostitution leads to an increase in trafficking. In 2004 the Federal Government first granted funding to BSIL Southern Edge Training to deliver a package of victim support services (David 2008, 16). This service is now provided by the Australian Red Cross. Project Respect is a recipient of funding at the state level for work supporting victims of trafficking (Schloenhardt 2009b, 3).

In this instance, the Australian Federal Government has not funded organisations that explicitly oppose legalised prostitution however, some commentators believe the allocation of funding is still somewhat politicised. Jeffreys argues that the Australian Government is more likely to fund organisation that 'have the ideological viewpoint that prostitution is fine and totally separate from trafficking' (Jeffreys interview 2008). Jeffreys believes that the provision of AIDS funding in an attempt to encourage safe sex has supported the existence of sex worker rights' groups such as the Network of Sex Work Projects, the Scarlet Alliance and the Sex Workers' Outreach Project and that this has, 'produced the sex work position, empowered it and pushed it ahead' (Jeffreys interview 2008).

In contrast, the Scarlet Alliance has expressed frustration about a lack of funding for work on key issues associated with trafficking (Fawkes interview 2008). In recent years, however, several Scarlet Alliance member organisations have received funding for outreach work with migrant and non-English speaking background sex workers (Kim 2010). Project Respect has also criticised the lack of funding made available to NGOs. During the Senate Inquiry, Project Respect's submission expressed frustration with the fact that 'None of the \$20 million trafficking package money has gone to groups such as ours, despite the fact that we do considerable work with trafficked women' (Project Respect, LCLC Submission 2005, 3).

Federal funding for anti-trafficking programs and victims services appears to have been directed towards non-ideological organisations not necessarily involved in direct lobbying. One of the reasons for this may be a reluctance to

fund services through organisations with strong ideological perspectives on the issue of prostitution and trafficking. Project Respect representative Vallins indicates that when it comes to funding services for trafficking, ideology should not be a central determinant. She argues that, while Project Respect continues to oppose legalisation of prostitution, they recognise the importance of remaining apolitical in the delivery of services and would oppose the establishment of an Anti-Prostitution Pledge in Australia. Vallins argues, 'If you just want to be able to get into those brothels and access those people, sometimes you need to be able to put those politics aside a bit ... So, even for organisations that take the sex work point of view, they do good work and they should still receive funding even if they take that point of view' (Vallins interview 2008).

In the United States, funding associated with anti-trafficking and victim support has provided a very clear indication of the extent to which decision-makers have accepted or rejected the asserted relationship between legalised prostitution and trafficking. This has been demonstrated through both the active direction of funding towards abolitionist groups, and a formalised policy and program of restricting funding from non-abolitionist groups. In contrast, the funding of services in Australia offers us limited insight into decision-makers' ideological perspective, although the choice to overlook key organisations lobbying on trafficking such as CATWA and the Scarlet Alliance could demonstrate the Government's unwillingness to offer either an acceptance or rejection of the claim. It could be assumed that funding has not been directed to organisations with explicit ideological stances on the relationship between prostitution and trafficking, however it is not certain that ideological factors were a key determinant in the awarding of contracts.

The use of funding to demonstrate acceptance of the ideology of particular advocates was used extensively in the United States to demonstrate acceptance of the abolitionist perspective. In Australia, it is likely that funding was used as a tool through which to avoid acceptance or rejection of either the abolitionist or sex work perspective. As a result, it is difficult to ascertain the Australian Government's acceptance of the claim that legalised prostitution leads to increased trafficking. Funding arrangements in the United States, however, have

offered yet another demonstration of the acceptance of the claim by decision-makers.

#### **5.4 Conclusion**

This chapter has argued that decision-makers in the United States showed a clear acceptance of the claim that legalised prostitution leads to increased trafficking. This acceptance was apparent through all stages of the process, as decision-makers accepted the abolitionist characterisation of the problem of sex trafficking, abolitionist proposals for the prevention of sex trafficking, and abolitionist ideology surrounding prostitution. This acceptance included agreement with the key assumptions, arguments and proposals contained within the claim, as well as the claim itself.

By contrast, Australian decision-makers avoided explicit declarations of acceptance or rejection of the claim. However, their actions during the hearings and in the final legislation indicate some acceptance of aspects of the claim. While decision-makers were unwilling to establish policies aimed at reducing demand for commercial sex, or to attack systems of legalised prostitution, they did indicate acceptance of the assumption that sex trafficking is unique and the sex industry is illegitimate. This acceptance was evident in the final definition of a trafficking victim, as well as in the rejection of alternative policy proposals that suggested utilising legalised systems of prostitution to minimise worker exploitation. Ultimately decision-makers made efforts to remain neutral on the issue.

## **CHAPTER SIX – FACTORS INFLUENCING ACCEPTANCE OF THE CLAIM**

Previous chapters have explored the deployment, substantiation and acceptance of the claim that legalised prostitution leads to increased sex trafficking. In this chapter, some of the key differences in the US and Australian experiences of developing anti-trafficking legislation are considered, examining the impact on the decision-making process of what Kingdon broadly terms ‘politics’ (Kingdon 2003, 17). These differences include the political culture of each country, the involvement of sex workers in trafficking debates, the involvement of faith-based organisations and coalitions in debates, and the use of specific campaigning tactics by advocates of the claim. This chapter argues that all of these factors have had an impact on the outcome of trafficking debates in Australia and the United States, and in particular on the acceptance of the claim. These factors have contributed to an outcome whereby the claim was strongly accepted in the United States due to the establishment of a perceived consensus regarding the claim. In Australia, these factors conversely acted as obstacles to the creation of this consensus, and thus assisted in reducing the likelihood that legislators would accept the claim that legalised prostitution leads to increased trafficking.

The first section of this chapter explores the political cultures of Australia and the United States, considering the scope of change possible within a federal system, the impact of the legal status of prostitution, and differing attitudes towards sex work. The second section of this chapter describes the role that sex workers and sex work activities played in the decision-making process, arguing that the greater involvement of sex workers offered a strong challenge to the abolitionist perspective. The third section of this chapter considers the involvement of other stakeholders in the legislative process, specifically religious and feminist groups, in contributing to the development of an assumed abolitionist consensus in the United States, but not Australia. Finally, this chapter analyses some of the campaigning tactics used by abolitionist advocates to encourage greater acceptance of the claim.



## **6.1 Differences and similarities in political culture and structures**

A possible factor in the differing degrees of acceptance of the claim is the differing political culture and structures in Australia and the United States. This section explores differences in the scope for change open to decision-makers engaged in developing anti-trafficking legislation, the impact of pre-existing legislation on prostitution, and differences in sexual culture in Australia and the United States.

### **6.1.1 Federal systems and the scope for change**

Due to its hybrid nature, the Australian political system has often been referred to as the 'Washminster' system (Thompson 1994, 97). As both Australia and the United States are Federal systems, they share some similarities in the way in which legislation is formulated and implemented. While Australia's Parliamentary system is largely modelled on the British Westminster Parliamentary system (Maddox 2000, 193), it also draws on American federalism. In both countries the federal legislature is bicameral, with the Senate in Australia operating in a similar fashion to the US Senate. The federal structure is also modelled on US federalism (Maddox 2000, 193), with a similar designation of key aspects of legislative responsibility devolved to the state level.

The split between federal and state powers for governing is relevant in the context of human trafficking legislation. While states are not legally prevented from introducing anti-trafficking legislation, to date anti-trafficking legislation has been created at the federal level in both Australia and the United States – in Australia through the Federal Parliament and in the United States through the US Congress. However, prostitution policy is typically seen as the responsibility of state governments as most criminal law is the remit of the states. This delegation does not, however, prevent federal governments from establishing policy that would impact upon prostitution at the state level. However, in Australia and the United States the responses of the federal government to calls for prostitution policy reform have been quite different.

In Australia, the Joint Committee Inquiry stated that the scope of its inquiry was limited to the issue of human trafficking, and could not extend to taking a position on the legitimacy of prostitution (APJC Report 2004, 60). Clearly the Parliamentary Inquiry were unwilling to expand their scope of inquiry to take a position on the legitimacy of prostitution and its relationship to trafficking. This is consistent with a position taken in an earlier debate on trafficking initiated in 1998 by the Department of Justice. The Australian Model Criminal Code Officers Committee (MCCOC) received a submission from CATWA, similar to that submitted during the Joint Parliamentary Committee Inquiry, calling for prostitution to be recognised as a key cause of trafficking. The Committee's response in 1998 was also to side-step the issue by declaring they would not 'enter into the fray of general prostitution law reform' (Parliament of Australia, MCCOC Report, 2008, 21). It should not, however, be assumed on the basis of these declarations that the Federal Government is unable to intervene in prostitution policy, or are unwilling to do so. In the past the Australian Government has had an impact on prostitution policy at the state level, by providing funding to sex worker groups to undertake outreach work in the prevention of HIV/AIDS (see Section 6.2.2 of this chapter).

In contrast to the Australian Parliamentary Inquiry Committee, the United States Congress demonstrated a strong willingness to intervene in prostitution policy, introducing anti-trafficking legislation that included measures to address prostitution at the state level. These measures (discussed in Chapter Five) included the funding of abolitionist organisations through the NSPD 22, and the provision of funding incentives for state law enforcement agencies to increase their efforts to prosecute the buyers of sex.

More recently, these efforts have been expanded. In debate on the 2007 Trafficking Victims Protection Reauthorization Bill Democratic Congresswoman Catherine Maloney sought to remove the 'force, fraud and coercion' elements required to prove that trafficking has taken place (Neuwirth 2008). This action would have an impact on prostitution policy at the state level as under this law all migrants who engage in sex work would automatically be defined as trafficking victims, enabling federal law enforcement to act more widely against

prostitution at the state level. While this Reauthorization successfully passed the House of Representatives, Senate sponsors of the legislation Senators Sam Brownback and Joe Biden did not accept it, encouraging a version of the Bill that retained the 'force, fraud and coercion' elements within the definition of trafficking.

Another key political difference that may have resulted in differing responses to the claim is the role of the leader of government in Australia and the United States. While some argue that Australia is, in essence, a republic (Sharman 1990; Galligan 1995), the role of the Prime Minister is not equivalent to that of the US President. The Prime Minister in Australia is drawn directly from the party controlling the House of Representatives (Singleton, Aitken, Jinks, Warhurst 2000, 141). The President is elected separately from the US Congress and thus may not be a member of the party controlling the House of Representatives in the Congress (Lowi and Ginsberg 2000, 139).

While the Prime Minister of Australia is able to direct policy through control of the parliamentary party, US Presidents probably have a greater individual capacity to direct policy than Prime Ministers in Australia. Walter and Strangio (2007) argue that over the last few decades Prime Ministers have centralised policy decision-making to a greater degree. However, Prime Ministers are also beholden to the support of their party, which may remove a leader without any deference to the voting public as evidenced through the recent dismissal by the Australian Labor Party of Kevin Rudd as leader of the party and thus Prime Minister (*ABC News* 2010). American Presidents, by contrast, are not held to account by their own party to the same degree, and thus are freer to direct policy based on personal agendas and perspectives.

Of course, it has already been noted in Chapter Five that different Presidents may behave in different ways. President George W. Bush was more inclined towards centralising powers (Conlan and Dinlan 2007, 13) than President Bill Clinton. It is clear in the United States that the personal perspective of the President has also had a significant impact on anti-trafficking legislation. The actions of President George W. Bush in declaring a National Security Presidential Directive

that explicitly linked the growth of sex trafficking to legalised prostitution was a clear acceptance of the claim at the personal, and Presidential, level. By contrast, McBride Stetson indicates that under President Clinton, abolitionist activists saw the President's Interagency Council (the organisation tasked with developing anti-trafficking legislation) as a 'closed group, uninterested in their input' (McBride Stetson 2004, 261). As indicated in Chapter Five, this situation changed dramatically with the arrival of George W. Bush, again demonstrating the influence a President can have over the direction of policy, and the influence campaigners can have over the policy-making process.

Despite arguments from some that there has been an increasing Presidentialisation of Australian Prime Ministers (Bean and Mughan 1989, 1166), this degree of personal leadership is not as common in the Australian context and is not evident in the development of anti-trafficking legislation. While the Prime Minister of Australia is somewhat more restricted in directing policy than the US President, the Parliamentary system would not have constrained then-Prime Minister John Howard from pushing for an acceptance (or rejection) of the claim, if he so wished. However, as indicated in earlier chapters, the Howard Government was unwilling to enter into the debate over the relationship between legalised prostitution and trafficking, both at the leadership and Parliamentary level.

By contrast, the support President Bush showed personally and politically for the abolitionist perspective may have had a greater impact due to the role the President plays in leading legislative change from the highest possible level. By demonstrating a willingness to over-step state/federal boundaries, and by taking personal leadership on the issue, Bush certainly contributed to the acceptance of the claim in wider political circles, and ultimately in legislation.

### **6.1.2 Legislative starting points – criminalisation versus legalisation as the status quo**

Another factor contributing to the greater degree of acceptance of the claim in the United States than in Australia could be the divergence of current legislative approaches towards prostitution. Throughout the research process, interviewees were quick to identify that one of the key differences influencing the acceptance of the claim has been the presence of already legalised systems of prostitution in Australia.

In the United States prostitution remains illegal except in a few counties of Nevada (Davis 2006, 840-841). Although the US Federal Government may not be able to directly control the prostitution law of individual states, they are in a position to direct law enforcement activities and community services through the provision of funding. The delegation of primary responsibility for prostitution law to the state has also not stopped the US Government from declaring a position on the legitimacy of prostitution.

