

The London School of Economics and Political Science

**American Legal Discourse on Child Trafficking:
The Re/production of Inequalities and Persistence of Child Criminalization**

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Abstract

The criminalization of children commercially-sexually exploited through prostitution persists despite trafficking laws recognizing this as one of the worst forms of exploitation committed against the most vulnerable social group. This thesis examines the re/production of inequalities in American legal discourse on child trafficking, and why child criminalization persists in this context. Employing a child-centered framework built from multi-conscious feminism and the sociologies of law and childhood, it examines mechanisms of othering and criminalization in key legislative debates, statutes and cases of the United States generally as well as two states exemplifying the retributive and child-protective modes of handling child trafficking. It identifies three themes or issues often presented as binaries that structure child trafficking discourse—adult/child, victim/offender and consent/non-consent—and examines how these are deployed to penalize children in general, and minority and immigrant children in particular. First, processes of marginalization related to race, class, gender and immigration have been vital to the construction of childhood (as normative/deviant) in and through trafficking and prostitution laws, which are reproduced through different types of discourses in both states. Second, both retributive and child-protective modes of response preserve child criminalization by maintaining the tension between prostitution and trafficking, and the female culpability associated with prostitution, including through the denial of the victimization of “repeat offenders.” Finally, despite its prohibition, prostitution is conceptualized in contractual terms, which imputes consent to identities constructed through this discourse and renders commercial-sexual exploitation as merely or primarily involving acts of sale, purchase and consumption.

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Acronyms and Abbreviations

APIA	Alien Prostitution Importation Act
CE-HIV	Criminal Exposure of HIV
CT-HIV	Criminal Transmission of HIV
CDA	Critical Discourse Analysis
CLDA	Critical Legal Discourse Analysis
CRC or UNCRC	United Nations Convention on the Rights of the Child
CSEC	Commercial-Sexual Exploitation of Children
DMC	Disproportionate Minority Contact
DMYC	Disproportionate Minority Youth Contact
DMST	Domestic Minor Sex Trafficking
ILCS	Illinois Compiled Statutes
HB	House Bill
SB	Senate Bill
TVPA	Trafficking Victims Protection Act
TVPRA	Trafficking Victims Protection Reauthorization Act
UCA	Utah Code Annotated
WSTA	White Slave Traffic Act

CHAPTER 1: The Sociological Significance of What is Legislated

1.1 Introduction

This dissertation is about how and why the penalization of children who are commercially-sexually exploited through prostitution persists in the United States. It examines the role of American legal discourse on child sex trafficking in re/producing inequalities that enable the othering and criminalization of impacted children. The motivating concern behind this research is that various means of penalization continue to be deployed against impacted children despite trafficking laws recognizing child prostitution as one of the worst forms of exploitation committed against the most vulnerable social group in society. The central query of this research is: How has American legal discourse on child sex trafficking re/produced social inequalities, and why does the criminalization of impacted children persist? Contending with this question reveals how law and society respond to extreme inequalities and those identified as the most vulnerable and exploited among us. Hybridized discourses of retributivism and rehabilitation and contractual discourse of individualistic market relations, as part of broader neoliberal ideology, are used to justify various forms and degrees of criminalization and carceral management, which jeopardize, erode and often overpower discourses of childhood and child protection. The core argument of the thesis is that at least three dualisms structure American legal discourse regarding child sex trafficking—adult/child, victim/offender, and consent/non-consent—and these are deployed in ways that penalize children generally and minority and immigrant children in particular.

This chapter introduces the problem and its various dimensions, clarifies my research query and aims, discusses the contributions and limits of key literatures regarding child sex trafficking and processes of marginalization around race, class, gender, childhood and punishment to shaping this research, and concludes with summaries of subsequent chapters.

1.1.1 Dimensions of the Problem: Urgency, challenges and multidimensionality

The issue of child sex trafficking is sociologically profound, politically urgent and proliferating in legislation, yet sociologically undertheorized. The institution and practice of child sex trafficking is global in scope and disparately impacts children the world over, positioning girls who are socio-economically marginalized as most vulnerable to its conditions, “risk factors” and harms (Javidan 2012; O'Connell-Davidson 2005: 34). Miriam (2005: 1) states that, “Given the magnitude of the problem, namely the vast numbers of women and children whose lives have been devastated by sex-trafficking under globalization, such questions reemerge with a new political urgency.” Current feminist debates over trafficking raise important sociological, legal and philosophical questions about agency, power, consent and victimization. However, efforts to theorize child prostitution specifically challenge existing scholarly and legal frameworks. The sociology of “sex work” is currently the predominant framework and discourse available for sociologists to draw from, and despite the agentic adult woman as its central subject, social science researchers are increasingly extending it to encompass children and child sex trafficking (e.g., O'Connell-Davidson 2005; Orchard 2007; Lutnick 2016). Alternatively, the issue of child prostitution is ignored or exempted from analysis specific to children. Legal frameworks have rendered minors in prostitution simultaneously hyper-visible and invisible; emblematic of systemic failures, yet politically sidelined; pitied, yet scorned; victims, yet offenders; children, yet un-childlike; legally incapable of consenting to sex, yet legally culpable for selling sex. These contradictions result from and reinforce the uncertainties impacted children face before the law with regard to how they will be treated. Legal constructions of the issue used to formulate responses to it often lead to the criminalization of impacted children (Javidan 2003; Schwartz 2008).

Noticing, theorizing and transcending these contradictions has required interdisciplinary research and approaching the topic as a locus for intra-disciplinary convergence—of the sociologies of gender, sex work, globalization, migration and criminology, as well as those with which it is less often associated—the sociologies of race, ethnicity, postcoloniality, childhood, and juvenile justice, including punishment and law. Child prostitution implicates processes of globalization, the reproduction of race, class, gender and age-based inequalities, criminalization and mass incarceration (e.g. Javidan 2012; Grahn-Farley 2003; O'Connell-Davidson 2005; Hughes 2005). I have also found critical jurisprudence that imbricates social theories of race, class, gender, childhood and criminalization or punishment theory helpful to thinking through this issue, particularly to critique its legal construction (e.g. Grahn-Farley 2002, 2003; Pether 1999; Farley 1997; Douzinas and Gearey 2005). Minors in prostitution embody the resultant contradictions of these processes, which render them quintessential “bad subjects” of theory, law, political subjectivity and citizenship (Harris 2003 and Roithmayr 2003). The *bad subject* is a complicated feminine (or feminized) subject in conflict with the law, who is not only penalized for violating the law, but also for breaching social norms, often many at once (Id.).

Discussing a previous study that I conducted of legislative debates, laws and cases regarding child prostitution in California (Javidan 2003), Angela Harris (2003: 521), a founding scholar of Critical Race Theory and its feminist outgrowth of Critical Race Feminism, commented that minors in prostitution and their social location exemplify the bad subject “because in becoming prostitutes, they cease to be understood as children.” In that study I pointed out that this is the result of a contradiction when prostitution law is wrongfully applied to minors to label them sex offenders rather than applying age of consent/statutory rape law to protect them from criminalization because these laws specify that minors are legally incapable of consenting to sex and therefore cannot be legally liable

for selling sex. I was primarily concerned with the dualism of minors as victims and offenders and how this led to their criminalization. Building from and expanding upon those earlier insights, using sociological theory and critical jurisprudence, I delve more deeply into the roots of that problem here but additionally into the significance of child status and consent. This study is similarly concerned with how “prostitution” negates “child” status (and its assumed protections), but with an added awareness of how normative childhood in Anglo-American culture has been constructed in raced, classed and gendered terms, such that minors who deviate from White middle class standards are often viewed as “non-children” or are “adultified” in law and society (Bush 2010; Bernstein 2011). In this research I pursue the deeper sociological story of the role of legal discourse related to child prostitution in constructing normative and deviant childhoods via race, class, gender and immigration or citizenship status, perpetuating the penalization of impacted children through criminalization, and reading “consent” into their exploitation. The aim is to investigate ways in which this lays the foundation for disparate impact on children through mutually constitutive processes of marginalization embedded in or performed by legal texts—racialization (including racialized immigration), classing, gendering, infantilization/adultification (as two sides of the same coin) and penalization. I combine theorizing multiplicities (Ali 2003a, 2003b) and critical legal discourse analysis as methodologies of multi-conscious feminism for the investigation of complex social phenomena applicable to legal archival research.

I examine key legal texts related to child prostitution in two states, Utah and Illinois, which ostensibly exemplify the two primary modalities of treating minors in prostitution across the US—child criminalization and child protection—while considering the ways in which these overlap or diverge.¹ This is designed to show how distinct versions of the legal conceptualization of child prostitution emerge from various discursive contexts but in “hybrid”

¹ Chapter 2 contains a more in-depth discussion regarding my choice of focus on Utah and Illinois as exemplary of the respective punitive and child-protective approaches in the US.

forms that combine retributive and rehabilitative tendencies, which allow penalization to continue, even under auspices of child protection. Utilizing archival and documentary primary sources, I highlight relevant contemporary texts—transcribed legislative debates, statutory language, and judicial opinions (cases)—and consider continuities with and departures from their antecedents in the historical present.

The thesis identifies three themes or issues often presented as binaries in related law that structure the legal discourse but which also operate as polarized ends of continua and fulcrums upon which the fate of minors are determined—adult/child, victim/offender, and consent/non-consent—and examines the ways in which these are deployed to penalize children in general, and minority and immigrant children in particular. Each of the three empirical chapters focuses, respectively, on one of these three themes or issues that form the foundation for criminalization or protection of children in this context. They trace the career of the conceptualization of child prostitution from a violation of patriarchal sex right to the origins of “trafficking” in racialized immigration law targeting “alien prostitution,” and then from White female victimization to feminized culpability in criminal law that is facially gender-neutral but which preserves racialized feminine culpability. Charting these shifts from each of the three thematic angles, the empirical chapters narrate the contemporary reconceptualization of child prostitution, which is marked by tensions between a legal regime of child protection based on age of consent and a punitive legal regime based on prostitution. The emergent concepts of “child sex trafficking” and “domestic minor sex trafficking” attempt to reconcile the two regimes, but preserve the possibility of retributive measures, leaving impacted minors at a crossroads between protection and punishment. Economically marginalized children, particularly girls of color, who are disproportionately impacted by child prostitution and criminalization, are in greatest jeopardy for being positioned on the punitive end of these binaries and continua, and thereby at greatest risk of penalization. The

law generates polarities of “non-consenting child victim” as the ideal subject of protection and the “consenting adult offender” as the intended subject of punishment. The proximity of children to the subjects of punishment is over-determined by a multiplicity of processes of marginalization that have deeper historical roots than most related research contends with.

The contribution of this thesis is to provide greater insight into the mutual re/production of social inequalities and criminalization by examining the construction of a specific issue and its subjects—child prostitution and minors in prostitution—as they epitomize and embody a multiplicity of processes of othering and marginalization involving race/ethnicity/nationality, class, gender, childhood and punishment. The potential impact of this research, as a sociologically informed approach to an issue predominantly defined by law, is to draw attention to the deeper sociological and historical issues behind the law and the impediments these create to justice for impacted children by moving toward a child-centered approach that theorizes the issue from a multi-dimensional and historical perspective, which allows us to recognize these inequalities and injustices. To center the “bad subject” that epitomizes and embodies the multiplicity of processes of marginalization, particularly through interdisciplinary effort, enables intervention in multiple spheres of systemic, structural and institutional “isms” that corroborate to re/produce inequalities generally, and in particular for those most impacted by them.

1.1.2 Terminology

Terminology related to child prostitution has discursive, legal and political significance, and is highly contested. Contemporary human trafficking discourse uses a plurality of terms to signify the same or similar referents, hence lacks a single, unified term to refer to child prostitution. *Trafficking* is a heterogeneous phenomenon with multiple usages. *Human trafficking* can be for labor or sexual exploitation, the latter referred to as *sex trafficking*. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons,

especially Women and Children (2000) defines *child trafficking* as “the recruitment, transportation, transfer, harboring or receipt of any person under the age of eighteen for the purposes of sexual or labor exploitation, forced labor, or slavery” (Gozdziak 2008: 904). *Sex trafficking* is the broader umbrella term under which falls the *commercial-sexual exploitation of children (CSEC)*, also referred to as *child sex trafficking*. International law recognizes *child prostitution* as one of three forms of CSEC, along with child pornography and child sexual abuse (UN General Assembly, Convention on the Rights of the Child 1989). US federal law and the UN Protocol employ the same definition of “child” as in the UN Convention on the Rights of the Child (CRC): “every human being below the age of 18, unless under the law applicable to the child, majority is attained earlier”² (Id.: 904), I use the term “minors” and “children” interchangeably in accord with sociology of childhood and critical child rights theory to convey “child” status as a social and legal construct, defined by age. *Domestic Minor Sex Trafficking (DMST)*, a term originating in the US, refers specifically to interstate or intrastate child sex trafficking, which includes child prostitution (Smith, Healy Vardaman et al. 2009; Lutnick 2016).

In this framework, CSEC and child sex trafficking identify children as their subjects, but clarity and correspondence with other research necessitate specifying the prostitution form of these. The term *child prostitution* is heavily criticized for camouflaging or euphemizing what is actually commercialized child rape (Goddard, De Bortoli et al. 2005). Unlike other terms, however, it specifies subject and form—the exchange of something of market value for sexual acts with minors. Usage of the term in this study, along with “minors in prostitution” is not meant to impute consent or criminality on minors nor to minimize their

² Though the US is a signatory of the CRC, it is the only States Party not to have ratified, accepted, acceded or succeeded to it (United Nations Treaty Collection 2016). Long cited as the only other States Party not to have adopted the CRC, Somalia ratified on 1 October 2015, and South Sudan has not signed but acceded on 23 January 2015 (Id.). The US has, however, adopted the UN Optional Protocol on the Sale of Children, Child Pornography, and Child Prostitution (United States Congress 2016).

exploitation, per critique of the term “prostitution,” but to specify the form of commercial-sexual exploitation and convey the indeterminate status of minors in prostitution who are in conflict with the law. There are multiple issues regarding the discourse and genealogy of these terms, a full exploration of which is beyond the scope of this research, but which could be written about extensively (see e.g. Ollus 2015; Meshkovska, Siegel et al. 2015; Brayley and Cockbain 2014). I discuss a sociological understanding of human trafficking for sexual and labor exploitation further below.

1.2 Literature Review

I reviewed a broad range of literature for this research, including regarding human trafficking for labor exploitation, sex trafficking, prostitution, commercial-sexual exploitation of children (CSEC), and child prostitution in global, national and local contexts. Although my knowledge of these subject matters informs this research throughout, it is only possible to provide what is essentially a summary of the most relevant aspects possible to convey here. I provide background and discuss available statistical information that highlights the race, class, gender and child-related aspects of the problem to help produce a picture of child sex trafficking in the US in global context, and the issue of punishment. I discuss some issues related to terminology, then develop a sociologically grounded understanding of human trafficking. I identify a tension between the dominant sociological framework for interpreting prostitution—the sociology of sex work—and the more marginalized sociology of childhood, which disrupts and challenges sex work theory, particularly its extension to children, in fundamental ways. In chapter 2, I discuss theorizing multiplicities and its salient dimensions for this research.

Law, social policy and anti-trafficking NGOs dominate topical research and shape official discourse and legislation on child prostitution (Gozdziak and Collett 2005: 99, 118). Legal discourse on child prostitution and shifts within it reflect and propel cultural

developments encompassing social, political, and economic life. It is an axiom of both legally and sociologically oriented literature regarding sex trafficking and prostitution that legislation is indispensable to their abolition or regulation. However, while sex trafficking laws are currently proliferating, their direction is at best unclear, and their outcomes contradictory and uneven. They are also constructed in a broader legal nexus and social context that are profoundly consequential for outcomes but which are largely unarticulated in legal discourse. Both child-protective and punitive tendencies exist in American law governing child prostitution, with more punitive measures gaining prominence in recent decades (Schwartz 2008).

Moreover, legislation is one of the major causes of law enforcement and justice systems' targeting of non-White minors, resulting in "disproportionate minority contact" (DMC) (Nellis and Richardson 2010), or "disproportionate minority youth contact" (DMYC). The disproportionate arrest, detention, conviction and punishment of girls of color in prostitution mirrors the results of such policies and practices. Legal discourse related to child prostitution can provide insight into the rationale and operation of what postcolonial feminism, intersectional theories and criminology observe as the selective rendition of "Others" as hyper-visible or invisible as well as their exclusion from or inclusion in various discourses to their detriment (Alexander and Mohanty 1997; Crenshaw 1989; Young 2003; Javidan 2003). Child prostitution laws not only assign or deny sexual victimhood, but they do so by re/producing hierarchies of social stratification and victimization that reflect and re/produce social hierarchy generally. In observing this, one finds that the discursive construction of child prostitution involves the corroboration of processes of racialization, classing, gendering, infantilization, adultification and criminalization (or quasi-criminalization), and that childhood/child status can be viewed as the submerged foundation of these stratifications.

Sociological studies of child prostitution that aim for policy impact and which rely on the current legal apparatus will come up against problematic contradictions structuring the law in this area. Responses to my first study (Javidan 2003) affirmed my finding that the criminalization of minors in prostitution exposes “shameful contradictions” and “absurdities” in US law³ (Aoki 2003; Covey and Myers Morrison 2011; Mir 2013). Minors in prostitution are criminalized despite the identification of child prostitution in national and international laws as one of the worst criminal abuses against the most vulnerable in society, despite minors’ legal incapacity to consent to sex or enter contracts, and despite the illegality of contracts for sex in the US. However, the common response of redrafting legislation to re-conceptualize minors in prostitution as victims is not eradicating their criminalization. Rather, it results in their criminalization or quasi-criminalization through arrest, detention and processing in justice systems under the guise of benevolence and/or imperatives of extracting testimony from minors to prosecute traffickers and pimps (see, e.g. Brown 2007; Bittle 2002). Such processes should be closely scrutinized as new (yet old) modes of criminalization and incarceration often undetected by current frameworks. Minors continue to be criminalized as sex offenders (“prostitutes”), or quasi-criminalized through ostensibly child-protective measures that construe them as victims of sex crimes such as domestic minor sex trafficking (DMST), but that offer partial, incomplete or conditional decriminalization. Legal texts that construct the issue as “prostitution” express the punitive modality deployed against minors, whereas the “DMST” construct operates in terms of child protection. Discord between these

³ As a law review article, Javidan (2003) is considered a secondary (non-binding) authority, meaning that lawmakers (judges and legislators) and practitioners may consult it to gain expertise on this particular area of law. It has been considered a pioneering piece for pointing out the victim/offender contradiction in American law related to child prostitution. Over the years governmental agencies and non-governmental organizations have cited it as a resource for policy-making regarding girls and juvenile justice, and drafting tribal legislation regarding crimes against children using a victim-centered approach (e.g. US Department of Justice: Office of Justice Programs 2004; Sekaquaptewa, Bubar et al. 2008), but it is also considered key literature for legal scholarship on the topic (e.g. Adelson 2008; Annitto 2011; Birkhead 2011). As part of a small but influential and growing body of scholarship, it has played a significant role in shifting American legal discourse on child prostitution in terms of re-conceptualizing minors in prostitution as victims of sex crimes rather than offenders.

competing articulations of child prostitution suggests the great logical lengths and/or strained rationales required to maintain this double standard.

CSEC has been viewed and addressed varying across the globe as primarily an issue of gender, law and order, public health, morals, labor, migration, poverty and development, or human rights (UNICEF Innocenti Research Centre 2005). The achievement of the human rights framework and discourse regarding sex trafficking has been to offer a conceptual and normative framework “for reorienting the trafficking debate towards the exploitation of persons, regardless of their immigration status,” and to “serve as a tool for developing effective policies” (Lee 2011: 33). However, deepening analysis of trafficking and its causes as well as holding states accountable for their responses requires “identifying which individuals or groups of people are disproportionately more likely to be trafficked than others” (Id.). The official recognition of CSEC as a social wrong in the US has so far not centered on economically marginalized African American girls in the domestic context, and currently misrecognizes its most likely international sex trafficking victims, from Central America, as an influx of illegal migrants (US Department of Justice 2014). Available statistical data points to the need to center children, particularly minority children, in analyses of CSEC.

1.2.1 Disproportionalities and disparate impact

The exact prevalence of sex trafficking in the US (and world) is unknown, as data and statistics are patchy and incomprehensive. Statistics regarding human trafficking, including child prostitution, and the number of criminalized minors in prostitution are scarce, often unreliable and even unverifiable due to the nature of the phenomenon—seemingly ubiquitous, yet hidden and elusive (Bales 2004: 8; O'Connell-Davidson 2005; Lehti and Aromaa 2006: 142; Bales 2009: xiii; Birkhead 2011: 1062). The exact scope of sex trafficking may be unknowable due to the hidden nature of sex crimes generally, which are underreported. The patchwork of existing statistics and data nonetheless reveals urgency with regard to

prevalence and scope of the problem as well as disproportionalities that make race, ethnicity, nationality/immigration/citizenship, class, gender and age salient and important units of analysis and synthesis. Legal discourse on child prostitution is necessarily an intervention into these various aspects of social organization. The juxtaposition of these disproportionalities with the disparate impact of criminalization suggests that children are over-burdened with these inequitable conditions and that their penalization is over-determined.

Age-related data shows that children are disproportionately impacted by commercial-sexual exploitation globally, including in the US, such that children are not merely marginal or aberrant in prostitution, but integral and arguably foundational to it. Children comprise approximately 26% of the world's population but 40-50% of those who are in "forced commercial sexual exploitation" (UNICEF 2006). Approximately 32% of total human trafficking victims in the world are children⁴ (World Bank 2016; United Nations Office of Drugs and Crime 2014: 29-30). "Current estimates of human trafficking for sexual exploitation...exaggerate the role of trafficking in international prostitution of adults but underestimate trafficking in minors" (Lehti and Aromaa 2006: 133). Globally, compared to adults, minors occupy the lowest rungs of prostitution hierarchy, endure its worst conditions and gain the least economically (O'Connell-Davidson 2005: 34).

40% of sex trafficking cases in the US are of minors (Bureau of Justice Statistics 2011). Over the last two decades the most commonly cited US statistic regarding child prostitution in the US remains between 100,000 to 300,000 minors entering prostitution per year (Estes and Weiner 2001: 4; ECPAT 1996, in Halter 2008: 9, discussing the limitations of

⁴ There is regional variation, however, wherein in Africa and Central Asia upwards of 68% of human trafficking victims are children (United Nations Office of Drugs and Crime 2012: 74). Of the 12.3 million people estimated to be in "forced labor," 1.39 are in "forced commercial sexual exploitation" (UNICEF 2006). A widely cited estimate is that of all human trafficking victims annually, 1.2 million are children (ILO 2002, in UNICEF 2006), and that approximately 2 million children are exploited in "the commercial sex industry" at any given time (UNICEF 2008: 25).

this data). The average age of entry into prostitution in the US ranges from twelve to fourteen or fifteen years old⁵ (Annitto 2011: 9; Grace, Starck et al. 2012; Curtis, Terry et al. 2008), though in at least one American city non-White minors in street prostitution are found to enter two years earlier than their White counterparts (Kramer and Berg 2003, in Schepel 2011: 10). Boys' average age range is slightly lower, from 11-13 years old (ECPAT USA 2013: 8).

Recent research indicates that minor girls comprise the majority of the participants in the "commercial sex industry"⁶ (Butler 2015: 1481). The prevalence of minors entering prostitution is increasing, particularly of those between thirteen and seventeen years of age, with 80% of adult women in prostitution having entered as minors⁷ (Birckhead 2011: 1056). These findings, particularly when taken together, would seem to support a striking claim that merits further attention and investigation: that most women's prostitution in the US most often begins in childhood, and that children, especially girls, are not only integral but arguably foundational to prostitution. Minors in prostitution, particularly street-based prostitution, experience disproportionately greater victimization by crime in general, susceptibility to coercion into unprotected sex, incidence of pregnancy and STDs including HIV/AIDS, and more frequent malnutrition and illness, compared to adults in prostitution and the general population of minors (Halter 2008: 18; Klain 1999; Flowers 2011: 78-79). Research also indicates that drug abuse is both an antecedent and a consequence of entering prostitution, and finds disproportionate rates of mental health problems and suicidality for minors in street prostitution (Id.). Juvenile courts are also seeing an increase in cases of

⁵ There are currently efforts to discredit this finding, but I tend to agree that the issue is actionable without having to "wax pedantic over the absence of airtight statistics" (Truong 2015: 288).

⁶ It also indicates that a significant but often less visible number of boys are amongst the population of minors in prostitution, with the number of minority boys in prostitution increasing (Id.).

⁷ See also MacKinnon (2011: 277, 298-99), listing several studies supporting this, explaining that entry into prostitution "often well below the age of majority" is a "global commonality of prostitution," and that "most women enter the sex industry with previously violated childhoods," but that it is often denied that prostitution continues this violation, particularly once they reach age of majority (Id.).

minors in prostitution (Butler 2015: 1481). There are a significant number of arrests of children for prostitution in the US, from which even children under 10 are not exempt (Halter 2008; Snyder 2012: 17). The picture that develops from the aggregation of available age-related data indicates the need for particular attention to child prostitution, and child status, generational order and the life course in the context of sex trafficking.

Information regarding gender demonstrates the disparate impact of commercial-sexual exploitation along lines of gender. Globally, approximately three-quarters of all victims of human trafficking are female (United Nations Office of Drugs and Crime 2014: 10). In the US of those “certified” by the federal government as trafficking victims, among adults 69% were women and among children 82% were girls (Clawson, Dutch et al. 2009). Some studies report that the number of boys and girls in the US in prostitution are nearly equal (Curtis, Terry et al. 2008; Polaris Project 2010; Shanahan 2013). However, others find, both globally and nationally, that the disproportionate majority of child trafficking victims in general are girls.⁸ The United Nations Office of Drugs and Crime (2014) reports that two-thirds of child trafficking victims globally are girls—whether for labor or sexual exploitation or organ extraction. “There exists a general consensus that a majority of female victims of trafficking are trafficked for prostitution” (Lehti and Aromaa 2006: 133). Three-fifths (60%) of human trafficking is for sexual exploitation, with females comprising 98% of victims (International Labour Organization 2012: 14). Street-based prostitution is much more common for females than males, particularly for poor women and women of color⁹ (Lucas 1995: 49). White males are overrepresented among “clients,” (Truong 2015: 289) with at

⁸ Percentage estimates regarding all of these types of human trafficking along lines of gender and age are as follows: 59 percent women, 17 percent girls, 14 percent men, and 10 percent boys (UNODC 2014: 10).

⁹ Historically, males have been among persons in prostitution in the US. Men called “fairies” prior to the 1920s-30s (later stigmatized as “homosexual”) were available in prostitution as an “option” (Schepel 2011: 11). Economic motivation is the common denominator of male and female prostitution, but the circumstances and reasons differ significantly for transgender (male-to-female) persons, the majority of whom work indoors and cite as primary motives the financing of gender reassignment treatments and surgeries as well as fulfilling an emotional need for gender affirmation as female, described as being sexually desired and acted upon in passive feminine roles (Sanders, O’Neill and Pitcher 2013: 38-39, 76; Id.: 5, 8).

least one study reporting that of all minors in prostitution surveyed, nearly all served male “customers,” the majority served being White adult males between ages 25-55 (Curtis, Terry et al. 2008: 3).

Running away from home has remained a major risk factor for children entering prostitution, and a common reason has been familial rejection or mistreatment based on children’s gender non-conformity, so that LGBT children also comprise a significant portion of minors in prostitution (Lolai 2015). One of the key gender-based differences is that boys in prostitution often collectivize, pool resources, and act independent of pimps, whereas girls more often have a pimp, though they do not necessarily identify this person as such; rather, they may see him as a “boyfriend” or partner, who doubles as both a protector and abuser in dynamics very similar to domestic violence (Halter 2008: 16-17; Grace, Starck et al. 2012; Stark and Hodgson 2004). The deployment of gender to justify child exploitation also takes the form of presuming the greater resiliency of boys to withstand sexual abuse due to their masculinity, a position that boys themselves often adopt, which serves to deny their victimization (ECPAT USA 2013; Lillywhite and Skidmore 2006: 355).

Girls are also disproportionately arrested for prostitution, as “arrest data indicates that girls accounted for 76% of juvenile prostitution arrests in the United States. In comparison, girls accounted for only 30% of juvenile arrests as a whole” (Annitto 2011: 11). Insofar as arrests indicate criminal culpability, the culpability attributed to girls via prostitution arrest is reinforced by global and US patterns of impunity for pimps, traffickers and “clients.” Such gender disparity between overall juvenile arrests and arrest for prostitution is a global pattern.¹⁰ In the US females of color comprise a relatively low percentage of persons in

¹⁰ Even though 134 countries and territories have criminalized trafficking by designating it a specific offense in accord with the Trafficking in Persons Protocol, there is generally a very low conviction rate globally, including zero to few convictions in 40% of countries over the decade between 2004-2014, such that reports conclude “that impunity remains a serious problem...there has been no discernable increase in the global criminal justice

prostitution, but are over-concentrated in street prostitution—the most dangerous and least lucrative form¹¹ (Prince 2008: 31). Street-based prostitution is also the most visible and targeted form, exposing participants to greater risk of arrest (Bradley and Moschella 1998: 352). A highly disproportionate percentage of African-American women and girls, in particular, are arrested and/or prosecuted for prostitution (Fleharty 2014: 460-61; Halter 2008: 129; Muslim, Labriola et al. 2009: 14-15; Flowers 1998: 21; Lucas 1995). Since 1990 arrest rates for prostitution have declined significantly for males and females, but two-thirds of all prostitution arrests are of females, and disproportionately of Black females (Snyder 2012: 4, 2).

Further data regarding race, ethnicity, nationality and foreign and domestic trafficking shows that children of color, especially girls, are disparately impacted by CSEC through prostitution.¹² International human trafficking victims into the US recorded since the last decade have disproportionately originated from El Salvador and Mexico (Clawson, Dutch et al. 2009). However, 83% of sex trafficking victims found in the US are American citizens (Bureau of Justice Statistics 2011). Though it is rarely noticed or highlighted, existing data consistently and clearly demonstrates that domestic sex trafficking is a problem disproportionately impacting girls of color, especially African American girls. Black children, especially girls, with an average age of between twelve and fourteen years old, are burdened with the greatest risk for sex trafficking in the US (Butler 2015: 1481). It is reported that 40% of sex trafficking victims in the US are Black females, (Morris 2016: 102) and that 36% of minors in prostitution are Black, compared to the general national population of Black

response to this crime” (United Nations Office of Drugs and Crime 2012; United Nations Office of Drugs and Crime 2014). In the US it has historically been rare for pimps, traffickers or clients to be prosecuted (Johnson 2014).

¹¹ Non-street prostitutes are 92% White, compared to street prostitutes, who are 59% White (Kramer and Berg 2003, in Schepel 2011: 10).

¹² See also MacKinnon (2011: 278) discussing the work of Ruchira Gupta (2009) and others, for an international perspective on the disparate impact of trafficking and prostitution in terms of race and caste.

children and youth aged 10 to 19 years old comprising only 14.5 percent (Butler 2015: 1482-83). Because laws related to child prostitution are split along lines of international and domestic sex trafficking, it is important to pay attention to how such laws have constructive effects on the identities of affected populations by dividing them in these ways, especially since this makes a difference to what type of legal system, law enforcement bodies and facilities are designated to process them, e.g. the difference between local police and jails or border police and immigrant detention facilities.

Despite poverty as an oft-cited macro-situational factor precipitating child prostitution, some studies regarding Western countries diminish its role (e.g. Sereny 1985). However, others demonstrate its importance in finding that minors in prostitution are disproportionately poor in terms of familial background, but also that 92% of minors in prostitution outside their households in the US have reported being “very poor” or “just making it” (Silbert and Pines 1982, in Monasky 2011: 2005). The term “survival sex” suggests economic constraints and deprivation that cause homeless and runaway children and youth in particular to exchange sex for money or other things of value, with related studies finding that across the US, youth who are African American, GLB and tested for HIV are considerably more likely to engage in it than their White heterosexual, non-HIV-tested counterparts (Walls and Bell 2011; Greene, Ennett et al. 1999).

In these ways domestic sex trafficking in the US disproportionately impacts economically marginalized girls of color, especially Black girls.¹³ These disparities are cross regional within the US. Race, class, and gender disproportionalities as well as those of dis/ability are evident in CSEC in major US cities. Nationally, 78 percent of US child sex trafficking cases between 2008-2010 involved non-White children, the majority being Black

¹³ I use the term “economically marginalized” to mean working class, working poor, and impoverished and/or underclass, in accord with sociological conceptualizations of class in the US developed in the context of childhood (Handel, Cahill et al. 2007: 247-263).

and Latino (Butler 2015: 1482). Studies report that in New York City between 50-67% of all minors in street prostitution—the largest subgroup—are Black, even though only 26% of the city’s population is Black, and that Latinos comprise another 20-25% (Id.). This means that up to 75% of minors in prostitution in New York City are Black and Latino girls (Id.). The same racial and gender pattern is replicated in the adult population.¹⁴ Similarly, on the West Coast, in Alameda County in the San Francisco Bay Area, Black girls comprised 66% of those referred to MISSEY, a non-profit organization that exclusively serves CSEC survivors¹⁵ (Id.). In LA County, 92% of girls identified in the juvenile justice system as trafficking victims are African American, with 62% of them from the child welfare system and 84% from poor communities in the Southeastern part of the county¹⁶ (Id.).

A disproportionate number of women and girls in prostitution, particularly street prostitution, are also persons with physical and mental disabilities (Law 2000: 604). Mental health and psychosomatic diagnoses can often be related to the conditions and circumstances of children’s lives resulting in undesirable behavioral patterns, rather than what are commonly thought of as mental illness. This includes those leading to CSEC, for example PTSD stemming from abuse or neglect, or those caused by CSEC, such as dissociative disorders (Grace, Starck et al. 2012: 413). A recent study reports that, “Girls who are victims of commercial sexual exploitation recount a profound sense of being alone, without resources” (Id.). These findings suggest that multidimensional inequalities undergird child prostitution in

¹⁴ African-American females dominate samples in studies of female prostitution in the US, and also “represent significant disparities in drug abuse, PTSD levels, poverty and mental health” (El-Bassel 2001, Young and Boyd 2000, Raphael and Shapiro 2004, in Schepel 2011: 10).

¹⁵ Out of 179 cases reviewed, 178 were girls, 76% were Black, greater than half were on juvenile probation, and approximately one-third were dependents of the child welfare system (National Center for Youth Law 2012). Of 149 cases in San Francisco, greater than half were foster care youth from group homes (Id.), suggesting the greater prevalence of CSEC among system-involved children.

¹⁶ Additionally, a disproportionate number of missing children in the US, who are at great risk for sexual exploitation, are children of color, with Black children comprising 36.8% of all missing children in 2014 (Butler 2015: 1482).

the US and globally, and that many children experiencing CSEC lack social and material resources (Javidan 2012; Dank 2009).

1.2.2 Punishment and Protection

Broad police discretion to criminalize (and the criminal records produced in the process) lead to entanglement in justice systems and perpetuation of law enforcement's disproportionate contact with minorities, not to mention distress, trauma and confinement related to arrest and custody for suspects, witnesses and detainees (Brown 2007). Reputational harm, labeling and (further) socio-economic marginalization are extra-legal ramifications of these processes (Id.). These occur in the broader context of mass incarceration (Wacquant 2009, 2002; Brown 2008; Cooper 2011; Alexander 2012), record-high and increasing rates of arrest and incarceration for girls (Lane 2003: 1), a "global lockdown" of females of color and the "ceiling" of urban minors (Sudbury 2005 and Duncan 2000, in Winn 2010: 425). The over-criminalization of youth may be traced to social spending cuts affecting children, punitive law-and-order policies, and the use of child prostitution for "selling 'crime control' and 'individualized solutions to complex social issues'" (Chunn 2003: 715, quoting Martin 2002; Lee 2011: 58). Human trafficking in all its forms must be reframed in a sociologically informed way, meaning not simply as a criminal problem but as a *social issue* (Lee 2011: 58). This requires "bring[ing] the state back to the centre of the sociological gaze of human trafficking," and expanding "our understanding of the gendered, raced and classed patterns of trafficking for sexual and labour exploitation" (Id.).

1.2.3 Contextualizing and Understanding "Trafficking" Sociologically

Similar to statistical data, social-historical information regarding child sex trafficking in the US is also sparse. However, understanding the relationship between race, class, gender, nation, childhood and the key role of human trafficking in constructing these helps establish

the context that produces the commercial-sexual exploitation of children, over-determines its prevalence for economically marginalized children and girls of color and over-burdens them with its conditions, contributing factors and legal responses.

Human trafficking has been integral to the settlement and establishment of the US as a nation-state, its territorial expansion, and the construction of its geo-jurisdictional borders and cultural boundaries in both the antebellum and postbellum periods. Omi and Winant (2015) explain:

In early North America, race, class, and gender were deeply interlinked. Their amalgamation was established both by the necessity of developing a division of labor, and organized labor force; and by the necessity of supplying, through various forms of human trafficking (only some of which can be labeled as ‘voluntary immigration’) the steady flow of actual human bodies (and souls) that would constitute the North American population (p. 93).

Along with refugee/asylum policies and reverse “voluntary” migration from ex-colonies, sex trafficking has been integral to trafficking for labor exploitation, primarily involves women, and “combines coerced and voluntary dimensions” (Id.: 93).

While these different experiences share common levels and qualities of coercion, the form of exploitation has differed. If human trafficking is to be understood not simply as movement but as exploitation, then the type of exploitation has varied along lines of race, gender and childhood. For instance, in the antebellum period Africans and Irish were trafficked into the US, but while Africans were subject to chattel slavery as a form of racialized forced labor and the Irish were racialized as non-White,¹⁷ the Irish were “generally subject to indenture, not chattelization” (Id.: 79). Racialized labor exploitation of Mexican-Americans and Mexican migrants in the American Southwest, and of the Chinese, Japanese and other immigrants of East Asian origin took the form of quasi-slavery, e.g. Chinese labor

¹⁷ See also Ronald Takaki (1993) regarding the origins of “Black” as racial classification, finding that British desire to colonize Ireland led them to racialize the Irish as “Black,” a label that British colonizers of North America later applied to Native Americans, then to enslaved African Americans.

to build the Transcontinental/Pacific Railroad during US westward expansion in the post-slavery economy (Calavita 2010; Glenn 2002; Filindra 2014).

Thus, historically, the type or system of exploitation to which trafficked persons were subject has been racialized and gendered, including for children. Not only have children often toiled alongside their parents or other adults under conditions of labor exploitation—for example African American children under chattel slavery or Mexican children in field labor (Handel, Cahill et al. 2007: 70; Filindra 2014: 97)—but child labor has constituted its own distinct form of forced labor. The US was built as much on coerced child labor, including indentured servitude, as it was on slavery, which, of course, also ensnared children. These practices were Constitutionally enforced under the Fugitive Slave Acts, which normalized the exploitation of children as economic commodities.

The United States was settled, in large part, by working indentured children—many of whom were bound out for long terms of service and separated by an ocean from their parents. Over half the people who settled the Colonies south of New England came to America under contracts of indenture... Many were poor children taken from the streets of English cities, often without their consent. The average age of an indentured servant was fourteen to sixteen and the youngest was six (Woodhouse 2008: 63).

Moreover, children who were chattelized¹⁸ through racialized enslavement or indenture due to being “illegitimate” had in common that they would be “transferred to the most economical use, and separated from their kin” (Id.: 5). Indenture was a means of managing labor, sex and the allocation of resources, as it “provided a process of redistributing labor and also a method of controlling unmarried and interracial sexual activity and of privatizing

¹⁸ *Chattel* refers to “a form of moveable personal possession with attributes both of thing and of human being, to be used to satisfy the needs of his owners” (Woodhouse 2008: 64). Bales’ (2004) study of human trafficking finds that a major difference between old (chattel) slavery and modern day slavery is the removal of the “ownership” aspect, i.e. universal illegality of slavery and lack of long-term investment in the person to ensure his or her future utility, adding to the greater and more rapid “disposability” of enslaved persons today. Notions of child rights that developed during the twentieth century have attempted to move socio-legal perception of children away from their traditional status as chattel during modernity, i.e. as “owned” by their father or parents.

responsibility for the poor, who would otherwise be a drain on the community's resources" (Id.: 65).

Chattel slavery, Native American extermination and even one of the founding pillars of the child welfare system were forms of child trafficking insofar as these practices involved forceful removal, relocation and/or exploitation of labor and sex. Historically, African American children who were enslaved on plantations performed the same type of difficult labor as European settler children on family agricultural homesteads but without their independence or rightful inheritance (Handel, Cahill et al. 2007: 70). The injustices of chattel slavery were also qualitatively different based on gender, wherein the choices available to an enslaved girl were "defined by her reduction as a sexual object, an object to be raped, bred, or abused" (Woodhouse 2008: 87). In addition to labor exploitation, sexual exploitation was integral to the role of enslaved females in the reproduction of the slave labor force, particularly through forced breeding (Roberts 1997: 27-28). Some children were forcefully bred for commercial-sexual exploitation, specifically "mixed race" girls to be sold into prostitution at the age of eleven or twelve, as "fancy houses" placed a high premium on them (Carter and Giobbe 1999: 42). White males' sexual exploitation of Black girls was common under American chattel slavery (Id.). In a different form of child trafficking, the modern foster care system originates in the practice of an antebellum children's charity that orchestrated the abduction of virtually any unsupervised child from American city streets to be transported on "orphan trains" to join rural Midwestern households in exchange for their servitude¹⁹ (Handel, Cahill et al. 2007: 72-73). A few decades later, missionaries began

¹⁹ The Children's Aid Society still exists today, and provides its own version of this largely downplayed history on its website, arguing that orphan trains were an "ambitious, unusual and controversial social experiment," but not indenture because "older children" were to be paid for their labor (Children's Aid Society 2016). The invocation of "older children" to justify practices involving children is not uncommon in trafficking debates, but merits scrutiny because the implicit and presumed greater capacity of older children does not translate to their greater political power since minors are, by definition, persons formally excluded from the polity, regardless of whether they are younger or older minors.

targeting Native American girls for abduction and forceful placement into Christian- and government-run boarding schools in order to religiously convert and “civilize” them. This was animated by the belief that “if we get the girls, we get the race,” and underwritten by Anglo-Saxon ideology that the transmittal and reproduction of culture and values are achieved through the normative feminine role (Devens 1992; Smith 2004). Thus various forms of child trafficking undergirded the extreme wealth of the Confederate economy, the settlement and rural development of the American Midwest, and Manifest Destiny via Native cultural genocide.