As noted in earlier chapters, the US hearings on trafficking did generate significant debate about the legitimacy of prostitution. Due to a status quo of criminalisation of prostitution in the United States, abolitionists focused their efforts primarily on encouraging opposition to legalised prostitution in other countries, and on a formal recognition of the claim that legalised prostitution leads to increased trafficking.

The status quo of criminalisation of prostitution in the United States may have significantly aided acceptance of the claim that legalised prostitution leads to increased trafficking, as acceptance of the claim would be consistent with State Government policies on prostitution (with the exception of Nevada). As we will see below, this is not the case in Australia. As an aside, it is interesting to note that while some US legislators argued legalised prostitution contributed to increased trafficking, legislators did not consider whether or not criminalisation might be contributing to increased trafficking. Criminalisation of the sex industry in the United States was clearly not preventing the trafficking of women into the sex industry, though this reality was not discussed during the US hearings.

In Australia, many states have systems of legalised prostitution<sup>5</sup>. This status quo of legalisation across much of Australia (Quadara 2008, 15-17) would certainly make it unlikely that a federal inquiry would recommend a criminalisation of prostitution. However, the Joint Committee Inquiry also chose not to recommend legalisation, maintaining that this was outside of their 'terms of reference'.

The status quo of legalisation across the east and west coasts of Australia may also have had an impact on the way in which organisations in Australia have lobbied on the issue. Vallins (interview 2008) indicates that Project Respect often avoids lobbying directly on the issue of legalisation of prostitution due to the current legislative situation. Instead, they focus mostly on trafficking, though still make their anti-legalisation arguments in subtle ways. She says:

Prostitution is legalised in most states of Australia. That has an impact on how people think about prostitution and how people are prepared to think about prostitution ... So acknowledging that, and recognising that, when we lobby on trafficking specifically we generally keep the debate more or less to trafficking (Vallins interview 2008).

Both Jeffreys and Vallins believe that the current systems of legalisation on the state level limited the discussion at the Joint Committee Inquiry over whether or not legalised prostitution leads to an increase in trafficking. Vallins says, 'Because prostitution is legalised here, that means there is much less space to say that there's a link between prostitution and trafficking' (Vallins interview 2008).

These differing legislative systems in Australia and the United States may have had an impact on acceptance of the claim due to the political ramifications of such a decision. In the United States, acceptance of the claim was consistent with the vast majority of US jurisdictions where prostitution remains criminalised. In

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<sup>5</sup> In Queensland, Victoria, and the Australian Capital Territory legal sex work includes licensed or registered brothels and private workers. In New South Wales this is also extended to street based sex work in designated areas, escort agencies and private workers. In the Northern Territory escort agencies may operate with a license and private workers may operate without a license, but brothels and street work are forbidden. In South Australia there are no laws forbidding prostitution and thus private operators are legal however brothel prostitution and soliciting remain illegal. The situation is similar in Tasmania where only self-employed sex workers may operate (Quadara 2008, 15-17).

Australia, however, acceptance of the claim that legalised prostitution leads to increased sex trafficking would have involved a direct condemnation of the prostitution policies of several states of Australia. As a result, the existing legislation in Australia and the US relating to prostitution may have had a direct impact on the extent of change legislators were willing and able to make, and thus contributed to the degree of acceptance or rejection of the claim. It is too simplistic, however, to attribute the rejection of the claim in Australia to this one factor due to numerous other factors that are discussed in this thesis.

### **6.1.3 Political attitudes to sex work**

During this research, several interviewees observed that one of the key differences between Australia and the United States was the sexual culture of each country. It was perceived that Australian attitudes towards sex and sex work were more liberal, while America was more conservative. As one interviewee wryly noted, 'Australia got the convicts, and we [the United States] got the puritans' (Ditmore interview 2008).

It is difficult to measure the extent to which differing attitudes about sex have contributed to the acceptance or rejection of the claim in policy-making. However, it is clear that there are differences in Australian and American sexual cultures and political attitudes towards sex work clients and prostitution law reform that influence how receptive decision-makers would be to the claim. This section argues that political attitudes to prostitution in Australia have been influenced by a more secular and liberal approach to sexual freedom historically and by significant feminist support for liberalised prostitution laws. While this has not resulted in a complete acceptance of the sex work perspective, it has contributed to the political acceptance of a harm minimisation approach to prostitution. By contrast, political attitudes towards sex work in the United States are grounded in a more religious culture and a conservative approach to sexual freedom, with feminists of many different persuasions opposing the legalisation of prostitution. This has resulted in a problematisation of men's

demand for sexual services and resistance towards harm minimisation approaches to prostitution.

In Australia, the trend in recent decades has been towards an increasing liberalisation of attitudes about sexuality and sex work. Writing over a decade ago, Sullivan (1997) argued that changes in Australian sexual culture in the 1970s paved the way for a greater acceptance of liberal approaches to sex. This culture was influenced by the increasing prevalence of pre-marital sex, the growing availability and accessibility of pornography, and the emergence of women's and gay liberation movements (Sullivan 1997, 127-129).

Australian political attitudes towards sexual freedom can be seen in the establishment of anti-discrimination laws to protect homosexual people established in all states of Australia, as well as the success of gay liberation movements in securing equal rights for same-sex couples. While Australia has not yet established marriage rights for homosexual partners, 'gay marriage' is seen as a largely symbolic change as same-sex couples are already guaranteed equal rights under recent Federal law reforms (Australian Attorney General 2008). In addition, every Australian State and Territory has adopted anti-discrimination laws that guarantee protection and equal rights to all homosexual people.

This is in stark contrast to the United States where the move towards equal rights has been slow and highly controversial. Riggle, Thomas and Rostosky argue that 'social affirmation and legal recognition are only sporadically available' for same-sex couples that are essentially treated as 'second-class citizens' (Riggle, Thomas, Rostosky 2005, 221). This legislative difference reflects strong attitudinal differences between Australia and the United States when it comes to private sexual behaviour.



Political attitudes about sexual freedom in Australia and the United States have also been influenced by feminist movements, with differing attitudes reflecting differing feminist ideologies. Until recently<sup>6</sup>, the feminist movement in Australia has contributed to the increasingly liberal and libertarian approach to sexuality, and prostitution. The Australian women's liberation movement emerged from a socialist ideology, driven by what Curthoys describes as a 'Marxist interest in the value of women's labour' (Curthoys 1993, 26). Sullivan argues that in the 1980s, this ideology began to shift as some feminists argued that policy agendas could be better pursued by working with the state (Sullivan 1994, 157) instead of maintaining socialist goals of a more extensive feminist revolution. During this time, an increasingly libertarian ideology emerged in the women's liberation movement, and prostitution began to be 'conceptualised in terms of a private sexual activity between consenting adults' (Sullivan 1997, 181). While socialist arguments emphasising the value of women's labour do not marry completely with libertarian arguments in favour of viewing prostitution as a private, consensual activity, these ideologies underpinning the women's liberation movement have contributed to a growing political understanding of sex as a form of labour (Sullivan 1997, 165). This differs significantly to the nature of women's movements in the United States. McBride Stetson (2004) argues that while some liberal feminists in the US have supported the removal of legal restrictions on prostitution (2004, 245), radical feminist voices dominate political debate on prostitution and trafficking, casting prostitution itself as inherently exploitative (2004, 259).

The emergence in Australia of 'official feminism' (Eisenstein in Sullivan 1994, 154), whereby feminists have become influential by actively involving themselves in Australia's political parties and through government agencies, assisted in bringing the liberal feminist agenda to the policy-making stage. It also

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<sup>6</sup> In the last decade, a rise in radical feminism in Australia has been reflected in the formation of organisations and collectives that call for a radical feminist approach to issues such as pornography and prostitution. The Australian branch of the Coalition Against Trafficking in Women has been active in holding conferences (CATW 2010) and submitting evidence to Parliamentary Inquiries (APJC 2004; LCLC 2005) reflective of a radical feminist ideology. The creation of the radical feminist website 'The Fury' in 2002 (The Fury 2010), and the continued use of the F Agenda (or Feminist Agenda) radical feminist mailing list as a collectivising tool (Jeffreys interview 2008) have also contributed to the growing strength of the radical feminist movement in Australia over recent decades.

assisted in changing political attitudes towards prostitution. Sullivan regards the involvement of liberal feminist organisation the Women's Electoral Lobby (WEL) in advocating for the appointment of feminist bureaucrats (the 'Femocrat' strategy) in the New South Wales Government during the 1970s and onwards as fundamental to the eventual legalisation of prostitution in that state (Sullivan in Outshoorn 2004, 27-28). In addition, the fight for the legalisation of prostitution in Victoria was led by Joan Coxsedge, a feminist member of the Australian Labor Party, who worked closely with the Prostitutes' Collective of Victoria to ensure that both feminists' views and sex workers' voices were heard (Sullivan in Outshoorn 2004, 29). 'Official feminism' was evident mostly in the Australian Labor Party (ALP), reflecting the significant links between the social democratic approach of the ALP and the socialist origins of the Australian feminist movement. It is not surprising, therefore, that it was Labor Governments that took action in reforming prostitution laws, establishing legalised and decriminalised systems in several states of Australia from the late 1970s onwards (West 2000, 111). Political perspectives on prostitution in Australia continue to reflect a liberal feminist approach, despite some support from both sides of politics for a radical feminist approach. As noted in Chapter Five, a prominent Federal Labor Parliamentarian, Jennie George, lent support to the radical feminist perspective on prostitution and trafficking during the debate over the adoption of new trafficking legislation in 2005 (Parliament of Australia, House, 21 June 2005, 42).

In the United States, there is a similar diversity of feminist voices speaking on issues related to prostitution and trafficking. However, one key difference is that while in Australia mainstream liberal feminist organisations are supportive of a legalisation approach to prostitution (for example the Women's Electoral Lobby), in the United States mainstream liberal feminist organisations (such as Equality Now) maintain their support for abolition. While Equality Now is a smaller and less powerful feminist organisation than the National Organization for Women (NOW), it has taken the lead amongst feminist groups in lobbying for an abolitionist approach to trafficking. In the United States the radical feminist perspective that sees prostitution as another form of men's domination over

women is also more dominant in debates on prostitution and trafficking. As a result of this widespread feminist support for abolition, support for a liberalisation of prostitution policy is not forthcoming from women in positions of power, or from powerful feminist organisations.

The differing ideologies of feminist movements in Australia and the United States have clearly influenced political attitudes with respect to prostitution reform. However, while US decision-makers have subscribed to the abolitionist perspective, Australian decision-makers have not necessarily embraced the sex work perspective. As noted in Chapter Five, decision-makers did not demonstrate their acceptance of prostitution as legitimate labour. However, the support for liberalisation of prostitution by Australian feminists has resulted in a greater acceptance of the harm minimisation approach.

Resistance to a libertarian approach to sex work is clear in Weitzer's (2009) analysis of political opposition to the legalisation of prostitution in Western Australia (WA). Weitzer indicates that some WA Parliamentarians equated prostitution with 'male domination and abuse of women'. They also resisted efforts to characterise prostitution as work, 'denouncing the term "sex work" and insisting on alternatives highlighting victimhood, like "slaves" and "prostituted women"' (Weitzer 2009, 95). These perspectives reflect a radical feminist approach to sex work that is dominant in the United States. However, despite the strong libertarian-based support for decriminalisation, Weitzer notes that ultimately political support for legalisation was based mainly on harm minimisation, and not necessarily a belief in the legitimacy of sex work (Weitzer 2009, 100). These competing positions seem to represent what Agustin calls the 'twin reactions to commercial sex – moral revulsion and resigned tolerance' (Agustin 2005a, 618).

These reactions are also evident in societal attitudes towards prostitution in Australia. A 1991 survey of public attitudes towards prostitution indicated that 'two out of three people in Queensland agree or strongly agree that there is nothing wrong with a person paying for sex with a prostitute' (CJC 1991, 68). However, despite what seems to be an acceptance of the legitimacy of

prostitution, those surveyed also strongly favoured regulation of the sex industry by local councils or government agencies, rather than self-regulation by prostitutes' collectives (CJC 1991, 75). This indicates a reluctance to simply remove legislation against sex work, and is consistent with a regulationist, and harm minimisation, approach to prostitution. This has certainly been evident in the development of anti-trafficking legislation in Australia and indicates that while legislation has changed, the attitudes of decision-makers towards prostitution may not be as liberal, and may continue to lag behind legislation.

In the United States, societal attitudes towards prostitution are also somewhat contradictory. Weitzer indicates that while many argue that 'Americans consider prostitution immoral or distasteful' (Weitzer 2007b, 31), this opinion does not account for the majority of the nation. He reports that opinion polls demonstrate that a sizeable majority of Americans see 'nothing inherently wrong' with prostitution, and instead support a harm minimisation approach, which could include legalisation (Weitzer 2007b, 31). However, this public support for a harm minimisation approach has not resulted in a questioning of alternatives to prohibition by political decision-makers.

In fact, the opposite has occurred as recent action on prostitution at the state level has seen the extension of criminalisation. As noted earlier, legislators in Rhode Island have recently moved to declare indoor prostitution illegal. This indicates that decision-makers still find it politically popular to condemn prostitution and maintain a prohibitionist approach to sex work. Hughes was particularly vocal during the Rhode Island debate. Writing with Robert George, she suggested that politicians must, 'let the tragic consequences of Rhode Island's experiment in decriminalizing prostitution be a lesson to lawmakers in other states' (Hughes and George 2009). The events in Rhode Island, along with Federal statements condemning legalised prostitution, suggest that United States decision-makers are becoming more supportive of criminalisation.