An understanding of human trafficking from the perspective of economic sociology can generate “critical versions of the history of the economic present” (Tonkiss 2006: 28). As slavery was a key component in the international division of labor and “primitive accumulation” of early capitalism, human trafficking or modern slavery is an entrenched and profitable component of the contemporary global capitalist economy, supplying the demand of advanced capitalism for cheap, informal and forced labor (Id.: 19, 23; Bales 2004; Kara 2009; Javidan 2012). The role of illegal markets is undertheorized in economic sociology, but when human trafficking is addressed it is often characterized as “the dark side” or a “disease” of the global capitalist economy (Tonkiss 2008: 586; Kara 2009: 6). Yet sex trafficking has “stabilized” into an “industry” and fully-integrated segment of the global economy “akin to a mature, multinational corporation that has achieved steady-state growth and [which] produces immense cash flows” (Kara 2009: 17). In nations with advanced economies trafficking of females into forced domestic work and prostitution “is a profitable but largely hidden part of cross-border economic flows” (Tonkiss 2006: 24). As much as the place of sex trafficking in global economic structures has stabilized, sex trafficking itself acts as a destabilizing force for impacted persons. Among various forms of insecurity induced by the global capitalist economy, including economic insecurities related to poverty and inequality, sex trafficking

can be understood as a form of “personal insecurity, linked to crime and victimisation” (Id.: 171-72).

The stabilization and industrialization of sex trafficking is bound up with the organization of the global capitalist economy in terms of class structure defined by tiers of labor, the base of which is “forced labor,” in which women and children are over-concentrated and CSEC can be located.²⁰ Labor exploitation of women and children has been foundational to the latest reorganization of the global capitalist economy, in which the distinction between labor commodification and slavery tend to be blurred (Id.: 23-24). Sociological studies of globalization and child labor or exploitation conceptualize CSEC as a form of trafficking or a most hazardous form of labor (ILO 2002, in Id.: 24). Although the term “labor” is problematic as applied to child prostitution, its conceptualization as forced labor in this context allows theorizing its economic implications and connectivity between it and global economic processes. Accordingly, CSEC can be located in the tier of forced labor that undergirds the global capitalist economy. Thus not only have various forms of human trafficking, including child trafficking, been more integral to the development of the US than typically recognized, but they are also currently entrenched in the structure of a global system of advanced capitalism, whose processes shape the national economy of the US, while the US continues its leadership role in global economic governance.

Lerum and Brents (2016: 18) summarize the primary sociological critiques of human trafficking research as follows: “unreliable data, anti-sex work ideology, rescue industry & carceral state critiques, and global health & human rights.” These critiques originate largely

²⁰ This class structure unifies an elite global class of capitalists who operate through transnational corporations and organize the politics of the global economic system, while it fragments and stratifies tiers of labor into four general but distinct categories: specialty labor, formal wage labor, informal labor and forced labor. As a descending hierarchy, these represent decreasing levels of skill, pay, working conditions, bargaining power and elective transnational mobility (as opposed to forced or coerced migration associated with trafficking). For a fuller discussion of how transnational corporations and global commodity chains result in the fragmentation and stratification labor, see my conceptualization of class and human trafficking in global context (Javidan 2012), based on the work of economic sociologists including Leslie Sklair (2002) and Fran Tonkiss (2006).

from gender-focused research comprising “the sociology of sex work” (Sanders, O'Neill et al. 2009). Its general aims are to contribute to the issues of consent and victimization, usually to argue in favor of legalization and regulation (privatized, state-regulated) prostitution. Sociological theorization of human trafficking from a gender perspective tends to focus on sex trafficking and prostitution. Conceptual issues and debates have persisted regarding the trafficking of women for purposes of sexual exploitation or sexual servitude (Meshkovska, Siegel et al. 2015: 382). These have largely revolved around the issues of victimization and consent (Davies 2015; Id.: 382-84), and to a lesser extent around age of minority (e.g. Jeffreys 2000; O'Connell-Davidson 2005).

Current debates originate from contestations regarding the issues of consent and victimization raised during the drafting process of the Palermo Protocol, the international legal instrument that codifies the contemporary and widely accepted definition of human trafficking (Meshkovska, Siegel et al. 2015: 382). The debate has persisted largely along the lines of what is commonly dichotomized as sex workers' rights versus abolitionism. Sex workers' rights advocates specifically posited “non-coerced, adult migrant prostitution” against the notion of “trafficking,” to argue that not all prostitution is coerced; that it is possible for women to choose prostitution voluntarily (Id.). Abolitionists argued that although the degree, level and extent of coercion, abuse and violence that women and children experience individually vary, the industry of prostitution is based upon sexual violation and exploitation of bodies (Id.). Sex workers' rights advocates argue for the recognition of consensual prostitution on the grounds that not doing so is infantilizing and disempowering to women, and deprives them of the option to choose prostitution (Id.: 383).

The conceptualization of consent impacts that of victimization. Abolitionist concern has been regarding the way in which the finding of consent places the burden of proof for victimization on the victims, which requires the legal sorting of deserving/undeserving

victims, and which provides a defense for exploiters²¹ (Id.). One of the major differences between the two approaches is that the sex work perspective conceives of prostitution as a form of labor, whereas abolitionism defines it in terms of commercial-sexual exploitation (Id.), wary of “positive and neutralizing definitions of prostitution” as “a job like any other job,” since prostitution entails specific harms and dangers and is largely driven by male sexual demand (Carter and Giobbe 2006: 51, in Spector 2006; Leidholdt 2003: 169). International law reflects this unresolved conflict by leaving the issue of consent open and dichotomized, expressed in the requirement that “trafficking” must involve force, fraud or coercion (Balos 2004; Meshkovska, Siegel et al. 2015: 383; Lee 2011: 68). Thus the feminist contestation that informs the sociology of sex work is largely founded on a legal battle—a battle over legal discourse.

The language of contracts is one of the major discursive components underwriting the formulation of consent in this context, yet its workings and significance are often subdued and elude critique. Pateman (1988) theorizes this in the context of prostitution, explaining that the mostly implicit language of contracts in political and legal discourse on prostitution serves to legitimize it as a mutual commercial exchange between free and equal individuals. Indeed, this is observable in legal texts reviewed for this project, in which contractual language of offer (solicitation) and acceptance (patronizing) is omnipresent but often submerged in other discourses such as criminal justice and child protection. Pateman argues that the discourse of individual contracts generally masks broader structural inequalities of the “social contract” within which individual exchanges occur—specifically, patriarchy. Rather than opposing patriarchy, contract is actually “the means through which modern patriarchy is constituted,” as it plays an important part in upholding “the law of male sex-

²¹ Lee (2011: 68-71) points out the ways in which this subjects potential and actual victims of trafficking to standards of ideal victimhood in which all those who do not measure up to specific notions of worthiness—defined by respectability, legitimacy, authenticity and moral character—are subject to victim-blaming as “culpable victims,” and disqualified from receiving state assistance and resources.

right” (Pateman 1988: 2). Mills (1997: 5-6) similarly warns us about “contract talk,” which should be exposed for the ways in which it helps theorize, justify and rationalize social and political inequalities and oppression, or to argue for merely reforming these. Contractarian discourse is “the political lingua franca of our times,” and the dominant interpretive framework of social relations in modern Western democracies (Id.: 3). As a framework in which “contract” and “freedom” are conflated, contractarian discourse has been revived with the advent of neoliberalism and its emphasis on personal “choice,” which conflates private enterprise and privatization with “freedom” (Pateman 1988: x; see also Hall and Midgley 2004; Harvey 2005; Brown 2015).

Rather than presuming that society and the social contract are just—comprising of free and equal citizens negotiating its terms through the state as a neutral arbiter—Pateman and Mills insist that the in/justice of individual contracts on the micro-level is inextricably linked to the in/justice of the social contract on the macro-level. But as they and critical theorists of race, class, gender, nation and childhood have repeatedly demonstrated, the terms of the social contract are fundamentally unjust for minoritized and subaltern groups (non-hegemonies). In its function and genesis the social contract—which maps the societal and legal organization of Western liberal democracies in terms of formal egalitarianism—continually unifies and preserves the White adult male as the ideal humanist subject and fortifies White-adult-male hegemony to the exclusion of the “non-ideal polity,” i.e. the *bad subject* (Grahm-Farley 2003; Kearney 2009; Mills 1997: 5-6; Harris 2003; Roithmayr 2003).

Thus whether or not individual “consent” is found, prostitution “supports and is supported by social, economic and political inequalities,” (Balos 2004: 162) which the interpretation of prostitution as a “contract” does not capture. Prostitution is an integral component of patriarchal capitalism, and likening it to capitalist private enterprise—a private contractual arrangement for purchase and sale—does not render it the expression of “freedom”

(Pateman 1988: 208). It simply represents the commodification of women's bodies in the capitalist market, which renews "the terms of the original [sexual] contract" through the fulfillment of primarily male demand for the sexual use of persons²² (Id.: 189).

The contractual understanding of prostitution interprets sexual consent through neoliberal market relations. Commercial consent is conflated with sexual consent, or sexual consent is rendered irrelevant or secondary to commercial consent. Sociological studies show that economic strain, particularly for women, drives their entry into prostitution, not sexual desire, and that cross-border movements of persons in prostitution almost always flow from poor nations to wealthier ones (Scott and Marshall 2009: 608). Because the sexual contract has been about the compromise of female *sexual* integrity and autonomy in particular (in order to ensure continual male access to and control over female sexuality), the interpretation of prostitution as merely "labor" or the subject of a service contract merits scrutiny. The specific concern with prostitution is that it not only reinforces capitalist relations of labor commodification and alienation, but that it also reinforces patriarchal relations through an embodied practice of direct sexual use that disparately impacts females and gender non-conforming persons, and, of course, the economically imperiled. Contractarianism serves as a legitimizing discourse of neoliberalism, which mystifies sexual subordination and the extreme reification of hegemonic gender relations that prostitution represents. The rendering of sexual consent and desire irrelevant or secondary to other considerations is problematic regardless of whether it is achieved by slavery or by contract. It is in these ways that prostitution is linked to the broader issue of human trafficking, and this linkage survives the contractual turn.

²² Historically, at the same time that "the racial contract" instituted the enslavement of Africans "based on the very opposite of equal rights between buyers and sellers," (Mills 1997; Harman 2008: 249) the civil position of wives resembled slavery under the terms of the original sexual contract since, for example, husbands in nineteenth-century Britain could legally enforce their wives' labor and obedience through violence, and be "sold by husbands at public auction" (Pateman 1988: 191; O'Connell-Davidson 2005: 12).

Contract has been touted as the key difference between feudalism or chattel slavery and capitalist “freedom.” It is similarly invoked in the contemporary context to mark the difference between modern day slavery or sexual servitude and “sex work.” However, the greater consideration given to the multidimensional history of human trafficking and its significance in the US and contemporary global capitalist economy, as well as the fraught boundary of non/consent, the more tenuous a notion of justice based on contract and formal egalitarianism becomes.

1.3 Sociological Tensions

Pateman (1988: 257) explains that child prostitution is beyond the scope of her theory, but sex work theorists have been extending their framework to children despite its remaining controversial even in its application to adults. The current direction of sociological literature is to extend sex work theory to children (e.g. O'Connell-Davidson 2005; Orchard 2007; Shanahan 2013). Main tenets of the now established “sex work” perspective include viewing prostitution as: 1) labor, specifically “sexual labor,”²³ 2) a product of more or less rational choice among less appealing alternatives, and 3) understanding “sex workers” primarily as sexual agents, as opposed to victims of exploitation (O'Neill 2001; Sanders, O'Neill and Pitcher 2009: 4, 11; Miriam 2005). Research stemming from this approach views child prostitution as a “resource” accessed through “the sexual labor of children,” and refers to minors in prostitution as “child sex workers,” (O'Connell-Davidson 2005; Orchard 2007) as opposed to commercially-sexually exploited children. The normative subject of sex work theory is the consenting adult woman as commercial and sexual agent. However, this framework is extended to children via arguments that tend to minimize or erase child status

²³ This has recently been referred to as “sexual labor” in an attempt to unload the term “sex work” of its political baggage (Boris, Gilmore et al. 2010), and with greater abstraction, as “intimate labor” (Musto, Jackson et al. 2015)

and generational order to focus on other social categories, factors, and units of analysis such as “culture,” gender or poverty.

O'Connell-Davidson (2005) interprets child prostitution as a commercial and sexual contract and argues that children may have the same capacity to enter them as similarly situated adults because appalling socio-economic circumstances render both more or less equally vulnerable. Orchard (2007) interprets child prostitution as an “embedded practice” of “culture” in the “third world,” specifically in India, which “works to create, inform, and give meaning to these girls as they grow up,” highlighting the “positive aspects of being a young sex worker.” Elsewhere, Orchard characterizes child prostitution as “the sexual labour of children” and “sex work that involves children,” arguing that victimization is too simple an explanation for child prostitution (Orchard 2015). Shanahan (2013) takes a market-based view of prostitution as a system of economic-sexual exchange, conceptualizes minors as commercial-sexual agents and pimps as “market facilitators.” She argues that most minors in prostitution are older teenagers so that there is little difference between them and adults, and adopts an approach of harm reduction that focuses on children’s resiliency. These researchers conceptualize prostitution as a “resource” for children—economic and/or socio-cultural. The conceptualization of prostitution as a resource for children contradicts not only child rights and even critical child rights literature (e.g. Grahn-Farley 2003), but also key recent works of the sociology of childhood, discussed below.²⁴

On the other hand, research that does not extend sex work theory to children often adopts an uncritical approach to child status, victimhood, capacity, law and law enforcement, and may engage in “multivariate” but not multiplicitous analysis of race, class, gender and childhood (e.g. Halter 2008; 2010). Both approach law and law enforcement as

²⁴ All of these except official child rights discourse use social constructionist approaches or deconstructionist methodologies toward childhood but come to vastly different conclusions and policy points.

unproblematic on the institutional level, if perhaps flawed in substance and implementation, and mostly exclude race (and/or replace it with “culture”) in largely gender- and age-focused analyses that exclude discussions of the global capitalist economy, class and poverty, or provide limited discussions of these.²⁵ The primacy of class, gender and national origin over childhood (O’Connell-Davidson 2005) is unsupported by these sociological theories of childhood, which increasingly support the integration and centralization of child status in broader social theory as well as inclusion in (and consideration on par with) other “special sociologies” of social categorization, e.g. race, class and gender (Handel, Cahill et al. 2007; Bühler-Niederberger 2010; Corsaro 2015).

My approach disrupts the current trajectory of applying and extending to children the problematic framework of sex work theory, which takes the consenting adult as its normative subject. In addition to less attention to race and law, one tendency in current sex work theory is that there seems to be theorized no material difference between the status and conditions of children/childhood and adults/adulthood. It posits its ultimate goals as legal ones—namely, “labor rights” and “human rights” for prostitutes—to strive for improving pay and working conditions, and to criminalize only that which rises to the level of *abuse*, (e.g. Orchard 2007; O’Connell-Davidson 2005) typically defined in accordance with and in reliance upon legal definitions. But as Mills (1997: 26) points out, the concept of abuse presumes that the structural subordination itself is legitimate; that the problem with colonialism, slavery, corporal punishment, or child prostitution is not subordination or domination, but the “improper administration of these regimes.”

Each of these positions is at odds with key recent works in the sociology of childhood (e.g. Handel, Cahill et al. 2007; Corsaro 2015; Bühler-Niederberger 2010). The centrality of

²⁵ Sex work theory’s critique of law enforcement is mostly limited to its view of police as disruptive to the “business” of “sex work.” It aims to change the laws to favor sex work, and thereby harness law enforcement for its protection and facilitation (e.g. Soothill and Sanders 2004).

the consenting adult as the ideal subject of sex work theory and its extension and application to children is in direct tension with the sociological process of child-centered research related to children and childhood. In simple terms, this requires a worldview re-centered around children, who are otherwise marginalized in social theory and society writ large. Moreover, the idea that there is no material difference between adult versus child status and conditions—whether in general or in the prostitution context—is refuted by theorizations of childhood in “the new sociology of childhood” as well as critical jurisprudence on children and child rights (e.g. Grahn-Farley 2002, 2003, 2008, 2013; Woodhouse 2008). Both tend to employ deconstructive, anti-essentialist methodologies that understand childhood as a social and legal construct and children as active agents in socialization and as social contributors, though substantially constrained by structural power, namely the generational order. Even when “controlling for” race, ethnicity, national origin, class, gender, sexuality, and/or dis/ability, on a collective level the injustices and inequities associated with these are amplified for children compared to their adult counterparts due to difference in structural power (Handel, Cahill et al. 2007; Corsaro 2015; Grahn-Farley 2002: 302). The new sociology of childhood understands “childhood” and “children” as socio-historical formations, minoritarian social categories, and as specific social-hierarchical locations that include generational stratification with the qualities and similar levels of coherence and incoherence associated with other, interrelated categories (Id.).

The idea that prostitution is a “resource” for children is also contrary to definitions of “resources” employed in sociological theories of childhood. Key works in sociology of childhood and critical child rights conceive of resources in material and human terms, as improving the standard of living and quality of life of children, and benefiting children on both individual and collective levels. Poverty and class are central concerns of sociology of childhood, and sociologists of childhood emphasize the importance of allocating sufficient

resources to the wellbeing of children in economic terms as well as for health care, education and other developmental investments (Handel, Cahill et al. 2007; Grahn-Farley 2003).

Nowhere do sociological theories of childhood advocate or imply prostitution as a resource for children. Rather, where the issue arises, it is discussed as a form of abuse and as a form of endangerment to children that plays a significant role in the socialization of children in economically marginalized neighborhoods (Handel, Cahill et al. 2007: 282, 261).

The notion that child prostitution is or could be a benign expression of culture with “positive aspects” for children’s development and wellbeing is also untenable through sociological theories of childhood, including those focused on the developing world, as well as emerging research on African American childhood and Black girlhood in the US.²⁶ In the final analysis of her “alternative example of child prostitution” what Orchard (2007) deems oppressive is not the practice of child prostitution but *discourse* on child prostitution that constructs the practice in terms of cultural backwardness and crime. While critiques of “cultural deficiency” and “crime” are valid, the indictment of discourse over practice over-emphasizes the discursive at the risk of minimizing or discounting the practical and material. What is also troubling about this line of analysis is that the “embeddedness” of child prostitution in “the cultural context” is offered as evidence of its non-oppressive (creative, informative, meaningful) character, rather than as evidence of its institutionalization,

²⁶ The definition of *culture* in sociology of childhood is the same as in other sociologies, wherein childhood and children’s culture are viewed as “ordinary” and a “way of life” that “makes sense to individuals in a particular community” (Williams 1961, 1989, in Kehily 2004: 9). Culture is defined as “the way of life developed by people in adaptation to the environmental and social conditions that they collectively face,” including “conventional understandings that guide peoples’ interpretations, actions, and interactions” (Id.: 57). Culture also “includes some elements that are highly valued by the people themselves and some elements that are accepted as necessary or ‘realistic’ adaptations but are not especially valued. A way of life includes, then, values and norms, but also...skills, habits, and styles of action” (Id.: 240). This may appear to allow sex work theorists to claim child prostitution as pragmatic adaptation under circumstances of poverty, patriarchy, and caste, and therefore, part of Indian culture. However, even its inclusion in “culture” does not mean that the creation or reproduction of said culture is multilateral, inclusive or representative of the interests of those most impacted by its practices and institutions. Moreover, “way of life” and “culture” have vague parameters, are unclear as to the unit that they represent, and imply that they can apply to “any kind of organization or group, in each case focusing on the commonalities of thought, attitudes, behavior, skills, and material objects (such as houses, motorcycles, music players, sailboats, pickup trucks, video games, etc) (Id.).

systemic operation, structural violence and harm.²⁷ This serves to reify the “cultural deficiency” explanation of child exploitation, even though Orchard aims to challenge it, wherein denouncing the “backward culture” explanation gets translated to the acceptance and celebration of culture as an unproblematic construct—bracketed off from racism, classism, sexism and other forms of subordination in their respective micro- and macro-spheres. “The cultural context” becomes paramount but “culture” is uncritically accepted in ways that risk its essentialization and presumption of its representativeness over all whom it encompasses. Insofar as culture and politics are integral to one another, it is particularly important to develop and center analyses of childhood and child status as political constructs in relation to “culture.”

Thus the conceptualization of prostitution as a cultural practice of subaltern girls, and even integral to their development and economic wellbeing does not comport with the new sociology of childhood. “Culture” can too easily become a nebulous concept onto which vague and relativist ideas may be projected, into which structural inequalities collapse and through which power relations are mystified. Instead, the new sociology of childhood urges the need to critically examine structural inequalities themselves, in relation to children. Although children are viewed as societal contributors and as active agents in their own socialization, especially in peer cultures, modern Western history has demonstrated ways in which law and society severely limit children’s ability to effect structural change and be efficacious co-constructors of their broader cultures (“the adult world”), particularly as an organized collective. In many ways child prostitution exemplifies and epitomizes systemic inequalities that render children (and infantilized, minoritized, or feminized adults)

²⁷ British criminology provides perspectives on “harm” that adopt a critical approach to the construct of “crime.” The *social harm* approach moves away from focusing on harm as defined solely by criminal law, and rather views harm as embedded in broader systemic violence, including CSEC as part of “the social wreckage of neo-liberal globalisation” (Hillyard and Tombs 2004: 3). See also Dorling, Gordon et al. (2008).

vulnerable to prostitution or sex trafficking as a Bourdieusian “forced choice” (Bourdieu 1984, in Lutnick 2016: 120-121).

Lutnick’s (2016) study of DMST in the US acknowledges that child prostitution is entrenched in many domestic communities and networks, which is partly responsible for its elusive ubiquity. However, in contrast to Orchard, Lutnick sees the conditions and factors causing child prostitution as “the failure of social and cultural systems” (Id.: 120). Childhood sociologists focusing on child neglect, abuse and neighborhood contexts in relation to socialization processes would agree with the characterization of child prostitution as such failure because of what they find essential to the wellbeing of children as well as families and communities. Where prostitution is discussed in such studies, it is considered to be among factors that imperil children’s wellbeing and development (Handel, Cahill et al. 2007: 260). Children’s “wellbeing” is defined in terms that greatly emphasize their economic wellbeing, mirroring international standards set and reported by NGOs such as UNICEF (Corsaro 2015: 313-14). Healthcare, physical health, paid family leave, quality child care and early education are identified as contributing to children’s wellbeing (Id., 344-50). Child poverty, child abuse including child sexual abuse and neglect, including yelling and corporal punishment, drug use and obesity are identified as commonly contributing to children’s lack of wellbeing in industrial countries, especially in the US, which fares particularly badly by international measures of child wellbeing²⁸ (Handel, Cahill et al. 2007: 259; Id.). In developing countries (and industrial countries to some extent), common detractors from children’s wellbeing include the effects of globalization such as increased child poverty, rapid urbanization, global debt crisis, governmental corruption, ethnic violence, the spread of infectious diseases such as HIV/AIDS, malnutrition and food insecurity (Corsaro 2015: 344-50; Id.: 281).

²⁸ For example, US infant mortality rates have consistently been the highest among industrial nations (Giroux 2003: xviii).

The current sociological understanding of childhood wellbeing undermines any suggestion that child prostitution helps alleviate the immiseration of children, whether in industrial or developing, rural or urban contexts. Instead, prostitution is discussed as something that parents aim to protect their children from, as part of the risks of poverty, violence and the “constant danger” that faces them, particularly in low-income and poor US neighborhoods that are most impacted by it, and wherein hyper-protective socialization strategies of parents reflect these perils (Handel, Cahill et al. 2007: 281). Prostitution is considered among negative influences of the street from which families of working class and working poor neighborhoods attempt to protect their children, along with “gangs, peer pressure, violence...drugs, and alcoholism” (Id.: 261).

Though economic wellbeing is key, it is important how this is achieved and whether and to what extent it extracts other tolls. Childhood sociology regarding gender socialization—which sensitizes gender and sexuality theory to the importance of childhood experiences that socialize children into binary gender roles in often banal but arguably coercive ways—would point to the impact of child prostitution on sexual and psychological development per gender role reification, if not trauma in line with child abuse during formative years of the life course (Corsaro 2015: 206-311; Id.: 287-334). The child-focused sociological literature simply does not support the notion that prostitution is developmentally positive. Even the idea that child prostitution at least contributes strictly to children’s economic wellbeing is dubious due to the finding that children occupy a particular rank in prostitution hierarchy that maintains them in its worst conditions and with the least to gain (O’Connell-Davidson 2005). In this way child prostitution represents another dimension of relative deprivation for minors in relation to their adult counterparts, reflecting the generational order of social hierarchy.

Thus the extension of the sociology of sex work to children is exceedingly at odds with key recent works in the sociology of childhood. The two are currently disparate streams of theory in which both adhere to a social constructionist approach to childhood but sex work theory seems to do so only insofar as it helps blur the boundaries of age so that older teenagers (Shanahan 2013) but also younger children (Orchard 2007), even as young as three (O'Connell-Davidson 2005) can be incorporated into it. Otherwise, in research that supports prostitution for adults but not children, the boundary between adult and child is to be maintained and literally policed. Soothill and Sanders (2004) recommend models of regulation that manage prostitution to “facilitate safe, consensual commercial sex,” stating, “we suggest that the primary mission should in the first instance be the protection of minors rather than a diffuse attempt to tackle prostitution in all its forms.” This is to bolster the aim of facilitating commercial sex above that of centering children and reorganizing the world in ways that render their commercial-sexual exploitation obsolete. The centering and prioritization of commercial sex necessarily relegates “child protection” to afterthought or secondary consideration. Child protection continues being necessary because the conditions of child endangerment remain unaltered. This begs the question of what “protection of minors” means when the primary aim is to facilitate commercial sex. Moreover, arguments favoring legalized prostitution while enforcing age boundaries fail to address how the prostitution harms existing for minors are neutralized upon their reaching age of majority. The promise of child protection, along with those of safety and consent, serve to legitimize commercial sex, but the promise of child protection in a highly unequal and adult supremacist world is illusory and routinely broken, in much the same way that noblesse oblige fails to protect minorities and subalterns, charity fails to protect the poor, and chivalry fails to protect females.

Black feminist theory and women of color feminism offer a critical approach toward prostitution, along with a highly empathetic ethos toward persons in prostitution and those impacted by its contributing factors.²⁹ Recent works have begun to express concern with child prostitution as integral to conditions that contribute to the exploitation and criminalization of low-income and economically marginalized girls of color (Morris 2016; Butler 2015; Harper 2013). This can be seen as part of a deep, if somewhat subdued, aspect of women of color feminism (as an antecedent to or early expression of intersectional feminism). In the foundational anthology *This Bridge Called My Back* (Moraga and Anzaldúa 1983) “the prostitute” does not figure as “other” in the accounts of Black, Latina and Asian feminists, but rather suggests a haunting self-reflection of the role of marginalized women of color under racist patriarchy. Audre Lorde (1983: 99) invokes this in observing, “Poor women and women of color know there is a difference between the daily manifestations of marital slavery and prostitution because it is our daughters who line 42nd Street.”

In discussing the school-to-prison pipeline—specifically, the criminalization of African American girls in schools—Morris (2016: 119) understands child prostitution as a major barrier to girls’ educational and socio-economic advancement, acting as both a source of “push” and “pull” out of schools. Morris’ concern with child prostitution is foremost about the expendability and blatant sexual commodification of Black female bodies. In accord with other Black feminist and intersectional theorists such as bell hooks and Patricia Hill-Collins, these works problematize prostitution and racist/sexist pornography as the extension, persistence and shape shifting of the commercial-sexual exploitation of Black females under slavery (Tong 1998: 219-224; Carter and Giobbe 2006: 40-43; Butler 2015).

²⁹ This is in contrast to certain rights-based strands of postcolonial feminist theory, i.e. those that view prostitution as primarily issues of labor and migration, e.g. Kempadoo and Doezema 1998, Agustin 2007, Parreñas, Cam Thai et al. 2016, etc. The two, however, share a non-stigmatizing approach toward persons in prostitution.

Given the hyper-sexualization of Black females, Morris highlights Black girls' desire to transcend sexual objectification and the difficult struggle this entails considering that they are often "reduced to their sexuality" in mainstream media representations, portrayed as literal or figurative prostitutes (Morris 2016: 123, 134). The legalization of prostitution and its extension to children may theoretically appear to disrupt pathways to incarceration based on the commission of prostitution as a crime. However, it does not disrupt the over-sexualization of racialized bodies, but rather promotes capitalizing upon it. Morris (2016: 114) specifically scrutinizes narratives of casting girls (especially Black girls) as "wiling choosers" of prostitution. She finds this the greater and more problematic characterization with which Black girls contend, as opposed to the ascription of "innocent victimhood"—a trope that is largely unavailable to them (Ocen 2015). The impossibility of Black sexual victimization persists in the contemporary context through "the myth of Black female promiscuity" or hyper-sexuality, which historically meant that regardless of their "respectable" reputations, Black females occupy a class "lower than the white prostitute" (Morris 2016: 115). In contrast to the presumption of White feminine innocence and sexual purity that historically viewed the White prostitute as a "fallen woman" backsliding in Social Darwinian terms, the Black female figure, regardless of respectability, has represented the dark evolutionary past and true "nature" or "essence" of femininity; the retrograde, shadowy figure threatening White civilization, evolution and order (Dijkstra 1996). This myth has figured heavily in "policy responses to the victimization of Black women" (Morris 2016: 115). This has certainly been the case in the construction of statutory rape, prostitution and sex trafficking law discussed throughout the empirical chapters.

Sex work theory, its primary unit of analysis as "sex workers," and its extension to children are often devoid of such historical context, particularly where children are concerned. They often fail to account for its disparate and disproportionate impact on women and

children of color, and propose policies that reflect this omission. In terms of historical retrospection, this has resulted in a peculiar idealization of the Gilded Age, the era prior to the formal criminalization of “prostitution” as such. Some accounts evoke a kind of romanticization of child prostitution as a form of “girl power,” and equally so across race, class and a broad age/developmental range, from 12 to 20 years of age (see e.g. Linehan 2014). Others—while demonstrating depth of historical knowledge on adult prostitution—promote states’ rights to advance its legalization without awareness or consideration of the ways in which the historic and contemporary use of this strategy has undermined race, class, gender and childhood equity (e.g. Ditmore 2011).

The hyper-sexualization of females of color—including through the reiteration of the “Jezebel” trope in contemporary narratives regarding Black femininity and sexuality—has appeared in discourses related to child welfare and juvenile crime, whose primary measure is “moral decency” and behavioral performance (Morris 2016: 115). Such contextualization reveals that the struggle over sex trafficking and prostitution has not been merely one against extricating women from their ascription and confinement to White, bourgeois respectability, but that, like enslavement, prostitution has been carved out as the expected role of some females. As Morris (2016: 115) explains, this relegation—with which criminal justice systems are complicit—involves a globalized culture of “steering of girls of color into sex work,” combined with “sexist and dismissive notions that they are choosing a life of prostitution rather than trafficked into it” (Morris 2016: 115).

My research helps historicize and develop the deeper and broader contextualization needed to comprehend the over-determination of girls of color being rendered consenting sexual offenders in the prostitution context, criminalized, and excluded from child protective regimes. However, I also discovered that when authorities in the criminal justice system find it expedient to render girls into non-consenting child victims in order to fulfill legally

prescribed requirements for prosecuting pimps and traffickers in cases that they develop interest in prosecuting, they will do so, though often only for the limited purpose and duration of successful prosecution, rather than throughout criminal procedure and its aftermath. Legal-authoritative discourse will also include and exclude other children from childhood when politically expedient to do so, in order, for example, to render parents blameworthy for the mass migration of their children despite the purpose of their migration being to escape criminal violence, including forced recruitment for trafficking.

It is important to recognize these tensions going forward, and to interrogate “sex worker”/“child sex worker” as units of analysis as well as the constructs of “sex work”/“child sexual labor” to describe, extend to and normalize child prostitution, or alternatively, to argue for merely policing the boundaries between adult/child, victim/offender and consent/non-consent—with an aim to uphold the practice and institution of prostitution.³⁰ To reiterate, this project aims to investigate ways in which legal discourse regarding child prostitution lays the foundation for disparate impact on children through mutually constitutive processes of marginalization—racialization (including racialized im/migration), classing, gendering, infantilization/adultification (as two sides of the same coin) and penalization. These place economically marginalized girls of color at greatest risk of commercial-sexual exploitation, result in greater prevalence of sex trafficking among them, and disparately impact them through de facto and de jure forms of penalization in legal contexts and through systems’ responses. Thus here, moving away from sex workers’ rights to focus on girls at greatest risk for prostitution signifies centering the marginalized yet disproportionately impacted subjects of DMST within the US and/or child sex trafficking into the US. Because the ideal subject of American sex trafficking laws has been constructed as a White, middle class suburban girl, it is important to reframe the issue to reflect that—proportionally speaking—economically

³⁰ The critique of rights is also a disruptive force in the extension of sex work theory to children, which I explore throughout the following chapters.

marginalized Black girls are the most likely victims of DMST.³¹ At the same time, the most likely victims of child sex trafficking across borders into the US are Central American, yet these children are constructed in ways that dehumanize and exclude them from normative childhood as well.

Going forward, it will be important to make historical and contemporary connections between colonialism, slavery, migration and human trafficking. It will also be important to propose more critical means of addressing sex trafficking and prostitution than legalistic models and the promotion of legalization, or a general reliance on law and rights as solutions to inequities. The empirical chapters will discuss how legal discourse regarding child prostitution in the United States from the antebellum period to the present reveals that discursive processes of marginalization along lines of race, immigration, class and gender have been vital to how childhood has been constructed and contested in and through prostitution and trafficking laws. They will show how American legal discourse on child prostitution is structured by at least three dichotomies—adult/child, victim/offender, and consent/non-consent—which are deployed in ways that result in the penalization of children in general and minority and immigrant children in particular.

1.4 Chapter Summaries

Chapter 3, on the construction of the child in and through laws related to child sex trafficking, examines the issue first through key contemporary legal texts in the states of Utah and Illinois, showing the ways in which discourse in recent years has shifted and constructed the issue and its subjects differently and similarly in each state. It then connects the contemporary to historical legal texts that have contributed to rendering childhood

³¹ There is a rather exceptional pattern in the US in which White, middle class (and most often suburban) girls comprise the majority of girls in prostitution in terms of numbers (Lamb 2001), but that Black girls are disproportionately represented, discussed further below.

provisional in legal discourse related to child sex trafficking, laying the foundation for this continuity in the present.

Chapter 4 examines the dichotomized construction of child prostitution as *prostitution* or *sex trafficking*, which is to examine the boundaries between punishment and protection. The same basic set of legal texts outlined in Chapter 2 are examined but with a shift in focus toward how they establish the structure of culpability for prostitution and sex trafficking, and how the victim/offender binary it generates contributes to the making of minors in prostitution as *bad subjects* marked by the condition of *criminalized multiplicity*. It investigates prevarication regarding victimhood in child prostitution as rooted in ambivalence regarding child prostitution itself, which manifests in the contradictory characterization of minors in prostitution as both criminal offenders of prostitution and crime victims of sex trafficking. The two primary responses to child prostitution are constructed through the bifurcation of prostitution and sex trafficking, resulting in an oppositional dynamic in which *prostitution* imputes culpability on the person who sells her sex, and *sex trafficking* exculpates the person whose body is sold. Respectively, they each represent the conceptual core of the punitive regime and protective regime to which impacted minors may be subjected.

Chapter 5 discusses the ways in which “consent” is understood in contractual terms, and how this imputes consent and therefore criminal culpability upon children in ways that render them rather indistinguishable from “consenting adult offenders.” The three binaries are mutually shaping and interdependent in these ways—the determination of non/consent interlocks with that of victim/offender, which in turn depends on perceptions of adult/child. The construction of prostitution as a contract for goods or services and the subjection of minors to such a definition works against the notion that child prostitution is commercial-

sexual exploitation, that minors are victimized by it, and, ultimately, that minors are children requiring child protection.

Chapter 6 concludes by discussing observations and some recommendations related to the dimensions highlighted in this research—race, class, gender, childhood and punishment—through notions of feminist multiplicity as well as race- and class-conscious child-centrism in the context of child sex trafficking.

CHAPTER 2: Deconstructing the Bad Subject

2.1 Methodological Overview

Every legal text, law and rationale has underlying theories and an epistemological base that requires scrutiny, particularly when used to criminalize those whom both international and national law define as commercially-sexually exploited children. The approach of this research is to use *theorizing multiplicities* to analyze the discursive construction of child prostitution and minors in prostitution as “bad subjects”—subaltern feminine or feminized subjects in conflict with the law—through processes of racialization, classing and gendering, while incorporating processes of infantilization or adultification in the criminal context. By *theorizing multiplicities* I mean to understand the issue of child prostitution and its subjects (and their treatment) as involving the convergence of social-discursive processes, and which requires unpacking. The special focus on criminalization and quasi-criminalization led me to select legal discourse as the object of analysis. The selection of legal discourse required legal-archival research and an interdisciplinary search to define “legal discourse” and grasp its significance, which I understand to involve the combination of a sociological definition of “law” and “discourse.” I explored deconstructive methodologies broadly, beginning with more established theoretical foundations of social constructionism and discourse analysis, to recent configurations in Critical Discourse Analysis (CDA), which views discourse as social practice (Fairclough 1992). This led me to Critical Legal Discourse Analysis (CLDA) as a specific form of CDA that uses a feminist sociological lens to critically analyze legal texts, particularly those regarding sex crimes. CDA provides a means of systematically extracting “data” relevant to one’s enquiry, guided by key concepts and without prescriptive theoretical parameters within which to analyze findings. However, the theory it is conjoined with should generally be compatible with its main deconstructive aim of “enabling a critical view of

how...texts fit into a larger contextual setting,” as well as how those texts shape the larger contextual setting (Huckin, Andrus et al. 2012: 119).

Theorizing multiplicities is a deconstructive methodology—of organizing an investigation into how complex social, political, historical and discursive processes can marginalize subjects, particularly (though not only) subaltern or “minority” feminine subjects. It is focused on discursive deconstruction of interconnected social processes involving race, class and gender, developed around child subjects³² (Ali 2003a). Various, interrelated social processes co-construct issues and subjects. Thus we can discuss race, ethnicity, nationality, class, gender and childhood not necessarily as the overlap of otherwise distinct dimensions of identity, but as involving the interconnectivity of processes associated with these, which are continually being re/produced and which often extend problematic historical trajectories into contemporary discursive formations. Because theorizing multiplicities understands these processes as part of social construction—in the sense that power dynamics construct, destroy, and reconstruct social categories, and shift meanings across temporal and spatial terrains—it lends itself to deconstructive methodology specifically designed for textual analysis, such as discourse analysis (Id.). Ali (2003a) provides a methodical structure for organizing a multiplicitous examination by breaking down the typically compartmentalized categories in question, but highlighting their interrelatedness for the specific issue at hand.

The theoretical anchor of my analysis can be described as *criminalized multiplicity*. I invoke the word “multiplicity” as a double-entendre. I use it to signify a sociologically processual understanding of discursive construction sensitive to racialized gender stereotypes and oversexualization of females of color, as part of multi-conscious feminism or feminist multiplicities, and to invoke but nuance the concept of “multiple jeopardy” from

³² Ali utilized ethnography and interviews as discursive sources (texts) of subaltern subjects within institutional settings (children in schools), whereas I use archival data to focus on the discourse of the institution (law) and its authorities (lawmakers). Theorizing multiplicities is useful to both research forms.

intersectional criminology. Feminists have used the legal concept of *double jeopardy* to indicate how interlocking oppressions of race and gender imperil Black women (Beal 1970, 2008). Feminist criminologists have used it to counteract the “chivalry thesis,” which claims that women receive greater leniency in the criminal justice system by virtue of their gender (e.g. Sarri and Hasenfeld 1976). The legal doctrine of double jeopardy holds that it is a violation of a person’s rights to be tried and punished twice for the same crime (Garner 2006: 225). Combining these, feminist criminologists have demonstrated that females in conflict with the law are punished more harshly than their male counterparts for the same crimes—once for violating the law, and again for violating the gender norm of feminine innocence and purity, which extends to girls in the juvenile justice system (Guevara, Herz et al. 2006: 263). Black feminist sociologists have shown that women of color are placed in *multiple jeopardy*, as they must contend with compounded oppressions (King 1988; Hill-Collins 2000; Wing 1997, 2003; Tong 1998: 216-17). Multiple jeopardy—the compounding of structural sexism and racism—conveys the greater probabilities for females of color of subjection to judgment against normative femininity and Whiteness, including in juvenile justice (Selo 1976). In criminal procedure, *multiplicity* means to charge the same defendant with the same offense multiple times, in violation of her rights against being punished several times for a single offense³³ (Garner 2006: 471). *Multiplicity* in this research implies the perilous terrain that economically marginalized girls of color in conflict with the law must tread due to the interplay of multiple normativities—of race, class, gender, childhood and punishment—against which they can be judged.

In this chapter I map the expansive and enriching methodological journey that has produced the insights expounded in the empirical chapters. The overarching theme is

³³ This epistemological development exemplifies the importance of sociological interventions into law, whereby feminist criminologists put a legal concept into sociological perspective to the benefit of decades of research and as an invitation to cross disciplinary borders.

deconstructive methodologies. I discuss discourse, genealogy, social constructionism and CDA, tapering into CLDA as the most precise methodology for systematizing the extraction of legal-archival data and the most compatible for a theoretical orientation of *criminalized multiplicity*.

Davis and Dent (2001) argue that engraved guidelines for what are broadly termed intersectional studies are unnecessary; rather, the aim is to “[stimulate] our creativity in looking for new and often unorthodox ways of doing feminist analysis”³⁴ (quoted in Potter 2013: 309). An approach of *theorizing multiplicities* structures my enquiry into processes of marginalization, which I argue blur the distinction between protective and punitive boundaries in the criminal context of child prostitution. I integrate the various dimensions of theorizing multiplicities for the issue and subjects of child prostitution with their counterparts in sociology of law and critical jurisprudence throughout the discussion in order to forge a more comprehensive framework for analyzing this complex problem so strongly connected to law.