The US has also demonstrated increasing willingness to condemn clients of sexual services, emphasising their opposition to prostitution. Bernstein argues that, in the United States as well as parts of Western Europe, the vast expansion

of the sex industry has not resulted in more liberal attitudes towards sex work. Instead, state efforts to 'problematise heterosexual male desire' have increased, with stricter enforcement of anti-prostitution legislation, as well as the introduction of diversion programmes, or 'john schools', designed to 're-educate' men found to be consumers of commercial sex (Bernstein 2005, 103). This approach is a shift from traditional attitudes towards sexual commerce, in which women were often treated as the 'problem' (Altman 2001). They were characterised as either lustful or fallen, and efforts focused on 'saving' prostituted women (Agustin 2007). This cultural shift in attitudes towards prostitution is also evident in increasing calls for the introduction of the Swedish model, which again characterises men's demand for prostitution as the 'problem' (Bernstein 2007, 183). Altman argues that this approach to prostitution is 'schizophrenic' as the United States represents on the one hand unrestrained capitalism and consumerism, but on the other hand seeks to restrict the growth of the market when it comes to the sex industry (Altman 2001, 109). The opposition to growth in the market is therefore based on a particular opposition to the sex industry, reflecting moralistic attitudes towards sex work.

In contrast, while Australian decision-makers have demonstrated a residual reticence towards viewing commercial sex as 'work', attitudes towards the client do not demonise consumers of sexual services to the same extent. Competing perceptions of the client are evident in political attitudes towards sex work. Carpenter (2000) indicates that differing attitudes towards the client view the purchase of sexual services as either a fulfilled biological need, or a choice. She argues that while clients are often problematised as 'deviant', this is in stark contrast to both literature and accounts from sex workers who view clients as 'normal' consumers of a service (Carpenter 2000, 98). Sullivan argues that in the past decision-makers in policy debates have demonstrated an acceptance of the assumption that sex was a biological and 'irrepressible' need, and have seen decriminalisation as a way of 'facilitating – and better managing – men's access to prostitutes' (Sullivan 1997, 194). While this approach does indicate some problematisation of men's desire for sexual services, it identifies a harm minimisation model as a suitable response. During recent trafficking debates in

Australia, decision-makers resisted attempts to problematise demand, indicating that attitudes towards clients may have undergone some changes since liberalisation of prostitution policy in Victoria, New South Wales and Queensland. However, it is difficult to draw conclusions in this instance, as the rejection of calls to address demand may be symptomatic of a reluctance to get involved in prostitution policy, rather than an acceptance of the client as a 'normal consumer'.

A key difference between Australia and the United States appears to be the acceptance of the harm minimisation approach. In the United States, the consumer is increasingly demonised, and a principled opposition to prostitution seems paramount. In Australia, clients are not wholly accepted as 'normal consumers', however the harm minimisation approach has clearly been embraced by many political decision-makers. These contrasting political attitudes towards sex work are largely grounded in the differing ideologies of feminist movements, as well as differences in the sexual culture of Australia and the United States.

This convergence of American feminist and conservative support for an abolitionist approach to prostitution, along with a status quo of criminalisation in the United States, generates a clear image of US opposition to prostitution. This assumed consensus certainly makes it more likely that US decision-makers would accept a claim that was consistent with current legislative approaches and political attitudes. By contrast, Australian legislators demonstrated an unwillingness to accept the claim by arguing that they would not engage on a state issue.

## **6.2 Sex workers and sex work activists in the process**

Another factor influencing the acceptance of the claim in the United States and Australia was the involvement of sex workers and advocates of the sex work perspective in the development of anti-trafficking policy. This section identifies the extent to which sex workers have been involved, discussing several barriers to their participation, which existed primarily in the United States, but also to

some degree in Australia. These barriers include the criminalisation of sex work in the United States (and some parts of Australia), a possible reluctance by sex workers to engage in trafficking debates, lack of political support for sex workers' involvement and the sidelining of sex workers' experiences by abolitionist advocates. The active involvement of sex workers in the development of trafficking legislation in Australia assisted in limiting acceptance of the claim that legalised prostitution leads to increased sex trafficking.

### **6.2.1 Sex workers' involvement**

In the United States, the scope for sex workers to contribute to the development of the *Trafficking Victims Protection Act 2000* and its reauthorizations was extremely limited. In the public hearings held from 1999 to 2005, over 30 non-government organisations were represented on issues relating to human trafficking. Despite some representations made by individuals who were supportive of sex workers' rights (US Congress, Senate, 7 March 2002, 42-44), none of the 43 individuals who gave testimony at the hearings provided evidence as sex workers or as a representative of a sex workers' organisation.

Individuals did share their experiences of trafficking during the US hearings. Anita Sharma Bhattarai (US Congress, House, 14 September 1999, 35), 'Inez' (*Senate* 22 February 2000, 26) and 'Maria' (US Congress, House, 29 November 2001, 71) provided testimony about their personal experiences as victims of trafficking. Many witnesses also related the experiences of victims of trafficking they had come into contact with through the provision of services. The experience of individual victims was seen as important to provide 'direction' and to 'shine that light on what takes place' in the realities of human trafficking (US Congress, Senate, 22 February 2000, 28). However, when legislative efforts turned towards focusing on the eradication of the commercial sex industry in hearings leading to the *Trafficking Victims Protection Reauthorization Act 2005*, no testimony from sex workers, or from organisations able to relate the experiences of a range of sex workers, was contained within the record.

In contrast, sex workers openly contributed to the Australian Joint Committee and Senate Inquiries. The Scarlet Alliance, an association of sex workers and sex worker organisations in Australia, gave testimony at the hearings and via submissions drawing on information gained through consultations with sex workers and outreach workers. The Scarlet Alliance was able to represent the experiences of (some) sex workers, including migrant sex workers, in Australia. However, the voices of migrant sex workers themselves, or of trafficking victims were absent from the discussions.

Some of the witnesses at the Australian hearings noted that a weakness of the Australian system was that migrant sex workers were often immediately deported from the country, and victims of trafficking were not adequately identified and also deported (Parliament of Australia, APJC Hearings, 18 November 2003, 43-45; 25 February 2004, 42). Even trafficking victims who were identified by authorities were also swiftly deported when they were unwilling or unable to testify against their traffickers in criminal prosecutions. While this situation has recently changed, and victims are now permitted to stay in Australia as long as they offer a more limited degree of cooperation with criminal prosecutions, the practice of deporting trafficking victims and migrant sex workers continues. Fawkes says this is not only a weakness with the system, but also results in a decision-making process that is not adequately informed by the voices of migrant sex workers and victims of trafficking. 'Key people who could inform the discussion have been quickly removed from the country' (Fawkes interview 2008).

In both Australia and the United States, the involvement of sex workers or those able to represent sex workers was limited to some extent. The exclusion of sex workers and the sex work perspective from these debates occurred for several reasons that will now be explored.



### 6.2.2 Criminalisation of sex work as a participation barrier

One of the primary barriers to the participation of sex workers in public debates is the criminalisation of sex work that still persists in both countries. As discussed earlier, sex work remains criminalised in all areas of the United States except for a few counties in Nevada (Davis 2006, 840-841). This criminalisation continues to make it difficult for sex workers to speak openly about their experiences and thus limits the amount of exposure that decision-makers have to their perspective. Jordan highlights the challenges faced by organisations in bringing the perspective of sex workers both from the United States and other nations to Congress. In interview she explained:

Sex workers cannot speak publicly in the United States. And if you are known to be a sex worker, you can't even get a visa to come here ... I have to invite professionals working with them to come to the US because the sex workers who could speak for themselves very eloquently would never get a visa (Jordan interview 2008).

The understandable reluctance of sex workers in the United States to come forward and identify themselves as individuals taking part in an illegal activity has led to a situation where the views of sex workers can only really be represented through spokespeople. In contrast, the legalisation and decriminalisation of sex work in some states of Australia has, in part, enabled sex workers to express their views more openly. However, criminalisation is not always a barrier to participation. The Prostitutes' Collective of Victoria took an active and open role in public debate before the decriminalisation of sex work in that state (Sullivan in Outshoorn 2004, 28). However Jordan notes that a key difference between the American and Australian experience is that in Australia, 'you have sex workers who can get out there and speak for themselves. You have them organised, you have people who back them. They have their own voice' (Jordan interview 2008).

In addition, the government funding of sex worker organisations in Australia to undertake outreach work associated with HIV/AIDS prevention and harm minimisation in the sex industry has assisted in enabling sex work advocates to

take an active and open role in political debate. For example, several member organisations of the Scarlet Alliance have received funding from State and Territory health departments over many years to undertake outreach and awareness work (AFAO 2009, 24). Saunders argues that 'liberal attitudes towards "harm reduction"' have made these partnership arrangements between sex worker groups and the government possible' (Saunders 1999, 3). The key role sex worker organisations play in HIV/AIDS prevention, and the official support they receive through government funding, affirms sex workers as key stakeholders in debates surrounding prostitution, including trafficking.

At the trafficking inquiries in Australia the Scarlet Alliance ensured that sex workers were consulted as stakeholders. However this and further participation has not been without obstacles. Janelle Fawkes notes that until recently sex workers have been largely excluded from the debate over human trafficking. 'On an advocacy and lobbying level, there's actually been major barriers to migrant sex workers' and sex workers' voices generally being heard on these issues' (Fawkes interview 2008). For the Australian Parliamentary Joint Committee hearing, Fawkes describes Scarlet Alliance's approach as proactive. 'We weren't requested in any way to participate', she says (Fawkes interview 2008). In addition, though prostitution has been decriminalised or legalised in many states of Australia, there still remains a public stigma attached to sex work that often undermines the representations that sex workers can make. Fawkes argues that there is still a tendency to disregard what sex workers have to say, particularly in the context of giving evidence at hearings or in criminal prosecutions. Fawkes says, 'It is perceived to be a less believable case if the person previously worked as a sex worker, or if they go on working as a sex worker whilst they are participating in the case' (Fawkes interview 2008).

Testimonial evidence is not the only basis on which decision-makers form their opinions and certainly in the United States many interest groups attempted to influence congressional representatives on the issue of trafficking without testifying at the committee hearings (Stolz 2007, 316). These efforts do not, however, necessarily result in the representation of sex workers' views in the public realm as there is also a public stigma attached to sex workers in the

United States. Melissa Ditmore from New York's Urban Justice Centre Sex Workers' Project believes that although some politicians will listen to sex worker activist organisations, they are very reluctant to report information from these meetings to Congressional hearings. 'For a legislator to stand up and say, "well, when I met with and when I talked with someone from Prostitutes of New York" is political death' (Ditmore interview 2008).

### **6.2.3 'Traditional' reluctance to engage with trafficking debates**

Another possible reason for the limited involvement of sex workers in the development of anti-trafficking legislation could be a traditional reluctance by sex workers and sex workers' organisations to engage in debates about trafficking. Doezema (2005) highlights some of the concerns sex workers have through her analysis of the Vienna negotiations leading to the UN Trafficking Protocol. She suggests that a reluctance to engage comes in part from a belief that, 'Historically, anti-trafficking measures have been used against sex workers themselves, rather than against "traffickers"' (Doezema 2005, 62).

This concern is certainly justified. In recent times sex workers have reported negative experiences as a result of 'rescue raids' instituted by international non-government organisations (Busza 2004, 243). In addition, the introduction by several countries of strict regulations on the movement of young women within and across borders as part of a suite of anti-trafficking measures has detrimentally affected not only migrant sex workers, but all migrant women (Soderlund 2005, 82). Doezema also argues that prior to the Vienna negotiations, 'The reluctance to engage with trafficking as an issue was exacerbated by an awareness of the implicit anti-prostitution agenda of many anti-trafficking measures' (Doezema 2005, 71). This agenda was clearly evident in the campaigning approaches of several abolitionist organisations, in particular the Coalition Against Trafficking in Women (CATW).

Despite these concerns, sex workers were present in Vienna representing their views through the Network of Sex Worker Projects (NSWP), human rights organisations, service providers and other lobby groups involved in the

negotiations. Doezema describes the NSWP's approach as 'a dual strategy of overt resistance to the Protocol and stealthy support for the Human Rights Caucus lobby' (Doezema 2005, 77). This strategy sprung from the belief held by many sex workers that by actively participating in efforts to shape anti-trafficking legislation, sex workers would be contributing to the conflation of prostitution and trafficking. Despite this reluctance, Ann Jordan, a key leader of the HRC, has credited the NSWP with making a strong contribution to shaping the position of the Human Rights Caucus (Jordan 2002).

The actions of sex workers during the UN negotiations do indicate a strong willingness to engage in the trafficking debate where the interests of sex workers might be affected. This engagement certainly has relevance in the US context where the TVPRA 2005 seeks to abolish domestic prostitution. In Australia sex workers' groups have been engaged for some time with the legislative decision-making process (Elena Jeffreys 2010). As noted earlier, the Prostitutes Collective of Victoria played a key role in supporting a decriminalisation agenda in Victoria in the 1980s and 1990s, (Sullivan 2004, 28-29) and the Scarlet Alliance has been a strong presence in prostitution debates in Australia over the last decade. Recently the Scarlet Alliance participated on the Human Rights and Equal Opportunities Commission steering committee for 'Ethical Guidelines for NGOs working with trafficked persons', a government funded project (Scarlet Alliance 2008, 2). This engagement has continued since the resurgence of the trafficking debate in the 1990s (Sullivan 2004), despite continued concerns among sex workers about the conflation of prostitution and trafficking in legal definitions and policy measures (Murray in Kempadoo and Doezema 1998, 53).

Sex workers have clearly indicated their willingness to engage with public debate on trafficking issues. It is therefore unlikely that a reluctance on the part of sex workers in Australia or the United States to engage with trafficking debates is the cause of their limited involvement in the legislative decision-making process.

#### **6.2.4 Political support deficit**

A key factor restricting the influence that sex workers could have over the legislative process in Australia and the United States is the amount of political support that these individuals and organisations could expect during the trafficking debates.

As noted above, the criminalisation of sex work in the United States often prevents sex workers from being able to advocate in their own words on their own behalf. It also limits the opportunities for sex workers to collectivise and develop a strong political identity to create what Jordan believes many politicians are looking for in the form of constituency support (Jordan interview 2008). Other factors undermining political support available to sex workers include the sidelining of sex workers' experiences, and 'naming and shaming' campaigns targeting any political supporters of the sex work perspective. These factors will be discussed in greater detail later in this chapter.

In Australia, although there remain obstacles to group organising among sex workers (Gall 2006, 127) the partial collectivisation and unionisation of sex workers, as well as increased feminist support within government, has certainly improved the ability of sex workers to represent themselves as a more identifiable political force. Altman (2001) argues that 'gaining acceptance for sex-worker groups has been a tough ongoing struggle' but that Australia and New Zealand are quite unique in having sex workers involved in formal policy development through national AIDS advisory bodies (Altman 2001, 102). Sullivan argues that the conceptualisation of prostitution as work during the 1970s and 1980s facilitated greater political support and 'made possible broad feminist support' for decriminalisation of prostitution (Sullivan 1997, 165).

Despite a greater degree of involvement of sex workers in trafficking debates in Australia than other countries, the Scarlet Alliance notes that there is still an inclination to overlook sex workers as a key stakeholder in the political process. Fawkes reports that government agencies including the Office for Women and the Sex Discrimination Unit of the Human Rights and Equal Opportunities Commission have in the past been reluctant to involve the Scarlet Alliance in

consultations and forums on trafficking and sex work related issues (Fawkes interview 2008). Only recently, with a change of government from the largely conservative Liberal Party of Australia to the traditionally more socially progressive Australian Labor Party, have the Scarlet Alliance felt there is more political support for their involvement in research and policy creation (Fawkes interview 2008).

### **6.2.5 Sidelineing of sex worker experiences**

The partial exclusion of domestic and migrant sex workers from Australian hearings, the full exclusion of sex workers from the United States hearings, and the lack of political support for the sex work perspective has, to differing degrees in Australia and the United States, created a void that has been swiftly filled by organisations that purport to speak for sex workers. In the hearings, the experiences of 'prostituted women' were most frequently appropriated by others to lend weight to an abolitionist view of prostitution.

Sex workers are often depicted in both academic literature and during the US and Australian hearings as entering prostitution as an indirect result of sexual abuse, family violence, or unstable family and social relationships (Carpenter 2000, 87). These representations tend to characterise sex workers as 'damaged' women and thus question the prospect of sex work as a valid choice. Carpenter argues that even when economic factors are discussed as motivations for undertaking sex work, 'this economic knowing of the prostitute continues to be positioned within a victim framework' and is often only considered alongside, not instead of, psychological factors (Carpenter 2000, 90).

The depiction of sex worker experiences throughout legislative hearings has been characterised in similar ways, and debates have often been fraught with a dispute over what is the 'truth' of prostitution. Sex workers and sex work activists argue that abolitionists consistently ignore positive accounts of sex work and dismiss the credibility and expertise that sex workers can bring to the political process. Petra Ostergen (cited in Fawkes 2005, 22) claims that sex workers are only listened to if they present the view that prostitution is always

harmful to women. She argues that in Sweden, where prostitution policy criminalises clients,

Several sex workers say that they feel used by politicians, feminists and the media. They think that sex workers are only listened to and being paid attention to if they say the correct things, i.e. that they find prostitution appalling, that they are victims, that they have stopped selling sex and will never go back, and that they are grateful to the current prostitution policy [the criminalisation of buyers and decriminalisation of sellers] and to policy makers (Ostergen cited in Fawkes 2005, 22).

Jeffreys (1995) believes conversely that the experiences of sex workers have been prioritised over the arguments of abolitionist feminists in the discourse on prostitution. She accuses feminists who support the sex work perspective of hiding 'their political intelligence behind the argument that only prostitutes can speak about their experience when such diametrically opposite views are all posing as the truth of prostitution' (Jeffreys 1995, 542). However, while Jeffreys accuses some feminists of relying only on sex worker experiences that suit their version of 'truth', her fellow abolitionists also prioritise the experiences of sex workers who have experienced exploitation, abuse and violence to support their campaigns. Saunders (2005, 350) points to research conducted by the Coalition Against Trafficking in Women that intentionally ignored positive accounts of sex work. The research focused on women working in the entertainment industry in the Philippines. Saunders says, 'experiences shared by sex workers that did not fit into the mould of relentless sexual exploitation were filtered out during the interviewing process' (Saunders 2005, 350).

This creation of a central narrative that focuses only on a certain type of 'victim' is consistent with other abolitionist tactics. In particular, the central narrative is reinforced by the tactic of sidelining the experiences of sex workers by undermining their credibility, questioning their ability to make rational decisions and casting them as being 'injured'. Doezema (2001) utilises Brown's (1995) analysis of identity as being constructed on the basis of a perception of historical injuries that render groups of people as 'injured' or 'wounded', arguing

that the actions of abolitionists similarly reduce sex workers to an 'injured body' or 'other'. This 'othering' is often enhanced through the use of dehumanising language by abolitionists, most notably Kathleen Barry's description of sex workers as 'interchangeable with the life-size plastic dolls complete with orifices for penetration and ejaculation sold in pornography shops' (Barry 1995, 35). Doezema (2001) argues that this depiction of sex workers as 'injured' excludes the possibility of dissent on the experience of sex work:

Prostitution is considered always injurious because the sex in it is dehumanizing. However, the sex takes on this dehumanizing character because it takes place within prostitution. In this neat, sealed construction, there is no place for the experiences of sex workers who claim their work is not harmful or alienating. For Barry and CATW, the notion of a prostitute who is unharmed by her experience is an ontological impossibility: that which cannot be (Doezema 2001, 27).

Soderlund (2005) notes that many abolitionists are often perplexed when confronted with cases that do not fit the stereotype of the prostitute as 'injured' and seeking rescue. She describes the frustration experienced by *New York Times* columnist Nicholas Kristof who investigated and wrote about the lives of two women in Cambodia. When Kristof discovers that the 'sex slave' who he helped to 'free' has returned to prostitution, 'Rather than altering his paradigm regarding prostitution, he rationalises Srey Mom's return to the brothel by appealing to her drug addiction, her "eerily close relationship" with the brothel owner, and her low self-esteem' (Soderlund 2005, 78). He complains that, 'It would be a tidier world if slaves always sought freedom' (Kristof in Soderlund 2005, 78).

The necessity to formulate a coherent campaign and consistent narrative for the purposes of lobbying is in some ways at fault for the characterisation of the 'truth' of prostitution as being either at one extreme or another. Campaigners from both the abolitionist and sex work perspective engage in a process of creating a narrative that supports their political perspective. However, the extreme dichotomy perpetuated through campaigns often results in the



sidelining of sex worker perspectives altogether. By depicting women in prostitution as injured, as victims, and as having no real agency, abolitionist activists are guilty of manufacturing a 'truth' that effectively sidelines any competing views voiced by sex workers. Jordan says,

They claim the right to speak for women in prostitution because their voices are silenced or because they're suffering from false consciousness ... because they positioned themselves as the primary caretakers of these women, that they are really deprived any kind of agency, they can say whatever they want (Jordan interview 2008).

In the United States, several organisations presented their views on prostitution, often claiming to speak on behalf of the 'victims' of the commercial sex industry. As noted in Chapter Three, the Coalition Against Trafficking in Women, the Protection Project, Equality Now and Donna Hughes all attacked prostitution as a cause of trafficking, often building this argument by declaring that all prostitution is harmful to women, that women cannot consent to this activity, and that there is no prostitution without coercion. Hughes exemplified this approach by questioning whether or not women are able to enter into prostitution voluntarily and claiming that, 'Unless compelled by poverty, past trauma or substance addiction, few women will voluntarily engage in prostitution' (US Congress, House, 19 June 2002, 73).

In Australia, a similar attempt was made by the Australian branch of the Coalition Against Trafficking in Women to reject the validity of sex worker accounts and the sex work perspective. Jeffreys argued that women in sex work were not making a valid choice to become sex workers because, 'They do not wish to be in there and they do not see themselves at all as having made a reasonable choice to be in prostitution' (Parliament of Australia, APJC Hearing, 18 November 2003, 60).

Although the Parliamentary Committee appeared to question and reject much of Jeffrey's testimony (Parliament of Australia, APJC Hearing, 18 November 2003, 59-50) the Scarlet Alliance indicates that sex worker perspectives were nonetheless sidelined for historical reasons of exclusion. Fawkes argues that,

There is a reluctance to listen to and believe sex workers and that some feminists have developed or adapted theories and practices which actively silence the sex worker 'voice' and replace our '*truths*', history and our sex work experiences with the 'truth' as written by anti sex work feminists. Effectively this has excluded sex workers' own feminist analysis of their work from feminist spaces and debates ... It is not that sex workers are not feminists or that sex workers do not want to participate in feminist debate and feminist space, rather that sex workers are actively excluded and disbelieved (Fawkes 2005, 22-23).

The misappropriation of sex workers' experiences and the silencing of the sex work perspective certainly took place to a greater degree during the congressional hearings in the United States. However, despite the presence of sex workers during the Australian hearings, there is still evidence of a reluctance in Australia to accept sex worker narratives as 'truth' in the political discourse on prostitution.

The validity of the representations the Scarlet Alliance made on behalf of their sex worker membership at the hearings was also called into question by Jeffreys. Senator Kerr, in refuting Jeffrey's argument that prostitution must not be understood as work suggested that, 'The advocacy for the legalisation of prostitution has largely been put forward by women speaking out from within the sex industry,' (Parliament of Australia, APJC Hearing, 18 November 2003, 60). Jeffreys countered this by saying,

It has been actually a very small proportion of women, who have become self-styled spokeswomen and said that they would like prostitution to continue. They rely upon this for an income (Parliament of Australia, APJC Hearing, 18 November 2003, 60).

She added that the advocacy from women within the sex industry

is like the tobacco industry. They put up these representatives called the Marlboro men, who said "We love smoking and it is fine," when their health was actually rather badly affected. I think that women who are the spokeswomen for the prostitution industry are put up so that the

industry is what is protected — and men's right to buy women. (Parliament of Australia, APJC Hearing, 18 November 2003, 60-61).

However, despite efforts to undermine their credibility, sex workers represented through the Scarlet Alliance were able to bring unique expertise and perspectives to the Australian inquiry. In particular the Scarlet Alliance representatives were able to provide key details about the conditions many migrant sex workers face, as well as information about the average 'cost' of a contract-debt. They also advocated the introduction of migrant visas to make it easier for migrant sex workers to come to Australia, which could also assist in the identification of trafficking victims (Parliament of Australia, APJC Hearing, 25 February 2004, 23-24). The involvement of sex workers in the Parliamentary Inquiry may also have been a key factor that prevented the kind of intimidation and shaming tactics used in the United States from taking hold in Australia. If sex workers are able to speak for themselves, and are not regarded just as the 'wolves' of brothel owners, pimps and traffickers (as sex workers' advocates are depicted as in the United States) then the ability of abolitionist groups to misrepresent them is greatly limited.

In the past, sex workers may have been understandably reluctant to engage in debates about trafficking. However, it is clear that in Australia at least sex workers have been actively involved both openly and behind the scenes in recent discourses about trafficking. Despite this, there remain barriers to participation faced by sex workers and sex worker rights' advocates that have restricted their involvement in hearings in Australia and the United States to differing degrees. In the United States, sex workers and the sex work perspective were almost entirely excluded from debates, resulting in a public record that lacks recognition of the strong discourse amongst sex workers that refutes both the claim and the abolitionist approach generally. By contrast, Australian sex workers have had greater success in representing themselves in the political process, and as a result have been able to offer decision-makers a more accurate reflection of the competing perspectives concerning a possible relationship between prostitution and trafficking.

### **6.3 Faith-based organisations and coalitions**

One of the major differences between the Australian and American experience was the involvement of religious organisations and the use of coalitions in lobbying on the development of anti-trafficking legislation.

This section of the chapter considers the involvement of religious groups in the decision-making process, and in particular how those groups have worked in tandem or coalition with feminist and secular organisations. Firstly, it describes the role that religious groups have played on the issue of trafficking historically and over recent administrations in Australia and the United States. Secondly, this section looks at the coalitions that formed in the United States, and considers some of the key factors leading to coalition in the US. It also explores the reasons behind the lack of coalition building in Australia, discussing the power of religious groups in the political process in Australia and the United States. Finally, this section discusses the coherence of the abolitionist coalition in the United States, demonstrating how divergent positions between interest groups can sometimes be prohibitive to coalitions.

Religious organisations in the United States wielded substantial power in the development of anti-trafficking legislation. The coalition between feminist and religious organisations also had an impact on the degree of success enjoyed by advocates of 'the claim'. In contrast, religious organisations in Australia have played a minimal role in the development of legislation, and no coalitions with feminists have been formed. This situation reflects the overall importance of religion in US political culture, an increased secularism in Australia, as well as a reluctance on the part of Australian organisations to seek common ground with ideologically divergent organisations.

#### **6.3.1 Faith-based organisations and human trafficking**

Religious organisations have a long history of campaigning on the issue of human trafficking. The Salvation Army were active in public debates concerning human trafficking in the late nineteenth century (Walkowitz 1980, 126), and Jeffreys

argues that representatives of the Association for Moral and Social Hygiene (AMSH) based their opposition to prostitution and trafficking on 'Christian morality' (Jeffreys 1997, 32). In the United States, religious organisations have played a significant role in the development of recent anti-trafficking legislation.