2.1.1 Discourse, Genealogy and Social Construction

Discourse is notoriously difficult to define,³⁵ but remains a useful concept for social research (Fairclough 1992: 3; Scott and Marshall 2009: 181-82), particularly when defined to include “all forms of talk and text” (Gill 1996). The definition of discourse may vary depending on the type of discourse analysis employed, but analyses typically share the common Foucauldian denominator that discourse conjoins power and knowledge, and that

³⁴ Carbin and Edenheim (2013) caution against vague or overbroad contours, and Alexander-Floyd (2012) argues for maintaining the centrality of Black feminism to intersectional research. My hope is that the specific topic, dimensions, and the Black, postcolonial and transnational feminist orientation of this research adequately address these critiques.

³⁵ “Foucauldian methodology” in particular is critiqued for being difficult to implement and replicate (Dreyfus and Rabinow 1983, in Allsopp 2009), but I have found “Foucauldian” concepts such as *genealogy*, in a more generic sense, to be useful for a succinct, pointed and instrumental mapping of predecessors and progeny of child prostitution law, as well as examining what social, historical, political and economic forces prompted their coming into being.

knowledge—of a particular field, subject area, institution, discipline—is constructed through strategic deployment of various “discursive elements” and their interaction with broader contexts (Foucault 1978: 100-102; Fairclough 1992: 5; Wodak and Meyer 2009).

Discourse analyses highlight knowledge as socially constructed and *constructive*. Discourse is the textual materialization of social meanings, the realization of social structures of thought/knowledge and power documented in texts (Halliday 1973; 1985; Fowler, et al. 1979, in Figueiredo 1998). However, discourses both reflect and produce “knowledge” in specific historical contexts, and thus “texts” are the materialization of discourse, but also a means of knowledge production (Hall 1997: 44). “Discourses do not just reflect or represent social entities and relations, they construct or ‘constitute’ them,” so that understanding the “social effects of discourse” is the aim of discourse analysis—how “different discourses construct key entities in different ways, and position people...in different ways as social subjects” (Fairclough 1992: 3-4). Discourse analyses observe social-discursive processes, and are used to understand knowledge as “situated” in social and institutional contexts, shaped by various speakers who occupy particular positions of power, the degree and efficacy of which varies (Fairclough 2010; Wodak 2009).

Genealogy is a methodology for documenting socio-historical development of a concept and related discourse, often employed alongside various forms of discourse analysis, including in multi-conscious feminist research. Though genealogy derives from Foucauldian (and Nietzschean) theory, as a means of tracing the history of a discourse, it is often and fruitfully used in a more generic sense to connote any systematic endeavor to reconstruct (trace back and track) specific histories regarding a specific practice or production of “knowledge,” often focusing on a concept, key word or phrase. The common aim of studies that use genealogy to describe their approach to social history is to trace the conceptualization of a commonly used term or idea that is often taken for granted or

naturalized, and thus has a kind of covert power, in order to deconstruct the concept as part and parcel of social transformations (Fraser and Gordon 1994; Ali 2003a; Sye 2008; Carbin and Edenheim 2013; Casas-Cortés 2015). Though the objective is not necessarily to produce a linear (chronological or reverse-chronological) reconstruction, genealogies often attempt to return to the “first” known or relevant utterance of the word, phrase or idea, and recount its development in more or less linear sequence, to demonstrate patterns over time. If social constructionism, discussed below, “is the assertion that how individuals organize and view the world is specific to the historical time period and culture within which the individual is living...that knowledge varies by culture and historical period, [as] a social product of [these],” then genealogy enhances social constructionist efforts by helping to trace that historicity and develop the socio-historical context as it relates to the discursive construction of an object (or subject). Chapter 3 contains a genealogical recounting of child prostitution laws in order to locate current laws and explore their significance in historical context. Using law review articles (Carter and Giobbe 1999; Brown 2007; Monasky 2011; Annitto 2011), I piece together important aspects of this history to trace changes or similarities in terminology and to demonstrate the significance of modifications in language, for example the shift from the phrase “white slave traffic” at the start of the twentieth century to race- and gender-neutral “sex trafficking” in US law at the beginning of the twenty-first.

I had originally conceived of this project as a social constructionist one due to my description of it as involving “legal construction.” This is still an accurate description, but my use of the word “construction” prompts the need for clarification. In this research I invoke the term to convey the *discursive construction* of an issue and its subjects. Below, I explain my choice of CLDA as a more precise methodology for this research. However, social constructionism is instructive, enriching, and an underlying foundation for an approach to discourse, particularly for defining *legal discourse* and *legal construction*. Thus, social

constructionism in this study is used not to invoke a schematic methodology, but rather as foundational and necessary to reiterate in the study of “new” concepts such as DMST. Like discourse studies, social constructionism is a theory of knowledge production and a deconstructive method. Both view knowledge as “situated, perspectival and discursive” (Sayer 1997: 466). The basic social constructionist thesis is that social forces produce social meanings (Obasogie 2014: 16). Its deconstructive methodology involves “the process of disaggregating subjective social meanings (i.e., that which is constructed by social forces and human choices) from the objects and bodies that they attach to” (Id.: 25). Contemporary social theorization of race, ethnicity, nationality, class, gender and childhood share a common foundation of social constructionism, which lends them to discursive analysis, to examine the socially constructive effects of discourse (Fairclough 1992; van Dijk 2004; Wodak and Meyer 2009).

Discussing child abuse and child protectionism, Munro (2008) explains social constructionism as a means of making the knowledge and value base of policies explicit so that they can be justified or critiqued as untenable, rather than presuming consensus, which often masks the standardization of White middle class values and marginalization of impoverished minority communities. Moreover, the “feedback loop” conception of naming and classification as discursively constructed and constructive³⁶ (Hacking 1999; Haslanger 2013: 88) is a shared foundation of theories of subject formation ranging from labeling theory to Bourdieu to postcolonial feminism, all of which inform CLDA, discussed below.

2.1.2 Critical Legal Discourse Analysis

Legal discourse is the communicative, textual means by which law, as a cultural institution and regulatory social force, re/produces social meaning. In the criminal context it

³⁶ The feedback loop theory holds that classificatory schemes “have the power to both establish and reinforce groupings, which may eventually come to ‘fit’ the classifications,” i.e. to influence the classified to conform to the classifications (Haslanger 2013: 88).

is the discursive locus of legal approval, condemnation and authority of the state to carry out actions that “would otherwise be *prima facie* morally wrongful,” (Lacey 1998, in Carrabine, Cox et al. 2009: 293) such as shackling, confinement and/or execution. Legal discourse is a particularly powerful form of elite discourse that conveys the justificatory and legitimizing powers of law through public, communicative discourse. My theorization of legal discourse derives ultimately from combining a sociologically defined conception of *law* and a CDA-based conception of *discourse*. In accord with sociology of law, the aim is to “offer...a conceptualization of law that differs from and transcends its juridical understanding” (Deflem 2008: 275), and to provide the most compatible conception of law for the Black, postcolonial, transnational feminist and child-centered orientation of *theorizing multiplicities*.

Newman (2012: 30-31) provides a basic sociological definition of law, which views law as a social institution, explaining that law is oriented toward the general aim of societies to

preserve order, avoid chaos and make important social decisions...[t]he legal system provides explicit laws or rules of conduct and mechanisms for enforcing those laws, settling disputes, and changing outdated laws or creating new ones. These activities take place within a larger system of governance that allocates and acknowledges power, authority, and leadership.

Such a major force of social organization, law is also a cultural force through which culture is produced and reproduced, similar to mass media³⁷ (Sarat and Simon 2003; Harris 2003: 518).

Sociologically informed approaches to legal discourse share at least three qualities salient for this research: (1) a social constructionist foundation of knowledge production—that law and legal discourse produce and are constituted by “knowledge”; (2) the objective of illuminating legal-discursive processes of marginalization (involving race, ethnicity, nationality, class, gender and age); and (3) the critique of “legal liberalism.” These qualities

³⁷ The ubiquity of mass media should not be mistaken for being necessarily more constructive of the issue of child prostitution since the authoritative reach of the law and its legitimizing effects can produce an even more potent (elite) discourse that is encoded in terms of race, class, gender and childhood (van Dijk 2008: 55).

strengthen the ability to detect discursive processes of marginalization in legal texts that are facially neutral or egalitarian for the ways in which they are contingent on race, ethnicity, nationality, class, gender and age.

Sociological approaches to law coalesce around deconstructive methodology as a primary means of unpacking and interrogating “the legal text/story...and its structure and logic” (Treviño 1998: 117). Critical jurisprudence can refer to theorization of law informed by sociology and critical social theory, including social constructionist and deconstructive theories³⁸ (Correa 2011: 84; Douzinas and Gearey 2005). Like discursive-constructionist theories, critical jurisprudence also focuses on demonstrating the historical contingency of social reality and hierarchical social relations that re/produce injustice and inequalities through legal means (Obasogie 2014: 186; Douzinas and Gearey 2005). This is a particularly important task because legal constructions of race, class, gender and childhood become actionable through law (Id.: 282). The dynamics that critical jurisprudence seeks to uncover are ones in which “othering” is achieved in and through law, using lenses informed by post-structuralism, critical approaches to rights, critical jurisprudence of race, postcolonial jurisprudence, and/or feminist jurisprudence (Id.). The latter in particular aims to reveal “the gendered nature of law’s power,” particularly through critique of legal liberalism and its pretense of objectivity (Id.: 237). Critical jurisprudence recognizes that often where “critique has to define itself against the tradition...the feminist critic must define herself against both the established tradition, and a critical tradition that is as inhospitable as the mainstream” (Id.).

³⁸ This refers to a range of jurisprudential theories from the earlier Critical Legal Studies (CLS) movement to Critical Race Theory (CRT), Feminist Legal Theory, intersectionality (Crenshaw 1989), co-synthesis (Kwan 1997), multi-dimensionality (Hutchinson 2001), Critical Race Feminism (Wing 1997, 2000, 2003), Critical Child Rights (Grahn-Farley 2003), Critical Class Theory (McCluskey 2008), and efforts to unify jurisprudential critiques of normativity in Outsider Theory (Valdes 2002) and Critical Minority Theory (Grahn-Farley 2003).

To define “legal discourse” from a multiplicitous perspective I integrate insights gleaned from a survey of sociology of law and critical jurisprudence literature, which yielded several important commonalities among streams of research that focus on race, class, gender, childhood and/or their intersections. First, law does not simply reflect racist, classist, sexist, adultist preferences or represent such consensus, but is constructive and constitutive of the very ideas of “race,” “class,” “gender” and “childhood”/“adulthood” (Obasogie 2014; Treviño 1998; Minda 1995; Grahn-Farley 2003). Second, American law re/produces race, class, gender and age normativities by standardizing Whiteness, masculinity, capitalist values and adulthood (Id.). Third, the re/production of inequalities along these lines in and through law are institutional and systemic in character (Id.). Grahn-Farley (2003) additionally points out that critiques of normativity are regarding subjects who each have their own unique individual and collective experiences of discrimination, but which share the common experience of being infantilized or viewed as “immature” for political subjecthood. Obasogie (2014: 201) advocates greater attention to “the robust yet subtle process” of racialization in lawmaking, which is applicable to processes related to class, gender and childhood. Intersectionality can be shifted from a focus on the subjects of and reasons for discrimination toward “the more process-oriented and deeply sociological questions of ‘how’ these particular realities are rendered” (Obasogie 2006: 484). Harris ’ (1990) critique of feminist legal theory has called for an anti-essentialist and multi-conscious feminism, and Kwan (1997: 1278) argues that responses to legal-discursive marginalization require a “theoretical tool to provide an adequate account of the intertextuality of categories.” I now turn to Critical Discourse Analysis (CDA) and its application to legal texts through Critical Legal Discourse Analysis (CLDA) to move toward such a methodology.

CDA provides background for CLDA, refines the definition of *discourse*, and delineates guiding themes of CDA generally, while also providing some specific linguistic

tools. CDA was pioneered by British sociolinguist Norman Fairclough, who adopted the critical linguistics of Halliday (1973), using an approach to discourse based in social theory to emphasize the social and political context of texts and their socially constructive properties (Huckin, Andrus et al. 2012). Pioneered by Fairclough and other founders such as Wodak, van Dijk and van Leeuwen, CDA developed based on greater interest in the social, political and rhetorical aspects of discourse (Id.: 108). CDA and CLDA understand “language as social practice determined by social structures” (Pether 1999: 57, quoting Fairclough 1989). Discourse is a “piece of text” instantiating discursive and social practice and positioning “social subjects” (Fairclough 1992: 4). A *text* is the product of any writing or speech act (“discursive event” or “instance of discourse”), encompassing any “symbolic form,” (Id.: 6) for example the transcript of a legislative debate in a state Senate.

Fairclough and Wodak, founders of CDA, outline its distinctive principles and aims, to: (1) address social problems, (2) analyze power relations as discursive, and (3) analyze discourse as historical social action that constitutes culture and social relations, and performs “ideological work” (Fairclough 1992; Huckin, Andrus et al. 2012). One of the most important contributions of CDA that I carry over to CLDA is that although CDA detracts from linguistic focus, it retains useful tools for a descriptive and critical vocabulary regarding discourse, increasingly attending to “textual silences, omissions, and absences, which have enormously manipulative potential” (Huckin, Andrus et al. 2012: 121). This is crucial for analyzing legal discourse, particularly for its racializing and gendering effects, in the post-civil rights era of facially neutral legal language wherein direct references, and not necessarily even recognizable “code,” are employed in racializing and gendering ways. Moreover, silences and omissions often point to areas of neglect, i.e. matters for which the state is responsible for remedying, but which it fails to do. Absences also indicate the inclusion and exclusion of persons from various discourses.

I initially had my reservations about any type of discourse analysis for this research based on worries of diluting rich multiplicitous analysis of race, class, gender and childhood with overly schematic linguistic analysis, but CDA has specifically responded to critiques that it is “too language centered” (Id.: 121; Blommaert 2005). Without being too linguistically focused, CDA provides tools with which social researchers can more precisely describe, communicate and critique language in texts. Particularly useful for legal texts are rhetorical concepts of CDA: textual silences, insinuation, suggestion, connotation, foregrounding/back-grounding, etc., and the sort of work that these do, such as manipulate or rationalize (Huckin, Andrus et al. 2012: 113, 121).

As exemplified by the development of CLDA, delineated below, CDA is particularly apt for examining public and institutional, including elite-institutional discourse regarding race, class, gender and sexuality, as well as for archival research such as that involving legal texts (Id.: 110-113, 120, 123). As a public discourse, legal discourse is communicative and imbued with explanatory power regarding social life, and has substantial justificatory and legitimizing powers (Reeves 1983; Huckin, Andrus et al. 2012; Fairclough 2011; Gill 1996). The concentration of power abuses in institutional settings means that CDA “routinely engages in institutional analysis,” especially of “powerful institutions such as...the law,” which it considers as producing the type of public discourse that is ideal for CDA (Huckin, Andrus et al. 2012: 123). As a critical investigation of social inequalities, CDA is concerned with language in which power, hegemony,³⁹ values, ideology,⁴⁰ social justice, political interests, authority, control and discrimination are “expressed, constituted and legitimized” (Id.: 108, 123).

³⁹ Along with intertextuality and ideology, hegemony is a central concept in CDA, particularly important for understanding how “consent” is generated and how power manages to make allies of subordinate groups.

⁴⁰ CDA understands ideology as embedded in texts, and as constituting subjects through interpellation. Discourse does ideological work when it “contributes to sustaining or restructuring power relations” (Fairclough 1992: 91).

CDA is amenable to various discursive genres or conventions, including law, and CLDA is the application of CDA to legal texts from a multi-conscious feminist perspective (Fairclough 1992: 5; Wodak 2007; Pether 1999; Varzari 2001). The newness and openness of CDA in general are viewed as promising and an invitation to its expansion and application in nascent scholarship (Huckin, Andrus et al. 2012; Varzari 2001). The theoretical orientation of CLDA and its accord with *criminalized multiplicity* make it well suited for this research. In summary, CLDA combined with theorizing multiplicities can be understood as a methodology for identifying the re/production of hegemonic notions and inequalities regarding race, class, gender and childhood in facially neutral but culturally contingent legal texts.

CLDA conceives of law as language and culture, and thus demonstrates the cultural contingency of legal discourse through interdisciplinary, multi-conscious feminism. I use the work of feminist legal scholar Penelope Pether (1999) as a guiding example of the application of CDA to legal discourse, upon which I build. Pether developed CLDA through an interrogation of American legal discourse regarding rape and the issue of consent, to identify the limitations of criminal law on sexual victimization, using a sociological definition of “legal discourse” based on Bourdieu’s concepts of *subject formation* and *habitus* in conjunction with Foucault’s conception of law as power.⁴¹ The critical-race feminist scholarship of Angela Harris (1990; 2003), which critiques formal egalitarianism from a race and gender perspective, can be incorporated to augment the *multi-consciousness* of the feminism in CLDA. Pether understands legal discourse as discourse that is often rhetorical

⁴¹ Pether also draws from Derridean deconstructionism and feminist legal theory (Pether 1999: 55). Feminist legal theory calls out the standardization of masculine values in law as patriarchal language that renders women misfits in the law, as “other,” “different,” “deviant,” “exceptional” or “baffling” (Minow 1987; Minda 1995: 140). This includes “legal rhetoric of free choice and autonomy” and the generic “contractarian” discourse of the social contract that is actually gendered (Minda 1995: 140; Pateman 1988). Feminist legal theory requires looking at legal language and scrutinizing its assumptions about gender and sexuality because “legal discourse should be recognized as a site of political struggle over sex differences” (Frug 1992: 1045-46).

and guided by lawmakers' *habitus*, and she specifies mechanics for analyzing it. The principal theme of CLDA is foregrounding the cultural contingency of legal discourse. Its key mechanics are: (1) de-emphasizing technical modifications of statutory language as solutions and focusing efforts on problematic "cultural stories" or "cultural fantasies" undergirding law, (2) a critical view of legal liberalism and the "social contract," (3) a sociological approach to reading legal texts, (4) intertextuality, and (5) synthesis (Pether 1999: 54-55, 59-60, 87; Harris 1990, 2003).

"From the work of Foucault we draw the understanding that law is made in its institutions and discourses; also of relevance is his conception of power as everywhere and capable of different investments" (Pether 1999: 55). Foucault's *archaeology*

focuses on subject formation—how we are made in culture, our bodies 'disciplined' and 'punished' by discourse—on 'power as it functions within institutions and to create knowledges and truths...the constitution of the subject...the way the body is formed, shaped and branded in disciplinary practices'⁴² (Id.: 60).

The discourse of focus in CLDA and my own research is *criminal* legal discourse—a particularly powerful form of discourse that is explicit in its purpose to discipline and punish. Pether also draws from Bourdieu's theory of *subject formation*, "how we become who we are," and *habitus*, "the embodied experiences that produce both our perception of the world and the world that is fashioned in the image of what the habitus identifies as normal," or how our personal experiences and norms shape our perception of the world (Id.: 59, 55).

Whereas the focus of legalistic solutions to sex crimes is on technical modifications of statutory language, Pether understands this as an exercise in futility. Instead, the focus should be on "cultural stories" that circulate in popular and legal discourse, which yield problematic interpretations and applications of the statutes (Id.: 53-54). Conflicts, inconsistencies and

⁴² Various types of CDA are based on Foucauldian concepts. Discourse analysis involves examining discourse, narratives, texts and language from the perspective that they are imbued with ideology (of a particular institution, such as law).

contradictions (embodied by bad subjects) are often resolved in favor of commonplace, dominant understandings even when the language of legal-authoritative texts such as jury instructions attempt to counter them. Quotidian, hegemonic understandings of gender, sexuality and moral culpability “may not be subordinate even in the discursively authoritative space of the courtroom: they may be naturalized there” (Id.). My approach goes further because it is less concerned with evaluating whether statutes are applied or interpreted properly, and centrally concerned with the constructive effects and work of re/producing inequalities that legal discourse does, including that which is codified in statutes.

Foregrounding the cultural contingency of legal discourse involves examining how legal culture constitutes identities, including ways in which it imputes to subaltern identities the responsibilities of citizenship while, simultaneously, denying their capacity for it (Harris 2003: 522). Based on Spivak (1988) and hooks (2000), Harris ’ (2003: 524-25) approach to legal discourse seeks to expose and critique techniques of othering that construct “bad subjects.” CLDA views legal texts as sites of political struggle, and is critical of legal liberalism (legal-formal egalitarianism) because despite the formal equality promised by liberal legal systems, lawmakers often espouse the same problematic views of feminine (and subaltern) subjects purveyed in the larger society (Pether 1999: 87). Legal liberalism often conceals the law’s contingency on gender (and race/ethnicity, class and childhood) as well as the habitus of lawmakers via discourse that is declaratively egalitarian regarding citizenship and the class and socio-economic position of men (Id.), i.e. through the discourse of social contract (Pateman 1988; Mills 1997; Pateman and Mills 2007). CLDA critiques liberalist reliance on the binary thinking of modern Western thought, similarly critiqued in Derridean, feminist, postcolonial and critical-jurisprudential works as attempts to efface contradictions between, for example, *public* versus *private* or free will versus determinism, and thereby stabilize their meanings (Kennedy 1979 and Oetken 1991, in Obasogie 2014: 185; Moallem

2005: 160). The law dichotomizes phenomena through such cognitive polarizations. In these ways CLDA renders suspect the hegemonic liberal notion of social contract—“that set of legal concepts meant to safeguard from political interference an individual’s personal freedom to engage in contractual agreements in order to promote his or her self-interest” (Treviño 1998: 97).

Specific themes and techniques in legal discourse that mystify the law’s cultural contingency and distract from the social processes of marginalization at work include the individualization of social problems, pathologization, criminalization, medicalization and privatization, (Brockman and Chunn 1993; Fudge and Cossman 2002; Martin 2002). Connecting critical-race and postcolonial theory, Farley (1997: 517-529) explains how legal discourse constructs subaltern identities through racial appeals. “Becoming the subaltern,” through legal discourse is achieved through pathologization and the general “thematization of our urban bantustans as areas of anti-civilization,” including association of communities of color and “the black inner-city” as “Neocolony” with “the spectacle of violence, narcotics, illiteracy, illegitimacy, and disease” (Id.: 517-518). This justifies the deployment of law-and-order responses to social problems, connoting that “savagery [is] kept at bay only by spiraling investment in the prison-industrial complex” (Id.: 519). Critical analysis of legal discourse requires scrutinizing racialized appeals embedded in these imageries, associations and themes of law-and-order, punishment and control through incarceration. Lazar (2005) also alerts the analyst to the ways in which feminist discourse is often appropriated for anti-feminist purposes, such as when the language of “choice” and women’s empowerment in campaigns for the legal right to abortion are deployed to promote women’s purchase of guns and inscription into gun culture. In general, analyses should scrutinize political fictions offered in lieu of empirical evidence for purposes of persuasion as well as the habitus of the speaker (lawmaker) circulating them (Pether 1999: 55).

The concept of *intertextuality* is based largely on the works of Bakhtin (1981, 1986) and Kristeva (1986), that “texts are constructed through other texts” (Fairclough 1992: 9, 84-85, and Chapter 4). Intertextuality recognizes the ways in which a single text may draw from several, even potentially contradictory, discourses and assumptions thereof to construct its objects, such that texts should be understood “in relation to webs of other text and to the social context” (Lehtonen 2007: 6-6; Lazar 2005: 14; Fairclough 1992). Intertextuality is interested in the effect of old texts on new ones, how the rhetorical force of texts changes in new contexts, and the ways in which texts can reconfigure contexts, including their *recontextualization* over the course of time (Huckin, Andrus et al. 2012: 120-21). The aim of an intertextual reading is to make and reveal connections between “discursive, social and cultural change,” which are often hidden (Fairclough 1992: 9). Legal texts involving a particular crime such as sex trafficking are quintessentially intertextual since relevant legislative debates, statutes, and cases are interrelated and reference one another.

Although gathering the corpus of legal texts requires conventional legal research, to transcend the “legally-sanctioned meaning” of texts requires the application of (preferably) sociological theory that synthesizes multiple levels of consciousness to reflect the multi-dimensionality of the issue and subjects being constructed (Goodrich 1986 and Matsuda 1989, in Pether 1999: 55, 85). In accord with CLDA techniques of rendering visible, foregrounding, and subjecting to critique the discursive processes of marginalization in legal texts related to child sex trafficking, my empirical analysis focuses on how problematic cultural assumptions and narratives in legal discourse lay the foundation for the criminalization or penalization of commercially-sexually exploited minors, specifically minors in prostitution. I read texts through the sociological lens of theorizing multiplicities for an integrative view of how these construct the issue and its subjects in ways that place minors in multiple jeopardy of being

criminalized, or subject them to *criminalized multiplicity*. I turn to theorizing multiplicities to break down and operationalize each of the concepts and dimensions I am working with.

2.1.3 Theorizing Multiplicities

The aim of theorizing multiplicities is to help complicate and nuance the key binaries or dualisms structuring the legal discourse of child trafficking—adult/child, victim/offender and consent/non-consent—and to gain insight into their construction, reproduction and operation. This helps to understand what is being re/produced, and how. It also incorporates multiple dimensions that are mutually constitutive or mutually shaping into a single framework, which achieves integration and synthesis. Each of the dimensions of race/ethnicity, class, gender and childhood outlined has a contemporary sociological definition and explanation that understands each as socially constructed categories of stratification and social organization, a process of reproduction or marginalization associated with it, an institutional dimension and relationship to justice, justice systems and crime control. Law regulates and continually re/constructs each category of identity. They each also play a key role in the socialization of American children, and in turn, re/constructions of American childhood shape their contours and substance. I contribute to intersectional or multiplicity approaches to race, class and gender by incorporating childhood as an important and salient dimension of inequality.

Contemporary sociology understands *race* as a socio-historical, legal and political construct that remains tenacious and powerful for shaping social order (Ali 2003a, 2003b; Omi and Winant 2015: 3, 12-13; Obasogie 2014: 16-17). Its social meaning derives politically and transforms through political struggle (Id.). Traditional definitions constructed race as a concept and category of persons labeled and treated similarly based on biological and inborn traits perceived as common among its members, usually including phenotypical qualities—color of hair and skin, hair texture and other physiological characteristics such as

body shape and build—while also ascribing “sexual characteristics” (Ali 2003a; Newman 2012: 360-65). As social categorization, race is based on prevailing cultural definitions that “shape social rankings and determine access to important resources” (Newman 2012: 361). It has been variably understood through the lenses of ethnicity, class and nation, which respectively emphasize culture, economic class and modern projects of “nation building” as primary constructors of race (Omi and Winant 2015). Additionally, race has played a key role in the socialization of all American children (Handel, Cahill et al. 2007: 267-283; Corsaro 2015: 77-82).

Racialization is the social, political and ideological process whereby a group is categorized as a “race” (Ali 2003; 2003b). Racialization ascribes, extends and continually reconstructs race in new contexts and across time, conveying the tenacity of notions of or pertaining to race through social and discursive processes (Ali 2003a: 2), which social institutions such as the law re/produce (Haney-Lopez 2010). *Institutionalized racism* is “[racial] injustice built into the system” through “routine workings” of legal and customary practices, including through politics, legislation and policing, which systematically reproduce racial inequalities, regardless of individual intentionality (Jones 1986, in Newman 2012: 389; Omi and Winant 1986: 14). The criminal and juvenile justice systems and criminal law, generally, are key sites in which race is re/produced and ethnicity and nationality are racialized (Bush 2010; Haney-Lopez 2010). The process of racialization, practice of institutional racism, and their causes and consequences can be examined using what can be understood as deconstructive methodologies (e.g. Ali 2003a; 2003b).

Class is “an economic category” of stratification “reproduced through cultural practices” (Bourdieu 1987, 1997, in Tonkiss 2006: 135, 139). Class stratification and social class are important determinants of social inequality involving issues of commodification, exploitation and domination (Newman 2012: 360-61; Id.: 131), though culture mediates class

position and notions of class belonging (Burawoy 1979). As discussed above, globalization theory rooted in economic sociology helps locate class in globalizing economic structures and processes guided by neoliberal tenets. In the US national context, there is relative sociological consensus that the American population can be divided into six social classes—upper class (or capitalist class), upper-middle class, middle class, working class, working poor, and the underclass⁴³ (Handel, Cahill et al. 2007: 247-263). Each of these creates different conditions and experiences of childhood and selfhood across the life course, and “develops a more or less varied class culture, “each a distinctive version of the general American culture,” through the transmittal and regeneration of values and practices shaped by and adaptive to class conditions such as competitiveness, entitlement, cooperativeness and different extremities of individualism (Id.; Corsaro 2015: 306-314). The criteria for class membership can be inconsistent, and there is some social mobility—upward mobility, though arguably greater downward mobility—between these strata, “but generally classes reproduce themselves” (Farkas 1996, in Id.: 255).

Class interrelates and interacts with race, ethnicity, nationality, gender and childhood. Tonkiss (2006: 158-59) explains, “inequality is still reproduced economically, and a focus on divisions other than class in fact can show up more severe economic disparities...[and] can direct attention to other forms of economic power and injustice.” For at least the last two decades, approximately 40% of American children have been “low-income,” meaning that approximately 20% have lived in poverty, with another 20% “near-poor” (household incomes between \$12,000-22,000/year) (Handel, Cahill et al. 2007: 259; National Center for Children in Poverty 2016). A multidimensional focus on children reveals the greater economic inequalities that they bear in the US and globally (Javidan 2012). US child poverty has been

⁴³ In sociology of childhood literature, researchers who do not subscribe to the notion of an underclass instead focus on child poverty, but their research is nonetheless regarding those whom others would include in the underclass (Handel, Cahill et al. 2007: 259).

“growing greater in both magnitude and intensity, and those trends are most pronounced for young children of color” (Cicchino 1996: 24, 29). US Census data shows the disproportionate number of children, particularly Black children, who are poor compared to adults (Javidan 2012; Cicchino 1996). Poverty and class are feminized and racialized globally and in the US (Ali 2003b; Tonkiss 2006, 2008; Mies 1998). Race and ethnicity in the US are historically intertwined with class (Takaki 1993). Class polarization is increasingly racially polarized, particularly since the Great Recession (Harper 2013: 33). The socio-economic mobility of girls suffers most with such developments (Cicchino 1996: 24, 29). The works of Alexander (2012) and Wacquant (2009) demonstrate that criminal laws and justice systems disparately impact and ensnare the working class, working poor and underclass, including low-income minors in the juvenile justice and child welfare systems Birkhead (2012), due to institutional and structural classism. Townsend’s (1993; 2002; 2004) conceptualization of *relative deprivation* informs my understanding of class and child poverty as well, for its emphasis on children’s lived conditions and immediate circumstances, rather than solely their parental household income and/or assets. Townsend’s work provides nuanced understanding of social exclusion—measured relative to the material conditions of others within a particular societal and economic context (e.g. advanced capitalism)—rather than based on absolute measures of poverty.

Gender is also a key component of the ordering of social life. Gender is a social construct that defines and attributes social roles of masculinity and femininity, particularly along lines of biological sex and reproductive function. Unlike “sex,” which is associated with biological characteristics, “gender” involves physical aesthetics and behavioral characteristics that are socially defined and which vary across culture and time (Lindsey 2010: 4). Though there are and have been multiple forms of gender in human societies, in modern Western societies, normative gender identities have been constructed as binary,

dichotomized as masculine and feminine (Id.; Handel, Cahill et al. 2007: 307). Gender identity is not always consistent with biological sex, but normative gender identity requires that the person's "sex" (biological characteristics) match his or her "gender"—a conformity is known as "cisgender"—and that sexual relationships be "heteronormative" (Franklin 2014). Childhood is a gendered experience marked by the inculcation of gender differences as part of socialization, which children themselves often resist, yet gender is often treated as natural and inevitable (Thorne 1993; Handel, Cahill et al. 2007: 287; Corsaro 2015: 206-208).

Gendered and gendering processes important for analyzing child prostitution include *feminization*, *sexualization*, and *over-sexualization*. Feminization can refer to the greater risks of females to certain conditions such as poverty, the over-concentration of females in certain roles, statuses or type of work, or the ascription of stereotypically "feminine" characteristics such as dependency and subservience (Bianchi 1999; Roos 1997; Grahn-Farley 2002). Sexualization refers to the attribution of sexual qualities to persons, groups or abstract notions, including sexual objectification (Geldens, Lincoln et al. 2011). Over-sexualization is the gendered and racialized ascription of sexual nature and/or proclivity above "normal" or accepted standards (Ali 2003b: 278). Like the feminization and sexualization of children, the over-sexualization of women of color and working class White women ascribes sexual deviance and works to deny their sexual exploitation and victimization (Burman and Stacey 2010; Id.). *Institutional sexism* is female subordination in the routine workings of "economics, law, politics and other social institutions," which are often gendered, for example through the adoption of masculine values in legislation and policing practices (Newman 2012: 437). It is under these conditions that girls' sexualities are negotiated, including in and through law.

Butler (1990) observes that rather than "being" male or female as an essentialized identity, gender is performed, and de Beauvoir argues that prostitution epitomizes performance of the dominant functional role of "Woman," (Tong 1998: 208) such that we

cannot take for granted the gender-re/productive function of prostitution and related laws. Transnational, postcolonial and Black feminisms are concerned with how women are treated as passive, docile and vulnerable victims (Kempadoo and Doezema 1998; Agustin 2007), but also concerned with the commission and denial of their sexual victimization, including their treatment in public space as commercial-sexual targets and exclusion from normative victimhood (Hill-Collins 2000, in Tong 1998: 218; Grahn-Farley 2000; Harper 2013: 35-36). Childhood victimization from both adults and peers—psychological, physical and sexual—is also very often structured by gender, and disproportionately impacts girls Corsaro 2015: 334). Justice and justice systems are of central importance to intersectional feminism, particularly for their disparate impact on women of color (Wing 1997; Davis and Dent 2001; Wing 2003; Moallem 2006; Crenshaw, Ocen et al. 2015). In the prostitution and sex trafficking contexts, we are alerted to the perils and consequences of “carceral feminism”—the reliance of feminist goals on criminalization and law enforcement (Bernstein 2012).

The sociology of childhood establishes *child* as an identity and *children* as a distinct social group, cultural category and unit of analysis similar to race, class and gender (Jenks 1996; Corsaro 1997, 2015; Wyness 2006, in Mayall 2013). “Child” can refer to progeny or “someone who has not yet reached full economic and jural status as an adult in society,” who is transitioning through the age-related phase of childhood (Scott and Marshall 2009: 77). Despite contrary empirical evidence, the subordinate status accorded children as well as child protectionism are typically justified based on presumed incapacities—political, intellectual, economic and sexual (Id.: 78). Sociology of childhood moves away from the focus of early anthropology and developmental psychology of children as “pre-social objects of socialization” or as adult “socialization projects,” toward the view of children as important, agentic and competent social actors (Mayall 2013: 2, 11; Hutchby and Moran-Ellis 1998; Qvortrup 2009; Burman and Stacey 2010: 230). Its basic premise is that childhood is socially

constructed (James and Prout 1997), with emphasis on macro-structural construction through history, gender, politics and economics (Wyness 2013; Qvortrup, Bardy et al. 1994; Mayall 2013: 2). A broad range of global forces and processes shape plural childhoods across societies: globalization and its neoliberal imperatives, the state, free market, national reconstruction, law and rights, risk, and the cultural identity of children (Stephens 1995; Wagg and Pilcher 1996; Corsaro 2015: 289; Kehily 2004: 13).

The figure of the child has also served as “a powerful symbol in the construction of modern Western society,” and the ambiguity of its contours enhances its “symbolic functioning” (Scott and Marshall 2009: 78). However, children are not merely idealized nor the beneficiaries of chivalry as often emphasized in sex work theory (e.g. O'Connell-Davidson 2005; Gozdziaik 2016). Three overarching and competing views of children have tensely undergirded modern Western notions of childhood. The romantic view is the sole view that associates children with innocence, purity and malleability, requiring care and protection (Kehily 2004: 5, Corsaro 2015: 72, Handel, Cahill et al. 2007: 69). The *tabula rossa* view sees children as a “blank slate” to be trained, controlled, educated and guided into mature, responsible citizens (Kehily 2004: 5). Though originally reserved for the “lower classes,” the puritanical view of childhood came to be applied to the majority of children, with its presumption of an evil lurking within all children, who are innately sinful and require having their will broken as part of training and socialization (Handel, Cahill et al. 2007: 68, Kehily 2004: 5). The puritanical view is particularly salient in popular representations of minors in conflict with the law, including those in prostitution. The child rights paradigm, which constructs children as capable rights-bearers in the human rights context, has only recently challenged dominant ideologies regarding children and childhood (Scott and Marshall 2009: 78). Thus Western conceptualization of children cannot be reduced to romanticism, particularly given the exclusion of poor, working class and non-White children

from its remit, and is better understood as an assemblage comprising of discordant and contradictory co-articulations unevenly applied to different groups of children. At the same time the category “children” has coherence as a distinct category through socially and legally constructed structural disadvantage in the generational order, which should not simply be subsumed under other sociological categories of race, class and gender (Alanen 1988, Qvortrup 1993, 2007, in Bühler-Niederberger 2010: 378). Moreover, the subordination of children is socially normalized and legally formalized in ways that the subordination of adults and minorities is not (Grahn-Farley 2002; 2003).

Social processes of re/production associated with children and childhood include childism and infantilization, or adultism and adultification. These processes are strongly associated with the deteriorating conditions of childhood under neoliberal regimes, particularly among the poor and abused (Young-Bruehl 2012: 16; Bousfield and Ragusa 2014). *Childism* is a heuristic, synthesizing term capturing anti-child attitudes or policies of societies that help justify or legitimize the subordination or mistreatment of children (Young-Bruehl 2012: 1-2). *Infantilization* is the ascription of “child-like” qualities to others, including persons, places, cultures, and even ideas, implying their underdevelopment, incapability and/or dependency (Marson and Powell 2014; Nii-Amoo Doodoo 2005: 594). Bianchi (1999) also refers to the “juvenilization” of poverty to denote the dramatic increase in US child poverty after 1970. *Adultism* invokes the normative power of adults over children, discrimination against children, or adult supremacy (Ribeiro and de Fátima Dias 2009: 463-4; Flasher 1978). *Adultification* “is a sociological process...of ‘role corruption’” whereby attributes, responsibilities and capacities normatively associated with adults are extended to children (Bousfield and Ragusa 2014: 172-73). Outcomes of these processes include increasingly waiving minors, particularly Black and Latino youth, into the adult justice

system (Haney-Lopez 2010; Giroux 2003: 118), and the US having the highest rates of child abuse and child incarceration in the world (Young-Bruehl 2012: 2, 16).

Each of these processes interacts with notions of crime, punishment and justice for minors in conflict with the law, including those at the crossroads of being subjected to laws related to prostitution or sex trafficking. *Criminalization* is the process of rendering certain behaviors punishable under criminal law. It is also a process of othering, strongly indicating the out-group status of those whom states perceive to be most threatening at a given time (Ellis 2012: 2). Police arrest and custody, detention and being adjudicated delinquent are considered criminalizing practices. The process of criminalization works against the view of children in normative childhood that presumes their innocence and attends to their protection. Along with prior criminal record and the gravity of current offense(s), pre-adjudication detention is considered among the best predictors of criminalization in models that account for demographics and other extralegal factors (Guevara, Herz et al. 2006: 262).

2.2 Methods

I have defined “legal discourse” as possessing the qualities of being public, communicative, authoritative, elite and institutional, with legitimizing and justificatory powers. This part of the chapter details the specific methods of my strategy of enquiry into the legal-discursive construction of child prostitution. In this section I circumscribe the legal texts that comprise “legal discourse” for purposes of this research and explain their utility and significance as well as how I researched them.

2.2.1 Selection of Laws

The empirical chapters explore the genesis of child prostitution law, how and why they came to be, and analyze their significance. But suffice it for methods that the key conceptual and legal distinction in criminal law determining whether minors in prostitution are to be

treated as non-consenting child victims or as offenders are, respectively, the crime of *DMST* or the crime of *prostitution*.⁴⁴ DMST laws view minors in prostitution as victims of sex offenses committed against them. DMST laws are those passed since federal legislation (TVPA 2000), pertaining to the domestic sex trafficking of minors (including exploitation through prostitution) within US borders. Prostitution laws, by default, typically apply to both adults and minors, including in Utah and Illinois. Therefore, I focused on researching statutes falling under these two headings in the criminal code of each jurisdiction. In the legal research database WestLaw, the statutes link links to the cases adjudicated under them. Legislative debates that led to the passage of these laws are available on the website of the Utah Legislature (in audio format) and the Illinois General Assembly (electronic transcriptions). I center my empirical analysis around this important division in the law—between prostitution and DM/ST—which provides my two key sets of legal texts.

Based on the principle of *intertextuality*, I webbed my research out further, to other crimes—that at least theoretically, if not often in practice—inform whether minors in prostitution are viewed as victims or offenders of sex crimes. These include statutes governing the crimes of rape and child rape (including child sex abuse), statutory rape (including age of consent regulation), and statutes pertaining to the criminal exposure or transmission of HIV, which provide tougher penalties for prostitution while knowingly HIV-positive. These statutes are points on the “continuum of abuse” (and criminality) to which Halter (2008) refers in her research as governing the cases and treatment of minors in prostitution. These heterogeneous texts are interconnected through reference to minors as a class and to sexual crimes committed by or against them. They compose a set of laws

⁴⁴ In my research I have not come across statutes that refer to “child prostitution,” but rather to DMST or “Safe Harbor” statutes. Though these are the immediate places that a practitioner might look to the law, the criminalization of minors for prostitution creates an indeterminacy regarding their status as victim or offender that requires examining child prostitution as embedded in a *continuum* of protective or punitive laws that may or not be applied to them. Thus legal discourse on child prostitution is not limited to the terms or discourse of DMST or Safe Harbor.

aggregating “the associated field” of related statements that structure the legal discourse and form the nexus of laws applicable to minors in prostitution.

Texts that fall on this continuum of laws fulfill both the legal criteria of what constitutes prostitution as a crime (Bourdeau 2010), and the sociological/CLDA criteria of what constitutes legal discourse on prostitution from a feminist perspective. However, limited time and space require that legal texts other than those related directly to DMST and prostitution, i.e. other than ones explicitly categorized in the criminal code as such—child sex abuse, rape and HIV provisions—will be approached mostly as supplementary to my more central analysis of the key crimes of DMST and prostitution. CLDA demonstrates that despite compartmentalization of statutes, lawmakers are aware of the broader matrix of law, and other laws related to sexual victimization evidence the juridico-political mindset and its reliance on similar cultural narratives (Pether 1999).