The eight years of the Bush administration from 2001 certainly saw a dramatic rise in the power and involvement of religious organisations in politics in general. Kaplan (2005) argues that evangelical organisations wielded increasing power over major domestic policy initiatives, as well as advocating for 'family values abroad'. This has included taking part in hearings leading to the development of the *Trafficking Victims Protection Act 2000* and subsequent reauthorisations.

Religious organisations prominently involved in the issue of human trafficking in the lead up to the establishment of the TVPA include the International Justice Mission (IJM), the Salvation Army, and Shared Hope International. As noted above, the Salvation Army has been active in anti-trafficking campaigning since the nineteenth century. The International Justice Mission and Shared Hope International are both organisations that have emerged more recently. The IJM was founded in 1997 by Gary Haugen as an organisation to carry out a Christian mission of protecting vulnerable people and ensuring justice (Power 1999). Shared Hope International is also founded on Christian principles by former Congresswoman Linda Smith who says she learned about the problem of human trafficking through the Assembly of God congregation to which she belongs (Shapiro 2004). Formed as issue groups, both Shared Hope International and the International Justice Mission are not branches of churches or representative of particular religious denominations, but they are grounded in religious principles (Shared Hope International 2010; International Justice Mission 2010).

In the US both Shared Hope International and the International Justice Mission have been involved in campaigning, as well as delivering services to victims of trafficking. Representatives from these organisations have also been vocal in the hearings on trafficking, giving testimony to congress throughout the development of the legislation as well as subsequent reauthorizations.

Evangelical activist organisations also took an interest in the issue. The National Association of Evangelicals and Concerned Women of America are two key groups who did not testify at the congressional hearings, yet played a strong role in campaigning behind the scenes. These groups represent a more traditional model of religious involvement in trafficking, as they are drawn from religious congregations that are active on a number of social issues.

In Australia, very few religious groups made submissions or gave testimony to the Inquiry. The Catholic Women's League made submissions to the Joint Committee and Senate Committee Inquiries, in which they clearly put forward the claim that legalised prostitution leads to an increase in trafficking. This group, however, was not among the witnesses at the public hearings.

### **6.3.2 Faith-based and feminist coalitions and tandem efforts**

The development of anti-trafficking legislation in the US saw the emergence of a coalition between faith-based and feminist organisations, reminiscent of the coalition of religious groups and radical feminists that emerged in the 1980s to campaign against pornography (Weitzer 2007a, 448). The new coalition was led, in part by Michael Horowitz, who Hertzke (2004) credits with energising faith-based groups on the issue of trafficking, and building a coalition that gave new strength to abolitionist groups. He argues:

The formative efforts of Lederer, Haugen, and Neuwirth, notable as they were, did not gain major policy traction in Washington D.C., until the issue was engaged by the new faith-based coalition. Here again, Michael Horowitz served as a catalyst in connecting these activists with religious leaders who could mobilize constituent pressure (Hertzke 2004, 321).

Initially, a coalition of feminist and anti-trafficking organisations such as the Protection Project, Equality Now, Planned Parenthood Federation of America, National Organisation of Women (NOW) and CATW lobbied Senator Wellstone in an attempt to make prostitution synonymous with sexual exploitation in the definition of trafficking (McBride Stetson 2004, 258). When Wellstone and the

Clinton Administration indicated they would resist efforts to define all prostitution as trafficking, several coalition members including Equality Now and the Protection Project turned for support to Congressman Chris Smith. McBride Stetson describes Smith as 'not a natural ally of the feminists' due to his prominent anti-abortion stance (McBride Stetson 2004, 259). However, he was in agreement with feminist organisations on trafficking and prostitution, and was able to assist in the construction of a coalition between feminist and faith-based organisations.

Equality Now, along with the Protection Project and other secular groups, joined forces with religious organisations to achieve change. Hughes also credits Horowitz with part of the organisation and success of the coalition, and describes the different players involved:

I'm in the feminist wing of the coalition. The Polaris Project, a service organization based in Washington, holds up the liberal/progressive wing ... Then there are the powerful faith based groups — the Salvation Army and the Southern Baptists in particular. Conservative groups, such as Concerned Women for America, are among the leaders (Hughes in Lopez 2006).

This coalition, which included the International Justice Mission and the National Association of Evangelicals, did not necessarily involve all those on the abolitionist side of the debate. Although CATW has been involved in coalition activities from time to time, Soderlund notes that it was one of several organisations not always included in the coalition (Soderlund 2005, 72). This does not, however, mean that they opposed the work of the coalition. As Stolz (2005) argues, much of the lobbying work done on this issue was done not in coalition, but in tandem:

Interviewees described the groups as working in tandem rather than functioning as a coalition to enact the legislation. That is, feminist groups, religious groups, labor groups, working through members of Congress and staff with similar views sought ways to address the trafficking problems ... The groups "did their own thing", for their own reasons,

simultaneously. Consequently, it seems more appropriate to depict the trafficking legislation, generally, as the outcome of tandem efforts of interest groups with diverse interests to meet their respective goals, rather than the outcome of a concerted, organized, coordinated effort by an established coalition of organizations (Stolz 2005, 420).

It is more likely that both statements are true — coalitions did play a strong role, however tandem efforts assisted and reinforced these.

The coalition and tandem efforts of feminist and faith-based organisations in the US on the issue of trafficking are regularly credited with strongly influencing administration policy. However, no similar alliance formed in Australia around the issue of trafficking. There is some evidence of tandem organisation in Australia, although this is extremely limited. For example, the Catholic Women's League of Australia (CWLA) and CATWA advocated for the introduction of the Swedish model of prostitution (CWLA, APJC Submission, 2003). It is unclear whether or not this position emerged independent to, or as a result of, increased efforts by CATWA to promote the Swedish model. It is also notable that the CWLA submission references Project Respect as their source for information regarding the scale of the trafficking problem, demonstrating some alignment with the perspective of this group. These incidents do not amount to coalition working, although Jeffreys argues that some religious organisations in Australia are beginning to change their rhetoric on the issue of prostitution to incorporate the language of feminist abolitionists:

Christian organisations that have, for their own reasons, objected to prostitution in the past have in the last ten years or so absolutely adopted the feminist perspective and they talk about prostitution as violence against women (Jeffreys interview 2008).

Despite possible common ground on prostitution, feminist and faith-based organisations in Australia have not formed a coalition that would mirror the efforts in the United States. Saunders reports that one sex worker advocate has expressed relief at this situation, declaring:



Luckily, in Australia we have not had to contend with anti-porn, anti-sex feminists teaming up with such unlikely allies as the AMA [Australian Medical Association] and conservative Christians to limit the rights of sex workers (Hunter cited in Saunders, unpublished).

At this stage, it seems unlikely that a coalition between feminist and religious organisations will emerge in Australia on the issue of trafficking.

### **6.3.3 Strength of religious groups**

Interviewees in the USA are broadly in agreement that the involvement of religious organisations sparked significant change in legislation, particularly through the Reauthorizations. One interviewee remarked that ‘things really took off’ once the National Association of Evangelicals got involved on the issue. This may be due to the importance of religion in US politics.

For organisations like the Protection Project and Equality Now, the possibility of a coalition, or at least consensus, on an abolitionist approach to trafficking legislation presented an opportunity to capitalise on the wide spread and growing support that religious organisations had, not only from the public, but also within Congress. The power religious groups held may also be one reason why feminist groups were willing to overlook other differences.

Melissa Ditmore from the Urban Justice Centre Sex Workers’ Project says that many women’s groups would ‘find it very difficult to work with any organisations that had a moralistic platform against a whole category of people, typically women’ (Ditmore interview 2008). The challenges of maintaining an alliance amongst groups with such divergent views on other issues will be discussed later in this section, however it is clear that the incentives to capitalise on the power of religious groups in Congress may have helped women’s groups to overcome their apprehensions about working together with faith-based groups.

The importance of religion in American politics can be seen in both the behaviour of individual politicians and the strength of faith-based organisations.

Kohut (2000) argues that religion has always had an important place in American politics, and in recent years political leaders have rushed to demonstrate their commitment to religion as the basis for their political actions (Kohut et al 2000). Wald and Calhoun-Brown argue that the strength of religion in politics is directly related to the importance of religion amongst the American public. While other nations have demonstrated a trend towards secularism, they argue that, 'By all the normal yardsticks of religious commitment – the strength of religious institutions, practices and belief – the United States has resisted the pressures towards secularity' (Wald and Calhoun-Brown 2007, 10). The established annual Presidential 'prayer breakfast' is a very clear example of the importance of Christian faith in American politics, as these events, 'aimed at building an "invisible organisation" of Christian leaders all over the country" are now viewed as politically important 'power breakfasts' (Maddox 2005, 262).

Religion has clearly been an important factor in American politics since its inception, however it was through the election of Ronald Reagan in 1980 that the Christian Right established itself as a significant power player. Kaplan refers to Reagan's election as the Right's 'coming-out party as a formidable political bloc' (Kaplan 2005, 71). As noted in Chapter Five, the election of George W. Bush as President provided a greater opportunity for the Christian Right to influence the policy-making process. Kaplan (2005) argues that the Bush administration's support for religious organisations increased the power these organisations had to lobby on issues within Congress. Interviewees also reported that the ability of religious organisations to fundraise on the issue also gave them substantial power within Congress. Lederer describes the impact of religious organisations joining women's groups as introducing:

a fresh perspective and a biblical mandate to the women's movement. Women's groups don't understand that the partnership on this issue has strengthened them, because they would not be getting attention internationally otherwise (Lederer in Crago 2003).

The involvement of religious groups in the anti-trafficking debate clearly strengthened the forces of abolitionism, and assisted feminist abolitionist groups

in gaining access to decision-makers. As such, there is no doubt that the power of religious organisations made it much more likely that this coalition would form due to the significant incentives on offer for feminist groups willing to work with faith-based organisations.

In contrast, religious groups in Australia appeared to have limited influence over the development of anti-trafficking legislation, and as a result feminist organisations may have had little incentive to align with them. This is not to say that religious organisations, or religious politicians, have not been concerned about prostitution and trafficking. Altman suggests that moralistic or religious attitudes on sex work and sexuality have emerged in Australia through the views of some parliament representatives. He argues, 'American influence helps export its anxieties to the rest of the world' (Altman 2001, 155). Nor should it be assumed that religious organisations in Australia are powerless; some researchers argue that religious organisations certainly had some influence over policy during the years in which John Howard was Prime Minister (Connell 2005, 328; Marr 1999, 218; Warhurst 2007a, 24; Maddox 2005). However, others suggest that the influence of the Christian Right on Australian politics may be over-stated (Smith 2009, 614).

Christian groups, particularly the Catholic church, have traditionally aligned more closely with the Labor party in Australia, however in recent decades there has been increasing evidence of a stronger association between the Liberal Party and Christian organisations. Marr argues that, 'Conservative Catholics have joined the Liberals and have made the Coalition side of politics more conservative as a result' (Marr 1999, 218). While religious groups played only a small role in the Australian Inquiry into Sexual Servitude, they have been heavily engaged in lobbying on key political issues over the last decade including tax reform, treatment of refugees and asylum seekers, industrial relations reform, stem cell research, euthanasia, and the 'abortion pill' RU486 (Warhurst 2007a, 24). Religious groups were also granted contracts for delivery of social services during the Howard years (Warhurst 2007b, 34), which is similar to the situation in the United States under Bush. Religious parliamentarians have also been active in a 'Parliamentary Christian Fellowship' that in the late 1980s introduced

the concept of the American 'prayer breakfast' which has become an opportunity for activism on key social issues (Maddox 2005, 274, 281).

Personal religion has also been a key factor in the ebb and flow of the political power wielded by religious organisations in the United States and Australia. It has been noted earlier that the election of George W. Bush as President had a significant impact on the increasing power of religious organisations. Personal politics could also have been a factor in increasing the power of religious organisations in Australia. Warhurst notes that political leaders from both sides have recently been more forthcoming and open in declaring their religious beliefs (Warhurst 2007a, 31). Maddox argues that early in his third term John Howard appeared to be 'repackaging himself for a conservative Christian market' by increasing his attendances at conservative churches (Maddox 2005, 258). Bachelard argues that the religious group 'The Brethren' wielded some influence over the Howard Government due to their lobbying on issues such as Medicare and their significant financial contribution to the Liberal Party's re-election campaign in 2004 (Bachelard 2008, 186, 189). Despite these factors, John Howard did not indicate a religious or moral basis for the government's position on prostitution during the development of anti-trafficking legislation.

Considering the active role Christian groups have played with respect to migration law reform, as well as policies relating to sexual freedom (such as the RU486 abortion pill), their limited role in the Inquiry into Sexual Servitude seems unusual. This lack of strong involvement may be due to a lack of awareness of trafficking issues in the wider population at the time. Religious groups in the United States were both powerful and dominant activists in the trafficking debate, thereby incentivising a coalition with feminist groups. In contrast, the relative lack of power held by religious organisations on trafficking issues in Australia clearly limits the incentive for feminist and faith-based groups to overcome their differences and work together. The lack of coalition-forming in Australia may also have been due to the relatively small number of groups active during the Australian inquiries. Mainstream feminist organisations such as the Women's Electoral Lobby and union groups did not participate in the Inquiries,

despite having significant involvement in earlier public debates about prostitution (Sullivan in Outshoorn 2004, 27-28).