2.2.2 Textual Research and Process

Constructing the research “corpus”—the entire body of discursive materials (texts)—for this research required archival research of legal texts (Bauer and Aarts 2000). The broad body of texts that I researched included legislative debates, statutes, cases, law review articles and other secondary sources related to federal law and the two states, Utah and Illinois. These are listed in order of reference in the text in Appendix A. Legal research involves finding, assembling and “effective marshaling of authorities...that bear on a question of law” (Garner 2006: 420). It is a technical skill learned during the initial year of instruction in American law schools. I received my Juris Doctor degree in 2003 from an ABA (American Bar Association) accredited law school in California and practiced law for five years in the state prior to embarking on this research. However, I updated and refined my legal research skills in WestLaw—one of two primary legal research databases—in 2009 through the Methodology Institute at London School of Economics, which I used to search for statutes

and cases related to child prostitution in US federal and state law. I also consulted reference sources to help explain the research process and concepts that became second nature to me as a practitioner.⁴⁵

Legal research requires selecting appropriate legal “authorities” (statutes and cases) using generative search terms that yield controlling (“binding”) authorities for the type of case at hand. Kunz, Schmedemann et al. (2012) outline a popular and straightforward method of legal research. First, identify the legal problem and legal issues that need to be researched, then identify search terms that will yield the most “on-point” results. Determine the jurisdiction and time frame of the authorities needed. Review relevant secondary authority and then primary authority, explained below. This is a relatively straightforward process.

2.2.3 The Problem and Search Terms

For researching Utah and Illinois state laws, I simply began by doing a “natural language” search in WestLaw for law review articles (explained below) related to “child prostitution.” A natural language search simply means a search that does not use terms and connectors that narrow the search. Thus a natural language search is a broad search, as one might do in the search field in Google, online. I applied no time limit to the search parameters in order to see the full history of available documents, from the earliest to most recent. Once the search yielded several articles, I vetted them for relevance and categorized them by relevance to either of the two states (Utah or Illinois). I then further classified them as relating to laws of the state that fall on the child-protective end of the spectrum (protective provisions for child victims, criminalization of DMST, victim services, other child protective laws), or those that fall on the punitive end of the spectrum, i.e. that can be used to

⁴⁵ These included Cohen, Berring and Olson’s *How to Find the Law* (1989); Jacobstein and Mersky’s *Fundamentals of Legal Research* (1990); Cohen and Olson’s *Legal Research in a Nutshell* (2013); Garner’s *Black’s Law Dictionary* (2006); and Kunz, Schmedemann et al. (2012)’s *The Process of Legal Research: Authorities and Options*.

criminalize minors in prostitution (prostitution, solicitation, disorderly conduct, criminal exposure of HIV laws).

I used both primary and secondary legal authorities to seek definitive texts regarding child sex trafficking. Primary authorities are binding and must be followed, such as statutes and cases, which directly issue from a law-making body (Garner 2006: 56). Secondary authorities are non-binding, and describe, explain and help understand the law, such as treatises, annotations, and law review articles. Secondary sources help to familiarize researchers with an area of law as well as identify the primary sources relevant to it. The object of my research is criminal law, which “defines, classifies, and sets forth punishment for one or more specific crimes” (Id.: 675). Through the legislative and adjudicative processes, lawmakers (legislators and judges) create authoritative legal texts that construct the issue of child sex trafficking and determine the fate of its subjects. By “enacting positive law in written form,” legislation brings something into or takes it out of existence, and attempts to control it (Id.: 421). Terminology and concepts in criminal statutes such as sexual exploitation, power, control, injury and imminent danger directly impact and are reflected in the interpretations, reports and treatment of minors in prostitution by police, who act as the front-line contact persons between the state and potential victims of trafficking (Halter 2008: 133).

Cases are primary, mandatory authorities in a jurisdiction to which judges must defer in rendering decisions, but which they can also modify. Since cases are decided in courts—the apparatus of the state in which culture is produced—cases produce culture and identity (Goldberg and Solomos 2002). Judicial opinions represent texts which re/produce these through elite-institutional discourse. Courts and legislatures construct specific narratives and legal identities—“the social constructions that courts apply to recognize the role of the litigants,” such as “victim” (Bumiller 1988: 60-61). After identifying key statutes, I reviewed

cases adjudicated under them for examples of how the particular law is interpreted, practiced and/or modified. Cases can help track cultural shifts, as they document decisions and judicial rationale, and determine future decisions by establishing precedent (Garner 2006: 672).

WestLaw utilizes a color-coding system that tags “good cases” as green, meaning that the case is still binding, i.e. has not been overturned (red) or partly overturned (yellow). I chose only “green” cases, and reviewed “yellow” cases for any relevant, binding portions.

Including cases as part of the corpus of texts to examine public discourse on a topic that involves juvenile justice has its difficulties. Juvenile cases are not usually publicly available since they are heard in courts that are closed to the public, and their cases are sealed to maintain minors’ anonymity, under the juvenile justice theory that youthful indiscretions should not carry over to prejudice one’s adult life (Etten and Petrone 1994). However, cases of higher courts, which also have greater precedential value, are available with juveniles’ names abbreviated for anonymity. The difficulty is that unless the case of a minor adjudicated for prostitution has reached a higher court in Utah or Illinois, it will not be publicly available or accessible, and therefore cannot be considered part of “public discourse” on the issue, which is the object of this research. Over several years of searching and monitoring, this never materialized in either of these states. However, I identified juvenile cases originating from other jurisdictions that have national relevance or application. On the other hand, DMST cases are publicly available and often highly publicized, including in Utah and Illinois, since they almost always involve the prosecution of adult pimps or traffickers. DMST cases often refer to and discuss juveniles involved, usually as victims.

Legislative debates involve formal rhetorical exchanges among legislators on the merits of a proposed bill before a chamber (Garner 2006: 293). They form part of legislative history, which includes the “background and events leading to the enactment of a statute” (Id.: 422). These debates determine the provisions that make up statutes, and reveal which

arguments and the positions that they represent prevailed over others. Some influential legal scholars and practitioners believe that legislative history and debates should be buried and forgotten once legislation is passed because it can render the law contradictory and undermine legal authority (e.g. Kozinski 1998). However, legislative history and debates are useful for assessing the socially constructive effects of legal discourse. Spector and Kitsuse (1977, in Best 2002) specifically mention that tracing legislative history is an ideal method of analyzing the social construction of a “social problem” such as child prostitution, i.e. demonstrating how it comes to be defined and known as such. Tracing legislative history, including debates, also serves the CDA objective of tracking changes in language for their cultural significance (Fairclough 1992). This is useful for genealogical approaches, which are concerned “with developing the buried history of thought...with the specific objective of revealing a link between knowledge and power” (Cuff 1998: 268). As demonstrated in prior research on sex trafficking and prostitution laws (Javidan 2003; Chapkis 2003; Kantola and Squires 2004; Babb 2012), examining legislative debates provides insight into the thoughts, arguments and knowledge base informing legislation. Government press releases and journalistic media can also serve as useful supplementary sources.

2.2.4 Selection of States

The above outlines the key texts for the production of legal discourse regarding child prostitution. I now turn to selection of states through which to examine this process as it unfolds in terms of the paradigmatic framework of punishment and child protection. I had originally approached the selection of states to exemplify and interrogate the punitive/protective binary constructed in influential literature of anti-trafficking NGOs focused on modifications of statutory language, and who dominate topical research and often shape official discourse and legislation on child prostitution (Gozdziak and Collett 2005: 99,

118).⁴⁶ In these reports, the legislative performance of Utah was consistently ranking at the lowest end of the spectrum, while Illinois was at its highest (e.g. Snow 2008; Shared Hope International 2012; Polaris Project 2010). The reports measure the level of protection for minors in prostitution and degree of punishment meted out to pimps and traffickers for each state in the US. They organize this information year by year, and based on specific criteria, including eliminating demand for child prostitution, prosecuting traffickers, identifying victims and providing protection and rehabilitation for victims (Smith 2011, in Babb 2012: 296). States that fulfill these policy requirements receive the highest rankings from these organizations (Id.). This is still very useful for understanding the discursive construction of child prostitution, especially the punitive/protective bifurcation that informs so much of the rapidly proliferating legislation and statutory modifications on the issue. Juxtaposing two states polarized in this literature has provided an opportunity to more deeply examine the social, historical and legal dynamics at work in each. It has helped work out the mechanisms that the less protective state deploys which promote child criminalization, or the more protective state adopts that discourage or diminish it. I also wanted to look for what may allow child criminalization to persist in both, regardless of their reputed protectionism or retributivism.

Over the course of this research, the ranking of the two states has changed to where they are now about even. In these reports Utah, at the lowest end of the scale, has caught up to Illinois, which has consistently been ranked at the highest end (Shared Hope International

⁴⁶ I had also conceived of selecting the two states as involving “comparative” analysis, but that implies the use of a specific methodology of cross-national comparison, for example, between the criminal justice systems of two countries. Since mine is an *intra*-national study involving primarily two jurisdictions (states) unified within the same federal system as exemplifying opposite sides of the same pole, it involves at most “comparative observations about the similarities and differences [I] notice within Anglo-American culture” (Nelken 2005: 246, in Banakar and Travers 2005). This contrasts with comparative research, which may be interested in, for example, globalization and “legal unification” of different types of legal systems (Id.). However, even comparing and contrasting two entities within the same system is helped by “address[ing] what lies behind [the scholar’s] descriptions and interpretations” (Nelken 2005: 246-47, in Id.). This is what I set out to do in this section.

2016a; Shared Hope International 2016b). However, this raises the issue of whether and to what extent states are actually progressing toward greater protectionism of minors in prostitution (and what this may actually mean). Notwithstanding reports of influential American anti-trafficking NGOs (e.g. Shared Hope International 2012), Schwartz (2008) finds a revival of retributivism. Schwartz demonstrates that even after eight years of model, pioneering legislation in New York, nearly half of all minors in prostitution are prosecuted as offenders. This raises concerns regarding the extent and severity of retributivist criminalization in states such as Utah, whose legislative performance ranks lowly in NGO reports, at the opposite end of the scale to ostensibly leading states such as New York, Illinois and Washington.

Using Utah and Illinois to exemplify the punitive and protective modes of labeling and processing minors in prostitution in accord with NGOs' assessments of these states has the additional benefit of exploring and challenging the punitive/protective dualism being constructed in the NGO literature and its tendency toward primarily legalistic thinking on child prostitution, which can foster complacency on the issue when it appears that satisfactory legal solutions are in place. This proves necessary because, as discussed in the empirical chapters, Utah still serves as a viable example for child penalization despite modifying its statutory language to the satisfaction of leading NGOs. The rationale behind such moves and their significance within the broader social and historical context of the state and nation (or globe), and material conditions are not considered in such reports, but remain important.

The selection of Utah and Illinois as jurisdictions of focus that represent different orientations relevant to the construction of child sex trafficking can also be defended on historical, cultural and political grounds. The capital cities of each state, Salt Lake City (Utah) and Chicago (Illinois), have each gained national and federal-governmental attention

or been identified by NGOs as child sex trafficking “hot spots,” signifying the overconcentration of child prostitution in these cities (Shared Hope International 2008; Babb 2012; Gozdziaik and Collett 2005: 111-12). However, the historical, cultural and political conditions of each state within which laws are made differ significantly.

Utah is a socially and politically conservative state, and the most religiously homogenous in the US, with approximately 62% of residents belonging to the Church of Jesus Christ of Latter-Day Saints (“LDS,” or Mormon Church) (Canham 2012). It is also a racially homogenous state, with 91.8% White residents (compared to 77% average in the US), and a particularly low percentage of Black residents compared to other minorities in the state, and especially compared to the US average (1.3% Black residents in Utah, compared to 13.1% average across the US) (United States Census Bureau--Utah 2010b). Tyler’s (2005) sociological study of race, class and gender in Utah found that problems facing marginalized communities in the US are prevalent but magnified in Utah, particularly for African American women. She reports the strong presence of a White-masculinist culture and institutionalization of a particularly conservative Christian religion that dominates most aspects of social, economic and professional life. The frequency and fatal outcomes of domestic violence in Utah are alarming, with a birthrate over 40% higher than the national average, and Utah women have “the largest percentage of anti-depressant drug usage” in the US (Id.: 178). African American women in Utah enjoy an unusual level of professional and economic success but only relative to their White women counterparts, and apparently at the cost of greater social marginalization than reported in other parts of the country (Id.: 19, 21, 174-76). Many African Americans in Utah express a need for taking refuge from everyday racism through spiritual means (Haight 2002: 78).

Utah also has “some of the poorest people in the country,” who are numerically White, but disproportionately Black (Tyler 2005: 151; Utah Intergenerational Welfare Reform

Commission 2014). Utah has played a significant, if understated, role in the construction of modern childhood in the US and internationally. Its state political apparatus is well connected to its dominant religious institution, the Mormon Church, which is influential in the sphere of national politics and international governance on issues of child rights, “family values,” gender and sexuality from an American neoconservative perspective. Utah is a central site of “Christian Right” political activity promoting the globalization of its values through its main institute of higher education, Brigham Young University (BYU) (Buss and Herman 2003). The strong presence of a particular church or sect of Christianity may make Utah appear an outlier state for purposes of this research, but it may have the advantage of highlighting the role of religious politics in the discursive construction of child prostitution along lines of race, class, gender and childhood. In the sex trafficking context, the Christian Right is one of the key players in constructing the issue in the US and its international policy on the matter (Berman 2006). Since Utah is a center for Christian Right political and intellectual activism influencing relevant law, it seems an ideal candidate for examining these aspects of influence over the legal-discursive construction of child prostitution. Social, ideological and political conditions of Utah life and lawmaking such as religiosity and social conservatism remain despite shifting ranks on NGO scales, and presumably make a difference for their hostility or amenability to, for example, discourses of civil rights, human rights and child rights.

In stark contrast to Utah, Illinois is much more ethnically and religiously diverse, with a higher percentage of racial and ethnic minorities across categories than the national average for states (United States Census Bureau--Illinois 2010a). In recent decades, Illinois has been characterized as a “blue state,” meaning that the majority of the state’s voters tend to support Democrat Party candidates, associated with “liberal” politics (Glanton 2012). Illinois has played a direct role in national and international politics, including in the areas of childhood and child prostitution, in many ways antithetical to Utah. Along with New York City, the

roots of US child protectionism are in Chicago, as prominent figures such as sociologist Jane Addams introduced the central tenets of social justice and reform, the foundations of the rehabilitative model of juvenile justice, and established the first settlement house (Murrin, Johnson et al. 2008; Naveh 1992). The Settlement House movement led the campaign against child labor in the US (Novkov 2000), thus playing a key role in defining modern childhood and the relationship of the state to the child. The “applied sociology” of Jane Addams’ settlement work with immigrants established and professionalized the field of social work and influenced development of the post-War sociology of Chicago School symbolic interactionism. Illinois is the birthplace of the US juvenile justice system. The first juvenile justice court was established in 1899 in Cook County, which seats Chicago (American Bar Association (ABA) 2012). Modern sex trafficking law and its historical precursor, the Mann Act, are rooted in Chicago as well, discussed further in Chapter 3. Moreover, the first court specifically designed for handling prostitution cases was also established in Chicago, in 1932 (Jabour 2013). These are historical precursors to Illinois’ current Safe Harbor Act for minors in prostitution, which has received much positive media attention and even some academic accolade (e.g. Lutnick 2016: 84-85) for leadership in taking steps that appear to decriminalize minors in prostitution. It was the first state to comply with the generally more protective federal standards for sex trafficking victims (Fernandez 2013).

At the same time, Chicago is also a bellwether for the effects of racialized class polarization stemming from Recession-era privatization and gentrification (Lipman and Haines 2007). It is home to the University of Chicago, noted for its engineering of aggressive neoliberalism (Hall and Midgley 2004), and the city continues to struggle with corruption and police violence against marginalized communities (Rogers 2015). The capitals of both Utah and Illinois are “hot spot” cities, but the two states are exemplary of what can be deemed the oppositional tendencies of “punitive” and “protective” in Anglo-American punishment theory

as well as “conservative” and “liberal” tendencies that mark the American political system. However, as discussed above, each has a continuum of laws on which minors in prostitution can fall, and neither excludes the possibility of their criminalization. Chapter 3 will elaborate the implications of these findings and their social and legal contexts.

Historical Periodization

Discussions throughout the chapters often draw from and refer to various points in history. The historical range of this research includes the Antebellum Era, Gilded Age, Progressive Era, Interwar Years/World War II/ Post-War Era, and Late Modern or Neoliberal Era. I justify this range and focus on these time periods for several reasons. In my research, the earliest case found regarding child prostitution with national impact occurred during the antebellum period. Several works identify the Gilded Age as key for establishing a major cornerstone regarding modern American childhood, which is the nation-wide elevation of age of consent and the establishment of statutory rape law. I particularly rely on the periodization offered by Odem (1995), which identifies two influential waves of “White purity reform” that occurred during this era, which shifted the blame for child prostitution from adult men toward minor girls. Marten’s (2014) *Children and Youth during the Gilded Age and Progressive Era* also provides a good resource for periodizing American childhood, demarcating the Gilded Age as approximately the decades of 1870-1900, and the Progressive Era from approximately 1900-1920s, but with the Progressive Era really “percolating” beginning in the late 1880s. González (2015) also provides a deeper and more thorough periodization of the Gilded Age, with a focus on class inequalities and poverty. Jabour (2013) specifies the interwar period as that which spanned between the end of the First World War in 1918 and beginning of World War II in 1939, which is under-explored in the prostitution context and deserves far greater attention as an interesting period for developments related to the treatment of women and girls. Bush (2010) outlines the treatment of American children during World War II and the

post-war era, particularly with regard to juvenile delinquency, its racialization and the targeting of African American girls for prostitution and STD quarantine. Harvey (2005) and Brown (2015) both identify the dawn of neoliberalism as congealing around the Reagan-Thatcher era, from the 1970s forward, while economic sociologists locate the beginnings of late capitalist globalization around the same time (Sklair 2002; Tonkiss 2006). Bay-Cheng (2015) identifies a shift in this period regarding cultural perception of girls' sexuality that emphasizes and presumes free choice and personal responsibility, while continuing to subject girls to hegemonic sexual mores.

Legislative debates provide temporally expansive insight into lawmakers' un/changing rationale for passing statutes pertaining to prostitution and sex trafficking, which codify the arguments considered successful for the regulation of child prostitution. While legislative debates and statutes establish the structure of child prostitution law, cases demonstrate particular ways that these are applied to individual minors in prostitution, while also changing or reinforcing this structure. In addition to discussing Utah and Illinois, I review these developments in the broader US context, for example, through federal legal texts as well as cases that originate from particular jurisdictions but become considered national in character and legal applicability.

CHAPTER 3: Provisional Childhood

3.1 The Contingencies of Child Protection

This chapter, on the construction of the child in and through laws related to child sex trafficking, examines the issue first through key contemporary legal texts in the states of Utah and Illinois, showing the ways in which discourse in recent years has shifted and constructed the issue and its subjects differently and similarly in each state. It then connects the contemporary to historical legal texts that have contributed to rendering childhood provisional in legal discourse related to child sex trafficking, laying the foundation for this continuity in the present. Historical texts range from the antebellum period to the present, following the basic periodization outlined in Chapter 2.

I find that while early efforts seemed motivated by child protection against commercial-sexual exploitation, these efforts have consistently been compromised through racialization, classing and gendering children in ways that adultify those who do not conform to normative childhood. The “women and girls” conflation that has been a hallmark of prostitution and sex trafficking law is not merely a problem of infantilizing adult women, under the pretext of expanding the scope of its “protection,” which has been the focus of many feminist theorists, but in many ways a function of adultifying girls, which diminishes or denies their victimization by narrowing the class of victims. Yet, by naming them, the law brought girls under the same moralistic scrutiny of the state, without offering them any unique or heightened protections. This is important to highlight since many feminist analyses of sex trafficking take for granted or at face value that the law provides greater (if not its greatest) protection to girls, and that society idealizes children. This represents a presumption of “chivalry” for girls and children generally that does not bear out in the historical or legal record, and which may foster complacency on the issue of child sex trafficking.

The adult/child binary is one of at least three key binaries or dualisms structuring legal discourse on child trafficking. The legal construction of childhood in general has relied on this oppositional dynamic (Grahn-Farley 2003). Though *adult* and *child* are commonly understood as constructed along lines of age, they have also been constructed as the opposite of “citizens” and “political subjects.” Minors are constructed by infantilizing a class of persons defined by the age of minority as “children,” and conversely, ascribing “maturity” and full citizenship to those of the age of majority, as “adults.” As discussed earlier, the associated social-discursive process constructing identities of “child” and “adult” are, respectively, infantilization⁴⁷ and adultification.⁴⁸ These processes have also historically acted as more diffuse discursive mechanisms of subordinate and superordinate classification. “Subaltern,” “minority,” or “other” groups have been subalternized, minoritized and othered through the essentializing attribution of “infantile” or “childish” qualities, requiring intervention often constructed as benevolent care. However, where normative childhood is marked by infantilization and the need for care and protection, deviant childhood is marked by adultification and punishment. The unfolding of these processes in the contexts of criminal or juvenile justice, child welfare and punishment complicates these dynamics because of the possibility of “adultification” of persons otherwise classified as “children,” and the greater probability of this ascription to children of color, including girls, and especially for girls in the prostitution context.

When one looks up the two main types of law constructing the issue of child prostitution in the states of Utah and Illinois, what is found is a greater difference in the

⁴⁷ I refer to infantilization as the denial of full citizenship based on lacking the capacity for full political subjectivity, which also has ontological implications since it is integral to liberal definitions of “humanness.” It also involves the vertical segregation of such a class of persons as in need of protection, but protection that is conditional and often fails to materialize.

⁴⁸ By adultification I mean the ascription of criminal capacity to minors despite having denied their citizenship capacity on the basis of “immaturity.” This condition marks the status of minors in conflict with the law, against whom adultification is deployed in order to criminalize them. In the child prostitution context, it can be extended to the ascription of sexual, commercial or commercial-sexual capacity to minors in order to achieve their criminalization.

conceptualization of the child within each state rather than between the two states. Each of the state's criminal codes now has domestic minor sex trafficking (DMST) statutes and has retained its prostitution statutes. The concept of DMST emerged on the national level in response to criticisms that federal anti-trafficking law was too internationally focused. Despite the advent of DMST in legal discourse to deal with children, specifically in the domestic context, the more adultifying state-level discourse of prostitution remains available and deployable against minors. The child as conceived in the discourse of DMST differs markedly from the one produced through prostitution discourse. Yet the two are never entirely decoupled from one another. This creates a dynamic in which lawmakers often equivocate regarding child prostitution and minors in prostitution and whether they comprise distinct categories triggering special protections from the state. This renders childhood provisional and child protections conditional in ways that re/produce inequalities and subject minors to a condition of criminalized multiplicity.

3.1.1 Traditionalism and retributivism in Utah

Utah's law titled "Human Trafficking of a Child" (UCA 76-5-308.5) and Illinois' law titled "Involuntary Sexual Servitude of a Minor" (720 ILCS 5/10-9(2)(c)) both conceive of the child or minor in the context of human trafficking as any person under 18 years of age. Illinois, however, more emphatically repeats that "there is no overt force or threat" required for the offense—that the child status of the victim alone is enough to amount to this crime. This is in line with Illinois' reputation for pioneering decriminalizing law for commercially-sexually exploited minors on the state level, and the first to comply with federal child sex trafficking requirements to view all minors as victims. Utah only very recently, in 2016, seems to have more clearly taken the "force" requirement out of this particular law, to where prostitution of a child without overt force is enough to be considered child sex trafficking.

However, neither Utah nor Illinois—despite their respective reputations—have been so certain about the child in prostitution. While it appears that both are moving toward more absolute protections by more clearly defining their beneficiaries as persons under 18, even their recent histories have been marked by prevarication. Currently, Utah’s DMST law reflects that there is no “force” required for the prostitution of a child to be counted as child sex trafficking, which is considered a first-degree felony (UCA 76-10-1313). Yet in its prostitution statute, soliciting or patronizing a prostituted child is considered only a third degree felony (UCA 76-10-1313; UCA 76-10-1303). In the case of soliciting a child it specifies, “...if the solicitation does not amount to human trafficking,” it is only a third degree felony.

The state appears to be drawing a distinction between prostitution and human trafficking where the child is concerned. Yet this undermines its own definition. Utah defines child sex trafficking as “commercial sexual activity with a child, mean[ing] any sexual act with a child, on account of which anything of value is given to or received by any person,” including patronizing or soliciting a child “for sexual exploitation,” which in turn means “all forms of commercial sexual activity with a child, including...prostitution” (UCA 76-5-308.5). If all child prostitution is child sex trafficking, like its DMST statute suggests, then why contradict this with a higher threshold to reach when it comes to solicitation, which involves the same prohibited conduct? These may appear to be technical glitches (or even mistakes). On the linguistic level, they do appear easily modifiable and correctable to create greater accord across Utah’s penal code and achieve fuller child protection. However, if one examines the record, they seem to reflect lawmakers’ equivocation on the issue.

In Utah’s prostitution statute, “child” is defined in the same way as in its DMST law, as a person under 18 (UCA 76-10-1301(1)). Illinois leaves children out of its prostitution law entirely (720 ILCS 5/11-14), and while this may appear to be a child-protective move that

would avoid the pitfall of Utah's code, throughout recent history it has simply meant that the law applies to children and adults alike (Birkhead 2011; Annitto 2011; Javidan 2003). Expanding out to examine other relevant legal texts that provide insight into these laws demonstrates that Illinois also equivocates regarding the child in prostitution in similar ways to Utah, but that the two states at times differ greatly in the discourses they draw from to advance their laws.

Based on the above, it would seem that Utah is "catching up" to the model state of Illinois, and that children are safest from criminalization in Illinois. However, the picture is more complicated, particularly the broader one looks across the nexus of laws that comprise what can be considered "child prostitution law," and the debates over them prior to their passage. When one goes further to examine them in social and historical context, ever more aspects of the issue come to light. Overall, it becomes apparent that child status is provisional. On the one hand child status is bestowed; on the other, it is eroded and contingent, and the child identity is subject to varying means of infantilization, adultification and childism. Whether constructing the child through DMST or prostitution discourse, hegemonic notions of children and childhood remain intact, and are re/produced in new ways and contexts.

Approximately two years preceding Utah's DMST law, a relatively high profile child sex trafficking case was initiated in the state, brought against a relatively young man with a Persian name, Arash Alexander Zarif (2006). I elaborate upon this case in the following chapter, but it is noteworthy here for the way in which the two teenage girl victims were unequivocally referred to in ways that maintained their age, in non-adultifying (and remarkably non-infantilizing) terms. They were referred to as "girls" and "minors" throughout the judge's opinion recounting the facts of the case, and because they were treated as witnesses rather than criminal wrongdoers, the association of childhood with their young age was maintained. This is in contrast to cases in which girls are tried as "delinquents"

before a juvenile court for prostitution, where little, if any, difference is accorded between them and adult women in prostitution. Thus, although their actions could have theoretically amounted to their complicity in the crime of prostitution, its reconceptualization as DMST (and the court's interpretation of Zarif's recordings of the girls as "child pornography") helped recover their child status.

Shortly after Zarif received a lengthy sentence in federal prison, and approximately eight years after Congress passed comprehensive trafficking law, the Trafficking Victims Protection Act 2000 (TVPA), Utah passed its own law that made human trafficking a felony (UCA 76-5-308). As in many states, Utah's prostitution and anti-trafficking laws were compartmentalized in ways that made them seem unconnected despite their intricacies, though Utah recently connected the idea of child prostitution with those of child sex abuse and human trafficking.

However, in 2011 as the state seemed to be making efforts toward adopting its first DMST law, the legislature clarified its law-and-order priorities over that of child welfare in its prostitution law. In that debate Utah state legislators proposed for this bill to amend the state's sexual solicitation statutes in order to render them gender-neutral. Yet at the same time they focused on the removal of prostitutes (including minors) "off the streets," and the protection of police officers to facilitate such arrests (HB 121). The bill's sponsor, Representative Jennifer Seelig (Democrat), made it clear that this was the purpose of the bill, acknowledged that many of those whom the law would impact are "underage girls," and that this would be for their own protection.

Legal analysis of the impact of this law found that it set minors up for arbitrary arrest and enforcement, would do nothing to help them since Utah allocates very little resources for victims, and would simply help police to make prostitution arrests (see Babb 2012: 286-87,

292-93). Based on this alone, it would seem that Utah is at best ambivalent about the status of minors in prostitution, using criminalizing language that gives the veneer of protection to the (primarily) women and girls targeted. Under these circumstances, the child becomes an empty signifier in terms of child protection, and instead, its symbolic function and power are harnessed for passing retributivist laws.

In response to criminalized social problems, law and order discourse and Broken Windows theory have consistently emphasized what are tantamount to cosmetic measures of removal and “clean up,” on the presumption that increasingly criminalizing measures, incarceration and the signaling effect of these are the most efficacious means of deterring crime (Sampson and Raudenbush 1999; Javidan 2003). Despite the child protective language of laws passed under the banner of “human trafficking,” law-and-order discourse of removing minors in prostitution “off the streets,” prioritizing “officer safety” (from the likes of minors in prostitution), and applying a punitive framework on a socio-economic problem of exploitation subsumes the subjects and their circumstances in tough-on-crime logic.

The child is swept up and captured in the general criminalizing treatment of prostitution. Here, law and society interlock to reinforce their disposability. Two traditional ideologies embedded in the subdued criminological theories justifying this law are at work—the view of prostitution as waste management, and the neoliberal revival of retributivism that law-and-order rhetoric represents. Early sociological and criminological theories primarily viewed prostitution as biologically determined sexual deviance, and the prostitute as an “atavistic” female offender whose “propensity for evil...far surpasses that of criminal men,” with a “cranial capacity” below that of “lunatics” (Lombroso and Ferrero 1893, in Sanders, O'Neill et al. 2009: 3). Institutional-functionalism, rooted in the Durkheimian notion of crime serving a useful function of generating “social solidarity,” viewed prostitution as a necessary evil—essentially as waste management for male sexual desire (Davis 1937, in Id.; O'Neill

2001: 130-31). This, combined with presumptions of the moral depravity of prostitutes (but not male “customers”), has represented the traditional, patriarchal view of persons in prostitution. In debating the matter, Utah’s lawmakers made no distinction between adults and children, such that any person fitting this profile would be subject to the streamlined arrest procedures with which they were primarily concerned. Haney-Lopez (2010) traces the political genesis of law-and-order rhetoric as a racial appeal deployed in American political discourse, beginning with the civil rights backlash of the late 1960s and popularized in the Reagan-Thatcher era. Its *modus operandi* has been the revival of traditional retributivism, encoding “crime” as a racialized buzzword to associate African Americans in particular with street crime (see also Woodward 1974). Thus it is noteworthy that this was primarily a bill geared toward managing *street* prostitution.

Street prostitution in the US has historically (and purposely) been concentrated in poor and minority neighborhoods, including in Utah and Illinois, creating particularly strong associations with economically marginalized females of color (Nichols 2008; Blair 2010). Although sociology of childhood literature points out the desire and hard work of parents in these locales to protect their children from prostitution, from a law-and-order enforcement perspective, it is a space of child deviance, particularly where minors in prostitution are concerned. Given that police officers typically evaluate the age of children of color, particularly African American children, to be approximately four years older than their actual age (Goff, Jackson et al. 2014: 532), the adultification and presumed non-innocence of girls of color in this space would seem an imminent risk.⁴⁹ “The street” has served as a powerful trope linking race, class and urban decay, reified in the “broken windows” imagery of Broken

⁴⁹ The findings of this study were primarily regarding African American boys, and the authors note that the race-and-gender intersection pertaining to African American girls might complicate their findings, but also note that African American girls represent a growing share of children in the US criminal justice system, (Id.: 540) indicating that they are just as much subject to the dynamics of disproportionate minority youth contact (DMYC) and its processes of adultification, compounded by the paternalism bias of juvenile justice and “delinquency by reason of poverty” (Birckhead 2012).

Windows theory (Sampson and Raudenbush 1999). The street overpowers the otherwise compelling trope of childhood innocence, such that the child gets lost among “the rabble” that such policies target for banishment from public view in the management and control of urban space (Stuart 2014). In this compounded framework of waste management, the child is not idealized, precious or innocent; rather s/he is the deviant subject burdening the state with clean up. The “waste management” functionaries whom persons in prostitution are traditionally and historically meant to be, are, in turn, waste-managed by the state and subject to legal confinement.

Since the mid-2000s Utah has created and continually revised its human trafficking law. By 2013 it had amended several provisions to add in and more clearly define “child” as indicating a distinct category of crimes (UCA 76-5-307(1)). Bringing children into increasingly sharper focus, that year the Chief Sponsor of the “Aggravated Human Trafficking” bill, Representative Jennifer Seelig, repeatedly referred to “children,” to clarify that the law bestows special protections to them by “distinguish[ing] acts involving children and [through] additional protection for those victims who, at the time of being trafficked, also have sexual offenses committed against them” (HB 163). She explained, “This specific bill was brought to me by the Attorney General’s Office. Specific conditions surrounding the need for this bill were brought to me by law enforcement.” To convey its authority, Seelig explained that she “saw some of this stuff” on a police ride-along, and cited several law enforcement and prosecutorial bodies that support the bill. Presumably to authenticate the child-centrism of the proposal, Seelig also added that, “these issues have been brought forward by a group of young people,” characterized as a “youth-driven organization called

Backyard Broadcast,” an “advocacy group to raise awareness and fight against child sex trafficking, with presence in 6 Utah high schools.”⁵⁰

Seelig reiterated the bill’s intent to distinguish children by discerning child victimhood, and to argue that this bestows special protections for them. Yet the child identity in this law is distinguished from adults in a rather superficial way in which there appears no difference between children and adults other than their physical segregation in the text. The provisions of the statute list a series of crimes of physical and sexual violence to denote what makes human trafficking “aggravated,” then simply reproduce this list but insert “child” in front of each. Looking at the law itself, there appears no reason for this separation, especially since the penalties that the law specifies for offenders are the same regardless of whether they are perpetrated against adults or children. This suggests the largely symbolic function that the placement of “child” serves, in lending the legitimacy of child protective efforts to a law that does not readily appear to provide “special” protections to children. It does, however, further retributivism through increased penalties overall and the carceral politics that this implies.

Seelig’s speech also allies law enforcement interests with those of “youth,” by identifying youth as those informing her interest in this problem, and suggesting that they would advocate for this policy. The “voices of youth” provide strong justification for the passage of seemingly child protective policies, yet whether and to what extent this law is child protective is unclear. As the following chapter demonstrates further, per retributivism, child protection is very often conflated with increased penalization of offenders, and assumed to be mutually reinforcing. Utah lawmakers have consistently equated the increase of penalties for such crimes as “aggravated human trafficking” with greater or “special” protections of children.

⁵⁰ This organization describes itself as an “abolitionist training academy” [<http://www.backyardbroadcast.org>]. The site’s main page states: “We see a future where child sex trafficking is abolished.” Sometime between 2014 and 2016 this was changed to drop the “child.”

At the same time childhood and victimhood also become synonymous. Though the criminal context leaves little alternative to this, and is therefore arguably necessary as a matter of practicality, it nonetheless has detrimental constructive effects for children. Children have routinely exhibited capabilities for maturity, responsibility, wisdom and “criminality” far beyond that which is typically associated with them, but they nonetheless remain disadvantaged and uniquely constrained by their child status and lack of standing (Handel, Cahill et al. 2007: 75; Grahn-Farley 2003). Minors in prostitution may not fit the “victim” profile, as many studies have shown that they neither often identify themselves as such, nor behave in ways that are normally expected of a stereotypical “victim” (Lutnick 2016).

All potential victims of sex trafficking are subject to notions of ideal victimhood (Lee 2011), of which normative childhood is a key part in the child sex trafficking context. As Halter’s (2008; 2010) study shows, children who perform certain behaviors associated with victimhood (and childhood, particularly girlhood) are more likely to be categorized as victims, but those whose behavior and attitudes do not conform to this are more likely to be treated as offenders. A minor in prostitution who is trying to “get by,” may appear economically or sexually “agentic” compared to most other children, and particularly “bad” considering the multiple violations of law and normativity s/he is likely to be associated with. Although DMST law appears to unburden children by rendering them victims, the compounded jeopardy of performing normative victimhood strongly linked to normative childhood/girlhood are problematic for minors in prostitution whose looks, behavior and “attitudes” are likely to disqualify them from the status of “child,” and therefore “victim.” The combination of conflating “victim” and “child” status, deterrence-oriented retributivism, and lack of resources for children, particularly commercially-sexually exploited children, in Utah suggests that child protection is understood as more of a negative concept—detering

pathological adults from preying on children—rather than a positive one of child empowerment through strengthening the social, economic, civil and political standing of children in society.

In 2015 Utah lawmakers turned to child migrants. It addressed the issue of “aggravated human *smuggling*” in its recently enacted human trafficking statute, wherein the person smuggled is “a child not accompanied by a family member who is 18 years of age or older” (UCA 76-5-310). This relates specifically to those who “are not...citizens of the United States; permanent resident aliens; or otherwise lawfully in this state or entitled to be in this state.” The timing of its passage coincides with heightened public consciousness in the US regarding the “influx” of child migrants from Central America across the southwest border (Kennedy 2014), which is somewhat proximal to Utah. The punishment for the crime of child smuggling, a second-degree felony, is one degree less than that reserved for aggravated human trafficking (UCA 76-5-310). “Smuggling” and “trafficking” can serve as racial, ethnic and nationality-based demarcations in the law without directly invoking these terms or ideas. Smuggling is typically distinguished from trafficking by pointing out that smuggling is done voluntarily. This law appears to negate the voluntariness of smuggling where child migrants are concerned. However, the current wave of child migrants primarily comprises those escaping impossible circumstances of violence in their countries of origin (Id.).

Although “voluntary” does not capture the dire conditions prompting such perilous journeys, the will to cross international borders toward relative safety, even illegally, is arguably purposeful, such that the punishment of smugglers for assisting unaccompanied children attempting such a feat does not directly translate to child protection. Based on the law alone, the primary way in which Utah statutes related to DMST distinguish child from adult are by designating “aggravated” status to crimes involving children, and thereby

increasing penalties for [adult] offenders. Relatedly, the legislature does not discuss child trafficking for forced labor at all anywhere in its debates, even though it is included in the definition of child trafficking—“for sexual exploitation *or forced labor*” (UCA 76-5-308.5(2), emphasis added). If the Utah legislature were interested in child protection for migrant children, they might address this issue since, among children, migrant (and runaway) children are the most likely victims of forced labor in the US (Buckley 2016: 116).

At the same time, and perhaps more positively, Utah also eliminated the defense of “mistake of age” when a child is the subject of human trafficking, including for “exploiting prostitution” (HB 163). This means that the law holds adults “strictly liable” regardless of whether they claim to have mistaken the child for being an adult. It reifies the importance of child status to child protection more so than levels of punishment for offenders. One amendment also incorporated child sexual abuse and child prostitution into the definitions of human trafficking. Making connections among these crimes against children is a fairly recent development in legal discourse, for which second wave feminists had previously advocated, but which only very recently have made it into legal and scholarly/professional definitions (Beckett 1996: 59).

A year later, a distinct concept of DMST emerged in Utah. A new crime of “human trafficking of a child” went into effect in 2016, making it a first-degree felony (UCA 76-5-308.5). Since the development of Utah’s own human trafficking laws and their refinement over the last decade or so, and the emergence of its own state-level codification of child sex trafficking, it appears that “child” is becoming a code for justifying greater retributivism in the law. Again, this does not necessarily translate to greater protection of minors, particularly given the continuation of law-and-order techniques of arrest and detention, to which children remain subject. Even though the Legislature makes every effort to compartmentalize children from adults in puzzling ways, it sweeps them up alongside adults off the streets without the

resources necessary to “rehabilitate” them. It is in these ways that the adult/child dualism is selectively deployed in the law, to lay the foundation for the criminalization of children who are otherwise clearly marked as victims of exploitation—if we accept empirical juvenile justice research that arrest and detention are criminalizing rather than “for their own good.”

A distinguishing feature of Utahn discourse is that, unlike in Illinois, below, the discourse of human rights is largely absent from Utah’s debates. Where civil rights are brought up in the prostitution context, they are referred to in profoundly hostile terms. Utah’s leadership in the conservative Christian “pro-family” and anti-child-rights movement helps explain this opposition. As discussed in Chapter 2, Utah has been a central site of institutional activity promoting the globalization of neoconservative “American family values.” In its main institute of higher education, the Mormon school Brigham Young University (BYU), this activity conducts through in-house institutes such as the World Family Policy Center (WFPC), and increasingly through the UN system, particularly with regard to the UN Convention on the Rights of the Child (CRC).

Richard G. Wilkins—the late professor of law at BYU’s Reuben Clark School of Law, and former missionary and managing director of WFPC at the school—consolidated the neoconservative, Christian Right position on the CRC in a law review article titled “Why the United States Should Not Ratify the Convention on the Rights of the Child.” This article was drafted and presented as part of a symposium on the protection of children’s rights in international law and US participation in the CRC (Wilkins 2003; see Appendix: Primary Sources). It is perhaps one of the most telling legal texts regarding the construction of children in Utah’s influential institutions for legal pedagogy, but with broader national and American-cultural significance. Since habitus of the speaker is important to the critical analysis of legal discourse, foregrounding this political background helps understand Utah’s dominant views regarding children and childhood. The profiles of most legislators during the

course of transcribing debates for this research showed that they attended Brigham Young, usually the law school, prior to their lawmaking/political careers, overlapping in time with Wilkins' influence.⁵¹ Brigham Young is unique from typical American universities since it requires missionary work as part of its curriculum, which represents its religious character. Wilkins' article provides a strong and far-reaching example of the cultural stories that circulate in legal circles of the state, and nationally. In a particularly comical twist regarding speaker habitus, Wilkins played the role of Ebenezer Scrooge—a miserly curmudgeon with no sympathy for suffering children—in Charles Dickens' *A Christmas Carol* for 27 consecutive years up until his death, and for this was dubbed “the steadfast scrooge” in the Salt Lake Tribune (Fulton 2012).

Wilkins, et al. claim that child rights “comes squarely into conflict with traditional American notions of family and family law” (Wilkins 2003, in Grahn-Farley 2011: 314). The veracity of this statement is at best dubious because many of the notions undergirding the CRC originated in the US over several decades of the twentieth century (Grahn-Farley 2013; Grahn-Farley 2011). However, since the US has refused to ratify the CRC, Wilkins' claim does represent the politically dominant American position on the otherwise near-universally ratified treaty. Although George W. Bush took up anti-sex trafficking as one of his most vociferous platforms (Berman 2006), his administration adopted Wilkins' position on children (Grahn-Farley 2011: 314).

Reading the article itself, the authors include an entire section dedicated to persuading Americans of “the dangers of the autonomous child,” in which they state, “Children are not autonomous. They are, by definition, ‘immature’—socially, mentally, emotionally, and physically” (p. 417). They argue that preventing children from activities such as voting and

⁵¹ The website of the Utah Legislature has undergone some changes over the years, with diminishing link integrity for many of the sites previously available. Profiles of legislators could generally be found (up to about 2014) on the state Legislature's official website [<http://le.utah.gov/Documents/find.htm>].

entering contracts (along with viewing pornography, driving, smoking, drinking and shooting guns) are to protect children and others “from the consequences of their immaturity,” and that adults do not impose these “deprivations” out of “arrogance or cruelty, but from wisdom” (Id.). The arguments laid out in the article read as a treatise of politically and socially conservative US views regarding children. Interestingly, they invoke the immaturity of children, and imply the same of the rest of the world’s nation-states that ratified the CRC (which were all but Somalia), by arguing that the speed and near universality of its ratification should be interpreted as the importance of children to the world, but not “careful consideration of probable consequences of implementing” it (p. 418).

The arguments of Wilkins, et al. mirror legal discourse on state and federal levels regarding CSEC. They “applaud” the provisions that “protect children from those who would exploit their vulnerability.” Though this reasserts the traditional, chivalrous adult/child relation, it renders child protection conditional on deprivation of child rights. “We cannot admire those treaty provisions—notably the ‘civil rights’ provisions, articles 13-16, that appear to move away from protecting children and toward granting children greater ability to make decisions traditionally reserved for adults” (Id.). Fundamentally, the authors claim that civil rights provisions related to children in the US oppose “a tradition of legal jurisprudence that severely limits the state’s ability to intrude upon the family” (Id.). This is based on parent-child relations that are said to predate the state “just as natural individual rights antedate the state in the Constitution’s political theory” (Id.). The authors argue that protecting children from “exploitation of their inexperience and incapacity” accords with the US legal tradition, and civil rights for children would alter US legal tradition (Id.). They characterize this as “ensuring that children have an enforceable ‘right to be left alone,’ free from parental interference in their choices” (Id.). Further, the authors advance the

paternalistic argument that American legal tradition underwrites not only the need to protect children from abuse and neglect but “to protect children from themselves” (Id.: 419).

Here, child autonomy is considered more dangerous than the conditions that children endure as a result of their child status. Of course “the danger of child autonomy” does not explain rampant child abuse by adults in the US, which has the highest rate of child abuse of any country (Young-Bruehl 2012: 2). Underlying Wilkins’ traditionalism is the revival of a puritanical view of the child in recent decades that both describes children as having too much power as it is, as well as prescribes curbing the dangerous powers that they might otherwise usurp (Giroux 2003: xiv). These ideas survive in the childrearing ideologies and broader visions of society espoused by the Evangelical Christian voting bloc (Blumenthal 2009).

What has marked the neoconservative “pro-family” position is a political commitment to anti-feminism and anti-LGBT-ism. This position emerged from conservative alarm at civil rights movements in the 1960s-70s and the discursive (“semantic”) transformations that these movements entailed, particularly gay rights and feminism. They argued that these movements were “anti-family” for their alleged role in dissolving the heteronormative nuclear family and putting “normalcy on the defensive” (Buss and Herman 2003: 4). The anti-family argument has most recently indicted the CRC for its perceived threat to traditional American family values.

Given that the same political forces brought law-and-order ideology into being, it is unsurprising that Utahn legislators conflate child protection with offender punishment. Blumenthal (2009) explains that harsh childrearing techniques espoused by leading figures of the Moral Majority—popular among Evangelicals across the US—are directly linked to the law-and-order vision of society that they espouse politically, which represents the

retrenchment of minority subordination generally. The child in need of harsh discipline to break his or her obstinate will is both figurative and literal in these political positions. The CRC specifically attempts to break with the traditional view of children as paternal chattel or parental property, and this renders the idea of child rights a threat of Social Darwinian (“Lord of the Flies”) magnitude (Grahn-Farley 2003; Giroux 2003). Indeed, childrearing ideology is strongly related to broader political vision, connecting the private and public spheres. Parenting values that can be described as “disciplinarian” (emphasizing child obedience and competition) or “nurturant” (prioritizing empathy, responsibility and cooperation), are respectively, fairly reliable indicators of “conservative” (even authoritarian) or “liberal” political affiliation in the US (Barker and Tinnick 2006).

Despite the intricacies of the legislative process and the unprecedented popularity of the CRC, Wilkins, et al.’s line of argument infantilizes nations who favor child rights, as not having carefully considered the implications of officiating children as rights-bearing subjects. They are discredited through the misconception that child rights means giving children “the right to be left alone,” i.e. sidelining parents, when the child’s family is actually an integral part of the child rights regime (Grahn-Farley 2011). This effectively elevates the US in its level of maturity and good counsel above the rest, except its only co-rejecter, Somalia.

In accord with the dominant American political position on the matters of child rights and commercial-sexual exploitation, neo-conservatism does not support human rights or civil rights for children, but acclaims protecting children from predators, premised upon their innate vulnerability. This preserves the traditional adult-child relationship of the original social/sexual contract in which the status of women and children is marked by dependency and chattelization, justifying the paternalism of benevolent discipline (“for your own good”). Hence Wilkins invokes relationships that “antedate the state” (parent-child relations and “natural individual rights”) in the political theory of the US Constitution, referring to social

contract theory. As Pateman (1988) would argue, this reasserts the original terms of the sexual contract as well.

It also adopts an essentialized notion of children and vulnerability. Like the status of the child and dominant ideologies projected onto children, “vulnerability” is socially and legally constructed. The word “child” has come to imply and signify vulnerability (Moore 2006: 77) as well as victimhood, based on a social identity defined through certain presumed “lacks,” but which are not the result of “nature”; rather, they are the result of “harmful exclusion from human, organizational, or economic resources” (Grahn-Farley 2003: 867). In such thinking vulnerability is used in both a descriptive and normative sense toward children, i.e. to describe how children *are* and how they *ought* to be, based on essentialist social and legal presumptions that children are immature and lack capacity. They are presumed incapable of handling freedom and responsibility until reaching the age of majority, which can vary greatly from state to state, demonstrating concretely the legal contingency of what is supposedly “natural.” In contrast, adults are presumed “capable” simply by virtue of reaching the age of majority.

The burden of proof (of maturity) is what marks the difference between adult and child status in their hegemonic formulation. Children are presumed immature unless they prove otherwise, through the process of “emancipation,” a term that invokes being freed from the condition of enslavement.⁵² Adults are presumed mature unless courts and/or medical professionals determine otherwise. The vulnerability associated with children as a group stems from relative disparity in power between children and adults—measured by proportionality of resources—rather than “nature.” Hegemonic relations—of which

⁵² Both Utah and Illinois provide for the emancipation of “mature minors,” which allows them to enter contracts, sue or be sued, be held liable for torts, and so on, but which maintains their juvenile status for purposes of criminal justice. Utah’s code specifies, however, that they cannot vote, smoke, drink alcohol, or possess tobacco or firearms until reaching age of majority (750 ILCS 30, “Emancipation of Minors Act”; UCA 78A-6-803, “Petition for emancipation”).

childhood/adulthood is an important, foundational dimension—construct the social and legal identity of the child as vulnerable and bring about this vulnerability (Grahn-Farley 2002, 2003). The “reality” of children’s vulnerability is reified precisely through practices and policies based, for instance, on a fear of child rights and the ways in which this might elevate the social conditions or status of children.

Moreover, a sociological view of childhood demonstrates its historical contingency—the ways in which children’s roles and status have changed dramatically over the centuries and have been contingent upon race, class, gender and nation. As Woodhouse (2008) effectively demonstrates, child labor has historically built the US, including the rural homesteads that Christian evangelicals in particular have romanticized since the advent of urban industrialization. Wilkins’ position illustrates Harris’ (1990; 2003) observation that subaltern identities are “responsibilized” and liable but denied political subjectivity, even though, as Wilkins’ own article demonstrates, childhood is a political category and politically embattled construct, demonstrably in the US. Thus the adult/child binary is maintained through “traditional roles,” which readily promise to protect children from exploitation, but which stop short of allowing a fundamental alteration of normative social roles dictating adult supremacy and child subordination.

Wilkins’ treatise against child rights is an authoritative and culturally productive legal text that reproduces the inequities and vulnerabilities marking childhood, while applauding child protectionism from exploitation. It not only reproduces childhood inequities, but race, class, gender and childhood are mutually implicated, as child rights and civil rights are both the targets of neo-conservative politics. Arguments that conservatives have historically made with regard to “states’ rights” to prevent federal interference in local practices, including lynching and child labor (Novkov 2000), are analogous and closely related to the denial of civil rights to children on grounds of state interference in the family. As a representation of

Utahn neo-conservatism in an international legal forum, Wilkins' treatise against child rights is a text with local and global reach to reinforce a traditionalist ideology of childhood.

The issue of children's "voice" becomes salient again when Wilkins invokes the paternalism of his anti-child-rights argument for the need "to protect children from themselves." Recalling Seelig's speech to persuade the Legislature to enhance penalties for aggravated human trafficking, the supportive "voice" of the abolitionist youth group was apparently authoritative enough on an important issue pertaining to children, and received recognition because it was useful in passing the law. It is difficult to reconcile the general distrust of children's political ability in the conservative view against child rights with the presence and vocalization of, for instance, an authoritative youth group meant to authenticate and legitimize child protective legislation in Wilkins' state Legislature. This could only suggest that so long as children articulate a viewpoint bolstering adult political objectives, their voices are validated, which relegates them to a utilitarian role in service of adults, and hence reifies their traditional place.

This utilitarianism translates into the reality of "aggravated human trafficking" cases in the state and the treatment of minors implicated in them. In various cases developing out of Utah over the course of this research, despite the development of a DMST discourse there at the same time, it became clear that the criminalization of minors continues. For example, in the case of *Haley* (2013) a 17 year-old African American girl was arrested in St. George, Utah during a prostitution sting involving the US Department of Homeland Security. She was reported as "being investigated for sexual solicitation and violating business and professional licensing requirements in connection with allegations adult men are patronizing prostitutes in the area" (The Associated Press 2014; Flynn 2013; Demasters 2013). *Haley* demonstrates that although the case is brought for "aggravated human trafficking" and police reported that they determined her to be a victim, the minor in prostitution was nonetheless criminalized in the

process. She was arrested and used to bait others, namely an African American man and woman, respectively 30 and 20 years old, for child endangerment charges, among others. The 20 year-old woman, Uhrhan, had herself been groomed into prostitution as a minor, (Website of St. George News) but this was rendered irrelevant because she had passed the age of minority. The 17 year-old girl was rendered a child for purposes of bringing “aggravated” charges, but a “prostitute” for the purposes of arrest, demonstrating the pliability of the child identity in service of prosecutorial imperatives. It is also remarkable that in a state with such an outstandingly low percentage of African Americans and people of color generally, the most publicized cases of sex trafficking in the state so often involve persons of color (see Reavy and Yi 2014, Scott 2015, Gardiner 2015, Ortiz, Winslow 2015, in Appendix A).

3.1.2 Human rights versus “the oldest form of work” in Illinois

In 2005, preceding Illinois’ much celebrated Safe Children Act (2010), a legislative debate took place regarding civil damages for forcing persons into prostitution (the “Predator Accountability Act,” HB 1299). The debate demonstrates a profound difference in the conceptualization of the problem between Illinois and Utah. The Representative from Illinois (Rep. Howard) introduced the bill by invoking human rights law, and explained that it disproportionately “affects women and children, particularly women of color.”

The United Nations Convention of December 2, 1949, proclaimed that prostitution and sex trafficking are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community. Sex trade activities and sex trafficking are supported by inequality and oppression based on gender, race, socio-economic status, sexual orientation, and age.

Rep. Howard even acknowledged that “Men are also trafficked and exploited in the sex trade,” which is an issue not often addressed in legislatures. Children are referenced in conjunction with women, or as “women and girls,” but Howard also mentions conditions specific to children. “Often, individuals enter sex trade-related activities prior to age 18, are homeless or runaways, victims of childhood sexual, physical, and emotional abuse or have mental health

or substance abuse issues.” Adults are also included in this explanation, as victims of violence and abuse through the sex trade.

Howard continues to cite research and its findings on the topic related to trauma and personal histories of victims. The citation of empirical research—as opposed to citing the support of law enforcement and Christian youth groups—is another profound difference between Illinois and Utah legislative debates on child prostitution, with the exception of Representative Seelig citing the commonly circulated (often critiqued as outdated) Estes (2001) study, that “up to 100,000 children [are] being exploited every year in America.” Howard also mentions the fact that pimps and traffickers are rarely held accountable, that “less than 1 percent of all prostitution-related arrests are for pimps or panderers,” which has long been a cause of disproportionate arrests of persons in prostitution, primarily females.

After all this, one of her peers, Representative Bailey, retorts with, “I’m gonna try to phrase this as nicely as I can. Prostitution is the oldest form of work since the beginning of time.” Bailey states this as a preface to argue that prostitutes choose their “work,” and that pimps are those who retrieve prostitutes from jail when they are arrested and take care of them when they are sick. Although Representative Howard counters this by pointing out that the legislation is intended to assist persons *forced* into prostitution, the rest of the debate completely disregards child prostitution by presuming the [consenting] adult woman, addressing only the issue of coercion and choice, and sidelining the legal impossibility of minors’ consent to prostitution, which is codified in Illinois’ own criminal code. Though Bailey’s argument was ultimately defeated, this demonstrates the circulation of traditionalist arguments in the Illinois Legislature.

Illinois’ construction of the issue of child sex trafficking differs markedly from Utah by virtue of its framing in human rights language. The words inequality, oppression, gender,

race, socio-economic status and sexual orientation are remarkably absent from the legal discourse of Utah, perhaps par for the course in its general hostility toward the ideas of civil and child rights. It is noteworthy, however, that Howard cited the 1949 Convention, but not the UNCRC. Even though “women and children” are the topic of her speech, child rights never figures into it. This is likely because the language of child rights is unavailable to her because the US has rejected the UNCRC as the law of the land—as a result of the consolidated neoconservative attack against it that Wilkins’ article encapsulates. In these ways the discourse of other states and their spheres of influence are not confined to the borders of their own jurisdiction, but like laws and cases that are (or become) nationally applicable, they become nationally authoritative and sometimes have international impact.

It is perhaps more surprising that Howard also chose not to invoke the Optional Protocol regarding CSEC, which the US *has* adopted, and which most directly pertains to child sex trafficking in the context of international law. This provides child-specific, international-legal language for argumentation regarding CSEC. On the other hand, Howard’s citation of empirical studies that are specific to the commercially-sexually exploited child re-center the focus on the particularities of child sex trafficking. The facts she cites accord with current social-scientific and other studies of child prostitution across disciplines. Empirical research supports her statement that in the US persons in prostitution often enter under the age of 18, are homeless or runaways, victims of childhood abuse, struggle with mental health or substance abuse issues and/or personal histories of trauma (Grace, Starck et al. 2012; Curtis, Terry et al. 2008; Schepel 2011; Butler 2015; Birkhead 2011; Halter 2008, 2010; Klain 1999; Lolai 2015). This is important for a critical analysis of legal discourse because Howard’s reliance on empirically verifiable data avoids the use of “political fictions” or problematic cultural stories to persuade the Legislature, such as the innate vulnerabilities of children or the perils of child autonomy.

At the same time this line of argument avoids going further, to a more structural understanding of the problem of child sex trafficking. The disparate impact that Representative Howard refers to can be seen as the patterned symptoms of deeper underlying inequities in American society, which, if unaddressed, leave the impression that these children are simply the victims of dysfunctional or pathological families. Poverty, particularly child poverty, is critical to discussions of child prostitution even if in the US the household or familial background of many or most girls who enter prostitution is considered “middle class” (Lamb 2001). Even when this is the case, the immediate circumstances in which children live in the street or illicit economy likely qualify as child poverty, broadly defined as children living in poverty. Poverty is a contested concept due to ongoing efforts to devise a universal, globally applicable standard for measuring it. There is no internationally accepted definition of poverty as of yet. In addition to “absolute poverty”—insufficient income for subsistence and essential services—a “relative deprivation” approach to child poverty includes insufficient income for social participation, to reflect the historically specific but increasingly globalized conditions, standards and expectations of consumerist societies such as the US and UK (Townsend 1993, 2004).

In the US, “underclass” status or child poverty are measured as falling below the “low-income” or “near-poor” thresholds, which means that a person has at his or her disposal less than approximately \$12,000 income per year (Handel, Cahill et al. 2007: 259; National Center for Children in Poverty 2016). Since the vast majority of minors in prostitution have reported being “very poor” or “just making it”—having broken away from their households, taken up temporary residence in shelters or with someone potentially or actually exploitive, and/or engaging in “survival sex” (Silbert and Pines 1982)—the material conditions associated with their immediate circumstances would seem paramount.

Recognition of the economic class structure of the problem would point to the status and conditions specific to American children and childhood, which are particularly dire compared to other Western democracies, and which imperil American children to various types of exploitation. The largest and fastest-growing portion of the US homeless population is children—an astounding 40% (1.4 million) are children—with an average age of just 9 years (Giroux 2003: xviii; 117). In 2003 greater than 13.3 million children lived in poverty (about 1 in 6 children), with 20% of children being poor during the first 3 years of life (Id.: xviii). After the economic crisis beginning 2008, this rose to 1 in 5 children (Javidan 2012: 368). 9.2 million children lacked health insurance, 90% of whom were in families with working parents, and millions lack affordable child care and decent early childhood education (Giroux 2003: 117). Among OECD nations, US child poverty rates are on par with Mexico (Organisation for Economic Co-operation and Development 2016), and, globally, the US ranks twelfth on this scale (Giroux 2003: xviii). In many states, there is greater investment in prison construction than education (Id.).

The American market-oriented society and its disdain for resource reallocation uniquely impacts children, including aversion to social welfare programs, which are largely means-tested, and cover only “the truly impoverished” (Corsaro 2015: 311). Overall, among industrial nations, countries such as the US that have high levels of overall inequality have higher child poverty rates (Id.: 311-12). Increased child poverty is to be expected with deep cuts to social spending and austerity regimes (Id.: 312). This is a trend duly noticed in the previous decade and understood as conditions known to exacerbate child prostitution (Martin 2002, in Fudge and Cossman 2002). The US is unlikely to face its increasing child poverty rate, given “growing concern about the budget deficit, opposition to higher taxes, skepticism about welfare policy, and the political power of the elderly,” who enjoy more than double the amount of resources allocated to them for social welfare than children do (Corsaro 2015:

314). Research on the economic well-being of children reveals that the US is uniquely difficult for poor families and children, and is simply not as committed to their well-being (Id.). The US has ranked first in military expenditures, the number of millionaires and billionaires (indicating concentration of wealth), and eighteenth globally in the gap between rich and poor children (indicating class polarization of childhood) (Giroux 2003: xviii).

Representative Howard specifically mentioned women and girls, and commendably pointed out the disproportionality of the impact of commercial-sexual exploitation on women of color, as the statistics in Chapter 1 confirm. I say that this is commendable because at the beginning of this research project a few years ago, it was very difficult to verify the demographics of CSEC in the US, particularly with regard to race, and it has taken years of monitoring and compiling statistics to be able to say with certainty that it is a problem disproportionately impacting females of color. Howard's bringing this matter in relief and to the attention of the Legislature should be recognized as an important point of progress on understanding the matter. At the same time, it also points to the need to understand that the processes of economic marginalization discussed above interact with race/ethnicity/nationality, gender and childhood, that class polarization is increasingly racially polarized in the US, particularly since the Great Recession, and that child poverty and immobility are amplified for children of color, particularly girls (Harper 2013; Cicchino 1996).

These are points of political discourse around which socio-economic and civil, political and criminal justice for children must bear out, they merit attention in legal discourse related to children that appears concerned with the conditions exposing them to commercial-sexual exploitation and criminalization. The articulation of concern regarding underlying conditions of child sex trafficking—notwithstanding its in/adequacy—is a point of major distinction between the discourse of Illinois and Utah. However, discussion of the

problematic role of criminal justice and law enforcement is largely omitted from the debates of Utah as well as Illinois. In the lawmaking process, these are treated as unproblematic and taken for granted with regard to the management of CSEC, whereas the next chapter discusses their role in the reproduction of inequalities and criminalization of children in the child sex trafficking context.

Rep. Howard importantly raised the problem of impunity for pimps and panderers (though not “customers”), but did not mention that this contributes to disproportionate female criminalization. This would have provided support for her argument in favor of a law aimed at restitution for persons forced into prostitution, since it would show that not only do the perpetrators enjoy impunity, but the victims are bearing its greatest costs. It should also be noted that the UNCRC and child rights discourse regarding CSEC generally cover many of these issues, and would provide a more robust framework with international legitimacy which to discuss the issue and its conditions or contributing factors.

In stark contrast to Rep. Howard’s presentation of the issue and its subjects, Rep. Bailey’s interjection into her discussion of sex trafficking—specifically forced prostitution—its detrimental impact, and disparate impact on females of color, has a leveling effect over these issues by rendering “prostitution” a matter of choice and inevitability. Bailey derailed Howard’s argument by making it about voluntary prostitution, using neoliberal notions of “choice” as well as a peculiar claim about the benevolent care of pimps for prostitutes. Since the debate is regarding a law allowing for persons forced into prostitution to sue perpetrators for civil damages caused by this harm, Bailey’s is a disconcerting objection. Though this derailment has the effect of eradicating children from the discussion, Howard made girls as much the subjects of this law as women by invoking “women and girls.” Bailey’s interjection of prostitution-by-choice adultifies the “girls” by subsuming them in the discourse of voluntary prostitution. The conflation of adult/child, woman/girl serves to collapse any

distinction for purposes of denying the child status of children and the need for restitution. Moreover, as mentioned above, the law of “emancipation” of minors defines the status of children through their exclusion from entering contracts. When prostitution is understood in its traditional sense—as a chosen “profession”—per Bailey’s speech, it implicitly becomes a matter of freedom of contract—selling sex willingly to further one’s own self interest. By including girls in the discourse of adult prostitution, Bailey at once denies the victimization of women, while denying the victimization and childhood of girls. Thus, Bailey’s interjection is derailment rather than a genuine enquiry, evidenced further in his claiming “choice” when Howard specifically meant to address “forced prostitution.”

Bailey’s statement that “Prostitution is the oldest form of work from the beginning of time” conveys the inevitability of women and girls selling sex, and implicitly the “naturalness” of this condition for females. It has the effect of rendering efforts to address prostitution futile. This follows precisely the same reifying logic of claiming that children are naturally vulnerable, while arguing against child rights that aim to empower them out of a permanent state of vulnerability. If prostitution is “inevitable,” then objection to efforts of eradicating its harms serves as a self-fulfilling prophecy that only ensures the continuation of those harms. Bailey’s objection was made to a proposal drawing from a social justice and human rights perspective on the issue. Apart from the benevolent characterization of pimps, the idea that prostitution is the world’s oldest “profession” can be viewed as a myth and particularly tenacious “problematic cultural story” circulated in legal culture to further similar other problematic myths. For instance, there is a more compelling but far less articulated claim rooted in feminist epistemology and practice that midwifery is actually “the world’s oldest profession” (Ulrich 2004). In this dynamic Bailey deemed Howard’s empirically based argument unpersuasive yet he offered the political fiction of inevitability as a means of

overpowering it based on gendered “common sense” that has become part of Western (and globalized) folk wisdom (Shifman 2003: 131).

Attending to the habitus of the speakers, their gender, as well as the interests that the two representatives in dialogue represent becomes important. Howard is a woman arguing for the restitution of women and girls, particularly of females of color, for being forced into prostitution. Given the casualness of Bailey’s interjection in an otherwise carefully crafted speech based upon principles of international law, contemporary American vernacular may help identify the dynamics at work here. The word “mansplaining” is a portmanteau of “man” and “explaining,” which means disruption and derailment in speech that is specifically a patronizing, gendered act whereby a male intends to “school” a female who is implicitly naïve. This term has been extended beyond the gender context into race relations and politics generally such that the actual gender of the speaker does not necessarily need to comport with the male-to-female speech dynamic, but a person representing a hegemonic or dominant value position may “mansplain” to another person whom they view in such a way (Reagle 2016; Carson 2013). The foundational process of this dynamic can be explained as involving the infantilization of another.

Overall the interest that Bailey serves is to reinforce traditionalism regarding prostitution—which had little regard for the “promiscuous” or “unchaste” woman or child—by echoing the voices of theorists past who argued that prostitution was a “safety valve” for sexual waste management to help uphold marital respectability. Put differently, prostitution upholds the sexual contract so foundational to the inequities of the social contract, and which subsumes women and children alike in the private sphere of masculine control (Pateman 1988). The argument of benevolent paternalism has been deployed to not only uphold notions of the sexual contract, but the racial contract as well (Mills 1997). The defense of pimps as rescuers of prostitutes from jails and their caretakers during illness is not only unsupported by

empirical studies, but bears remarkable resemblance to defenses of chattel slavery, justifications for which were based on similar notions of protectionism by a male figure with far greater power, but one who uses his power to advance the interests of the child-like beneficiary (Woodhouse 2008: 69-70). Studies show that although the behavior of pimps may appear “benevolent,” such as in the role of “boyfriend” or “daddy,” their role is largely manipulative, “managerial,” and most often abusive (Brannigan and Van Brunschot 1997: 348; Carter and Giobbe 1999: 44-47, 50-56). As one illustrative example, in a US case of a girl in prostitution infected with HIV, her pimp forced her back on the street relentlessly despite her horribly deteriorating health (Bales 2009: 89). In this way, Bailey’s speech represents the re-contextualization of one of the key machinations of pro-slavery apologia (or anti-abolitionist ones) in the contemporary defense of prostitution.

Though Bailey’s speech was ultimately unpersuasive to his peers, what it demonstrates is that traditionalism and its particular means of reproducing inequalities and penalizing commercially-sexually exploited children circulate beyond more reputedly conservative geographies in the American South or Southwest to form the larger rubric of public and official discourse on the matter. In the dialogue between Howard and Bailey we see the adultifying discourse of prostitution hedging strongly (and in a relatively crass way) into the discourse of child sex trafficking and the discussion of legal remedies, threatening minors in prostitution with the denial of restitution.

Adultification serves as one major means of rendering childhood provisional and child protection conditional. Another is childism. In 2008 the Illinois criminal code titled “Soliciting for a Juvenile Prostitute” designated the crime as a Class 1 felony, and was amended to raise the age of the minor in prostitution from “under 16 years of age” to “under 17 years of age.” This pertains to when a defendant is “soliciting for a juvenile prostitute where the prostitute for whom such person is soliciting is under 17 years of age or is a

severely or profoundly mentally retarded person” (720 ILCS 5/11-15.1(a)). However, while raising the age from 16 to 17, the law also provides a mistake-of-age defense to this crime. “It is an affirmative defense to a charge of soliciting for a juvenile prostitute that the accused reasonably believed the person was of the age of 17 years or over or was not a severely or profoundly mentally retarded person at the time of the act giving rise to the charge” (720 ILCS 5/11-15.1(b)). This is an erosion of the statutory rape principle, which is a strict liability crime, meaning that the subjective belief of the offender is irrelevant. The statute provides the same affirmative defense for offenders charged with pimping a juvenile (720 ILCS 5/11-19.1(c)). It also differentiates by age of the minor, designating “aggravated juvenile pimping” when “the prostitute was under the age of 13” (720 ILCS 5/11-19.1(b)). Strikingly, while Illinois has pioneered the concept of DMST on the state level, here, it also manages to codify the notion that a child under the age of 13 can be a “prostitute,” when elsewhere in its code this is considered child rape or child sex abuse. It raises questions about at which low age would lawmakers pause in applying the phrase “the prostitute” to a child.

At the same time, the legislature raised the age of prostituted minors, ostensibly in order to expand the scope of the law’s protection of children. However, they simultaneously and implicitly equated the incapacity of sixteen-year-olds with “severe mental retardation.” They then provided a “mistake of age” defense for “johns,” meaning that they can be exculpated by claiming that they believed a child in prostitution looked like or seemed to be an adult. The subjective mindset of the adult becomes prioritized over the objective reality of the minor’s child status. On the one hand, the law views children as so naturally vulnerable as to classify them alongside those with severe mental retardation, implying a connection between the two. On the other hand, the objective, material reality of child status can be negated through adult mental subjectivity in pursuit of de facto adult/child sexual relations, including for commercial-sexual purchase thereof. Regardless of its moral substance, the

constructive effect that this has on “the child”—who is otherwise deemed to embody a “natural” identity—is that this status can very easily be rendered meaningless depending on the adult subjective mindset. In other words the child identity is made available to adults for multiple, contradictory readings and usages. In turn, these readings and usages can be projected onto children’s bodies.

Despite what would otherwise be the accretion of pioneering efforts, in order to provide child protection, it seems the law must extract the toll of diminishing the mental capacity of teenagers by implicitly placing it on the level of a neurological disorder, and immediately begin to erode child protections in order to allow for adults’ indiscretions. The omission of “customers” in Rep. Howard’s critique of impunity for pimps and panderers in the 2005 debate interlocks here with the impunity that “mistake-of-age” has traditionally provided. As mentioned above, this “mistake” is one easily made with regard to minors in prostitution who are perceived in generally adultifying ways, particularly when they are children of color. In these ways, the law gives the appearance of increased child protection, but subtly yet profoundly undermines them, rendering these protections highly conditional, if not illusory.

In 2010 Illinois’ legislative debate on the nationally celebrated Safe Children Act (HB 6462 and 6129) officiated the term “child sex trafficking” in its legal discourse, and brought the legal concept of DMST into being in the state. The law defined all persons under the age of 18 as children. Discussing the bill, its sponsor, Rep. Burns, explains that it “decriminalizes the...crime of juvenile prostitution,” with an aim “to link these young people with the appropriate child protective services.” The terms “child,” “young people” and “juvenile” are used interchangeably. The exploiters are clearly defined as adults. The reason offered for decriminalization is “that these young people have been exploited by pimps and adults and forced into a life of prostitution.”

The lawmakers clearly set minors as victims in need of “child protective services,” and adults as the pimps and exploiters. The adult/child relationship is defined in terms of victims/offenders. Yet the interjection of “force” erodes the distinction between adult/child because the decriminalization of children for prostitution is supposed to remove the requirement that there was “force” involved; their child status alone is supposed to be sufficient for special protection. This signals the conditionality of their protection based on the harsh quality of the actions perpetrated against them by adults rather than the simple fact that they were committed against a child. One of the objectives of child decriminalization is to take away the “mistake of age” defense traditionally used to deny that child exploitation took place—to strictly protect minors on the basis of their child status alone—regardless of whether they were “forced” into prostitution or not (Law 2000). In this way, child status becomes paramount to this type of protection. Although the word “force” used in this debate does not end up being codified in the actual law, it shows equivocation in the mindset of the lawmaker toward child victims in an important and generative discursive event.

Rep. Reboletti also referred to “juvenile prostitutes”—a term that works against constructing minors in prostitution as children—compared to, for instance, “sexually exploited child.” The sponsor then emphasized “the age of the prostitutes,” adding “they’ve been confused, they’ve been manipulated, they’ve been pimped.” Although likely meant to evoke empathy, when spoken in a legal arena, this suggests that childhood in itself may not be sufficient to merit special protection; that specific harms that negate children’s consent such as confusion, manipulation and pimping are necessary to emphasize harm to them, not the fact of child status. Reboletti then addressed what happens “if the kids went back into that lifestyle,” and if they were to be re-arrested. Even though “kids” has a different connotation to “juveniles,” the reference to prostitution as “lifestyle” implies “choice” as associated with neoliberal discourse that privileges understandings of socio-economic conditions and

adaptations as “lifestyles” and the product of personal choices for which even minors have personal responsibility, and which can be changed primarily through self-help and self-will (McRobbie 2011: 181; Giroux 2003: 123). The re-contextualization of such words that function as placeholders for “choice” into the conceptualization of DMST, a new construct, can overpower the objective of child protectionism for which the law is being written. Given that “choice” was invoked in problematic ways in the 2005 debate, it would seem that by 2010 Illinois lawmakers were not ready to purge the discourse of child sex trafficking from the adultifying effects of personal responsabilization implied in “lifestyle” and “choice.”

Referred to only in passing, Reboletti mentioned the arrest and “re-arrest” of minors in prostitution. Even though the Representative states the objective of the law as decriminalizing minors, arrest is implicitly unproblematic to the project of decriminalization. Again, this belies juvenile justice literature, which demonstrates that arrest and pre-trial detention are criminalizing techniques because they prejudice criminal justice outcomes for minors who are subjected to these practices. What we seem to witness over the course of years leading up to the passage of this pioneering “safe harbor” law is that legislatures set up child protection and the construct of childhood/child status undergirding it. They then systematically whittle these down to the point of being barely recognizable as child-protective, to fit into prescribed frameworks such as law-and-order policing, which has traditionally involved the practice of arresting minors in prostitution. The power of “force,” “choice” and “arrest” each endure despite the attempts to decouple them from children and child status in the context of decriminalization.

Lawmakers’ understandings of children were tested again shortly after this debate. In May of 2010, Rep. Burns proposed amending the same law (HB 6462) by addressing the punishment of offenders of child prostitution—organized crime, pimps and solicitors. This time, throughout the debate, the term “juvenile” was consistently used to refer to both minors

in prostitution and minors who commit “juvenile pimping,” referred to as “juvenile pimps” against “juvenile prostitutes.” The lawmakers struggled with how pimps who are minors should be treated—whether they would be tried as adults or minors—and ultimately concluded that “it depends on the age of the juvenile pimp...the court would have the discretion to adjudicate them in juvenile court or charge them as an adult in adult court.” The initial confusion suggests that the concept of pimps as minors can be as vexing for lawmakers as the concept of minors in prostitution has been. For a moment their basic knowledge of juvenile justice procedure was challenged. Moreover, casual references to “juvenile pimps” and “juvenile prostitutes” in the same breath have the effect of not only equating them but also adultifying both, which helps the adultification of the victimized party to go unnoticed.

By 2010 Illinois was one of the few states to have adopted statutes recognizing minors in prostitution through the decriminalizing term of “victims.” The Illinois Safe Children Act of 2012 (HB 6362) amended several provisions of its criminal code to decriminalize and divert impacted minors from criminal justice or delinquency (720 ILCS 5/11-14(d) (2012)). It immunized minors from prosecution for prostitution (720 ILCS 5/11-14(d) (2012)), and barred defendants from raising as a defense the fact that the minor “consented” to engaging in prostitution (740 ILCS 128/25 (“Non-defenses”) (2012)). It also incorporated definitions of “child abuse” and “neglect” into the child prostitution context and required detaining officers to report minors in prostitution to the child welfare system, who would then have to commence an initial investigation into child abuse or neglect within a day (705 ILCS 405/2-3(2)(vi); 325 ILCS 5/3(h)). However, it also specifies “temporary protective custody” of minors in prostitution for the stated purpose of protecting the minor from pimps, traffickers and even herself (720 ILCS 5/11-149d); 704 ILCS 405/2-7 and 2-5). Arrest and pretrial detention not only have adultifying effects on minors for purposes of criminalization, but as many studies have now pointed out, the difference in treatment of minors in the

juvenile justice system and adults in the criminal justice system are increasingly minute, even if the stated aim is to divert minors into social services (Gardner 1987; Brown 2007). This same critique is made of the difference between the juvenile justice and child welfare systems (Lutnick 2016) such that these practices are untenable for children who have been commercially-sexually exploited.

In comparison to the 2005 debate that preceded the safe harbor law, in 2012 Illinois' amendment to its trafficking law was noticeably non-contentious. HB 5278 passed unanimously and without argument, allowing adults to sue perpetrators of trafficking crimes against them that occurred during their childhoods. By 2013 Illinois' law regarding "trafficking in persons, involuntary servitude, and related offenses" sectioned minors into a separate provision after the statute defined various words used in it, and the elements of "involuntary servitude." Minors were still defined as persons under 18, but Illinois took the added step of clarifying that older teenagers are still minors by specifying that there is "no overt force or threat" required whether "the minor is between the ages of 17 and 18 years" or "under the age of 17 years" (720 ILCS 5/10-9(c)(1)-(3)). The clarification that no force or threat is required for minors regardless of where they fall on the age range is an additional child-protective step that Utah does not take. Overall Utah and states with similar policies have treated the more child-protective federal standard as the "ceiling" (the maximum amount of child protection from criminalization that it is willing to provide), while Illinois has treated it as the "floor" (the minimum amount of protection the state should provide).

The case of *Sawyer* (2011, 2015), involving a former rapper and notorious pimp from the Southside of Chicago (discussed further in Chapter 4), originated under Illinois' safe harbor statute. In *Sawyer* the judge explained that the defendant met one of the girls, Tatianna, when she was 13 years old, describing her as, "often carrying a teddy bear." By reference to an iconic artifact of Western children's material culture, the judge evoked imagery of

normative youthful innocence, helping to maintain Tatianna's child status. According to the US brief presented upon appeal, in 2011 the district court sentenced Sawyer to fifty years in prison after a jury found that he "knew or recklessly disregarded that the victims were minors." Sawyer raised the mistake of age defense and claimed not to know that any of the girls were minors, and argued that they chose to be in prostitution.

The statement of the case in this brief, which ultimately won against Sawyer, meticulously listed each of the victims' names, ages, background information, and developed the narrative of their lives and interactions with him. It paid most attention to the ways in which Sawyer victimized these girls, but there was emphasis on each of their ages, particularly that "His youngest victim was twelve years old." Nonetheless if one looks up federal and state-level statistics on juvenile arrests, it is not uncommon to find that minors continue to be routinely arrested for prostitution, though the terminology of crimes under which these are listed may vary. Over the years I have noticed children as young as 9 on these statistical tables.

The judges' opinion in *Sawyer* explains that Sawyer required the girls to call him "Daddy," referred to them as "family" and "wives," to himself as an "uncle," and branded the girls with tattoos of names he gave them beginning with the letter "P" because his nickname and rapper name was "P-Child." It explains ways that Sawyer forced the girls to adopt behaviors and routines of the age he "gave" them rather than the age they were. For example, he required them to learn how to wear makeup and high heels, and how to give oral sex. These practices demonstrate the great extent to which the "mistake of age" defense works against minors in prostitution, particularly when their identities are manipulated to suit the demands of commercial sex. It reinforces ways in which the child identity is "open for interpretation" by adults (Grahn-Farley 2003). The requirement to appear sexually appealing in prostitution and commit acts that are constructed as antithetical to normative childhood

also bolsters the adultification of girls, similar to the way presumptions of masculinity and the hyper-resilience it implies adultifies boys in prostitution (Lillywhite and Skidmore 2006). Yet the choicelessness of their child status remains intact. The prosecution in *Sawyer* provided testimony of one of the girls, “Where else was [there] for me to go? I was only a child.”

Much of the girls’ documented testimony against Sawyer suggests a combination of their infantilization, adultification and chattelization mirroring the dynamics of domestic violence. Most testimonies reveal graphic details of the beatings, torture and death threats they received from Sawyer and his adult male co-defendant. However, two girls are also on the record as minimizing or denying these incidents, implying that assaults upon them were deserved—that they were beaten only because of their “smart mouths.” One of the girls stated that Sawyer told her he “only hits us to make us better,” suggesting the kind of disciplinarian patriarchal violence traditionally reserved for children and wives, as well as the mimicry of slavery.

Use of the term slavery—particularly in reference to chattel slavery in the sex trafficking context—is typically met with skepticism in the sociology of sex work (O’Connell-Davidson 2006; Kempadoo and Doezema 1998). However, sociological perspectives and the intersection of critical theories of race, class, gender and childhood as they bear on the historical presence of human trafficking in its various forms—chattel slavery, indenture, quasi-slavery, orchestrated child abductions—demonstrate their intimate connection with commercial/sexual exploitation in its various forms. These connections merit closer inspection, particularly with a child-centered approach.

Child centrism requires more than solely a focus on children’s subjective voice. Greater respect for children’s thinking and behavior as well as good faith efforts to

understand matters affecting children on their own terms are crucial. However, just as with any discourse, the purpose for which these voices are offered is paramount. There is also an objective component to child-centrism that does not presume authenticity or authority, but rather assesses the interests served. For instance, since we have come to understand the dynamics of the disciplinarianism Sawyer meted out against the girls as domestic violence, child abuse or aggravated assault and battery in any other context, we are not inclined to accept at face value the statement of the girls who implied that they deserved this treatment because Sawyer did not like what they had to say. In Sawyer's court case, the girls' voices were effectively framed to maintain their childhood, as children with little recourse in their lives. Had the girls been tried for prostitution in delinquency proceedings, however, they would have been constructed in very different terms, as the next chapter discusses.

3.2 Historical Presence

3.2.1 The Age of Consent

The antebellum era (prior to the Civil War) and the Gilded Age (approximately 1870-1900) saw many major transformations to American society, including the establishment of what we now understand as modern childhood beginning in the 1880s. During Colonial times⁵³ prostitution was not a distinct crime and vagrancy laws were used to enforce against it (Gilfoyle 1992, in Birkhead 2011: 1081-82). Prostitution was otherwise “grudgingly tolerated in urban centers,” where persons in prostitution used a combination of “fiercely protected” property rights and criminal law—which was privatized at the time—to “defend their right to sell their bodies” and prosecute “assaultive customers” (Id.). Minors in prostitution were mostly “orphaned or abandoned girls,” or socially marginalized in other ways (Id.: 1081). At this time a nationally influential case regarding child prostitution arose—the earliest of such cases I came across during the course of this research. *Ruhl* (1859)

⁵³ Colonial times overlap the period broadly defined as the onset of “modernity” during which the US was established as a sovereign nation-state.

represented the traditional Western view of children as chattel, making their protection from commercial-sexual exploitation contingent on the notion of children as the property of their parents. During Reconstruction (1865-1877) and the Gilded Age, what can be considered America's first human trafficking law, the 1875 Alien Prostitution Importation Act (APIA) or "Page Law" differentiated childhood through racialized immigration fused with religiosity and anxieties regarding the reformation of the nation after slavery. As the first federal and race-based immigration law—predating the Chinese Exclusion Act (1882)—the Page Law racialized prostitution and showed both pity and contempt for the victims of sex trafficking, whether adult or child. By the Gilded Age and with increasing migration into the US, the dawn of modern American childhood began around issues of labor and sexual exploitation, compulsory public education, juvenile justice and child welfare services.