#### **6.3.4 Perpetuation of power**

Following the introduction of the initial legislation and the establishment of the TIP Office, religious organisations received a boost not only from the election of George W. Bush, but also the appointment of John Miller as Director of the TIP Office in 2002. Shapiro says that Miller was ‘the pick of evangelicals’ to take over the Office due to his longstanding support for religious freedom and human rights (Shapiro 2004). Miller, a former Congressman, had also recently chaired the Discovery Institute, a research organisation commonly associated with the campaign for teaching intelligent design, a theory of creationism, in schools. Anthony DeStefano reports that Miller was supported for the job as Director of the TIP Office by Michael Horowitz and Charles Colson, an evangelical leader, which ultimately strengthened Miller’s ability to support the abolitionist position through the TIP Office:

With influential mentors such as Horowitz and Colson, both of them well-known prostitution abolitionists who had considerable clout with President Bush’s inner circle of advisors, Miller had an interest in pushing such policies and in later years used his job as a pulpit for abolitionism (DeStefano 2007, 107)

The power of religious organisations, and by association the feminist and secular groups in coalition with them, was further enhanced through the funding they received. As discussed in Chapter Five, the funding of abolitionist organisations perpetuated the dominant involvement of abolitionist groups testifying to congress and positioned them as the experts on the issue due to the services they provided and research they conducted with government funding. Shapiro (2004) argues that personal and political connections have also led to the allocation of funding to religious organisations, in particular Shared Hope International, created by former congresswoman Linda Smith. Shapiro argues:

There is a nexus of connections surrounding the Bush administration of which Smith is a part. She and Attorney General John Ashcroft have had a friendly relationship since her days in Congress. They both belonged to Assembly of God congregations and would see each other at functions for visiting church leaders (Shapiro 2004).

These sorts of relationships may explain, in part, why organisations like Shared Hope International and the International Justice Mission have been the recipient of million-dollar grants for anti-trafficking initiatives (as discussed in Chapter Five). In addition, the delegation of funding decisions to religious organisations has further perpetuated the power that the faith-based coalition has over trafficking policy-making and implementation in the United States. The Conference on Catholic Bishops was granted the bulk of funding to provide support to trafficking victims which they were then to sub-contract to individual organisations. The conditions applied to the funding through this sub-contracting arrangement included the anti-prostitution pledge, and a restriction on using the money for supporting abortion (Jordan interview 2008).

The rising political power of religious organisations during the Bush administration, combined with Miller's support from within the TIP Office, and perpetuated through the direction of funding, solidified the central role that religious organisations would play in the development of anti-trafficking legislation.

As discussed earlier in Chapter Five, much of the funding for services to victims of trafficking in Australia has been directed towards groups not traditionally involved in campaigning on trafficking issues.

### **6.3.5 The challenges of coalition**

It would be reasonable to assume that the differing opinions religious, feminist and secular groups hold over a number of issues might have some inherent problems for a coalition. However, Richard Cizik, Vice-President of the National Association of Evangelicals, argues that religious groups have learned to come

together despite differences working on numerous political issues. He notes that the experience of lobbying with diverse organisations for the establishment of the *Religious Freedom Act* demonstrated the influence coalitions can wield. He argues that the same approach was needed on trafficking. 'If evangelicals wanted to accomplish anything, they would have to build coalitions with people they previously considered opponents, on issues they could agree on' (Cizik in Shapiro 2004). Kirkland from Equality Now agrees that it was a particularly significant step for feminist organisations to take, and represented a partnership on one issue alone. She says, 'This was pretty much the only issue. We're a pro-choice organization' (Kirkland interview 2008).

Holding this alliance together on this one issue did require effort, and some interviewees have reported that Michael Horowitz's approach to maintaining the alliance ranged from the circulation of briefing materials to keep everyone 'on the same page' to the occasional bullying of groups that strayed from the hymn sheet and sang a more nuanced tune (Interview 2008, name withheld by request). However, the groups could at least come together around opposition to the legalisation of prostitution and it is clear that Horowitz was aware of the power an alliance like this could wield. He said:

You've got soccer moms and Southern Baptists, the National Organization for Women and the National Association of Evangelicals on the same side of the issue. Pro-family issues are usually controversial, but on this one, you've got everyone in agreement. Gloria Steinem and Chuck Colson together (Horowitz in Crago 2003).

By combining traditional political enemies, this coalition contributes to the creation of an assumed consensus on the issue of prostitution and trafficking.

As previously mentioned, a coalition between feminist and faith-based organisations on the issue of human trafficking has not emerged in Australia, despite its success in the United States. This is likely to be for several reasons. Firstly, the amount of influence religious organisations have in Australian politics is dramatically less than in the United States, despite a growing involvement of Christian organisations in the Liberal Party of Australia. As a

result, there is no great incentive for feminist organisations to ally with religious groups. In addition, Australian feminist groups are more liberal in their approach to sexual matters (as noted earlier) than US feminist groups, minimising the likelihood that there could be common ground on which they could work with conservative religious organisations.

Despite Jeffrey's belief, noted above, that Christian organisations have taken on the feminist abolitionist rhetoric for their position on trafficking, she admitted in interview that a coalition with them might be difficult because the Coalition Against Trafficking in Women Australia is not a Christian organisation (Jeffreys interview 2008). Vallins, of Project Respect, agrees that some feminist and human rights groups may not be able to form such single-issue coalitions in the same way that has occurred in the United States due to a divergence on other important women's issues such as abortion. However, Vallins also thought there might be problems in how some Christian groups work with women. In interview she said, 'I guess right wing groups are more likely to take the kind of charity view, sort of "poor women"' (Vallins interview 2008).

Other sorts of coalitions on the issue of trafficking have also not formed so readily in Australia. Vallins (2008) indicates that Project Respect has often wished to work in coalition with other groups such as the Scarlet Alliance, but differences of opinion over the legitimacy of sex work have prevented this. Vallins said:

We see that there's challenges in working with sex worker groups. We extend an olive branch ... but the frameworks for understanding prostitution are different (Vallins interview 2008).

This situation is not dissimilar to the United States. Groups in both Australia and America often identify themselves as being in either one or the other camp on the highly politicised issue of the legitimacy of prostitution. Vallins (2008) observed that this politicisation influenced the way in which Project Respect lobbied on the issue of whether or not legalised prostitution has led to an increase in trafficking. She says that in order to make it easier to collaborate with other organisations on the issue, 'when we lobby on trafficking specifically we



generally keep the debate more or less to trafficking' (Vallins interview 2008). However, as argued earlier, Project Respect's submission and witness testimony to the Australian Inquiry certainly implied a position that they believe legalisation has led to an increase in trafficking, this claim was put forward subtly.

Sex worker groups in the United States have also worked on forming coalitions with like-minded organisations. Crago notes that:

Sex worker groups across the world, meanwhile, have taken a lesson from the feminist establishment and the Christian Right by creating alliances of their own with labour, migrant and human rights groups (Crago 2003).

Melissa Ditmore from the Sex Workers' Project of the Urban Justice Centre has also seen the establishment of some coalitions due to the similarities between the anti-prostitution pledge and the establishment of the Mexico City Policy global gag rule which refused funding to international aid agencies that referred women for abortions (this policy has since been overturned by new US President Barack Obama). 'In the US, we are now making inroads with reproductive rights groups,' says Ditmore (Ditmore in Crago 2003).

In addition, coalitions of non-abolitionist organisations have begun to emerge organising around the issue of human trafficking. For example, the Freedom Network, established in 2001, includes many member organisations that actively oppose abolitionist approaches to human trafficking (Freedom Network, 2010). Despite these attempts, it has been difficult for these groups to wield political power equivalent to that of the feminist/faith-based coalition, in large part due to the marginalisation that has taken place of these groups. Groups in the United States who support the abolitionist perspective are not concerned about losing coalition partners if they put their views forward.

### 6.3.6 Coalition and consensus

The existence of a broad-based coalition in the United States, but not in Australia, is one of the key factors leading to a differing degree of acceptance of the claim that legalised prostitution leads to increased trafficking.

Both within the coalition, and for groups working in tandem, the spread of organisations advancing the claim was able to influence quite a large number of congressional representatives. Stolz argues

Groups typically sought to meet with those members of Congress and their staffs who held similar views. Feminist groups reached out to members who were politically liberal, while groups from the religious right sought out conservative members (Stolz 2005, 421).

Janice Raymond from the Coalition Against Trafficking in Women believes that feminist and faith-based groups working largely together, either in coalition or tandem, also influenced media perceptions about prostitution and trafficking. When interviewed for this research, she explained that

The tone and the tenor of the debate has definitely changed. We spent years trying to break through this crust of a kind of a polar “there’s only two camps”. There’s the moralists and there’s the liberals and nowhere to be visible is the feminist opposition to prostitution. And that is no longer true (Raymond interview 2008).

John Miller, former TIP Office Director, certainly believes that the coalition of feminist and faith-based groups had a substantial impact on the US government’s acceptance of the claim that legalised prostitution led to an increase in trafficking. ‘It is not usual in the United States to have feminist groups and faith-based groups in alliance ... So I would say that probably has an impact on Senators and Representatives’ (Miller interview 2008).

The lack of an equivalent coalition in Australia did not allow for this sort of demonstration of broad-based support for the belief that legalised prostitution leads to increased trafficking, and thus in part limited the acceptance of the claim by failing to persuade decision-makers of a consensus on the issue.

## **6.4 Dirty tricks and tactics**

This section explores the tactics used in Australia and the United States to undermine individuals and organisations supporting the sex work perspective, or refuting the claim that legalised prostitution leads to an increase in trafficking. Firstly, the practice of ‘naming and shaming’ politicians and government officials will be discussed. Secondly, the practice of undermining organisations that advocate on behalf of sex workers by labelling them as pro-prostitution is explored. Finally, the institutional exclusion of certain perspectives is also considered, looking at the ways in which both formal and informal methods have been used by governments to exclude opposition to current policy in both Australia and the United States.

In the United States all of these tactics have been used to attempt to shut down any opposition to the abolitionist perspective or ‘the claim’. Although some of these tactics were also employed in Australia, this has not been as commonplace or as successful, especially with regard to the third issue of institutional rejection where there is a perception that a ‘middle way’ position is more acceptable to legislators.

### **6.4.1 Naming and shaming**

One of the tactics employed by abolitionist campaigners has included a naming and shaming of decision-makers who indicated an inclination towards the sex work perspective. This practice has even been used against those who do not support the legalisation of prostitution, but reject the claim that legalised prostitution leads to increased trafficking.

In the United States, the overt tactic of ‘naming and shaming’ politicians who are not fully supportive of the abolitionist perspective has been used quite extensively. The tag ‘pro-prostitution’ has been applied to both those who advocate for a decriminalisation or legalisation of sex work, as well as those who may not necessarily support legalisation but who do not wholeheartedly subscribe to the measures called for by abolitionists. Wijers and Ditmore argue

that the tag misrepresents the views of those who support the sex work perspective or reject abolitionism and is 'akin to the use of the term "pro-abortion" rather than "pro-choice" by activists who seek to ban abortion' (Wijers and Ditmore 2003, 84). Despite this distinction, the tactic of declaring politicians to be 'pro-prostitution' as a method to deter them from supporting the sex work perspective has been used extensively in the United States both during the negotiations in Vienna over the UN Protocol, and throughout the congressional hearings.

The Clinton administration, and specifically Hillary Rodham Clinton and her key advisers, were attacked for being 'pro-prostitution' on numerous occasions. In 2000, a letter signed by nine organisations led by abolitionist advocates Equality Now was sent in response to the US delegation's decision to support a protocol that referred to 'forced' prostitution rather than all prostitution. The letter demanded to know whether or not the First Lady and Honorary Chairwoman of the President's Interagency Counsel on Women (PICW) was drawing a distinction between 'forced' and 'free' prostitution. A *New York Post* article reporting the letter referred to Clinton's advisors on the PICW as the 'Hooker Panel', naming government officials Anita Botti, Theresa Loar and Stephen Warnath as advocates of a 'pro-prostitution position' (Blomquist 2000, 6). In a scathing *Wall Street Journal* editorial Charles Colson and William Bennett continued to paint Clinton and the US delegation as 'pro-prostitution' by declaring that they had 'lobbied for the United Nations to adopt a trafficking protocol that would lend legitimacy to prostitution and hard core pornography' (Bennett and Colson 2000, 26).

A Clinton administration official recalls that members of the US delegation and various non-government organisations wanted to avoid a protracted debate about the legitimacy of prostitution due to fears that it would derail the establishment of any anti-trafficking agreement. Although many of these groups and individuals did not necessarily favour legalisation of prostitution, the official says they were:

accused of being pro-prostitution or being somehow less committed to eradicating the crime of human trafficking ... It has been very wrong in my judgement to accuse those who are absolutely 100 per cent committed to fighting human trafficking to being pro-prostitution when they don't accept the legal framework, not because they're wrong but because there is an interest to advance political solutions that the political world can endorse at a given time in a majority way to get something done (US Government Official, name withheld, interview 2008).

Ann Jordan, a member of the Human Rights Caucus, reports that in addition to this public naming and shaming, intimidation tactics were employed against the US delegation, the most common one being a threat to get Congress or the press involved. 'One of them tapped a member of the US delegation in the chest and threatened to go to Congress if the delegation did not adopt the anti-prostitution position' (Jordan interview 2008).

These naming and shaming activities surrounding the Vienna negotiations certainly continued throughout the hearings to determine the US domestic policy on trafficking. In 2002 Kate O'Beirne wrote in the *National Review* that the Clinton administration was 'pro-choice on prostitution' due to their exclusion of 'consensual prostitution' from the Trafficking Victims Protection Act. Senator Joe Biden (now Vice-President) and Senator Sam Brownback were also criticised more recently for their refusal to remove the 'force, fraud and coercion' elements from the latest Reauthorization Act in the Senate. In a *New York Times* editorial, John Miller, former congressman and Director of the TIP Office, accused the Department of Justice of accusing them of being 'blind to slavery' for objecting to the removal of the 'force, fraud and coercion' elements in the House version of the 2008 Reauthorization Bill, as well as Senator Biden for introducing a bill in the Senate that 'largely complies with the department's views' (Miller 2008). As discussed in Chapter Five, the first Director of the TIP Office, Nancy Ely-Raphael, was also publicly vilified for maintaining an approach to the trafficking issue that did not call for outright abolition of prostitution.