Although the formal and directly referential exclusion of women of color from political subjecthood and citizenship (and worthiness of protection from sexual integrity) has dematerialized from legal texts particularly since the civil rights era, the law continues to exclude and disservice females of color through seemingly neutral principles (Harris 2003: 517-18; Crenshaw 1989; Pether 1999). Facially neutral principles then become deployable against any and all females and gender non-conforming persons. Despite abolition of "the promiscuity defense," which allowed men accused of statutory rape to use girls' "bad character" as a defense, notions of gendered credibility persist in different forms and in new contexts in the law—"she lied," "she tricked me," "she looked 25." *Mistake of age* and the contours of *force* and *consent* can operate in this way as a proxy for the type of "adultifying" bad character traditionally contrasted with normative girlhood. These notions directly translate to the de/valuation of some girls' sexual integrity over others, as witnessed in Illinois' own courts in the present day, and others across the US (Pether 1999: 87; Oberman

1994). This suggests that even when laws change, cultural ideas regarding gender, specifically girlhood, persist.

The historical development of the crime of statutory rape and age of consent become important when attempting to understand contemporary trafficking and prostitution laws, particularly regarding children, and the discriminatory work of facially neutral principles. The development of statutory rape laws during the Gilded Age preceded White slave traffic laws and the prohibition of prostitution during the Progressive Era that followed to significantly erode the child protectionism of age-of-consent laws. It seems that the succession of the two regimes of age of consent and White Slave Traffic that these sets of laws brought about resulted in the contemporary contradiction between minors in prostitution as consenting, adultified offenders versus non-consenting child victims. Mistake-of-age, force requirements and character judgments implying good or bad girls that we witness in contemporary Utah and Illinois discourse and across states have been passed down through these historical and legal precedents.

Examining the legal discourse surrounding passage of (and resistance to) age of consent laws and the crime of statutory rape that they established reveals the dimensions of race, class, gender and age informing these constructs, which, in turn, shaped the contours of modern childhood. Beginning in the Gilded Age and congealing in the Progressive Era, efforts to raise the age of consent were beholden to White supremacy. So as not to alienate the support of southern White male legislators in particular, White women reformers leading the charge were tepid and equivocal regarding the protection of African American girls, as well as the protection of Black males from lynching based on false rape allegations (Odem 1995: 28-30). At the same time, many of the White male legislators to whom female reformers had to appeal during this pre-suffrage era were unequivocally hostile to the notion of underage girls' victimization in sexual interactions with older males (Id.). The age of

consent campaign upheld White feminine purity, but male legislators made certain to inject their ideas of working class and African American females as its antithetical embodiments—of the dark chaos of female sexuality and its implications for (White masculine) civilization.

Across the states male lawmakers conveyed similar ideas regarding working class girls generally (Id.). However, Southern White legislators' objections to age of consent laws in particular were consistent with the "Jezebel" stereotype or "controlling image" of Black females, which claimed their inherent promiscuity and "unrapeability." They pointed this sharply at Black girls. Much of the contentious debate and conflict over age of consent played out in state legislatures, and were catalogued in a magazine titled *Arena*, which informed the movement for statutory modification.⁵⁴ Expressing concern regarding female claims of sexual victimization against males, legislators argued in ways that would neutralize the gendered aspect of sexual victimization. For example, one legislator argued that males and females are equally lustful (as though the issue of rape and statutory rape are fundamentally about sexual desire): "the law-makers of this state were then, and are now, unwilling to inflict the heaviest penalty of the law on the male when there is a possibility that the female is also to blame" (Flower 1895a; 1895b). Exemplifying the voice of White southern masculine authority deployed contra to such bills (and in favor of keeping the lower age of consent), in 1895 Representative AC Tompkins of Owensboro, Kentucky, vocalized his opposition by deploying the image of a Black child prostitute, encased in the Social Darwinian ideology prevalent in Anglo-American culture at the time:

There is one other objection, and that too a vital one, to any interference with the law as to consent in this state, as it now stands. The laws of the United States place the

⁵⁴ Stephen Robertson of University of Sydney, Australia, writing for the university's Children & Youth in History project describes the magazine as such: "*The Arena* was an evangelical Christian periodical published in Boston that was known for its advocacy of social reform and women's issues...In 1895, it published a series of articles on age of consent reform edited by Helen Hamilton Gardener...an American feminist...lecturer and the author of articles and fiction, including two novels written to assist the age of consent campaign" [www.chnm.gmu.edu].

negro female on the same plane with the white female, declaring them identical in every particular. Natural law, however, declares that, psychologically and functionally, they are widely differing individuals. (Flower 1895)

Here, the representative's opposition to "the laws of the United States" vocalizes the general southern disposition of invoking opposition to any federal law (referred to as "laws of the United States") in accord with the post-slavery hostility that many southern political elites came to express toward the granting of formal equality to African Americans in the US Constitution. "Natural law," he argues, dictates otherwise, as most compellingly evinced by different rates of sexual maturity between Black and White females:

The menstrual function becomes established in the white Kentucky girl usually at about the fourteenth year, while in negro girls ovulation occurs about the eleventh year. Frequently it occurs as early as the tenth year. I am informed by Dr. Stinson Lambert, of Owensboro, Ky., a painstaking and accurate observer, that seventy-five per cent of negro girls menstruate at the eleventh year. Dr. Lambert also assures me that he has now under his care a negro girl who is in her twelfth year and who is pregnant.

The case of the pregnant twelve-year-old Black girl is offered as evidence of sexual precociousness rather than sexual victimization. Next, the lack of rape prosecutions for Black female victims is offered as proof of their hypersexuality and, hence, unrapeability:

Negroes, in a natural state, are not given to undue sensuality; they are like the lower mammalia in this respect. As soon, however, as they fall under the influence of civilization they become inordinately sensual. The negro is rarely accused of committing rape on the females of his own race. The reason for this is the natural complaisance of the females of his own race, the male being able to easily satisfy his desire without violence.

In the Representative's account, the passionless passivity of White feminine sexual mores, which statutory rape law claims to protect, stands in stark contrast to Black female sexuality that is on par with male sexual demand. Above all, he argues, such a law protecting "girls" opens the door to *Black* girls who would not hesitate to maliciously prosecute upstanding White males:

We see at once what a terrible weapon for evil the elevating of the age of consent would be when placed in the hands of a lecherous, sensual negro woman, who for the

sake of blackmail or revenge would not hesitate to bring criminal action even though she had been a prostitute since her eleventh year! Anyone acquainted with the American negro, a semi-civilized savage, will understand at once what bearing this has on the question without further enlightenment on my part. Taking the facts above cited into consideration, it would be manifestly unjust to tamper with the law as it now stands.

The precocious hypersexuality that renders bodies “unrapeable” ascribed to the Black female is the same as those attributed to the prostitute, coming together in the identity of the Black child prostitute at the core of its grown-up embodiment in the Black woman. Tompkins invokes the trope of the inviolable Black female to conflate it with that of the inviolable prostitute, which also implies that child prostitution at the age of eleven is not commercial-sexual exploitation, but rather character evidence. The body of the Black child prostitute was the line demarcating where child protection ends.

Tompkins’ oppositional rhetoric did not entirely “win,” since it was unsuccessful in preventing the age of consent from rising. However, his invocation of the Black child prostitute and the like from other legislators prompted the inclusion of the “promiscuity defense” in statutory rape laws that would work against child protection throughout the following century by exculpating perpetrators whose victims were deemed unchaste. This recalls the invocation of prostitutes-by-choice in the contemporary Illinois legislative debate, where the image of the voluntary prostitute was raised to suggest that it is probably unwise to allow even those forced into prostitution to have restitution. Rep. Bailey seemed quelled only when Rep. Howard insisted that the bill was limited solely to “forced” prostitution.

Thus age of consent law would be compromised by a combination of the southern opposition to racial equalization of the protection of girls that Thompson exemplified, and legislators’ general opposition to the protection of working class girls. Ultimately, the desire to protect White patriarchal respectability rather than vulnerable females (even White

females) seems to have driven the opposition to raising the age of consent and their requirement of “chastity” for legal protection. As one Kansas legislator explained:

The usual argument that unchaste and designing young women would take advantage of the law to inveigle young men into illicit relations and then use the law to extort blackmail from them was urged, and that in the penitentiaries of Kansas and Wyoming there are incarcerated several young men from highly respectable families who have been sent there by immoral young women...[T]he bill...was finally amended with a provision that it shall not apply to girls between fifteen and eighteen years of age, who are notoriously unchaste (Flower 1895).

The “chastity” requirement placed in many states’ statutes in the Progressive Era survived until very recently as the “promiscuity defense” to statutory rape—which adult males routinely deployed against underage female complainants. The defense of “promiscuity” is a product of such raced, classed and gendered historical compromises regarding childhood, and girlhood specifically. Notions of childhood or girlhood and regimes of child protection stemming from such a confluence have a history to overcome of what Odem (1995: 33) explains thusly:

Opponents of the new law clearly feared that raising the age of consent would imperil their sexual prerogatives with working-class and black women. In an effort to temper this threat, many legislators insisted that consent laws should only protect females of previously chaste character.

Even if one overlooks the chastity requirement, legislators’ ultimate support for statutory rape laws during this era cannot be viewed as necessarily chivalrous or passed in a spirit of child protectionism. Looking through the descriptions and transcriptions of these debates, the rationale commonly offered for the protection of girls in this context was to prevent patriarchal heads of households from the loss of their daughters’ services toward contribution to the household through child labor when other men took them away for exploitation. Contemporary construction of the issue follows its historical corollary insofar as child protections are hedged and diminished just as soon as they are created, out of particular concern for the wrongly accused adult male. As Pether (1999) would note, other means will

always exist with which to invoke the idea of promiscuity in the courtroom without having it available as an affirmative defense. When the rhetoric of willful prostitution is invoked in legal discourse encompassing DMST, it can have a similar effect.

3.2.2 “White Slavery”

In the contemporary legal discourse of Utah and Illinois we see usage of the term “trafficking” as well as “involuntary servitude” or “sexual servitude,” invoking the notion of modern slavery (Bales 2004, 2009; Kara 2009). This accords with references to the Thirteenth Amendment, which abolished slavery, in the federal anti-trafficking law titled the Trafficking Victims Protection Act (TVPA 2000), and its 2008 Reauthorization named after the famous British abolitionist William Wilberforce. Thus the legal discourse of modern slavery is national in scope. “Trafficking” is certainly a definitive concept of modern US child sex trafficking law. However, this term has a deeply troubled history and has been politically loaded in ways that have produced unequal childhoods and general inequalities through related discourse. Utah and Illinois have specific histories with regard to the notion that may underlie differences in their conceptualizations and responses in various ways. It is a history largely forgotten or silenced in contemporary debates among lawmakers. This may be an intentional avoidance given that it is a global pattern that governments evade discussing human trafficking in ways that trigger the issue of reparations (Lee 2011). While the language of slavery is used to legitimize the passage of anti-trafficking law, it is severed of its raced, classed, gendered and child-related histories. These histories expose deeper issues that legislatures must reckon with to address the concerns they express regarding the detrimental impact of child sex trafficking underwriting the bills that have been proliferating in American legislatures since the new millennium. Nearly a century exists between the TVPA and the first domestically focused federal anti-trafficking legislation—the White Slave Traffic Act of

1910, or “Mann Act,”—and so historical comparisons or measures of progress might involve a back-and-forth between these two time periods.

The seemingly neutral term “trafficking” has also contributed to the re/production of inequalities and child criminalization in the context of CSEC. Intertwined in this are important but unquestioned historical reasons for why in the US we must analyze the issue of child sex trafficking on the state level, and cannot solely refer to a unified national framework such as the TVPA to address it. The notion of state sovereignty—the supreme authority of individual states for self-governance (Garner 2006: 674)—has traditionally been deployed to preserve practices claimed to be culturally specific to states or regions of the US. “States’ rights,” for instance, was successfully deployed to institute the segregation of White children from children of color, or to extend slavery, including of children, through “convict leasing” after the formal abolition of chattel slavery (Woodward 2002; Haney-Lopez 2014: 38-41; Glenn 2002: 104-06). Such practices ensured the bifurcation and polarization of Black and White childhoods after slavery—rendering White, bourgeois childhood normative, Black childhood deviant, and all others as ambivalent, provisional non-childhoods (Patton 2007, Bernstein 2011). This polarization was institutionalized in systems of child welfare and juvenile justice that co-developed with the formal sanction of the Jim Crow regime from the Supreme Court decision of *Plessy* (1896) (Bush 2010). Not often considered together in the context of childhood, American law regarding prostitution followed suit when federal case law established that its regulation and criminalization fall within the domain of states’ “police power” over health, welfare, safety and morals, and thus the broad discretion of state legislatures (*L’Hote v. City of New Orleans* (1900)). These historical factors have made both national and state-level understandings of “trafficking” important for the treatment of impacted children.

The age of consent movement congealed around the notion of “White slavery,” which would soon undermine its aims. The history of sex work often recounts the phenomenon as beginning with hysteria in the 1880s over foreign men and men of color forcing women into prostitution, which was then used to regulate female sexuality and coerce bourgeois feminine conformity. However, this phrase was originally invoked against the deplorable conditions of child labor during emergent industrialization at the end of the eighteenth century in Anglo-American society. As reformers campaigned for laws to limit and regulate children’s wage work, Romantic British poet Samuel Coleridge described children working in factories as “our poor little White-Slaves” (Handel, Cahill et al. 2007: 72). A century later the phrase was utilized to expose the existence of child prostitution in Britain and to pass legislation in 1885 raising the age of consent to modern levels (Walkowitz 1992). Amidst this “moral panic,” the US contracted with Britain and other Western powers for an international anti-trafficking agreement (White Slave Traffic Agreement of 1904) to protect White women and girls of European descent.

Illinois would pioneer its domestic counterpart through Chicago-based muckrakers, sociologists and government agents, whose tracts on the matter would influence passage of the first national anti-trafficking law in the US, the White Slave Traffic Act of 1910. In the postbellum US, the phrase White slavery would be invoked in contrast to Black chattel slavery but also as analogous to it the way it had been with child laborers. It was used to promote White racial purity amidst eugenicist-based fears of “race suicide” (Ross 1901) through White women’s sexual activities and/or miscegenation (Lucas 1995: 57-58). By the Progressive Era “White slavery” became synonymous with trafficking and prostitution.

Several historical developments also made Chicago central to the conception of prostitution and sex trafficking as a national problem and locus in which anti-prostitution/trafficking efforts converged perhaps most intensely. One is the muckraking

work of George Kibbe Turner (1907) titled “City of Chicago” in the progressive *McClure’s* magazine, which exposed and traced Chicago’s violent crime to official corruption. This piece greatly influenced the definition of White slavery as, in the words of one scholar, “the enslavement of white women or girls by means of coercion, trick, or drugs by a non-white or non-Anglo-Saxon man for purposes of sexual exploitation” (Nichols 2008: 186). As mentioned in Chapter 2, another key development is the establishment of social work and the settlement house movement headed by sociologist Jane Addams and exemplified by Hull House as its institutional component, as part of a larger national movement preceding it to manage children of the underclass including immigrant children.⁵⁵ Turner’s 1907 exposé greatly influenced Addams, particularly her 1912 tract titled “New Conscience and an Ancient Evil,” in which she denounces the commercial-sexual exploitation of females and the socio-economic conditions contributing to it. As a result of these earlier movements, with the exception of Nevada, all states of the US have enacted statutory prohibitions against prostitution (Miller and Haltiwanger 2004: 208).

Even though Illinois, especially Chicago was earning a reputation for pioneering progressivism on the issue of childhood and child protectionism, influential proponents of early child sex trafficking law circulated literature that would inform the White Slave Traffic Act. Some of these were abolitionist and social justice oriented, while others contained tropes that we have come to recognize as racist and sexist. Chicago-based tracts published beginning around 1909 were typical of those that greatly influenced the earliest US laws regarding child prostitution (and sex trafficking)—the White Slave laws—and their enforcement. These writings circulated among reformers and politicians in urbanizing cities and made their way into popular consciousness on the issue. Exemplifying the abolitionist

⁵⁵ Interestingly, because of the early sociology of Jane Addams and its influence in the sociological research of the Chicago School, the desire to combat the commercial-sexual exploitation of children lies at the heart of early sociology.

and social justice oriented literature, Jane Addams wrote a famous piece titled “A New Conscience and an Ancient Evil” in 1912, referring to prostitution as the moral but perhaps more tenacious equivalent of African American slavery: “...this twin of slavery,” she wrote, “[is] as old and outrageous as slavery itself and even more persistent.” At the same time, explicitly racist discourse circulated in, for example, activist Samuel Paynter Wilson’s “Chicago and its Cess-Pools of Infamy” (1910) and white purity reformer Turner-Zimmermann’s “Chicago’s Black Trade in White Girls.” They refer to such characters as “[the] brutal Russian Jewish whoremonger” as predatory figures, and their prey as “young white girls, huddled in with the worst mob of negroes, whites and Chinese I have seen in Chicago’s slums.”

By invoking racialized sexual peril, distinguishing and contrasting Black slavery from White slavery, identifying its victims as White girls and its perpetrators as men of color, White Slavery rhetoric mobilized “slavery” for the protection of endangered White girls in America’s intermixing urban cities. This blanching of the concept of slavery and of its victims, particularly at a time of great turmoil and political strife for newly freed African Americans, disconnected any notion of commercial-sexual exploitation of girls of color under slavery. These and other “white purity reformers,” feminists and legal authorities provided the epistemological base that informed early “White Slavery” laws, which synonymously referred to “trafficking.” The nexus of White slavery laws thus included age of consent, prostitution, sex trafficking, and policy on female juvenile delinquency. These endure today in referents of “trafficking,” “servitude,” and other terminologies related to modern slavery, but are largely severed from any notion of systemic, systematic commercial-sexual exploitation of females of color, including girls.

Looking at Utah and Illinois as polarized opposites in the social policy literature of NGOs such as Shared Hope International—even if Utah appears to be raising its child-

protective standards—there may be a deeper historical story behind this polarization and others that reveals both points of contention and opposition as well as commonalities and alliances that form the story of how childhood has been constructed through these laws. Per national trends and reflecting the scope of influence of urban social reformers, the age of consent was raised—from 14 to 18—as far out as the southwestern territory known as Utah. The term “white slavery” to refer to prostitution made its way to Utah, and was used synonymously there (Nichols 2008: 109), a fact reflected in its laws at the time. The equivocation between the terms “prostitution” and “trafficking” today are rooted in these early usages. Such White slavery cases were adjudicated throughout the twentieth century in the state under federal law, specifically the White Slave Traffic Act. Just as in Chicago in 1908, Utah launched efforts that same year to rescue White females from brothels run by foreigners, even where both were Western European, and even though 90% of Salt Lake City prostitutes claimed to be US-born (Id.: 187). Such actions have historically impacted adults and children alike, but during this time age-segregated institutions to house and reform the “fallen” were developing, while maintaining the penal character of both. Federal officials prosecuted some cases in Utah but residents lamented that the Mann Act pertained only to interstate cases, demanding that local officials prosecute intrastate cases just as vigorously (Id.). In 1908 the Bureau of Investigation, which would be renamed the Federal Bureau of Investigation (FBI) in 1935, was created specifically to investigate White slavery cases and to enforce White slavery law.

However, Utah has its own unique historical relationship with the concept of White slavery and the genesis of “trafficking,” which may help explain its “lag” in adopting (or perhaps resistance to) federal standards on child sex trafficking. In Utah the issue of polygamy in particular, associated with Mormonism, reveals the conflation of Black slavery with White slavery practiced through polygamy in Utah. Polygamy was characterized

nationally, including in 1870s Chicago, as the enslavement of White Mormon women, and therefore worse than Black slavery, because it transgressed the normative racial role of White women. Here we see the origins and divergence of the concept of White slavery and trafficking as represented in the cultures of Utah and Illinois. Polygamy—as White slavery— ascribed Blackness and relegated White women to the role of Black females, blurring the well-established boundaries between Black and White. However, abolitionists also used White slavery to argue for the abolition of Black slavery, by getting Northerners to “imagine themselves or their white relatives in bondage,” including through stories of White orphan girls exploited just like “racially inferior blacks” as a kind of mistaken enslavement (Reeve 2015: 141). Mormon polygamy was subsumed in the broader national narrative of White slavery as an organized system in the American West. Indeed, in more contemporary mid-century cases where federal anti-trafficking law was used to prosecute Utahns for sex trafficking, they have often been to prosecute Mormon polygamy, which may help explain Utah’s resistance to federal intervention in what are ostensibly “private affairs” (e.g. *Cleveland* (1945), 146 F.2d 730).

The constructive effects of the development of White slavery on race, class, gender and childhood intertwined with those of the burgeoning juvenile justice system and its role in child criminalization. But such disparities were national in scope. In Illinois statutes dating to 1909⁵⁶ reveal the early bifurcation of a dependency and delinquency track for juveniles in conflict with the law as prelude to a two-tiered juvenile justice system developing within (and corresponding to) a two-tiered adult/child justice system. Over the course of their development these systems generated the present race, class and gender disparities associated with each. According to the Illinois statute, a dependent child over whom a court had

⁵⁶ Hurd’s Revised Statutes of Illinois (1909), chapter 23, sections 175-176, in Vice Commission of Chicago, “Social Evil in Chicago: A Study of Existing Conditions with Recommendations by The Vice Commission of Chicago.” Chicago: Gunthorp-Warren Printing Company (1911).

guardianship was one who, “for any reason, is destitute, homeless or abandoned; or dependent on the public for support; or has not proper parental care or guardianship.” The statute continues by identifying children associated with prostitution as those “found living any house of ill-fame or with any vicious or disreputable person.” Penury, parental neglect and residing in a brothel triggered the attention of the juvenile court. In contrast, the municipal code of Chicago defined the delinquent child as violating state law, one who “knowingly associates with thieves, vicious or immoral persons,” or knowingly engages in any vice, understood as prostitution, drinking or gambling. Such developments established the enduring label of “delinquent” with “the child prostitute.” Though we see today that Utah and Illinois have made efforts to purge this association in contemporary laws, this deviant identity can be regenerated through other means such as dual status as victims and offenders, or the imputation of commercial-sexual consent.

Like Illinois, Utah began constructing its juvenile justice and child welfare apparatus to handle problems such as child prostitution. The Utah state legislature established its first juvenile court in 1905, six years after the first in the country in Chicago, Illinois.⁵⁷ The court adjudicated children delinquent for various offenses, including prostitution (Nichols 2008: 182). It had broad discretion and served as a mechanism to manage the chaotic home lives of children, especially if his or her mother was perceived as or suspected of being a prostitute, or the child was exposed to such persons (Nichols 2008: 182). The purpose of Utah’s juvenile court was to correct such “wayward tendencies,” and restore the child to “useful citizenship” (Id.). Utah’s intervention in child prostitution conformed to the use of juvenile courts elsewhere in the country, as an effort of social control, and to coerce conformity of working class girls to normative gender standards, including to further the efforts of parents’ anti-

⁵⁷ Website of the Utah Courts: <https://www.utcourts.gov/courts/juv/intro/JuvenileBro.pdf> (Last accessed 2 January 2017).

miscegenation efforts in preventing the courtship of White daughters with Black men (Id.). Homes for “fallen” girls—as alternatives to jails—developed simultaneously, as predecessors to contemporary group homes and part of the modern quasi-criminalizing apparatus (Id.: 119).

These historical developments and the unequal childhoods they produced would be codified in the White Slave Traffic Act (1910). Apart from the White supremacist overture of its title and central defining concept of “white slavery,” legislators’ arguments in favor of the ultimately successful bill reveal its racial and gendered dimensions. A statement from southern Representative Thetis W. Sims of Tennessee provides an explicit example of this rhetoric. Sims argued before the US House that the purpose of the Act would be, “to prevent, I hope forever, the taking away by fraud or violence from some doting mother or loving father, of some blue-eyed girl and immersing her in dens of infamy” (United States House, 45 Congressional Record 811, 19 January 1910).

...whenever I think of a beautiful girl taken from one State to another, from a Territory to a State, or from a State to a Territory by holding out to her the promise of improvement in her condition, then to Chicago, New York, or any other city, and drugged, debauched, and ruined, instead of being murdered, which would be a mercy after such treatment, retain her there and sell her to any brute who will pay the price, I can not bring myself to vote against this bill or any similar measure.... Pass this law, take care of the girls, the women—the defenseless—and let the courts say whether or not the law is constitutional.

Another southern Congressman, Representative Gordon Russell of Texas, connected White femininity and nationhood, stating, “No nation can rise higher than the estimate which it places upon the virtue and purity of its womanhood.” He emphasized that “daughters of American homes” were the primary concern of the bill, contrary to popular conception that sex trafficking was a problem that mostly plagued foreign-born females.

65,000 daughters of American homes each year [were] conscripted into the great army of prostitutes. Think of the tears and the woe and the shame and the poverty and the disease caused by this infamous band of pimps and procurers, who are preying each year upon American womanhood and girlhood.

Pain, stigma, poverty and disease were understood as byproducts of the practice of prostitution, not as causes for entry into prostitution; only the corruption of a particularly criminal class of purposeful, intentional men could cause White females to become prostitutes. Representative Oscar Gillespie of Texas portrayed these acts thusly, “The meanest, the blackest crime that was ever instilled into the human heart by the devil himself is this crime of trafficking in the virtue and chastity of women.”

Making clear the race and gender of the victims as White females, the lawmakers also defined perpetrators—the most menacing among them—as Black males. Revealing the powerful influence of White slavery literature over the passage of the Act as well as that of fear of race mixing embedded in them, Rep. Russell also read to his fellow legislators from the publication of Georgia politician and journalist Thomas Edward Watson:

Some weeks ago a negro who signed himself “John Frankling” wrote me from Tifton, Ga., a letter in which he states that he had a white wife whom he had bought out of a group of twenty-five that were offered for sale in Chicago, and that she was the third white “wife” that he had purchased. Upon making inquiry of prominent men in Chicago, I was told that there was reason to believe that the negro had told the truth...In those dens of horror [country girls, trusting city girls, and foreign girls] are sold to all men who can pay the price—young or old, clean or unclean, healthy and diseased, black or white.

He concluded by urging the House to pass the bill, “which will be a step toward abolishing the slavery of white women...a tribute to every pure and good woman in this land.”

Representative Mann, the namesake of the bill, reinforced this powerful conclusion, stating:

Congress would be derelict in its duty if it did not exercise it, because all of the horrors which have ever been urged, either truthfully or fancifully, against the black-slave trade pale into insignificance as compared to the horrors of the so-called “white-slave traffic.”

US Congressional debates regarding the White Slave Traffic Act were explicit in their intent to protect White femininity. Lawmakers deployed the trope of White ingénues in contrast to all manner of men, but especially Black men purchasing White girls for sexual

slavery, implicitly at a White-slave auction in Chicago, and emphasized that White slavery was worse than Black slavery. It is noteworthy that although the representatives contentiously argued over whether the Act would interfere with states' rights—southern “home rule” against federal interference with states' repression of civil rights—the aim of protecting White femininity ultimately overcame these disagreements. Remarkably, during the Progressive Era, including in the Congress of the Mann Act, the same pretext served repeatedly to obstruct federal anti-lynching legislation.

The provisions enacted in the statute were not as clearly raced and gendered, but through a combination of adult/child designation (or lack thereof), immigration/citizenship status and punishment, the law upheld its stated aim. Provisions expressed and defined the protection of victims largely in terms of the punishment of offenders and assigned differential and uneven levels of punishment depending on whether female victims were US or foreign born. The law brought girls under the same moralistic scrutiny of the state without any unique or heightened protections for them, particularly evident in the treatment of foreign girls compared to their domestic counterparts. The White Slave Traffic Act represents the origins of conflating the punishment of offenders with the protection of children in the sex trafficking context. This is a feature observable in contemporary laws, representative of the trouble with retributivism and the ways it interacts with race, class, gender and age to produce inequitable treatment.

The Act specified and repeatedly referenced “woman or girl” as its subjects. The first several sections specifically pertain to US citizen females (Sections 1-5). The Act covers any woman or girl transported across state or national borders of the US

in interstate or foreign commerce...for the purpose of prostitution or debauchery, or for any other immoral purpose...compel[led] to become a prostitute or to give herself up to debauchery or to engage in any other immoral practice (Sections 2-3)...whether with or without her consent (Section 3).

This formally rendered “consent” an immaterial issue for purposes of finding an offender guilty of sex trafficking. Although the immateriality of consent was applied here against offenders of females of any age, it later became a key point of differentiation between adult women and girl children (notably after women’s suffrage) in the sex trafficking context, wherein only children have come to be legally presumed non-consenting, but adults are presumed consenting unless they prove otherwise (typically via force, fraud or coercion). In explicit reference to minors in prostitution, the Act specifies childhood by age, referring to “any woman or girl under the age of eighteen years” (Section 4).

The combination of age-specificity and the negation of “consent” as a material issue appear to carve out minor girls as a specially and strictly protected class. However, several pieces of language suggest that the recognition of their victimhood and provision of legal protection are contingent—not upon their status or identity—but upon the purposeful intent of the perpetrator. For example, the Act required that the perpetrator was aware of the girl’s age, i.e. that he “*knowingly* persuade, induce, entice, or coerce” a girl who is underage. It restated, “with the *purpose and intent* to induce or coerce her” into prostitution, debauchery, or immoral purpose (emphases added).⁵⁸ Requiring and emphasizing the perpetrator’s purpose and intent was contrary to notions of “strict liability” that underpin age of consent and statutory rape law. Those laws intended to operate on strict age-based status regardless of the adult perpetrator’s actual awareness of the minor’s age. However, the 1910 Act largely followed the same rationale and elements for minor girls as it did for adult women.

The Act maintained at least two major barriers to strict liability on the basis of age of the victim. Not only did it require the adult perpetrator’s personal knowledge of a girl’s age of minority and resolute determination for the girl to engage in “prostitution, debauchery or

⁵⁸ The combination of “purpose *and* intent” here suggests that the intent of the perpetrator alone is not enough to find victimization of a girl; the perpetrator must also be “purposeful.” This suggests a tougher standard for the prosecution of an offender.

other immoral” behavior, but it also used the language of “induce or coerce” to describe what the perpetrator must have done to cause the girl to do so. This counteracts its apparent recognition that victimization occurs regardless of whether a girl “consents,” i.e. “with or without her consent.” With this equivocation on the issue of consent, the Act suggests that a minor who “consents” is simply “a common prostitute” rather than a victim of sex trafficking. In these ways, the Act maintains a good girl/bad girl dichotomy through such stealth distinctions between a prostitute and trafficking victim. The only distinction made between women and girls is that the penalty for trafficking “underage girls” is double that of trafficking of-age women. Both are designated felonies, but the sentence for trafficking of girls is ten years in prison and a \$10,000 fine, compared to five years and \$5,000 for an adult woman, to be meted out “in the discretion of the court” (Section 4). Thus with regard to domestic trafficking of women and girls, the Act made the protection of a child contingent on the perpetrator’s knowledge, intent and purpose of specifically targeting a *child* and upon inducing or coercing her, rather than the plain fact of the victim “being a child.” While appearing to bestow special protections to children, namely girls, it rendered criteria virtually the same for child victims as for adult victims, thus specifying no substantive difference between adults and children (women and girls) that would give children added protection. It made the level of punishment of the perpetrator the most prominent marker of a victim’s child status. Thus the Act operated from the perspective of deterrent theory and its prosecutorial imperatives, rather than from the perspective of children or girls as a protected class.

The White Slave Traffic Act of 1910 also addressed international sex trafficking. It defined “alien women and girls” as a separate class of individuals, and clarified that this

portion of the Act dovetails from the 1904 international Agreement.⁵⁹ The 1904 Act had concerned itself only with women and girls of European descent—“from any country, party to the said arrangement for the suppression of the white-slave traffic” (Section 6)—which were European and North American. The law applied to females recently forced across international borders as well as foreign females already in prostitution in the US, regardless of the amount of time they have been present in the country, i.e. those who “transported in foreign commerce” (crossed international borders), and those “engaged in prostitution or debauchery in this country” (Section 6). The distinction between domestic and foreign sex trafficking was not merely territorial or jurisdictional. The international portion of the Act maintains the same problematic conflation between women and girls that its domestic counterparts do. However, the striking difference between international and domestic is that the punishment for sex-trafficking foreign women and girls is considerably less than for that of American women and girls. First, the crime is designated only a misdemeanor for foreign women and girls, compared to a felony for trafficking American females, and up to two years in prison and a \$2,000 fine, compared to *five times* that amount—upwards of \$10,000 and 10 years imprisonment—for American girls, and \$5,000 and 5 years imprisonment for American women. It is also noteworthy that there is no difference in punishment between trafficking of foreign women and foreign girls, but there is between American women and American girls. In other words, the domestic (interstate) trafficking of American girls incurs double the penalty of that of American women, while that of foreign women *and* girls incurs less than half that of American women.

These findings demonstrate that the “women and girls” conflation is not merely a problem of infantilizing adult women, under the pretext of expanding the scope of its

⁵⁹ The Act clarifies that it is pursuant to the 1902 international agreement of the Paris Conference, which culminated in the international 1904 White Slave Traffic Agreement, to which the US “adhered” in 1908.

“protection,” which has been the focus of feminist theorists, but also a function of adultifying girls, which diminishes or denies their victimization by narrowing the class of victims. Yet, by naming them, the law brought girls under the same moralistic scrutiny of the state, without offering them any unique or heightened protections. In breaking with the age-based strict liability of age of consent and statutory rape laws to create a distinct crime of “white-slave traffic,” it made childhood-based protection from commercial-sexual exploitation contingent on equally problematic notions of victimhood and consent that have done little to distinguish child status and offer child protection. The deterrence effect that doubling the penalty for trafficking American girls supposedly creates is dubious as a form of “protection,” since deterrence is directly aimed at punishing perpetrators and can only, at best, hope to protect victims in this indirect manner. Thus the structure of victimization and punishment in White slavery law was racialized, gendered, and classed, and not particularly child-protective. In particular, its heavy reliance on punishment as the primary marker of the child status of the victim denied child status and childhood-based “protection” to foreign girls.

Even though European immigrants from the signatory nations would soon be legally recognized as White Americans, per the story of racial formation in the US, this differentiation between American and non-American victims of sex trafficking nonetheless established an important and enduring distinction between international and domestic sex trafficking that would rapidly become more explicitly racialized. The Howell-Bennett Act of 1910, which passed simultaneously, continued the trajectory of older sex trafficking and immigration laws, penalizing those who import aliens for immoral purposes and deported aliens in prostitution as well as those engaging in the business of prostitution. The demand of feminist jurisprudence has been that the law should “move away from merely attaching criminal sanctions to crimes against women,” and instead focus on remaking the terms of the social and sexual contracts (Douzinas and Gearey 2005: 238; Pateman 1988). The Mann Act

exemplifies how the focus on punishment can detract from such an aim, and reinforce the racial and sexual contracts, particularly in the way that both subsume child subjects.

Whether current legal discourse on the issue of child sex trafficking is progressing depends largely on transcending this history and overcoming the mechanisms that have historically structured the law to re/produce inequalities. Though the law has been neutralized for reference to race and gender in recent decades, it remains severed from the history of slavery, class strife and struggles over childhood that initially brought these terms into being but which were appropriated for hegemonic ends. Laws may appear child-protective while taking steps to limit their own effectiveness. When the TVPA was first enacted in 2000, its focus on international trafficking differentiated between domestic and foreign victims and created a dual track system. Reversing from 1910 and due to geo/political shifts, the TVPA which effected greater protections for the foreign victims, although these benefits have not often materialized (Kara 2009). Historically, the discourses of prostitution and trafficking have been intertwined, and both constructs have existed uneasily alongside one another, with “prostitution” always deployable against children to adultifying and thereby criminalizing effect. Contemporary constructions of minors through the discourse of prostitution and historically discriminatory discourse of trafficking may not be purged of their historical saturations, given not only statistical disproportionalities for criminalization of girls of color, but also encoded words such as “street” in the prostitution context in law and order discourse. These discourses have been mutually shaped over time with reciprocity between the state and national levels, such that they cannot necessarily be separated by state-based jurisdiction. However, punishment theories of retributivism or rehabilitation and political orientations can intensify or alleviate their effects.

This chapter has discussed ways in which minors have been constructed in and through prostitution and trafficking laws to create provisional childhood, rendering child

protection conditional and child criminalization allowable. Equivocation on this issue in which child sex trafficking is never entirely decoupled from “prostitution” and its adultifying effects signifies that child status alone has never been sufficient for “child protection.” This tends to undermine framings of the issue operating on presumptions that children are idealized, benefit from special protections and chivalry, and that regulation of this issue is merely or primarily a matter of combating the infantilization of women and the unwanted interference of the state, as it becomes a more complicated matter than this when reframed to center children. What is needed is greater attention to historical developments and continuities, which politics are privileged or sidelined, and to what extent past inequalities are reproduced in new contexts, including through silences and omissions. The following chapters turn to the ways in which the victim/offender and consent/non-consent dualisms interplay with the foundation laid by legal discourse with regard to the adult/child.

CHAPTER 4: Ideal and Culpable Victims

In Chapter 3 we saw the blurring of boundaries between “adult” and “child” through the adultification of minors in prostitution, particularly African American girls, in the broader context of increasingly waiving African American and Latino minors into the adult justice system. Similar processes are at work in the construction of victimhood and perpetration, victims and offenders. American legal discourse dichotomizes *prostitution* and *sex trafficking* as two separate phenomena, but it also blurs the boundaries between them in equally problematic ways. This applies to both international and domestic child sex trafficking. Welfare-via-criminal justice interventions to both are generated within a framework of crime and border control. Legal discourse on international trafficking emphasizes the control of immigration and international borders, while that of domestic trafficking emphasizes law enforcement. The quasi-criminalization of minors in prostitution exemplifies the blurring of boundaries between welfare and criminalization historically and in the neoliberal era—not only between juvenile justice and adult criminal justice, but also between the criminalizing aspects of juvenile justice and child protection. Insofar as child welfare and its philosophical foundations have contributed to notions of modern childhood, the way the law blurs distinctions between the child as victim and offender—combined with its obfuscation of where welfare and criminalization begin and end—intertwine with and accelerate the erosion of childhood discussed in Chapter 3.

A review of the literature on punishment and juvenile justice (Chapter 1) shows that there are many structural, institutional and philosophically foundational reasons that lead to equivocation regarding the difference between victim and offender generally, which similarly impacts the distinction between adult and child and consent and non-consent as well. In the child prostitution context specifically, the construction of child prostitution as “prostitution” conveys criminal wrongdoing on the part of the minor, signaling the need for punishment. In

contrast, “sex trafficking” conveys victimization and suggests the need for protection. Response to prostitution under the prohibition model, which criminalizes prostitutes themselves, seeks retribution for a crime of morality against the public. The construction of minors in prostitution as victims of commercialized sex under DMST statutes relays the idea that they are children in need of protection and should not be criminalized. Typically, media reportage and scholarly and policy analyses appear satisfied that the law, at least in its intent, is child protective. Less scrutinized are the criminalizing means by which the ‘protection’ is to be achieved, such as arrest and detention. Policies that recommend these techniques under the auspices of protecting girls from pimps, traffickers or to prevent recidivism are either not engaging the literature on punishment and juvenile justice, or choosing to ignore its insights. Studies on juvenile arrests and detention in the context of disproportionate minority youth contact demonstrate that these are techniques of criminalization, not de-criminalization.

Chapter 4 examines the dichotomized construction of child prostitution as *prostitution* or *sex trafficking*, which is to examine the boundaries between punishment and protection. The same basic set of legal texts outlined in Chapter 2 are examined but with a shift in focus toward how they establish the structure of culpability for prostitution and sex trafficking, and how the victim/offender binary it generates contributes to the making of minors in prostitution as *bad subjects* marked by the condition of *criminalized multiplicity*. It investigates prevarication regarding victimhood in child prostitution as rooted in ambivalence regarding child prostitution itself, which manifests in the contradictory characterization of minors in prostitution as criminal offenders of prostitution and crime victims of sex trafficking. The two primary responses to child prostitution are constructed through the bifurcation of prostitution and sex trafficking, resulting in an oppositional dynamic in which *prostitution* imputes culpability on the person who sells her sex, and *sex trafficking*

exculpates the person whose body is sold. Respectively, they each represent the conceptual core of the punitive regime and protective regime to which impacted minors are subjected.

The protective construct of *sex trafficking* forms part of (but also competes across) a continuum of abuse and criminality, including age-of-consent based laws that proscribe child rape, child sex abuse and statutory rape. Even though DMST attempts to redefine child prostitution similarly, as a sex crime against children, lawmakers cannot seem to get past minors' culpability as commercial sex offenders to fully conceptualize it as an economic and sexual crime committed against children, and provide them with unequivocal protection. Furthermore, although *prostitution* is a punitive construct and *DMST* a protective one, both are technologies of crime control used for the quasi/criminalization of child prostitution across all states. They coexist in the criminal codes of all states, whether the state tends toward retributive or rehabilitative approaches to crime. Both are technologies of punishment for the criminalization of child prostitution operating across all states. This complicates the notion that Utah represents the more retributive model overall and Illinois the more protective. This chapter will demonstrate that punitive and child-protective tendencies coexist in both states through the enduring contradiction of minors being perceived congruently as victims and offenders. This reflects the broader structure of Western punishment and juvenile justice as vacillating between retributivism and rehabilitation, but what is striking about child prostitution is that they are contradictorily embodied in the same subject. A clearer indication of states' commitment to protecting and/or preventing CSEC is whether and to what extent states attempt to acknowledge and resolve this contradiction in ways that benefit children.

This chapter is structured by three main findings regarding how the victim/offender binary is deployed to penalize minors. First, it unpacks the bifurcation and contradictory construction of child prostitution as "prostitution" on the one hand, and as "child sex trafficking" on the other. The notion of *DMST* is ostensibly created to reconcile the

contradiction of “child” and “prostitute,” but nonetheless competes on a continuum of existing criminal laws that apply a range of labels to minors in prostitution, including as victims of various sex crimes (child rape, child sex abuse and statutory rape) on the protective end of the spectrum, or as sex offenders on the punitive end, the latter being the stronger tendency.

Second, it interrogates how this bifurcated construction of the issue creates ambivalence regarding its subjects. Minors are not straightforwardly treated as victims, but rather judged against “ideal” and “culpable” victimhood, or as offenders of a sex crime. Although sociological studies have primarily focused on the type of behavior and respectability this entails (Halter 2008; Lee 2011), their research calls for better understanding of the race, class, gender and childhood dimensions resulting in what I refer to as *criminalized multiplicity*—the over-determination of criminalization based on perceived violations of law as well as multiple norms—to which the “child prostitute” is particularly vulnerable. The first and second discussions are interwoven, discussing the US generally, then the two states, Utah and Illinois. The US discussion establishes the broader national context for the states, while state-level discussion demonstrates the bifurcation and mutual shaping of prostitution and trafficking, and the construction of victimization and perpetration.

Third, the practice of quasi-criminalization, justified using child protective discourse, renders minors in prostitution, at best, prosecutorial tools, and reifies their disposability. The construction and utilization of victimhood and perpetration in legal discourse regarding child prostitution reinforces the findings of Chapter 3 regarding the racialized, gendered and classed construction of childhood.

The key points and argument that these findings support are that despite the ostensible re-conceptualization of minors in prostitution as victims of commercial-sexual exploitation and

the adoption of race- and gender-neutral language, both jurisdictional circumscription (state vs. federal) and conceptual bifurcation of prostitution and sex trafficking create geographic and cognitive barriers to dismantling prostitution culpability as commercialized vice that is gendered and racially loaded. Commercialization is the means through which the law differentiates between the age-of-consent based protective regime against sexual predation on children (child rape, child sex abuse, statutory rape and DMST), and the punitive regime of prostitution law. It is the dividing line between minors' victimhood and culpability, the latter of which labels them as sex offenders, and places them in league with those who commit such violations *against* children. Despite interjection of the term "trafficking" to justify passing prostitution laws, minors' protection is conditional upon unrealistic standards of innocence (ideal victimhood). Female culpability persists and female victimization is recognized insofar as needed to prosecute facilitators of prostitution (pimps, traffickers), but not to decriminalize those considered victims.

Moreover, categorization of children does not bestow "special" or increased protections for them in a law and order structure. It merely provides cover of legitimacy without fully committing to the decriminalization of minors. It renders minors targets of quasi-criminalizing law enforcement efforts that primarily value their role as prosecutorial instruments (witnesses) whose potential criminalization can be leveraged as a bargaining tool for the extraction of evidence and testimony. This merely continues the instrumental de/valuation of exploited and exploitable children, and carves out an adversarial relationship between adults and exploited children by rendering authoritative adults as untrustworthy as criminal ones. Despite important differences between Utah and Illinois that comport with their reputations, respectively, for retributivism and progressive utilitarianism, they each adopt particular means of penalizing minors and re/producing good girl/bad girl dichotomies. Retributivism focuses on punishing offenders rather than victim protection per se, yet this

does not translate to greater prosecution of pimps and traffickers, and certainly not “clients.” Particularly troubling are laws that commit to protecting children only upon first arrest for prostitution, a practice that itself belies victim status, but transmogrify them to offenders upon subsequent findings of prostitution. This represents the illogical escalation of penalties for “repeat offenders,” which change minors’ status from dependent to delinquent, and from misdemeanor-offender to felon.

Criminology and juvenile delinquency/justice literature identify disproportionate minority contact (DMC) including of youth (DMYC) as ensnaring children of color in the criminal/juvenile justice systems and perpetuating the repeat-offender cycle (recidivism), while the urban sociology of Wacquant (2007) and legal scholarship of Alexander (2012) have pointed out ways in which such processes bolster racialized mass incarceration as de facto slavery. Examination of the quasi/criminalization of minors in prostitution pushes this framework further by showing that carceral politics and techniques are not only deployed as management of a despised, criminalized underclass, but extend even to those legally recognized as vulnerable, exploited and requiring protection. This requires closer attention to emergent modes of penalization despite discursive shifts toward victimization that appear chivalrous, sympathetic and decriminalizing, particularly in the age of “decarceration” as a response to the crisis of legitimacy for criminal justice induced by Alexander’s (2012) *New Jim Crow* critique. Legal-discursive shifts regarding child prostitution do not transcend the basic limitations of criminal punishment that merely reinscribe minors in the perpetual suspension between retributivist and rehabilitative tendencies, which is a general feature of modern Western crime control. Sociologists urge critical examination of justifications for punishment, i.e. methods of facilitating crime control, adopted in the name of collective good. Closer, detailed examination of the victim/offender binary as devised through prostitution

and sex trafficking, and as constructive of minors in prostitution, will highlight how quasi/criminalization of minors persists.

4.1 The Construction of Prostitution and Sex Trafficking

4.1.1 “Prostitution” as punitive code

Examining the historical and contemporary construction of prostitution and sex trafficking reveals that whereas prostitution discourse has rendered prostitutes criminally culpable, its competing discourse of sex trafficking (including DMST) has seemingly attempted to render prostitutes criminally inculpable.⁶⁰ Though seemingly eclipsed by the TVPA (2000), the Mann Act has endured over a century. The regulation of prostitution, including whether to criminalize minors for prostitution, continues to be the jurisdiction of the states, except where the federal government deems it may legally be found to rise to the level of “sex trafficking.” As the last chapter showed, federal dis/engagement has historically had profound consequences for minorities and children, and the distribution of rights and resources. The endurance of the state/federal split and its prostitution/sex trafficking corollary represent the codification of slavery’s afterlife or re/production of race in its contemporary legal legacies. Because the regulation of health, welfare, safety and morals is conceded to states’ “police powers,” the common practice of regulating prostitution as “morals” in state criminal codes is the reinforcement of jurisdictional dominion (including the idea that sex trafficking requires border-crossing), and retention of the power to continue viewing sex trafficking as prostitution and to criminalize children as prostitutes. In 2008, 44 out of 50 states allowed minors in prostitution to be arrested, criminally charged with prostitution offenses, prosecuted and incarcerated (Snow 2008: 3-4), despite federal and international prohibition of this practice. By 2016, 36 states continued criminalizing minors (Website of US Congressman Ted Poe). In 2014, there were 190 arrests for prostitution in Utah, 31 of

⁶⁰ Discussed further in Chapter 5, sex trafficking laws also determine criminal culpability based on a finding of “consent.”

which were children (Website of the State of Utah 2014). In its current reports, Illinois makes it harder to see this rate because it has done away with the word “prostitution” as a category of crime, subsuming this under “human trafficking” for sex (and labor, as the other category of human trafficking). Strangely, this erases arrests for prostitution off its criminal statistics report, even though presumably such arrests continue to occur (Website of the State of Illinois 2015).

Legal texts that construct the issue of “prostitution” demonstrate ways in which the word has come to serve as punitive code by establishing the criminal culpability of those it labels as “prostitutes.” Through these we start to see the drawing of boundaries between victim and offender, the construction of prostitution culpability, and notions of ideal and culpable victimhood. Early related cases and legislation also created a split between federal and state jurisdiction that respectively circumscribes prostitution and sex trafficking. In other words, they established “prostitution” as an issue reserved for the states, while “sex trafficking” fell within federal jurisdiction. This has deterred federal will to intervene on behalf of potential victims of sex trafficking where cases are deemed to involve “prostitution,” reserved for states’ jurisdiction.⁶¹ “Prostitution” not only establishes the culpability of “prostitutes,” but also negates a major means of constructing minors as victims of “sex trafficking,” thereby denying victimization and victimhood in the child prostitution context.

Legal discourse on prostitution—with reference to child prostitution—is traceable to an early, nationally significant case, *State of Iowa v. Ruhl* (1859). *Ruhl* is key to early establishment of the structure of criminal culpability for prostitution, age of consent and

⁶¹ This has important implications since local law enforcement is too often complicit in local CSEC, whereas federal law enforcement is often more detached from local crime or criminal networks and politics, and thus capable of more effective intervention.

statutory rape.⁶² Decided during the antebellum era and well before the Progressive Era reforms with which the development of modern age of consent, statutory rape and sex trafficking laws are typically associated, the written opinion in *Ruhl* centered on debating the definition of “prostitution,” mentioning the word 23 times in an 8-page decision. Though important to understanding the origins of the legal conceptualization of prostitution generally, *Ruhl* involved child prostitution, of a 15 year-old girl, and determining whether the defendant had lured her away from her family for purposes of prostitution. The court designated the girl as lacking capacity to consent to sex due to her age. Judge Wright wrote, “Under the age of fifteen, the child is legally incapable of giving consent.” The language of statutory rape figures into this early legal text that predates its Progressive Era codification.

“The question hinges on the meaning of the word prostitution,” the decision reads with regard to the defendant’s guilt. In defining “prostitution,” the decision refers to an Iowa statute—“§2584 of the Code”—to interpret the meaning of the word.⁶³ The case decision defines prostitution as “common, indiscriminate, illicit, intercourse, and not merely seduction, or sexual intercourse confined exclusively with one man.” In debating the definition of prostitution, the court cites what appears to be a combination of authors of legal treatises, an English dictionary, and a judge:

Mr. Bouvier says that prostitution means, “the common lewdness of a woman, for gain.” A prostitute, according to Webster, is a “female given to indiscriminate lewdness; a strumpet;” and prostitution is defined as “the act, or practice, of offering the body to an indiscriminate intercourse with men; common lewdness of a female.” Walker’s definition is, “the act of setting to sale; the life of a public strumpet.”

⁶² It is also important for understanding culpability and victimhood in American criminal jurisprudence generally, particularly with regard to “strict liability” for sexual offenses against minors, where offenders are criminally liable based solely on the age of the victim (Leonard 2003).

⁶³ This reference means that “prostitution” had been defined by the state’s legislature even earlier than 1859, the year this case came before the court on appeal, as an example of prostitution prohibition before the Progressive Era officiated it nationally.

For purposes of ascertaining the guilt of the luring offender, it goes on to distinguish prostitution from seduction, with indiscriminate sexual intercourse being the primary distinction between the two.

[S]he must be enticed away with the view, and for the purpose, of placing her in a house of ill-fame, place of assignation, or elsewhere, to become a prostitute in the more full and exact sense of the term; she must be placed there, for common and indiscriminate sexual intercourse with men, or, at least, she must be enticed away for the purpose of sexual intercourse by others than the party who thus enticed her; and a mere enticing away of a female for a personal sexual intercourse, will not subject the offender to the penalties of the statute.

The decision concludes by remarking that to place a minor girl in a brothel, a “house of ill-fame...where she would be in the society alone of the lewd and lascivious,” is to place her in conditions which “her prostitution might be regarded as almost necessarily to follow.” The inevitability of the girl’s prostitution in such a context was enough to hold liable a man who lures her there.

The court insisted on the defendant’s guilt because the statute intended to criminalize “taking and enticing away an unmarried female, under the age of fifteen years, from and without the consent of the person having the legal charge of her person, for the purpose of prostitution.” The judge reasoned that if the court were to *not* hold an adult man liable who lures away an orphaned child like this 15 year-old girl entrusted to the care of her uncle’s family, it would mean that “the most defenseless would be, so far as this offense is concerned, completely at the mercy of the base and selfish debaucher.” Thus the offender in this early, foundational ruling on prostitution, is an adult male so motivated. The decision makes clear that this is regardless of whether he knew the age of the female. Therefore, a debaucher assumes the risk of procuring girls who are underage, and will be held liable for doing so regardless of lacking actual knowledge of their age. In contrast, the victim is a girl child who is 15 years of age or younger, living in unfortunate circumstances (in this case, orphaned), and rather vulnerable.

Although age of consent and statutory rape law is often attributed to and associated with Progressive Era reforms that raised the age of majority to modern levels, the American legal record in various states reveals such earlier efforts to establish an age of consent, quite often motivated by criminalizing or deterring child prostitution.⁶⁴ These decisions focused on adult males luring minor girls into prostitution. Thus, both Progressive Era reforms leading to modern age of consent and statutory rape laws as well as earlier nineteenth century statutes and cases that established 10-12 years old (and above) as ages of majority were significantly motivated by preventing child prostitution.⁶⁵ These efforts, broadly, have also established the concept of “strict liability” in American criminal jurisprudence (Leonard 2003), which represents the principle of punishing more strictly and establishing bright lines of age for culpability when the offender’s actions are deemed sufficiently severe and immoral, and the victim class is deemed sufficiently vulnerable, defenseless or disempowered. *Ruhl* was the first of such cases holding strict liability along lines of age, and establishing age of consent as central to the issue of child prostitution, and of course, statutory rape. These constructs and principles were established under a broader judicial motive for maintaining the social contract, social cohesion and protection of the child, expressed in a statutory rape ruling from 1896 as “[t]he protection of society, of the family, and of the infant” (*People v. Ratz*, 46 P. 915, 916). Thus early legal ruling on child prostitution structured culpability by defining prostitution as female culpability and distinguishing seduction as adult male perpetration against girls, particularly against their abduction from their family and placement into circumstances that would certainly lead to their prostitution. Personal knowledge of girls’ age of minority was irrelevant. As an early watershed case, preventing child prostitution and punishing adult male perpetrators for it motivated *Ruhl*. Thus, victim/offender boundaries

⁶⁴ Other landmark cases include *People v. Fowler* (1891) from California, involving child prostitution, and statutory rape cases of *State v. Newton* (1876) from Iowa and *People v. Lewellyn* (1924) from Illinois, the latter of which occurred after Progressive Era reforms.

⁶⁵ Previously, this area of law seemed primarily guided by the English sixteenth century statute that designated as a felony sex with girls under 10 years of age.

were relatively clear with regard to child prostitution in the dominant American legal discourse.

4.1.2 Physical and cognitive boundaries

The end of Reconstruction and dawn of the Gilded Age brought racialized immigration law regarding sex trafficking that excluded foreign children from even the tentative child protection afforded US citizen children. By the Progressive Era the key case of *L'Hote* (1900) determined that the regulation of prostitution falls within the jurisdiction of states. By defining it as an issue of public health and morals, its regulation was delegated to the “police power” of the states.

[O]ne of the difficult social problems of the day is what shall be done in respect to those vocations which minister to and feed upon human weaknesses, appetites, and passions. The management of these vocations comes directly within the scope of what is known as the police power. They affect directly the public health and morals.

L'Hote represents the longstanding construction of prostitution in American legal discourse, originating in the Progressive Era and the end of the Gilded Age, during which time criminal prohibition specifically against “prostitution” solidified. An early legal articulation of prostitution criminality during this era, it attributes voracity and ravenousness to prostitutes, as those who prey upon the presumed sexual weakness and appetite of men.

In 1910, a decade after *L'Hote* established the regulation of prostitution as the jurisdiction of states, the sixty-first US Congress passed the White Slave Traffic Act (WSTA) or Mann Act, which reinterpreted prostitution as an issue of sex trafficking. WSTA established the lineage of modern DMST law. It defined sex trafficking as falling under federal jurisdiction. Its rationale was that the federal government has plenary power over all matters affecting interstate and foreign commerce, and since sex trafficking impacts interstate

commerce, Congress can regulate it.⁶⁶ Thus, prostitution would only be interpreted as sex trafficking if it involved the cross-border movement of females, like commodities/chattel, whether across state lines or international borders. WSTA was described in the legislation as “An Act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls.” This effectively prevented federal intervention into domestic child sex trafficking unless it involved the cross-border movement of girls. It designated as a felony the crime of

any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other...with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice,

and “in furtherance of such purpose” causes the girl to be transported across such borders (Sixty-First Congress. Sess. II. Chs. 393-395, 18 USC §§2421-2424).

Three years after passage of the WSTA, the case of *Hoke v. United States* (1913) reinforced the states’ rights stance of *L’Hote* by ensuring that despite federal anti-prostitution laws in the realm of sex trafficking, the power to prohibit prostitution was preserved for the individual states. Although *Hoke* was adjudicated at the height of White Slavery hysteria, and upheld the Mann Act as constitutional, it preserved “unquestionably” the control of the states “over the morals of their citizens...[which] extends to making prostitution a crime” under states’ ‘police powers.’” Today, although the TVPA protects minors as victims of “severe forms of trafficking,” implying their exculpation from prostitution liability, it effectively

⁶⁶ Dating back to 1824, the Commerce Clause of the US Constitution bestows vast power over federal regulation of interstate commerce—the exchange of goods or services involving transportation between cities, states and nations, including the traffic in goods and travel of people over state boundaries (Garner 2006: 114). Congress has complete and exclusive power to regulate what is considered to be commerce among the states, with foreign countries and Native American tribes (Id.). It has expanded and contracted at various times in history, mainly expanding up to the 1930s but shrinking significantly under the Rehnquist Court, often as part of the struggle over state sovereignty.

continues the states' rights tradition associated with Jim Crow of leaving it to the states whether to criminalize minors, under the rationale that prostitution is a crime, and crimes and the regulation of "morals" are the domain of states. Vacillation between state jurisdiction over prostitution and federal jurisdiction over sex trafficking marks the construction of the two concepts in American jurisprudence, from which flows the illegibility of prostitution as sex trafficking. The bifurcation of prostitution and sex trafficking and their jurisdictional circumscription, respectively, into state and federal domains, combined with the culpability associated with prostitution in legal discourse explain much of how and why minors in prostitution continue to be criminalized despite the existence of sex trafficking discourse.

Within particular state-level criminal codes, the major means by which the law differentiates between the age-of-consent based protective regime against the sexual predation of children (child rape, child sex abuse, statutory rape and DMST) and the punitive regime of prostitution law is by making commercialization the dividing line between minors' victimhood and culpability. Today's prostitution laws, still mostly regulated under the heading of "morality" in criminal codes identify commercialization as their defining criminal element. Despite a temporal distance of over one hundred years mediating the two texts, the secondary authority of Wharton's *Treatise on Prostitution* from 2014 reflects remarkably similar language and tone to *L'Hote* (1900). Though arguably less moralistic, the modern *Treatise* similarly invokes prostitution as a "vocation," and places perhaps greater emphasis on this by highlighting commercialization as the dividing line between mere "illicit sex" or "promiscuity," versus "prostitution." Prostitution law is unconcerned with illicit sex and promiscuity, whereas it explicitly proscribes prostitution.

The criminal law is not concerned with the prevention of illicit sexual intercourse; presumably, the crimes of fornication and adultery are adequate for that task. This is true even where the woman is promiscuous in her sexual activity. It is the commercial aspect of prostitution, entailing the concomitant evils of professional vice, which attracts the attention of the criminal law. Accordingly, prostitution statutes require the

element of ‘price.’ The requirement is commonly phrased in terms of a ‘fee,’ or ‘money or its equivalent,’ or as under the Model Penal Code, the accused is a prostitute if he or she engages in sexual activity ‘as a business.’ (2 Wharton’s Criminal Law §264, 15th edition).

This specifically refers to “woman” as the subject, but then attempts to appear gender neutral through reference to “he or she.” Historical constructions of prostitution in terms of “evil,” “vice,” and immorality—as opposed to gendered socio-economic strain or commercial-sexual exploitation—extend to the present context as well as how the law equates the commercial aspect of prostitution with criminality, thus establishing the boundary between “legal promiscuity” and “illegal promiscuity.” The attribution of the “evil” of prostitution to females and the construction of prostitution as an issue of commercialized female sexuality informs the dominant legal construction of prostitution as gendered commercialized vice. By constructing their role as offenders—the solicitors of sex for material gain—it renders minors in prostitution similar to adult women in prostitution, as temptresses or seductresses of adult males. The legal interpretation of their acts as “prostitution” labels them as sex offenders, placing them in the same category as pedophiles, abusers and exploiters who attempt or commit sexual violations *against* minors. “Prostitution” serves in opposition to the victimization/perpetration narrative of White Slavery and age of consent-based laws by shifting the blame for prostitution away from adult males and onto minor females. Thus the legal discourse of prostitution suggests a kind of malice on the part of children that is contrary to the definition of commercial-sexual exploitation of children embedded in the language of DMST statutes and international law against child sex trafficking. Emphasizing the commercial aspect of acts that would otherwise be considered child rape, child sex abuse or statutory rape functions to retain the culpability of children for acts of exploitation, abuse and sexual assault, and to divert it from adults, or actual child perpetrators (e.g. “juvenile pimps”).

Even though the explicit language of the WSTA aimed to protect women and girls from sex trafficking per its legislative history, legislative debates and reports that informed its construction of victimhood and perpetration, it would increasingly become utilized in ways that reflected the culpability of prostitutes. The cases of *United States v. Holte* (1915) and *Gebardi v. United States* (1932) demonstrate this trend over decades after its passage. Both of these cases held that women (who would otherwise be viewed as sex trafficking victims) can be held liable for conspiracy of their own prostitution under the WSTA. This suggests the enduring strength of the concept of “prostitution” and the trope of culpable “prostitutes,” which have very often overpowered notions of “sex trafficking,” even given the moral panic, hysteria and sensationalized popular media representation that sex workers rights feminists attribute to white slavery and modern sex trafficking.

4.2 Utah’s State level bifurcation of prostitution and sex trafficking

4.2.1 Breaking with retributivism?

The bifurcation of prostitution and sex trafficking is reflected on both the federal and state levels. With regard to prostitution, both Utah and Illinois, like other states since the Progressive Era, have a history of retributivism toward those labeled prostitutes. Similar to other states’ prohibitions, Utah’s statute proscribed vaguely all moral violations of a sexual nature. Such broad parameters have historically served as a prelude for the kind of discretion used to target females and sexual minorities, according to its major precedent *Salt Lake City v. Allred* (1967). This case shows how prostitution was constructed in ways that target prostitutes for punishment as a means to promote and improve prosperity, morals, peace, order, comfort and convenience, since prostitutes were considered antithetical to these aims. Its socially conservative stance on non-marital sex and deference to police foreshadows its contemporary counterparts in legislative debates, which are replete with deferential statements toward law enforcement and the state’s commitment to law and order.

Wharton's Treatise on White Slavery (2013) describes the *Wheeler* case hailing from Utah as establishing that the WSTA's "original purpose...was (and presumably still is) to protect women and girls who were weak from men who were bad." However, it contravenes this by citing another case, *United States v. Garrett* (1975), which holds that "women who were bad could also be guilty of violating the Act." This characterization of the holdings of Utah-based WSTA cases suggests that when potential victims are perceived as "bad women," it counteracts the trope of "bad men" as sexual predators, and thus negates female victimization. The national discourse regarding sex trafficking, as it has played out in the state of Utah, certainly establishes the ways in which "prostitution" (via invoking the "bad woman") hedges against "sex trafficking" committed by "bad men." This creates a discursive omnipresence of the possibility and likelihood of female complicity in sex trafficking, when female behavior is perceived to be more in line with that of a "prostitute."

When examining Utah through the lens of its own discursive framework on child prostitution law (on an "intrastate" level), the construction of prostitution and DMST also materializes and takes similarly bifurcated form, but through its own localized politics and particular articulations. With the exception of Nevada all states of the US have enacted statutory prohibitions against prostitution (Miller and Haltiwanger 2004: 208). The criminalization of prostitution in Utah predates its establishment as a state, but it first codified "sexual solicitation" as recently as 1993.

Utah's current statute on "prostitution," which was passed in 1992 defines prostitution as follows:

An individual is guilty of prostitution when the individual: (a) engages in any sexual activity with another individual for a fee, or the functional equivalent of a fee; (b) is an inmate of a house of prostitution; or (c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

In the next section it designates prostitution a “class B misdemeanor,” but contains a repeat offender provision that makes a subsequent conviction a “class A misdemeanor.”⁶⁷

Immediately noticeable are the gender neutrality, diminished moralistic language, emphasis on commercialization, and decreased penalty in the modern statute compared to previous language from just a few decades before. The statute nonetheless remains focused on prostitutes as offenders, and finds repeat offenses increasingly reprehensible.

Utah legislative debates regarding prostitution demonstrate that the culpable identity of the “prostitute” is most salient in its legal discourse, ultimately overshadowing the victim status of minors or of those impacted by sex trafficking. In constructing the issue of prostitution, lawmakers exhibit a combination of law-and-order rationale, religious and sexual conservatism, dubious conceptions of “human trafficking,” and contrived gender neutrality. With regard to law and order, just as with the 2011 amendments to Utah’s sexual solicitation statutes, promoted by Utah’s champion of human trafficking law Representative Jennifer Seelig, the prostitution debate (HB 92) demonstrates that the state is adamantly committed to facilitating arrests, protecting officers and bolstering prosecution. These constitute the modus operandi of law and order responses to child prostitution, in a retributive framework particularly in light of the dearth of resources for impacted minors.

*Selective sympathies and articulations of the unspeakable:
Law and order, religiosity, and conservatism*

One of only two legislative debates of substance regarding prostitution available publicly on record is regarding HB 92. The legislative purpose of the prostitution statute was

⁶⁷ Throughout US jurisdictions the distinction between and significance of a misdemeanor and felony charge is that the former entails the serving of jail sentences of one year or less, whereas a felony charge entails serving a prison sentence of greater than one year (Garner 2006: 460, 288). Employment and public and private aid applications most often also require disclosure of felony convictions on one’s record, thereby creating a legal barrier to employment and aid (see, generally, Alexander 2012). Socio-economic exclusion associated with the status of felons locks them into a cycle of marginalization and recidivism, which in both the adult and juvenile justice systems results in racialized patterns disproportionately impacting African Americans in particular but also Latinos (Id.).

to facilitate the more expedient prosecution of repeat offenders of prostitution, and does not mention pimping or patronizing. While prostitution is discussed as a problem that the bill intends to deal with, prostitutes themselves are referred to directly only at one time—with a mixture of discomfort and in a tone that makes light of the subject matter. The prime concerns of the bill, however, seem to be unkempt streets and the drainage of state resources. Representative Wharton, concerned about overcrowding jails with potentially increased prostitution arrests, states “Having a large...having a district that...as you know...heh...has a problem with this thing, I’m all for getting them off the streets and doing something” (HB 92). The bill passed unanimously and the only statements referring directly or indirectly to prostitutes encase them as a problem to be managed, burdens on the county courts and local justice systems, as well as potential burdens to correctional facilities. The aim of keeping prostitutes off the streets—out of public space and view—is a classic hallmark of the law-and-order criminology of Broken Windows Theory that focuses on the targeting of low-level offenders. Applied to prostitution, it casts a punitive net over those in street prostitution, in which poor females of color and those with mental illness and drug addictions tend to be concentrated.

Notably, similar to the refusal of other legislators to articulate the sexual acts being proscribed in the legislation they debate (even as sponsors), Representative Wharton also refused to refer to prostitution or prostitutes aloud, instead referring to them as “this thing” and “them.” The refusal to properly articulate the subject matter and subjects leads the legislator to adopt objectifying language. The acts that are the subjects of statutory rape and prostitution laws are “unspeakable” for some legislators in this way, whereas others do not hesitate to speak of atrocities. For example, in a separate but arguably related legislative debate, one Utah lawmaker argues strongly for enhanced sentences for child rape, reciting horrific details of injuries that a father caused through sexual assault of his infants (SB 2).

Utah legislators will passionately articulate condemnations with religious fervor and invocation of graphic imagery when it serves punitive ends against those clearly recognized as pedophiles under child rape statutes, similar, for instance, to the utilization of similar techniques in anti-abortion campaigns. This suggests lawmakers' selectivity with regard to prudence in discussing sexual acts and sexual violence. Legislators' statements and omissions—the illustrative examples as well that deemed “unspeakable”—demonstrate a willingness to discuss sexual violence against children openly, to highlight their victimization with a view towards retribution, but a reluctance to discuss commercial-sexual exploitation candidly. This signifies their ambivalence regarding victimization in this context.

4.2.2 “I guess, the prostitutes”

The next debate of record in Utah regarding prostitution does not appear for another two decades (February 2012). It comprises a brief and rather incoherent monologue from the sponsor of House Bill 276, Representative Ray, followed by no questions or discussion and a unanimous pass from lawmakers. HB 276 is specifically regarding “aiding sexual solicitation.” Since there is no specific reference to an exemption of minors as victims, the prostitution statute may be applied to minors and adults alike.

Representative Ray's speech merits quotation in its entirety for several reasons. First, it is one of only two “debates” on record regarding prostitution specifically. Second, its confusing and incoherent representation of the subject matter conveys a dubious understanding of prostitution and human trafficking that is attributable to the Legislature as a whole for having passed the bill unanimously and without further discussion after the Representative's speech. Third, it is one major example among several of Utah legislators' convoluted and ultimately impressionistic speech with regard to matters related to child prostitution.

Representatives, this bill comes off as...during the summer I did some...ride-alongs with Salt Lake City and one of the things we did was some vice work. What we found out is when...if you look on—it used to be Craigslist, but they’ve done away with that—but there’s a few other internet sites that you look on—you can find sites where they’re talking about...massages and a lot of covers for prostitution. What happens is you generally—and we’re talking more human trafficking here than anything else—but you have...the person—male or female—who’s in charge of the...I won’t use the word ‘escorts’ because of the...they think they’re not doing prostitution, but—I guess, the prostitutes—and they’re coming into the hotels, and these are the guys that are driving them there, and a lot of times forcing them into this type of a situation. They walk in, they set up the massage table, or they set up the room or do whatever they’re gonna do, and they wait in the vehicle. The gal in the room is arrested for...prostitution. The guy that set up the appointment who drove over there and set up the table and whatever else it was he set up walks away scot-free. So what we’re doing in this bill is we’re just simply saying that if...that person is involved...if they provide any service or commit any act that permits a person to commit any violation of that act, if it facilitates—aiding and abetting basically—prostitution. With that I’m open to any questions, Madam Speaker.

Reading the monologue in its totality conveys the level of confoundedness that Utah lawmakers possess and are willing to base legislation upon. The convoluted speech indicates lack of clear ideas, logic and rationale for the bases of law in this area, demonstrating that the Legislature is willing to pass laws based on the stringing together of phrases, fragmented thoughts and incomplete sentences that create ostensibly sufficient association and impression of “good law.” This is especially problematic given that several legislators express throughout various debates that most of them—often none of them other than the sponsor—may have read the bill prior to voting on them or passing them. Though the Representative implies in the next-to-last statement that he is about to explain what the bill does, “simply,” he does not actually complete his thought. Rather, he implies that a person who aids, abets or facilitates prostitution according to statute or in such a scenario as that described ought to be the target of law enforcement, prosecution and punishment.

Representative Ray’s speech not only impresses an idea of the victim and offender in the scenario he describes as well as provides an example of the problematic discourse regarding laws related to child prostitution, but also gives insight regarding the source of “knowledge” and “authority” upon which his and others’ constructions rely to pass laws and

justify punishments, namely “some ride-alongs” in police cars during vice operations. The rationale for this law was formulated based on one legislator’s experience from inside a police car, from a law enforcement perspective that is reflected in his monologue and ultimately in the statute. His statement is also an admission that law and law enforcement target prostitutes and that pimps and traffickers have not been targeted. He acknowledges and endorses routine arrests of prostitutes in the context of ramping up efforts to also arrest pimps as facilitators. Utah’s law and its rationale provide a clear example of Broken Windows Theory and its targeting of low-level “offenders” who are constructed as victims in the same breath—embedded in and articulated through the “commonsense” of criminal lawmaking.

Representative Ray makes no reference to the age of the persons whom he describes. However, he uses other means of describing “prostitutes.” First, he refers to prostitutes as persons who operate through websites similar to Craigslist.org, especially those that advertise “massages and a lot of covers for prostitution.” Second, he states, “I won’t use the word ‘escorts,’” but is also reluctant to use the word “prostitutes,” a word which he is audibly uncomfortable with uttering. In actuality, however, he uses both and these are the official designations of the offender class in the legal record. He expresses a belief that “doing prostitution” is a better description of the criminal conduct that this class of persons engages in. The confusion over prostitution and sex trafficking—and victim/offender status—is perhaps most obviously displayed in his hesitant reference to “I guess, the prostitutes.” This label is attached despite his earlier interjection that “we’re talking more human trafficking here than anything else,” and he references “force” in the prostitution context. Third, the Representative speaks of “the gal in the room,” in reference to the person whom “the guy”—an aider and abettor of prostitution—“sets up” or forces in a hotel room. Thus, he establishes the gender of the “prostitute” as female and of the offender (aider and abettor of prostitution) as male, even though at one stage he purposefully interjects—however awkwardly—the

gender-neutralizing phrase “male or female” into his speech in a sentence about essentially pimps and how they facilitate prostitution. The prostitution law is admittedly deeply gendered in terms of victims and offenders, who are not necessarily two distinct classes, with the law viewing “prostitutes” more as offenders than victims. This demonstrates the objectification and instrumental construction of the prostitute—she is a victim for purposes of vilifying the facilitator (pimp/trafficker) so that the law can ensnare him, but she is a criminal committing vice whose arrest is presumed righteous, despite characterizing her situation as “human trafficking” and potentially involving “force.” In listening to this monologue, one observes that despite the overall fragmentary nature of the speech, the statements referencing “human trafficking” and the phrase “male or female” distinctly convey the character of talking points equivocatingly inserted for some politically sanctioned but ineffectual purpose. Utilization of the increasingly re-popularized phraseology of variant forms of “trafficking” and formal gender egalitarianism produce an irresolute intervention, leaving the trope of prostitution culpability undisrupted.

Unlike in other legislative debates and statutes discussed, it is difficult to discern the prostitute as the victim in the scenario that Representative Ray recounts. He states that “the guys that are driving [the prostitutes to the hotels]” are “a lot of times forcing them into this type of situation,” which implies that if there is no force then there might not be a victim. However, he also states that oftentimes “The gal in the room is arrested for...prostitution,” while “the guy” “walks away scot-free.” This can be viewed as implying that the law’s refusal to target pimps victimizes the prostitute, but since prostitution is illegal and therefore merits arrest, and the focus of the legislation is the punishment of pimps, how the prostitute is treated is a non-issue and is more reasonably viewed as bolstering the case for arresting pimps in conjunction with arresting the prostitute, rather than not arresting the prostitute. It is certainly not an argument for decriminalization of prostitutes.

Based on the available legislative debates regarding prostitution as well as statutory language, a victim and offender profile emerges that is more ambiguous than the ones that form through the discourse of child and statutory rape and laws that criminalize DMST. Only with the implication of “force” from a male pimp toward a female prostitute can any class of victims be imagined. However, absent “force” against a prostitute and despite the sponsor’s reference to “human trafficking” as the proper term for what he is “really” talking about, the class of offenders includes both prostitutes and pimps, since both of their actions are criminal and arrest-worthy. In a retributive framework that subscribes to legal liberalism, this move blurs the line between victims and offenders—rendering both parties offenders—while appearing to have sympathy for victims of human trafficking and to promote egalitarianism through equal punishment of prostitution “offenders.” Meanwhile, there is no mention of “johns,” the class of persons that has largely escaped legal scrutiny and law enforcement targeting, despite their indispensable role in prostitution, as its “demand side.” The Representative argues that the purpose of the bill is to rectify the commonplace targeting of prostitutes but not pimps, but the omission of buyers/johns/abusers from prostitution culpability is particularly tenacious and undisturbed by the Representative’s characterization of prostitution.

Utah’s legislative debate regarding prostitution is thus marked by a convoluted, impressionistic discourse, little or no discussion, dialogue or debate regarding prostitution and sex trafficking, and a dubious conception of the phenomena. The mere use of buzzwords cannot indicate a deep understanding of sex trafficking and prostitution, victimhood and perpetration. This lack of cognitive clarity on the part of lawmakers is what allows “prostitution” to trump even the force, fraud and coercion associated with human trafficking, and to render those who are ultimately “prostitutes” the targets of law enforcement, as has historically been the case. In the aggregate the rationale supporting Utah’s prostitution statute

is not an argument for decriminalization of prostitutes or victims of sex trafficking, but rather for expanding the punitive remit of the law over facilitators (pimps), while leaving the culpability of prostitutes and impunity of “johns” intact.

4.2.3 Culpable victimhood

By the year Utah passed its own sex trafficking law (2008), the TVPA had been in effect for eight years. By then, despite Salt Lake City being identified as a major national and western regional area for sex trafficking, there had been no federal TVPA charge brought in Utah (Snow 2008: 48). The federal government’s refusal to take jurisdiction over Utah’s most publicized case to date, *Zarif* (2006), can be viewed as a result of the bifurcation between prostitution and sex trafficking stemming from the division of the two constructs along state/federal lines, wherein prostitution is viewed as a states’ issue and sex trafficking as a federal one. Although that case, involving minor girls paid to have sex with adult males, was construed to have risen to the level of sex trafficking, the federal government refused to intervene on grounds of its intrastate geography. The high-profile anti-trafficking NGO Shared Hope International reported in 2008 that an interviewee at the US Attorneys Office (USAO) explained that the TVPA did not apply in *Zarif* because of lack of evidence that the defendant benefited financially or induced the girls to cross a state line (Snow 2008: 48). However, the facts of the case indicate *Zarif*’s “facilitator” role, as a pimp, and interstate movement is not required under the TVPA. Instead, it may simply be that the USAO has adopted its own internal requirement or institutional rule for accepting a case that it will charge under federal jurisdiction (Id.). Decisions of criminal justice institutions such as the USAO are almost always guided by political considerations and resource allocation. It appears that federal reluctance to intervene based on the political worry of violating states’ rights embedded in the state/federal split guided this decision, and other similar instances of non-intervention.

The construction of victim and offender in *Zarif* is noteworthy. In his case before the Court of Appeals, the decision finds that “Zarif had transported two minor females to his house for the purpose of engaging in prostitution.” This alone meets the definition of DMST, and the state recognized it as such by charging him under its human trafficking provisions, specifically for “three counts of enticing a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct; one count of possession of child pornography; two counts of enticing a minor to engage in prostitution; one count of possession of a firearm by a prohibited person; and one count of possession of methamphetamine.” He had also told the girls that he runs a “brothel” or “escort service,” and once the girls agreed to perform sex acts with men, he made arrangements for this at his residence, and the girls subsequently performed what they had agreed to. However, Zarif was ultimately found guilty solely of producing child pornography, per facts of the case showing that he supplied “V1 and V2,” the two minor girls with alcohol then filmed “lewd and lascivious acts” involving them. The decision also suggests that he possessed other similar footage of “young girls, maybe only 14 years old, performing sex acts.” Overall, Zarif is described as luring or enticing minor girls into prostitution by offering them substantial amounts of money (claiming to offer up to \$300) for performing sex acts with adult men.

Since *Zarif* was tried under the state’s own DMST statute, which was brought against him as a trafficker, the girls were not implicated as prostitutes. The “V1 and V2” designation of the girls stands for “victim 1 and victim 2,” a common abbreviation in criminal law. The victim label sets the tone for how the minors are constructed—definitively as victims rather than as prostitute-offenders. At least one of the girls, V2, is also identified in the decision as a runaway. Several legislatures across the US and certainly anti-trafficking NGOs demonstrate awareness of the decades-long research citing that minors’ running away from home is a major precipitating factor for child prostitution. Running away is often prompted by physical

or sexual abuse—a risk factor for minors’ entry into prostitution—one that legislatures rarely articulate (Kramer and Berg 2003). It is possible that this general knowledge in some way informed the court’s understanding of V1 and V2 as victims, but in any case comports with victimization studies. The girls’ parents had also discovered the crime, and then contacted law enforcement. The girls were then cooperative with the law enforcement investigation of Zarif, providing material information in their interviews with police, positively identifying Zarif in a photo lineup, and generally behaving as good witnesses for the state. All of these conditions comport with Halter’s (2008) scheme for the likelihood of law enforcement to label minors in prostitution as victims rather than offenders, thereby influencing their treatment throughout the rest of criminal procedure. Had the girls been arrested as prostitutes or as part of busting a prostitution ring, they would very likely have been swept up with adult offenders and subject to detention. They would then need to clear themselves of prostitution charges, whether in adult or juvenile justice or family court (see Brown 2007). Though some effort is made to prevent this by allowing minors to expunge prostitution charges, this neglects the time, energy, resources and trauma associated with criminalizing practices for those ensnared by justice systems. It is also nonetheless part of the DMC cycle that catalyzes socio-economic marginalization (Alexander 2012). Even in state-level cases in Utah where the state equivalent of DMST charges were brought against adults (under UCA 76-10-1305, 1306, “aggravated exploitation of prostitution”), minors swept up in raids or arrests of perpetrators are often first detained and criminally investigated, then if they are deemed good, cooperative, useful witnesses and/or categorized as DMST victims, they will later be described by law enforcement and by media in terms of victimhood (see, e.g. *The People of the State of Utah v. Uhrhan* 2013).

In 2008 Utah passed its own law designating human trafficking, including DMST, as felonies.⁶⁸ As discussed in the previous chapter, despite adoption of several seemingly child protective measures that year, just three years later, the House amended Utah's sexual solicitation statutes, intending to get prostitutes, including minors, "off the streets." This law and order stance heralded the intent expressed in legislative debates leading to its passage—to handle minors in prostitution through criminalization or quasi-criminalization, with the greater aim of protecting police officers. The bill was advanced as a means of expanding officers' ability to arrest minors in prostitution by formally removing any need for "proving techniques" involving physical touching to demonstrate proof of the suspect's agreement to prostitution activity (see Babb 2012: 286). Though Representative Seelig expressed awareness that many of the prostitutes she referred to were minors, "the zeal to protect police officers and allow for the arrest of more prostitutes prevailed" (Id.: 287). The vice units and operations of Utah police have been scandalized due to several officers essentially indulging in sexual encounters or even sexually assaulting females during prostitution operations (stings, raids, and searches). The timing and purpose of this bill supports the view that the bill's aim is to expand law enforcement power and to counteract the public relations problem of police corruption in handling vice, including raping suspects. As found in many states, Utah's prostitution laws and its anti-trafficking laws are sometimes compartmentalized in ways that make them seem unconnected when the two phenomena are intertwined. At the same time, however, the legislature has ostensibly attempted to reconcile the two by injecting the phrase "human trafficking" into its debate on prostitution, and including a child prostitution provision in its modern prostitution statute. If we view law regarding child prostitution on a continuum, DMST intercedes between the protective end of the spectrum (laws related to child rape, child sex abuse and statutory rape) and the punitive end

⁶⁸ Utah codes that directly outlaw DMST include laws against human trafficking, aggravated human trafficking, and aggravated exploitation of prostitution involving a child. Utah established the crime of human trafficking by passing its first related bill in 2008 (UCA 76-5-308).