The politicians and government officials indicated above were not necessarily supportive of, and in some cases certainly opposed to the view that sex work is legitimate, yet they were vilified for not fully supporting the belief that the abolition of prostitution is central to addressing trafficking. This tactic makes it more likely that decision-makers would accept the claim that legalised prostitution leads to increased trafficking. For those still unwilling to accept the claim and the abolitionist perspective, the naming and shaming tactic minimises the chances that they would offer an explicit rejection of the claim. For fear of being tagged as 'pro-prostitution', and therefore somehow supportive of the oppression of women, it is highly unlikely that any US politicians or officials would openly advocate the sex work perspective. Ann Jordan reports that in her experience of working with politicians and government officials, there are some who may be sympathetic to the sex work perspective, or reject outright abolition as an approach to trafficking, however they say, "look, I'm going to get attacked as being pro-prostitution. What do I have to gain if I take this position? Nothing. Where's my constituency? Do I have a whole bunch of sex workers who are going to vote me into office?" (Jordan interview 2008).

The potential for political fall-out, combined with the lack of voting power sex workers can bring to support politicians who may support them leads to a lack of political will on the part of Members of Congress to support their position. As noted above, sex workers were already largely excluded from the decision-making process in the United States. This forms yet another barrier to their participation in the legislative process, and another factor contributing to the widespread acceptance of the claim.

A similar 'naming and shaming' is not as evident for Australian parliamentarians who choose to support legalised prostitution. The political support already demonstrated for legalised prostitution through the passing of legislation in Queensland, New South Wales, Western Australia and Victoria may be a key factor in preventing the vilification of politicians supportive of the sex work perspective. To 'shame' the many who have put their name to the legislation would be largely pointless and perhaps even counterproductive, resulting in an alienation of decision-makers in Australia. As discussed above, feminist support

for a liberalised approach to the sex industry has been present in party politics in Australia for decades. In recent years, however, there has been greater evidence of opposition to the legalisation of prostitution from women within the Australian Labor Party, as evidenced by the statements of ALP Federal MP Jennie George discussed in Chapter Five. Despite evidence of support for the abolitionist perspective, it is also clear that there is significant support for a harm minimisation approach to prostitution. These factors minimise the impact a naming and shaming tactic could have in persuading politicians to accept a particular viewpoint.

#### **6.4.2 Vilification and misleading labels**

These 'shaming' tactics have not been restricted to congressional representatives and government figures who may reject the claim that legalised prostitution leads to an increase in trafficking. They have also been used significantly throughout the Protocol negotiations and the congressional hearings against individuals and organisations that refute the claim and put forward the sex work perspective.

Abolitionist activist Donna Hughes has argued for the need to expose the 'wolves in sheep's clothing' (Hughes 2002) to ostracise individuals and organisations who say they are anti-trafficking but do not subscribe to the abolitionist viewpoint. She says, 'We cannot expect to have a successful abolition movement if we do not expose the wolves' (Hughes 2002). According to Hughes, the 'wolves' are academics, non-government activists and service providers who work against trafficking but are seeking to 'normalise or legalise' prostitution. Key to Hughes' definition of a 'wolf' is the rejection of the belief that ending demand for prostitution is a primary and necessary measure for ending trafficking.

The use of the evocative 'wolves in sheep's clothing' terminology depicts those who wish to maintain the force, fraud and coercion elements of trafficking legislation or those who support the sex work perspective as purveyors of evil disguising themselves as innocents. This characterisation of sex work activists

and their supporters intentionally conveys the impression that these individuals and organisations are not giving a true and honest representation of their position, and that their arguments in favour of the sex work perspective or against 'the claim' are really directed towards some sort of pervasive self-interest.

This impression is further developed through other shaming tactics used by abolitionist groups. At the Vienna negotiations a rumour was spread that the Human Rights Caucus, advocating for the inclusion of 'forced prostitution' in the definition of trafficking, was a front for the 'international prostitution mafia' (Ditmore in Doezema 2005). Dorchen Leidholdt, a co-founder of the Coalition Against Trafficking in Women, referred to the International Human Rights Law Group, a key member of the Human Rights Caucus, and other organisations that support legalised prostitution 'protection rackets for the sex industry' (Soriano cited in Doezema 2005, 73).

The 'pro-prostitution' tag has also persisted throughout the development of anti-trafficking legislation in the United States and has been made several times during the hearings themselves.

The depiction of opponents to the claim as being in some way 'pro-prostitution' has been 'enhanced' by attempts to mischaracterise the opposition to the claim. Former Director of the TIP Office John Miller, writing in the *New York Times*, characterised the dispute over the issue of consensual prostitution in the following way:

The feminist, religious and secular groups that help sex-trafficking survivors are on one side. And on the other are the department's [Justice Department] lawyers (most of them male), the Erotic Service Providers Union and the American Civil Liberties Union (Miller 2008).

For a man with Miller's political experience and position at the TIP Office for several years, it is unlikely he is unfamiliar with the many human rights groups (such as Global Rights) and sex worker advocacy groups (such as the Network of Sex Work Projects) who were also against removing force, fraud and coercion from the legal definition of trafficking.



This depiction of the debate is therefore a wilful misrepresentation of those who hold differing views, and an attempt to characterise sex work activists as nothing more than those who either want to profit from the sex industry, or those who oppose the law change for ideological reasons. Even when acknowledging the existence of divergent views amongst non-government organisations during his interview for this research, Miller maintains that there is not 'as big a divide' on the issue of the legitimacy of prostitution in the United States (Miller interview 2008).

Michael Horowitz also attempts to misrepresent the views of sex worker advocates. He claims that sex worker advocates think that a minimum wage and ergonomic mattresses will solve any problems associated with the sex industry, suggests that these activists just want prostitutes, including children, to ask that clients use a condom, and says, 'giving condoms to sex slaves is morally equivalent to improving conditions on 19<sup>th</sup> century slave ships' (Horowitz in Morse 2003). By taking this reductionist approach and drawing a parallel between slave traders and sex worker advocates, Horowitz is also intentionally misrepresenting the perspective of many human rights groups and sex worker activists in order to minimise the credibility they may have in the political realm. As discussed in Chapter Five, these attacks were more formalised when Donna Hughes provided a list to the US Congress of groups who she accused of 'supporting prostitution'.

In Australia, similar efforts have been made to paint sex worker activists as 'pro-prostitution', and to depict them as advocating on behalf not of sex workers, but of pimps and traffickers. Janelle Fawkes of the Scarlet Alliance reports that during the Australian Parliamentary Inquiry, they became aware of an effort to discredit the information they were bringing to the hearings:

Some of the Parliamentarians who were participating in the hearing suggested to us that they had been told that somebody had attempted to discredit our information, stating that we were simply a front for brothel owners (Fawkes interview 2008).

This rumour was circulated despite the fact that the Scarlet Alliance's membership 'specifically excludes sex industry business operators' and other groups who 'represent the rights of management' (Scarlet Alliance Constitution). This attempt to discredit the information the Scarlet Alliance brought to the hearings cannot be corroborated, and certainly sex worker activists were not declared to be 'pro-prostitution mafia' or 'wolves in sheep's clothing' during the hearings (as some were in the US). However, Jeffreys did call into question the validity of the representations the Scarlet Alliance made on behalf of their sex worker membership. As noted earlier, when Kerr refuted Jeffrey's arguments against legalised prostitution by suggesting that the advocacy for legalisation comes largely from women within the sex industry, she accused those women of being 'self-styled spokeswomen ... they rely upon this for an income'. She argued that, 'the women who are the spokeswomen for the prostitution industry are put up so that the industry is what is protected – and men's rights to buy women' (Parliament of Australia, APJC Hearing, 18 November 2003, 60).

This depiction of sex workers in the discussion relies on the belief, discussed earlier that sex workers are unable to speak for themselves. In addition, it characterises sex worker activists as paid spokespeople for the sex industry. Although this was certainly an attempt to discredit the information that the Scarlet Alliance brought to the hearings, it does not entirely equate to the blatant naming, shaming and intimidation tactics used during the Vienna negotiations and the US hearings.

As noted earlier in this section the involvement of sex workers in the Australian Inquiries may also be a key factor that prevents the kind of intimidation and shaming tactics used in the United States from taking hold in Australia. If sex workers are able to speak and represent themselves, then the ability of abolitionist groups to misrepresent them is greatly limited.

#### **6.4.3 Institutional exclusionary tactics**

The practice of 'exposing' individuals and organisations who refute the claim and advance the sex work perspective also had direct impacts in the United States on

the ongoing involvement of these groups in the delivery of services, and the formation of policy through forums, consultations and congressional hearings. This was as a result of a process of blacklisting that took place on both a formal and informal level.

The approach the Bush administration, and the Office to Monitor and Combat Trafficking in Persons under George W. Bush's presidency does appear to evoke President's Bush's attitude of 'if you're not with us, you're against us'. This statement is most famous as describing the Bush administration's attitude to the war on terror, but is an attitude that pervaded many aspects of US policy during the Bush administration including on the issues of prostitution and human trafficking. Interviewees report this attitude was brought to bear when it came to the issue of human trafficking following the adoption of the Trafficking Victims Protection Act and subsequent reauthorizations.

For example, several interviewees indicated that an informal process of 'whitelisting' took place in the US Office to Monitor and Combat Trafficking in Persons, whereby only those organisations who supported the abolitionist perspective received communications and were invited to take part in consultations. As discussed in greater detail in Chapter Five, this process of 'whitelisting' ensured that only organisations supportive of the Administration's policy were invited to participate in government funded research and service delivery. Jordan indicates that this whitelisting process has fluctuated over the time the TIP Office has existed. She says that during John Miller's directorship of the office her organisation and others were certainly not on the 'whitelist' but that since Mark Langan has taken over as Director they have been placed back on the list for communication about TIP Office activities and policy developments (Jordan interview 2008).

Carol Smolenski from End Child Prostitution and Trafficking USA sees her organisation as being in a unique position as, unlike adult prostitution, there is a clear consensus on the harm caused by child prostitution and trafficking. As a result, ECPAT USA does not get involved in the debates over the legitimacy of prostitution and has enjoyed an ongoing involvement with government agencies

working on the issue. When interviewed for this research she noted that at forums and speaking engagements she is often joined by representatives from Equality Now, CATW and the Polaris Project. She says, 'With this administration [the Bush administration] of course it's on the abolitionist side' (Smolenski interview 2008). Missing from this group that Smolenski notes are organisations that do not espouse the view that all prostitution is harmful and that it should be abolished. Wenchi Yu Perkins, formerly of Vital Voices, agrees with Smolenski's observation. In interview she said:

Groups feel that the administration, because of its policy [declaring prostitution illegitimate], has not been very friendly to the groups that have a different opinion on this issue, whether it's funding or even just being included in any kind of conversation (Perkins interview 2008).

In addition, a more formal exclusion process took place through the way the Bush administration handled funding. As discussed in Chapter Five, the 'anti-prostitution pledge' resulted in the exclusion of certain organisations from being able to apply for funding. While there are no official indications that the State Department has been involved in numerous rejections of funding applications on the basis of their position on prostitution, many interviewees reported that a process of self-selection took place following the TVPA Reauthorization 2003, and the announcement of NSPD22. Some organisations were unwilling to reject the idea of legalised or decriminalised prostitution, and so were forced to restrict their services, or simply stop applying for funding (Ditmore 2006).

Not only has the policy directly excluded certain groups from participating in service delivery, but it has had the result of perpetuating their exclusion in the ongoing hearings for the Reauthorization Acts. Certainly towards the 2005 Reauthorization the groups testifying at the hearings were mostly limited to declared abolitionist groups. For instance, in the hearing on 'Combating trafficking in persons: an international perspective' before the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Committee on Financial Services of the US House of Representatives held on 22 June 2005, the only witnesses heard from represented the Coalition Against

Trafficking in Women, Equality Now, the International Justice Mission and the Salvation Army. Hearings held throughout 2004 and 2005 additionally heard from the Polaris Project and SAGE (US Congress, House, 28 April 2005), Shared Hope International and the US Conference of Catholic Bishops (US Congress, House, 9 March 2005), and the Protection Project (US Congress, House, 24 June 2004; 8 July 2004).

It is not unreasonable to expect that the US Congress would be most interested in hearing from witnesses who have received US government funds to deliver services to trafficking victims, or to conduct further research on the issue of trafficking. The organisations indicated above certainly come from this group and testifying at hearings is one way in which these groups account for their activities. Due to the funding they have received, these groups are also able to work with trafficking victims and conduct further research on the issue of human trafficking. As a result, Congress would certainly be interested in what they have learnt and discovered through this process. However, restricting funding to organisations that hold a different view from the abolitionists has led to a perpetuation of the views of those who make 'the claim'. This has resulted in an apparent consensus on the link between legal prostitution and trafficking.

In Australia, there is some perception that an informal rejection of certain perspectives has taken place, but it has not gone so far as the 'if you're not with us, you're against us' approach that pervaded the Bush administration's attitude to the issue of trafficking, and terror.

Groups who advocate the sex work and abolitionist perspectives both report a perception that they are being ignored or excluded from debates. Jeffreys argues that the abolitionist perspective was unwelcome at the Parliamentary Inquiry. In interview she said, 'It's very very difficult to get the message out here. Nobody wants to know really.' She added that during the Parliamentary Inquiry she felt that the Committee were not very receptive to her comments. 'In fact, they were extremely patronising and very unpleasant' (Jeffreys interview 2008). However, unlike the Scarlet Alliance, Jeffreys does report being encouraged by a Labor politician to make a submission to the Joint Committee Inquiry (Jeffreys

interview 2008). In contrast, the Scarlet Alliance reports that no similar requests were made to them and that they were 'proactive' in their approach out of necessity.

It appears that, in Australia, more of a 'middle way' has been taken both formally and informally with regard to the treatment of organisations across the political spectrum. While those who advocate strongly for the sex work perspective like Scarlet Alliance, have been traditionally excluded from both funding and advocacy opportunities, as noted above, those like Jeffreys also feel that the abolitionist perspective has not been given consideration.

Project Respect is an organisation that could be said to occupy this middle ground. Although Project Respect has declared that they believe that prostitution is harmful to women and they are not supportive of legalisation as an approach to prostitution (Project Respect 2009, 1) they refrained from expressing this view strongly at the inquiry. In contrast to the testimony of Jeffreys, who focused strongly on legalised prostitution as the underlying cause of sex trafficking, Project Respect focused their attention on the importance of victim support and the use of specialised agencies to deliver this support. Although they stop short of declaring that legalised prostitution leads to an increase in trafficking, they do indicate that legalised prostitution is an issue that needs to be explored in some way. Kathleen Maltzahn from Project Respect highlights in her testimony that 'Internationally, more and more people are saying, "We've got to look at this issue of demand" — and of course that has not been mentioned at all in the package so far' She also adds that 'In Victoria, certainly in our experience, most of the trafficking we know about goes into legal brothels' (Parliament of Australia, APJC Hearing, 18 November 2003, 47-48).

As noted earlier in this chapter, Project Respect recognises the political environment surrounding the prostitution and trafficking debate in Australia, as well as the legal status of prostitution (Vallins interview 2008). This approach of focusing on the issue of trafficking without making a strong abolitionist case seems to have found some success in Australia. Vallins notes that Project Respect is now in a position where they are 'recognised as an important agency in this

area, so they [government agencies] will contact us and we will contact them' (Vallins interview 2008). This is in contrast to the experience of both the Scarlet Alliance and the Coalition Against Trafficking in Women Australia who, at various times, have felt excluded from the policy-making process due to their positions on the issue of prostitution.

In the United States it is very clear that there has been an effort to shut out any opposition to the view that legalised prostitution leads to an increase in trafficking. This has been done on a number of levels. Firstly, this has been done through the use of a 'naming and shaming' tactic to dissuade any political support for the sex work perspective. Secondly, the dissemination of rumour and innuendo depicting sex work activists as a 'a protection racket for the sex industry' or as the 'pro-prostitution mafia' has undermined the ability of organisations to refute the claim and bring the sex work perspective to the debate. Finally, formally and informally, opponents to the abolitionist perspective have been shut out of the debate through both a process of blacklisting, and through the perpetuation of only one perspective based on funding rules that largely exclude non-abolitionist organisations from US-government funded service delivery and research.

In Australia, while there is some evidence of attempts to exclude certain perspectives from the debate, it appears that a 'middle way' approach is the most politically palatable. While attempts have been made to depict sex worker activist organisations such as the Scarlet Alliance as 'a front for brothel owners', these attacks are more limited in Australia than in the United States. This is likely due to the ability of sex workers to represent themselves in an open forum such as the Parliamentary Inquiry. In addition, while the Scarlet Alliance has reported being excluded from consultations and funding opportunities, abolitionist advocate Sheila Jeffreys reports also feeling excluded from the debate. In contrast, while Project Respect supports an abolitionist view, its strategy to focus on trafficking more than the issue of domestic prostitution, and its success in becoming a key organisation for both consultation and funding opportunities, demonstrates that while opposition has not been shut out of the debate,

organisations which hold the view most closely resembling the government's are most respected and rewarded, as is the case in the United States.

## **6.5 Conclusion**

This Chapter has explored some of the key differences surrounding the Australian and American experiences of developing anti-trafficking legislation. The impact of differences in political culture, the involvement of sex workers in the debate, the involvement of religious and feminist groups in the debate, and the use of dirty tricks and tactics have all been considered as factors influencing the degree of acceptance of the claim. This chapter demonstrated that these factors contributed to the development of a perceived consensus in the United States supportive of the claim that legalised prostitution leads to increased trafficking. This consensus was built as a result of political support at both the Federal and State level for criminalisation of prostitution, as well as the creation of a broad-based coalition of feminist, religious and other secular groups supporting the abolitionist perspective. Through the use of exclusionary tactics, and by restricting the involvement of sex workers in trafficking debates, any opposition to the abolitionist perspective was effectively silenced. This further enhanced the perception that there was a consensus of support for the claim, and made it more likely that decision-makers would accept this position.

In Australia, acceptance of the claim was limited as a result of several key differences to the United States in these factors. A political culture supportive of a harm minimisation approach to prostitution may have limited the extent to which policy makers were willing to accept the claim. In addition, the active involvement of sex workers in trafficking debates has ensured that the tactics used in the United States have had limited success in Australia in silencing dissent against the abolitionist perspective. Sex workers speaking for themselves, as well as other voices critical of the abolitionist perspective, made it difficult for the 'truth' of prostitution to be represented as always injurious. While in the United States the sidelining of sex workers' perspectives resulted in a void that was filled by abolitionist voices, in Australia the presence of sex



workers ensured that other perspectives were considered. This prevented the establishment of a false consensus on the relationship between legalised prostitution and trafficking, and acceptance of the 'truth' as only abolitionist advocates see it.

## CHAPTER SEVEN

For the last two decades the world has been captivated by the phenomenon of human trafficking. Viewed as a modern form of slavery, efforts to combat it have been fuelled by significant amounts of funding, widespread political support, and a strong sense of moral righteousness. It seems that on this issue, the world is united – slavery is wrong and must be eradicated.

In this unquestioning environment, some social activists have used the international outrage over trafficking as a platform for their continued opposition to prostitution. This has been done through the use of the claim that legalised prostitution leads to increased sex trafficking.

This project grew out of an increasing concern that the development of anti-trafficking policy was being hijacked by those with an anti-prostitution agenda. What was of even greater concern was the fact that this agenda was based on a claim that appeared logically erroneous and could not be substantiated. The fact that this claim was being used to inform anti-trafficking policy in countries around the world sparked a strong desire to investigate further the claim that legalised prostitution leads to increased sex trafficking.

### **7.1 Thesis summary**

This thesis has undertaken a detailed exploration of the claim that legalised prostitution leads to increased trafficking. This included firstly an analysis of the origins of this claim and its basis in current debates on human trafficking. Chapter Two demonstrated that attacks on legalised prostitution in debates about human trafficking are not a new phenomenon and featured clearly in efforts to combat trafficking in the late nineteenth and early twentieth century. The re-emergence of concern about human trafficking in the late twentieth and early twenty-first century was accompanied by a renewed abolitionist attack on prostitution. Both early and recent abolitionism advanced the claim that any efforts to normalise prostitution through legalisation or decriminalisation would

fuel human trafficking. This belief was grounded in an abolitionist ideology which views prostitution as an inherent evil. This ideology is countered by the sex work perspective, which views prostitution as a legitimate form of labour. The two competing perspectives concerning prostitution were clearly evident in recent policy debates at an international level, as well as at a domestic level in Australia and the United States.

Following an exploration of the origins of the claim, an analysis of the claim itself was undertaken. In Chapter Three, the claim that legalised prostitution leads to increased trafficking was deconstructed, and its deployment through policy debates in Australia and the United States was charted. Through this analysis, the claim could be viewed as a set of key assumptions, arguments and policy proposals. The following assumptions formed a vital aspect of the 'anatomy' of the claim: sex trafficking is a unique problem; demand for commercial sex must be addressed; there is a causal relationship between prostitution and trafficking. These assumptions linked to key arguments and subsequent policy proposals that called for the abolition of prostitution: the sex industry is not legitimate (and therefore must be abolished); demand for prostitution fuels trafficking (and therefore demand for prostitution must be addressed); legalised prostitution leads to increased trafficking (and therefore all prostitution must be abolished in order to prevent trafficking).

These assumptions, arguments and policy proposals were deployed by abolitionist advocates throughout the development of policy in Australia and the United States. This chapter also demonstrated that these assumptions were presented through the use of 'true stories' that were used to educate decision-makers about the 'problem' of trafficking as characterised by abolitionists.

In Chapter Four the substantiation of the claim that legalised prostitution leads to increased trafficking was explored. In this chapter the efforts of advocates of the claim to substantiate it through the use of statistical evidence and logical argumentation were identified. The substantiation offered can be disputed on logical grounds, but is also largely unreliable. The ongoing definitional disputes, limitations in research and the mischaracterisation of human trafficking through

politicised data and skewed research continue to undermine attempts to substantiate a causal relationship between legalised prostitution and trafficking. Despite this limitation, decision-makers in the United States seemed willing to accept the claim, and did not question the credibility of the evidence to support it.

In contrast, decision-makers in Australia demonstrated a reluctance to accept argumentation without strong supporting evidence, offering some indication as to why advocates of the claim were more successful in persuading decision-makers in the United States than in Australia.

In Chapter Five, a detailed measurement of the degree to which decision-makers accepted or rejected the claim that legalised prostitution leads to increased trafficking was conducted. Kingdon's (2003) framework was used to chart the acceptance of the claim through the different aspects of the policy-making process – 'problem recognition', 'policy proposal' and 'politics'. Weitzer's (2007) framework identifying key indicators of the institutionalisation' of ideologies was also used in this section to demonstrate the extent to which the claim has become embedded within government ideology.

This chapter argued that decision-makers in the United States clearly accepted the claim that legalised prostitution leads to increased trafficking. This acceptance was evident in the way in which the trafficking problem was understood and defined, in the adoption of policies aimed at eradicating prostitution, in the ongoing consultation and collaboration with advocates of the claim, and in the official declaration by the government of the belief that legalised prostitution leads to increased sex trafficking. The acceptance of this claim was only resisted at the point at which diplomatic relationships may have been threatened due to the adoption of the claim in the methodology used to assess other nations' efforts to prevent trafficking.

In Australia, the claim was neither explicitly accepted nor rejected. Although the government maintained that they would not take a position on the legitimacy of prostitution, and its relationship to trafficking, there are some indications within

the definition of trafficking and the statements of individual members that there is both some acceptance and some rejection of the claim.

After charting the deployment, substantiation, and acceptance of the claim, the thesis focused on assessing some of the similarities and differences between the Australian and American experiences, in order to consider key factors that may have contributed to the differing outcomes. Chapter Six explored the differing political cultures of Australia and the United States, the involvement of sex workers and advocates of the sex work perspective in the policy-making process, the involvement of religious and feminist organisations in the debate, and the tactics used by advocates of the claim. This chapter argued that the acceptance of the claim in the United States was influenced by the establishment of an assumed consensus supportive of the belief that legalised prostitution leads to increased trafficking.

This consensus was built in part through the deployment of a consistent narrative (discussed in Chapter Three) of the 'truth' of prostitution and trafficking, as characterised by advocates of the claim. This consensus was supported by the political culture of the United States where a conservative sexual culture and radical feminist tradition converge in their opposition to prostitution. In addition, the status quo of almost complete criminalisation of prostitution across the United States ensured that the claim was consistent with current government policy.

The existence of a powerful coalition of feminist and faith-based organisations also perpetuated the belief that there was an overwhelming consensus in support of the claim. This consensus was maintained through the institutionalisation of the abolitionist ideology, the sidelining of the sex work perspective from trafficking debates, and the use of tactics such as 'naming and shaming' to silence any opposition to the claim.

In Australia, no such consensus was formed. This was due to several key factors including a political culture in Australia that has been heavily influenced by a libertarian feminist ideology in support of decriminalisation of prostitution. The building of an abolitionist consensus similar to that in the United States was also

undermined by demonstrated governmental support for systems of legalised prostitution in several states of Australia, as well as the active involvement of sex workers in the policy-making process who ensured that both perspectives were heard and that opposition to the claim was not sidelined or silenced.

## **7.2 Recommendations for future research**

It is hoped that by shedding light on the influence that this claim has had on the policy making process, the abolitionist nature of much anti-trafficking policy will be more readily recognised. This exploration of the factors supporting both the acceptance and rejection of the claim should also highlight some of the inadequacies in the policy-making process, particularly in the United States, where many vital voices have been silenced.

In undertaking this research, the focus has been to identify and measure the influence this claim has had on the policy-making process. Future research could focus on the impact the inclusion of this claim has had on outcomes in preventing human trafficking. Some of this research is already being undertaken by others, focusing on the extent to which the effectiveness of anti-trafficking legislation is undermined by ongoing opposition to legalised prostitution. There is also emerging evidence concerning the impact the inclusion of this claim in policy is having on sex workers around the globe, who are detrimentally affected by an abolitionist approach to trafficking.

## **7.3 Thesis conclusion**

Ultimately, the battle over the purported link between legalised prostitution and sex trafficking is likely to persist. This battle will continue to be characterised by a dispute over the legitimacy of prostitution, perpetuating a belief that prostitution is distinct to other forms of labour, and that systems of legalised prostitution are fuelling trafficking in young women and girls. It seems absurd that while the demand for sexual services is maligned and cast as the primary factor fuelling the trafficking in women, the demand for cheap clothes or fruit is

rarely viewed as the cause of trafficking in the garment and agricultural industries. Over time, this perspective may change to a point where it is the exploitation of labour, rather than the labour itself, which is condemned in all industries where trafficking occurs. In the short term, we should at least be allowed to expect that policy be informed by reliable evidence, not just ideology.

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