(prostitution) in an apparent attempt to neutralize the commercial aspect that serves to criminalize prostitutes, but never quite prevails. While DMST or any synonym do not appear in the text of its provisions related to children, it should be analyzed as part of the texts defining the issue of sex trafficking and DMST in Utah, particularly since the Bill proposing the changes made direct reference to “human trafficking.” HB 254 was titled “Human Trafficking Victim Amendments,” and once passed in 2014, it made statutory modifications that define child prostitution and ostensibly distinguish it from adult prostitution.

Moreover, the discursive imbrication of prostitution and sex trafficking leads to equating the two, while the cooptation of human trafficking language into a law-and-order framework equates victim protection with offender punishment. In 2011 Utah passed amendments to its sexual solicitation law that rendered legal language regarding prostitution gender-neutral. Remarkably, despite appearing to be an attempt to reconceptualize minors as victims and child prostitution as DMST, lawmakers actually mimic the same language they used regarding prostitutes and prostitution. At the same time, as discussed in Chapter 3, Representative Jennifer Seelig, the legislator who proposed the bill, made it clear that the point of the law is to help police arrest women and girls for prostitution, in order to get them “off the streets,” ostensibly for their own protection. Utah demonstrates ambivalence, at best, regarding the status of minors in prostitution, using quasi-criminalizing language that gives a veneer of protection to the women and girls it targets. Legal discourse in Utah regarding sex trafficking, including DMST, combines sympathy, child protective language, and consciousness regarding debt peonage and abuse of the legal process in trafficking with retributivism and law-and-order rhetoric. The net result is that it renders victim protection synonymous with offender punishments in a context that equates victims and offenders.

In this process, child segregation and offender punishment are spun as “special protections” for children. While lawmakers recognize the criminalization of children

incidental to their involvement in prostitution, they do not address child decriminalization but rather remain focused on the punishment of perpetrators. Also as discussed in Chapter 3, Utah's 2013 aggravated human trafficking law regarding unaccompanied children in the "smuggling" context was preceded by legislative debate on HB 163 in which its chief sponsor Representative Seelig claims that attaching "aggravated" to crimes against children confers special protection to children. The law also protects victims of any age from sexual offenses committed against them in the course of smuggling or human trafficking for labor or sexual exploitation. This apparently expresses a strong concern with punishing transgressions against children and redressing sexual offenses against human trafficking victims of all ages, and does not directly address victim protection. The only other Representative to comment on it substantively, a supporter of the bill, Representative Red, discussed the victims in this way: "Unfortunately...I've had to deal with victims of trafficking...most of the time way after the event...sometimes when they're...suffering from mental illness...sometimes when they've gotten involved in other problems and end up in jail...and I just think this is a step in the right direction to try and limit this grievous offense to humankind" (HB 163). This understanding of human trafficking victims—as persons often entangled in related criminal activity and inferably requiring treatment and rehabilitation for mental health problems—contrasts quite heavily with the legislature's construction of "prostitutes," even though it declared prostitutes as the victims of human trafficking. However, viewing the issue through an orientation of retributivism, the legislature primarily addresses the issue through enhanced punishments of pimps or traffickers. Though this may seem as simply par for the course in addressing social problems through criminal law, it is not merely so. Decriminalization of minors or persons in prostitution is one means available to criminal legislators that this particular legislature is demonstrably uncommitted to or passionate about relative to criminalization and retribution.

Utah's sex trafficking laws construct offenders in terms of specific behaviors outlined in the code. It appears that the law constructs offenders as criminal agents, whereas victims are passive and acted upon. This is certainly salient in the requirement that victims be ideal victims. However, upon closer examination, we see how minors in prostitution are made culpable and adult males, especially "johns" are shielded in various ways.⁶⁹ An interesting feature of the offender construct is that it is far more defined by behaviors and actions, as opposed to the victim construct, which is defined by victimization or a state of victimhood, a much more passive role of being acted upon. This has normative implications for how victims are expected to behave—passive but cooperative—with the demands of law enforcement and the circumstances in which they should be found. Though the statute demonstrates some awareness regarding traffickers' modus operandi, overall, Utah's legal discourse appears far less informed by oft-cited research related to sex trafficking victims, leading one legal commentator from Utah to argue—regarding states in general, including Utah—that "investigations, laws, and prosecutions should reflect these realities" (Jeffs 2013: 224). These realities include the extreme socio-economic constraints animating those in prostitution and the childhood abuses that the majority of them have experienced. Even though force is technically not a requirement of "sex trafficking" where minors are concerned, the fraught boundaries between adult and child, prostitution and sex trafficking, victim and offender, and consent/non-consent (discussed in the next chapter) nonetheless require

⁶⁹ The human trafficking offender is "an actor" who "recruits, harbors, transports, or obtains a person through use of force, fraud or coercion" (UCA 76-5-308(1)). The statute then lists the means by which an offender can achieve force, fraud or coercion, describing the modus operandi of traffickers, including debt bondage (UCA 76-5-308(1)(a)-(d)). These actions include: (a) threatening serious harm or physical restraint against the person or a third person; (b) tampering with (destroying, concealing, removing, confiscating or possessing) government identification document such as passport or immigration document; (c) abusing or threatening abuse of the law or legal process against the person or third person; (d) using a person's condition of being a debtor who has pledged his/her personal services (or that of another person's in his control) as security for debt where the reasonable value of the services is not applied toward the liquidation of the debt, or the length and nature of those services are not respectively limited or defined. The behaviors listed in this portion of the law are ones that are typically included, in some form and with some variation, in international and federal law regarding trafficking, and thus have become standard behaviors associated with traffickers. They demonstrate an awareness regarding the modus operandi of traffickers outlined in the bulk of research related to human trafficking, much of which informs national and international law.

consideration of these in how legal discourse constructs child prostitution and minors in prostitution.

The latter half of Utah's modern prostitution statute, effective as of May 2015, defines "child engaged in prostitution" as one who "offers or agrees to commit or engage in any sexual activity with another person for a fee" (UCA 76-10-1302(3)(iii)). This is the same definition as applied to adults, which uses the language of contracts (the subject of Chapter 5). In the next section it delineates the protocol for law enforcement officers when encountering a minor in prostitution. Police must conduct an investigation, refer the child to a special division, and "if arrest is made, bring the child to a receiving center, if available; and contact the child's parent or guardian, if practicable." The "if available" language indicates the importance of resources (the availability of child receiving centers in the jurisdiction), while the arrest provision explicitly authorizes arrest as a means of handling minors in prostitution. This establishes the pathway for criminalization or quasi-criminalization, particularly should the state or jurisdiction have no other facilities available.

Strikingly, the child prostitution provision does not refer to children as victims in this context. This is in stark contrast to Utah's legislative debates, statutes and cases categorized under DMST. The prostitution statute then applies the same retributive logic behind the repeat offender provision of the adult prostitution section to child prostitution. It states that police are required to check with the division that is supposed to receive minors for whether the minor has been referred to them "on at least one prior occasion," and if not, she will be provided with child protective services. If, however, she was previously referred to the division—meaning that she had previously encountered or been arrested by law enforcement for prostitution—she "may be subject to delinquency proceedings." Such a response to child prostitution marks the dubious understanding of the phenomenon that underpins punitive responses to it, does not distinguish between prostitution and sex trafficking, and

demonstrates confoundedness regarding victimization and perpetration. The incremental increase of retributivism with each “offense” demonstrates ambivalence regarding the victimhood of minors, which is at odds with an understanding of child prostitution as a form of sex trafficking or commercial-sexual exploitation. If we follow the logic of age of consent-based laws such as statutory rape, and even employ the earliest (sexist and moralistic) definitions of prostitution in cases involving children, a minor is legally incapable of consenting to sex, and therefore, strictly to be considered a victim of commercial-sexual exploitation. How does a second incident of commercial-sexual exploitation automatically become an offense of prostitution on the part of the minor merely due to its repetition? Upon first arrest, a minor in prostitution is a victim. Upon subsequent arrest, she is an offender. The legal fiction of the culpable victim translates to detrimental material realities for minors in prostitution.

Although it appears that Utah amended its statute to create greater leniency and protection for minors, in reality it created a first-time offender rule. In constructing what would be designated the “victim” in a DMST statute, by including the child in a prostitution statute in a manner that makes their protection contingent on never having come into law enforcement contact for prostitution, Utah actually designated the child as an offender on par with adult prostitutes through subjecting them to a repeat offender provision, while appearing chivalrous by separating them into a category of their own. This is particularly stark when juxtaposed against the fact that patronizing a prostitute always remains a Class B misdemeanor regardless of the number of convictions of the offender (Jeffs 2013: 237, legal commentary explaining UCA 76-10-1302). The sole exception to this is if the patron is knowingly HIV-positive (UCA 76-10-1309). There is no escalation of penalties applied to buyers who offend more than once, though they almost always do. The operative presumption is that once minors in prostitution are “rescued” by law enforcement, they will

not end up back in prostitution unless they are not victims but simply offenders, i.e. they intend to be in prostitution. Therefore, the logic goes, there should be no second encounter with law enforcement and second referral to the division.

Empirical research on child prostitution, whose findings even conservative lawmakers have relied upon, suggests that this is an unrealistic presumption for several reasons. First, the dearth of resources for the rescue and rehabilitation of victims of sex trafficking nationally, but especially in the state of Utah, create greater likelihood that victims will not receive the kind of intensive material support and services necessary for such a successful program. Second, system-involved girls—those referred to special “divisions” for children and entered into the child protective apparatus such as foster care—often end up in prostitution, in a feedback cycle driven by coercive and often grim or desperate material circumstances. Finally, sanctions against potential or actual trafficking victims are ineffective, whether the aim is to protect minors from exploitation and trauma or to deter involvement in prostitution. The rationale of criminal sanctions is to deter criminal offenders against a particular offending behavior, and therefore sanctions would only—theoretically—be effective against a class that the law designates as criminal offenders. Furthermore, the *de facto* first-time offender rule implies that minors must meet a requirement of innocence that would seem to hinge on their being forced into prostitution by an individual or network of individuals, rather than coerced into prostitution by dire circumstances, even though force is not a requirement for minors to be recognized as victims of sex trafficking under federal or even Utah DMST law. As one Utah-area lawyer observed in her 2012 commentary on the state’s solicitation statutes, “A traditional punitive attitude of moral disapproval aimed at prostitutes of all ages” permeates Utah’s legal discourse (Babb 2012: 282). Listening to and observing lawmakers in the Utah Legislature debate these matters provides insight into how retributivism is generated and how Utah’s particular brand of it constructs the issue and its subjects. By mid-2016 Utah

removed the repeat offender provision, to clarify that children arrested for prostitution are not to be processed as delinquents. However, the general shakiness of reconceptualizing minors as victims demonstrates that the various means and language of criminalization have ways of creeping into the discourse.

While injecting the phrase “human trafficking” into its discourse on prostitution, Utah conflates adult and child prostitution, authorizes the arrest of minors for prostitution, and subjects them to escalating penalties as juvenile delinquents. It renders their protection conditional upon unrealistic standards of innocence, when it is already jeopardized by lack of resources. The retributive framework prioritizes law enforcement aims at the sacrifice of child welfare. The compartmentalization of children into a separate category from adults does not translate to “special” or increased protection of children in a law and order structure. It renders children the target of law enforcement efforts geared toward “low-level offenders,” which at least quasi-criminalizes minors, particularly in the absence of adequate resource allocation for their diversion into alternative systems. Though victims of DMST are constructed in stark contrast to culpable prostitutes, the legislature’s greater concern seems to be prosecuting pimps/traffickers and enhancing their punishment, and this renders minors in prostitution as prosecutorial tools. In an apparent attempt to reconcile “child” and “prostitute,” the Utah legislature allows the culpable prostitute identity to subsume that of the non-consenting child victim.

4.2.4 Comparing prostitution and DMST within the retributive framework of Utah

In Utah adultification and criminalization (or at least quasi-criminalization) mark both approaches to child prostitution—whether constructed through “prostitution” or “sex trafficking,” including “DMST.” The prostitution framing of child prostitution entails arrest and punishment, but the DMST framing also embraces this, particularly insofar as child prostitution is incorporated into the prostitution statute, even if it is distinguished from adult

prostitution. In light of neoliberal law-and-order thinking, which emphasizes personal responsibility and the punishment of low level “offenders,” the criminalization response adultifies and blurs the boundaries between adult and child prostitution with the same responses and incremental punishment.⁷⁰ It operates under the mistaken presumption that primarily economically motivated crimes can be deterred with punishment, as opposed to preventive resource allocation via distributive justice upstream (addressing risk or precipitating factors of child prostitution), or at least rehabilitation resources downstream (palliative, remedial or restorative measures after commercial-sexual exploitation has occurred). In a neoliberal law-and-order framework, the quasi/criminalization response of arrest is viewed as an essential tool of the downstream “rescue” apparatus of the state, after the state has failed families and once families and the state have failed children. Thus when child prostitution is interpreted through the lens of prostitution, even when adult/child distinctions are explicitly made, the primary response is quasi/criminalization.

Since the DMST debates, statutes and cases make no other provision for how to handle minors in prostitution. However, the prostitution statute does, by specifying their arrest and application of a first-time offender rule, and the prostitution statute would guide protocol. This would trump the finding of the report of Shared Hope International (2008) on Salt Lake City, which explains that law enforcement in Utah are aware of the victim status of minors in prostitution and treat them accordingly, but are limited by extra-legal factors (lack of resources and federal/state cooperation). Moreover, SHI’s report was issued in 2008, several years prior to the 2014-2015 rewriting and amendment of Utah’s prostitution statute to include child prostitution and how to handle the issue and its subjects. Even though at first glance it may appear an act of chivalry toward juveniles, we can see how it actually

⁷⁰ Note, however, that even though “johns” are “low-level offenders” similar to “prostitutes,” law-and-order policing has not targeted them, carrying forth the practice of pre-neoliberal era law enforcement. This denotes a specific gendered dimension to policing in this area that is particularly tenacious, even through paradigmatic shifts in policing.

implicates them in prostitution through adultification and inequitable “equalization” through the same punitive crescendo applied to adults.

The phrase “off the streets,” used by the Utah legislature in both the prostitution and DMST contexts, is a signal of law and order and broken windows theory. It is deployed in both discourses alongside acknowledgement of the existence of child prostitution, and that the bills will impact minors. Where minors’ profiles and circumstances meet ideal victimhood, as in the *Zarif* case—deemed good, cooperative witnesses capable of advancing the state’s prosecutorial imperatives against pimps and traffickers—they are constructed as innocent, exploited victims. There is no evidence of the arrest or quasi/criminalization of V1 or V2 in *Zarif*.

Utah’s religiosity (conservative Christianity) contributes to its retributivism in distinct ways. Once the legislature determines that a particular class of persons constitutes criminally blameworthy offenders, its rhetoric becomes poignantly retributive, often encased in Biblical terms and parables (SB 2). The blurring of victim and offender in the child/prostitution context and use of a retributivist framework exacerbates this, as the treatment of minors in prostitution, too, becomes suffused with carceral and quasi-criminalizing techniques of law and order. The inclination for punishment eclipses the child protectiveness conveyed in some of the speeches. Child and victim protectionism are rendered a pretext for the enhanced punishment of offenders, allowing the legislature and public to focus on incarcerating offenders rather than on protecting minors. There is no discussion of socio-economic roots or distributive justice in debates that most explicitly address prostitution and sex trafficking in the criminal context. This is particularly troubling in a state that allocates virtually no resources for sex trafficking victims generally, or minors in prostitution specifically.⁷¹ Like

⁷¹ Utah’s only organization serving sex trafficking victims, the federally funded Utah Health & Human Rights Project, was compelled to terminate such services in 2011 due to escalating and increasingly hostile threats

all other states, Utah exhibits extremely low levels of arrest and prosecution for pimps, traffickers and johns compared to “prostitutes,” including minors.

This emphasis on retributivism not only avoids the upstream matters of addressing root causes of and preventing risk factors to child prostitution—whether conceived of as prostitution or sex trafficking—but even certainly avoids the downstream rehabilitative focus. It creates a rather insurmountable barrier of carceral politics between the state’s response to a social problem it seems concerned with and reaching even the downstream of the river parable. It can appear to be targeting the culprits at the upper reaches of the stream, but this is only made possible through an individualized focus on offenders rather than a systemic understanding of the problem of commercial-sexual exploitation. Lawmakers’ statements that declare the purpose of bills to be child protectionism, particularly in the context of commercial-sexual exploitation, provide their proposals with a powerful veneer of legitimacy, as do most efforts that appear to benefit children in need. However, that purpose is undermined by retributivism, especially when minors are not decriminalized, but rather continue to be criminalized or quasi-criminalized in insidious ways. The offender is the central figure of such efforts, not the victim. Yet this retributivism and discursive targeting does not translate materially to the greater prosecution of pimps/traffickers, and certainly not of buyer/abusers (“johns”).

Utah’s approach to prostitution is productive of race, class, gender and childhood normativities. Ideal victimhood requires that girls whose circumstances have led them to CSEC fit an unrealistic standard of ingénue, an ideal based on the norm of White, bourgeois girlhood. At the same time, the other possibility—victim blaming (via culpable

against its staff. This should be understood in the broader context of domestic terror threats against clinics and institutions that primarily serve women and girls, such as abortion clinics, as well as anti-feminism and anti-LGBT politics fostered by conservative political and intellectual elites in the US, including in Utah, which have a stronghold in areas across the country in which such threats take place. [Website of Salt Lake City Weekly; Website of Salt Lake Tribune 2011].

victimhood)—for prostitution imputes responsibility for sexual violation on females as part of the gender socialization of girls via sexual relations, and is a strong feature of retributivism despite its seeming focus on punishing offenders. Both demonstrate different ways in which law facilitates girls’ socialization into the role of sexual subordinate. Child prostitution itself does this by subjecting girls’ bodies, sexuality and sexual development to external, overwhelmingly masculine “market” demands. It also does this by failing to acknowledge the exploitation of boys and gender non-conforming children, thus rendering these children illegible as subjects of CSEC. This is despite the fact that African American males and gender non-conforming persons in prostitution are at greatest risk for contracting HIV (Schepel 2011). To the extent that the law upholds these dynamics, it participates in the production of race, class, gender and childhood, using race- and gender-neutral language. At the same time, they largely ignore issues of class. The purchasing power of johns never figures into policies that may otherwise appear equitable because they dispense “equal punishment” to all parties regardless of the power differentials that make the exploitation undergirding “human trafficking” possible to begin with.

4.3 Illinois’ state level bifurcation of prostitution and DMST

4.3.1 “These are not nice girls”: Illinois on prostitution

Although Illinois pioneers the rehabilitative model and reconceptualization of minors as victims, it finds other ways to employ a good girl/bad girl dichotomy. Similar to Utah, Illinois bifurcates prostitution from DMST, perhaps even more strongly than Utah because of its state-level leadership on the issue, for which it enjoys a reputation for “progressive” legislation in this area, in legal scholarship, popular media and NGO reports. Also similar to Utah, Illinois began with gender-specific statutes on prostitution, but its modern statute reflects the gender-neutral turn typical of other states’ statutes on prostitution. However, one major distinction noticeable between Utah’s and Illinois’ statutes is that, despite its reputation

for progressivism on sex trafficking, Illinois escalates the penalty for prostitution offenses to a felony after a certain number of repeat offenses. Based on the treatment of “prostitutes” as offenders, this means that Illinois makes an even stronger distinction between prostitution and sex trafficking than Utah. Illinois’ criminal code regarding prostitution reads as follows:

Sec. 11-14. Prostitution.

(a) Any person who performs, offers or agrees to perform any act of sexual penetration as defined in Section 12-12 of this Code for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution.

(b) Sentence.

Prostitution is a Class A misdemeanor. A person convicted of a second or subsequent violation of this Section, or of any combination of such number of convictions under this Section and Sections 11-15, 11-17, 11-18, 11-18.1 and 11-19 of this Code is guilty of a Class 4 felony. When a person has one or more prior convictions, the information or indictment charging that person shall state such prior conviction so as to give notice of the State's intention to treat the charge as a felony...

The gravity of charging prostitution as a felony requires emphasis. As mentioned earlier, the distinction makes a major difference in terms of sentence length (including the “three strikes” rule that leads to a lifetime sentence), facility in which time is served (jail versus prison), and criminal record. The retributivism exhibited in Illinois’ prostitution law through the misdemeanor-to-felony escalation is particularly grave given that Illinois also has a harsh repeat offender law that can further escalate felony convictions to lifetime sentences should a person be repeatedly convicted (a third time, per “three strikes” laws).⁷² This may suggest that in the Illinois victim-protective model, the stronger protection of victims of sex trafficking seems to rely upon the greater vilification of “prostitutes” as offenders, in order to

⁷² See Illinois’ “General Recidivism Provision,” on the website of the Illinois Legislature [<http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073000050K5-4.5-95>]. Under this provision, criminal transmission of HIV in Illinois is a Class 2 felony, and therefore two or greater convictions could lead to the defendant being sentenced as a “Class X” offender, a designation typically reserved for the most serious crimes such as first degree murder, sexual assault and aggravated kidnapping. Such schemes illustrated the facility with which prostitution criminalization can escalate in a retributive framework for those most mired in “the life” and entangled in the prostitution/criminalization cycle.

contrast them from “sex trafficking victims.” This bifurcation polarizes prostitution and sex trafficking into the kind of stark binaries historically observed between constructions of prostitutes and victims of White slavery. But, as we also see, both historically and now, the culpability associated with prostitution survives the polarization process and continues to inform the construction of sex trafficking and sex trafficking victims.

On the other hand, a significant portion of the legal discourse of Illinois on prostitution is dedicated to discussing rehabilitation for those convicted of prostitution (not only persons identified as sex trafficking victims), though with the limitation of a first-time offender rule and considerable language suggesting “responsibilization” of offenders in a law and order framework. In debating House Bill 1319, Representative Delgado explained that it “seeks to rehabilitate people that are convicted of felony prostitution for the first time,” allowing a one-time sentence of probation rather than serving a prison sentence. This bill passed contentiously with 66 votes in favor and 50 votes against it. Discussion between various legislators established that the rehabilitation scheme would be similar to other diversion programs—those available for diverting juveniles and drug offenders out of criminalization in the justice systems, and decriminalized (and often medicalized) into treatment, services and/or benefits. The bill’s sponsor, Representative Delgado, began arguing for his bill by summarizing his understanding of the problem.

The vast majority of persons in prostitution suffer from a long-term physical and emotional pain often resulting in mental illness, physical disabilities, post traumatic stress disorder. This is self-victimization for many reasons. They’ve been abused. They’ve had... they’ve been... there’s low... their self-esteem has been on... put on the ground. And this is pretty much they’re doing it to themselves. To give them an opportunity to... to really give them some real services is one of the best reasons I can give you for why this is important.

This conception of the issue comports with the physical and psychological suffering of prostitutes that decades of research have confirmed, but laced with culpable victimhood. Every other thought articulates a presumption of “self victimization” on the part of persons in

prostitution, likening prostitution to a cycle similar to substance addiction. Yes, prostitutes suffer, but at their own hands. State intervention is required only to save them from themselves. And they only deserve one chance at that.

Reinforcing culpable victimhood, after more discussion ensuring a first-time offender rule and expressing reservation about helping repeat offenders,⁷³ Representative Stephens states, “Okay. So, we’ve established that these are not quote ‘nice’ girls...” Before quoting the rest of his statement, it is important to pause here. What this statement unequivocally establishes is that a good girl/bad girl dichotomy is at work in the legislators’ conceptualization of prostitutes, a dichotomy consistently rearticulated in legal texts from the earliest prostitution cases to the 2014 Treatise on prostitution. I cite *legislators* in plural because although his opposition to the bill is defeated (since the bill passed), no one challenged or objected to Representative Stephens’ statement throughout the rest of the debate. Rather, the repeat offender status of the “girls” sufficed to classify them as not “nice.” To continue, the meaning of “not nice” can be inferred from the full statement, and the concurrence with the characterization can be gleaned from the ensuing dialogue:

(Rep. Stephens) ...these are not quote ‘nice’ girls who just made a mistake because they just got out of high school, or they became homeless one day, or because they... a pimp just grabbed them off the street. These are... these are prostitutes that have been out on the street, probably for some time, because you don’t get arrested and convicted on your first incident of prostitution, do you?

Rep. Delgado: Right. Rarely, if it’s misdemeanor, it’s rarely. You’re absolutely right. It’s the second time.

Rep. Stephens: Okay. So, you... so, we got a prostitute who’s been plying the streets, plying her trade, she finally gets caught. She might have been caught more than once, but finally got a conviction and then she went back out on the street. I don’t get it, Representative.

⁷³ “First-time offender rule” may be confusing in this context. The bill actually proposes diverting persons convicted of *felony* prostitution. This means that they have already been convicted of misdemeanor prostitution more than once, and thus can now be charged with felony prostitution. Therefore, once they are considered for this diversion/rehabilitation scheme, they are not technically first-time offenders of prostitution, per se, but rather charged with felony prostitution for the first time.

The implication is that ideal victimhood entails young girls of about high school age (teenagers), whom short of making a “mistake,” becoming homeless, or being kidnapped by a pimp, are culpable self-victimizers. Use of the word “mistake” is important here because it implies a first-time offense, the realization of one’s action as a self-made error, and subsequent redemption—never to return to the misbehavior—if one is sincerely and adequately sorrowful. The last statement, regarding the rarity of being convicted for an actual first-time offense, insinuates that no “first-time offender” is really a first-time offender. Even those labeled as such have probably offended multiple times in actuality. This creates an air of benevolence on the part of the state, in its intervention of rescuing those who may not even deserve it, but whom the state is nonetheless generous enough to assist.

Rep. Stephens continues to implore with an implicit warning of a slippery slope: “...why prostitutes? Why don’t we do this with all crime?...Well, let me tell you why we don’t, because it’s a bad idea...I think this bill...does everything except punish lawbreaking prostitutes.” The bill ultimately passes, with the sponsor, Rep. Delgado, closing his argument with statements regarding the multiple needs of prostitutes as “women who are self victimizing and young men,” with their family dysfunctions and drug and mental health problems. “[W]e have to leave room for people to make their mistakes...and be able to give them justice...we need to be there for them as a state.” Despite the benevolent language of rescue and rehabilitation, the responsibility remains squarely on the person in prostitution, both for the condition of being in prostitution as well as for the success of diversion. Though Illinois is reputed for its progressivism with regard to sex trafficking, its retributivism with regard to prostitution comes through clearly in its construction of the issue. Similar to Utah, it establishes “prostitution” and “prostitutes” as issues and subjects that can easily hedge against the protectionism embedded in the sex trafficking context.

4.3.2 Illinois on DMST

The Illinois Safe Children Act (2010) has been widely celebrated, along with New York's Safe Harbor law, as the nation's most progressive legislation regarding child prostitution. The Illinois General Assembly unanimously passed the bill proposing the Act, with no opposition expressed against it. The emphasis of the act on decriminalizing minors in prostitution and its child-protective orientation in terms of diversion and rehabilitation support this view. The 2010 legislative debate on the bill explicitly stated its purpose as "it deals with child sex trafficking...it decriminalizes the...crime of juvenile prostitution...the idea is to link these young people with the appropriate child protective services." However, it is important to pay close attention to the ways in which the Legislature constructs the issue and its subjects in ways that subtly bifurcate but also obfuscate prostitution and sex trafficking.

One of the main features of legal discourse and statutes on sex trafficking has been to subtract the requirement of "force, fraud and coercion" from the definition of "*child* sex trafficking." A person being under the age of majority (eighteen years of age under federal law) is automatically classified a "victim of a severe form of trafficking," not requiring the minor to demonstrate force, fraud or coercion. The fact of her being in prostitution is enough to be considered a victim of DMST, or so statutes state. However, in debating and passing its safe harbor law,⁷⁴ the Illinois Legislature repeatedly injected force, fraud and coercion into the discussion, despite explicitly addressing child sex trafficking. Its sponsor, Representative Burns, described the "reason" for the bill as "these young people have been exploited by pimps and adults and forced into a life of prostitution." This has implications for how victimhood is constructed.

⁷⁴ As a reminder, Safe harbor legislation in the CSEC context intends to provide child protection to minors in prostitution rather than to criminalize them.

The perhaps unconscious insertion of the word “force” in this context nonetheless implies minors’ culpability should law enforcement, the judiciary, and legal administrators be confronted with cases in which they perceive minors’ lack of being “forced” into prostitution in the ways that sex trafficking discourse outlines, e.g. being forced to participate through physical violence or threats thereof. At one point in the debate, Representative Burns admits, in reference to minors in prostitution, that “it’s hard to get them to work against their...the pimps,” implying their lack of cooperativeness with law enforcement and prosecutorial efforts. Most research confirms this claim, particularly social policy and NGO research concerned with assisting justice institutions. Thus the emphasis on force in discussing child sex trafficking works against the child protective framing of the issue. Though Rep. Burns later describes minors in prostitution as a protected class “because of the age of the prostitutes, and they’re juveniles...,” he continues with qualifying language that implies forms of coercion, “...they’ve been confused...manipulated...pimped.” Though much research substantiates the presence of coercion in child prostitution, minors often do not fit the profile of confused, manipulated and pimped children. For example, the case of *In re D*, discussed further below, exposes that legal authorities’ perception of minors as independent, or any findings that do not comport with the ideal-typical victim profile often count against minors’ victimhood in the prostitution context (see also Halter 2008).

In explaining their understanding of the problem of juvenile prostitution, Illinois legislators list causes of increased trafficking in the state. They mention that Chicago is a hotspot for sex trafficking, and cite “our tourism industry” as well as being a “transportation hub” with regular conventions. “[P]rostitution is big business and especially juvenile prostitution. A pimp can make \$500 thousand off of one young person a year. It’s... it’s truly a crime,” explains the bill’s sponsor. Child prostitution is discussed as a criminal industry thriving in particular due to Chicago’s geography, as well as a problem perpetrated by

“violent gangs.” The industrial characterization of child prostitution is typical of nearly all research discussing the issue, and the estimate of pimps’ ability to make \$500,000 per annum is also commonly cited in relevant research. It is unclear, however, to what extent child prostitution is a problem of organized crime, as the reference to violent gangs suggests. Though girls, especially those in street prostitution, are often under the control of a pimp, the connection to organized criminal activity of the scale suggested by “gangs” is not necessarily substantiated. This, too, has implications for ideal victimhood, because to understand child prostitution as entirely or even mostly perpetrated by gangs creates the perception that minors are coerced or forced into prostitution by evil and powerful criminal perpetrators rather than, as so often is the case, by coercive socio-economic circumstances. In such a framework the absence of such individualized criminal forces to whom can be directly traced the causes of child prostitution creates an impression of “choice” and culpability on the part of minors.⁷⁵

The Legislature also specifically characterized child prostitution as a significant domestic and localized problem with reference to national economic strain and trafficking elsewhere. Representative Durkin, in support of the bill, argued

[T]his type of practice is not something which is strictly unique to Asia or other parts of the world, it’s in the city of Chicago, it’s in the State of Illinois and we have to treat it accordingly. It’s more pervasive than people think...it’s a terrible problem which is gaining in... in strength because of the economy.

Within this framing, the Representative squarely framed minors as victims, despite their constituting part of a troubling social problem.

...[B]ut it’s also important because we’re now going to saw [*sic*] that the juvenile who has been involved in this is no longer going to be the criminal, they’re going to be the...they’re a victim. And we are going to treat them and we’re going to get them back on a right road to recovery.

The sponsor of the bill, Rep. Burns, concluded his argument by restating its purpose: “This Bill is about protecting victims.” The decriminalizing language of victimization, child

⁷⁵ The issue of “choice” and its illusory nature are discussed in Chapter 5.

protection, treatment and rehabilitation, however, is hedged by the prioritization of law-and-order and retributivism, similar to the legal discourse of Utah. After Burns' concluding remark, he iterated, "This is about giving our law enforcement officers the tools to crack down on this growing industry." Coupled with the peril of making the decriminalization of minors implicitly dependent on notions of force that are technically not required for juveniles, the Legislature's focus on punishing pimps (but not buyers) became a requisite part of its argument for decriminalization. Based on the final statement of the sponsor's closing argument, the decriminalization of minors is a prosecutorial tool. Despite the bill's stated purpose of rehabilitating commercially-sexually exploited children, from which it draws its legitimacy and unanimous consensus, decriminalization is a technical utility of law enforcement and prosecution.

Turning to offenders after proposing decriminalization of victims, the sponsor explained, "On the other end of the spectrum, what we do is we increase criminal penalties for those pimps, for those who would abuse and exploit sexually these young people. This is an important initiative to Cook County State's Attorney, Anita Alvarez." Representative Reboletti echoed with the necessity of implementing mandatory minimum sentences for pimps and of "moving [pimping] up one felony level," to which Burns agreed to make the "pimping of juveniles...a nonprobational offense." In a child protective framing of prostitution as essentially sex trafficking and of minors in prostitution as sex trafficking victims, commitment to the decriminalization of minors and criminalization of abusers is important. However, this debate never mentioned buyers—the average male drivers of demand for prostitution—as exploiters, abusers, or otherwise. The existence of buyers can be read into the legislators' discussion of "conventions" in Chicago causing a spike in trafficking, but they are never salient subjects of this discourse the way pimps are.

The *Sawyer* case, based out of Chicago and tried in its federal court, developed over the course of this research and the debate and passage of the Illinois Safe Children Act, from 2010-2015. On 9 September 2010 the FBI publicly announced in a press release the arrest of defendant Datquinn Sawyer, an African-American man, for child sex trafficking.

Governmental and media reports explain that the case was brought against the notorious West Side Chicago area pimp and former rapper. The FBI's press release (hereinafter, "FBI Press Release 2010") stated that this was the culmination of "a two-year joint federal/state investigation into a child prostitution ring" (FBI Press Release 2010, Appendix A).

Child prostitution in this case was described as "sexual trafficking of minors and sexual trafficking by force, fraud, and coercion in interstate commerce, which is a felony offense" (Id.). It was also referred to as "the horrific trade of sex trafficking." Furthermore, the FBI specified that the case involved street prostitution as well as online solicitation. "Sawyer is alleged to have forced his prostitutes to 'work the track,' a term used to refer to girls walking the streets or standing on street corners to solicit customers for sex acts for money" (Id.). The FBI continued that Sawyer also

...advertised his business through the Internet, making extensive use of Craigslist and similar online media, charging anywhere from \$150 to \$350 for sexual services. Sawyer is alleged to have kept all of the proceeds from the sexual encounters, providing his prostitutes with only minimal subsistence.

He was also accused of employing two other adult males "as drivers and enforcers," who were subsequently charged under state statutes at Cook County Circuit Court related to pandering, a Class 4 felony, to transport and monitor the activities of the girls "to ensure they were not pocketing money they earned from their sexual encounters."

Sawyer was described primarily in terms of his actions, as someone who "recruited as many as nine minor females," and "operated a child prostitution ring from his residence and his mother's residence," both in the West Side of Chicago, and forced minors into

prostitution through brute means. The Department of Justice (DOJ) explained, “Sawyer was a pimp who chose vulnerable victims, including girls who were young, homeless, or runaways, and used violence and threats of violence to exploit them sexually, knowing that they were minors.” The DOJ also spent one-third of its press release highlighting the force, fraud and coercion aspect of Sawyer’s actions, again, despite these not being required in a case of child sex trafficking. In the framework of the issue as “exploit[ing] children through prostitution,” the DOJ emphasized the level of control that the offender exerted over the victims, through force, fraud, fear and coercion:

The evidence showed that Sawyer recruited and groomed his victims, frequently deceiving them by initially concealing that he was a pimp and promising them riches and glamour if they stayed with him. He convinced victims that he loved them and wanted to be in a long-term romantic relationship with them. Sawyer also used threats and physical beatings to enforce a rigid set of rules that left him with a high degree of control over all his victims. Sawyer required the victims to commit commercial sex acts, and to give him the money they made. To maintain his control, he had sex with many of the victims, and impregnated three of them.

Sawyer gave his victims names beginning with a “P”—Precious, Paradise, Pooh, Peaches, Princess, Passion, Pebbles (Bubbles), and Perfect—based on his own nickname of “P-Child,” and had his victims call him “Daddy.” He also had many victims tattooed with his nicknames, and he prohibited his victims from looking at or speaking to other men (other than customers), and from talking back to or disrespecting him. When his victims broke the rules, he threatened or beat them. (Id.).

The court decisions against Sawyer that followed these initial public announcements reiterated this characterization of him and co-offenders. The DOJ ended its press release by praising its Innocence Lost initiative of targeting minors in prostitution for “rescue,” and “pimps, madams, and their associates” for prosecution. However, in line with the historical omission from legal texts regarding prostitution culpability, they failed to mention buyers and their indispensable role in maintaining child prostitution. Sawyer’s sentence has been reported as the longest sentence ever received by a pimp in the federal court of Chicago.⁷⁶

⁷⁶ The Chicago Tribune reported in 2012 that Sawyer’s was “the harshest sentence ever for a federal sex trafficking case in the Chicago area.” (Website of the Chicago Tribune, http://articles.chicagotribune.com/2012-05-17/news/ct-met-human-trafficking-0517-20120517_1_trafficking-ring-trafficking-case-datquinn-sawyer.)

Notably, its harshness was not due to mandatory minimum sentencing, but rather based on the court's discretion. Sawyer was charged under a federal sentencing provision for crimes of "peonage, slavery and trafficking in persons" (18 USC §1594(c)). The judge handing down the fifty-year sentence emphasized the power Sawyer wielded over his victims and his impliedly perverse motivation of personal enrichment.

[Y]ou used every device at your opportunity to subjugate [the victims] to your power, your will and to bring you treasure...And that is why I have the god-awful obligation to put you in jail for a long, long time...Because we have to put an end to this kind of conduct.

In contrast to the offender construct of the DMST case, even prior to adjudication of the cases, FBI and US Department of Justice press releases repeatedly refer to "victims," "girls," and "minors" to configure victimization. The FBI's depiction of the victims was as "vulnerable girls" and "the female victims of this sex trafficking operation." The rescue and rehabilitation response to the girls is also specified, that the victims were being "provided with counseling and related assistance by the FBI, Cook County State's Attorney's office and private social services providers." The Department of Justice highlighted the age of the girls, "at least nine victims, eight of whom were between the ages of 13 and 17." The victims meet the ideal victimhood requirement of cooperativeness with law enforcement, as most of them, "testified as government witnesses during the trial."

The subsequent case decisions at various levels of the district court system also echo the law enforcement characterization of the minors in prostitution. In the 2015 case denying Sawyer's petition for writ of habeas corpus, the court recounted the detailed misery of the girls' lives contained in previous case decisions. Two in particular, named Corrieana and Tatianna, exemplified the sympathy of the courts toward the victims, which is wholly absent

in the cases in which girls were tried for prostitution. To illustrate, the court recited

Corrieana's testimony containing background facts regarding her childhood and home life:

Corrieana testified that her biological mother was a prostitute who did drugs every day, engaging in both activities in Corrieana's presence. Corrieana lived with her paternal grandmother until she passed away and then moved in with her biological father when she was twelve or thirteen years of age. Her father would physically abuse her, causing her to run away after one year of living with him. Corrieana moved back in with her biological mother and her maternal grandmother sharing a two bedroom apartment with ten other people.

Similarly, the court recalled Tatianna's description of her life when she first met Sawyer:

At that time, her relationship with her mother was dysfunctional and her stepfather physically abused her mother. Tatianna's biological father was incarcerated, she had recently been assaulted by a group of men, she was skipping school and failing her classes, and she was so depressed that she was cutting herself because she "didn't feel like [she] needed to be alive."

It is important to bear in mind that in light of decades of research regarding minors in prostitution, the descriptions of Corrieana and Tatianna's childhoods are typical of most minors in prostitution in the US (Kramer and Berg 2003). They form such a strong pattern that research on child prostitution routinely refers to them as risk factors for the commercial-sexual exploitation of children, including entry into prostitution. Legal discourse is selective with regard to whether it includes or excludes these aspects of girls' lives. As this chapter finds, the classification of girls as "prostitutes" (when tried for prostitution) or as sex trafficking victims (particularly when serving as witnesses) is a reliable indicator for the inclusion or exclusion of such facts—in essence, of humanizing language.

As mentioned in Chapter 2, when cases involving minors are tried as DMST, they become publicly available since they typically involve adult perpetrators. However, when charges are brought against minors for prostitution, their cases are sealed and do not become part of the public discourse unless they reach higher courts. Three cases of minors tried as prostitutes from the 1970s connect these earlier iterations to the historical present. These

cases appear in a contemporary legal treatise on prostitution law in the US designed to give legal scholars, practitioners and judges expertise on the issue. Wharton's Treatise on Prostitution, titled *Wharton's Criminal Law, Part III. Offenses Against Morals, Chapter 16. Prostitution and Related Offenses* (hereinafter "Treatise") (Torcia 2014) serves as a secondary authority of prostitution law and thus forms a major part of contemporary American legal discourse on prostitution. As mentioned previously in discussing *L'Hote v. City of New Orleans* (1900), there is no federal law regarding prostitution per se, as prostitution is regulated by the states. However, Wharton's Treatise (2014) assesses statutes and cases from across the country to generate an authoritative text and authoritative statements regarding what is general US law related to prostitution, and therefore equally applicable in Utah and Illinois, or any other state. It cites several foundational cases to support its explanations of the various determinative issues that come into play in adjudicating a prostitution case. Of these, three cases are of minors, all of whom were girls between the ages of 14 to 16 years old at the time of their arrest, which occurred in "high vice areas," neighborhoods known to be socio-economically marginalized. These are the cases of *In re Appeal No. 180* (Maryland, 1976), *In re Dora P* (New York, 1979), and *In the Matter of D* (Oregon, 1976). Though these cases were decided in the 1970s they are still controlling law in prostitution cases, as their presence in this Treatise affirms.

Examining the treatment of these girls reveals ways in which children are constructed in the context of prostitution at the dawn of what we now understand to be the age of globalization and neoliberalism. The Treatise conflates adult and child prostitution by citing to the cases of minors as run of the mill "prostitution" cases, hardly noticeable in a sea of many more adult prostitution cases. The only distinguishing mark of these cases is the "in re" prefix and abbreviations or initials of names, denoting the prosecution of a person under 18 years of age. The Treatise reflects US law generally by treating the cases of minors in

prostitution the same as those of adults. The cases themselves, adjudicated in juvenile courts (with the exception of *Dora P* in the Supreme Court of New York), establish the legal status of the respondents as minors, and establish that “child” is a person under 18 years of age. They refer to the girls as “juvenile,” “the juvenile,” “delinquent child” (*In re Appeal no. 180*), “a person alleged to be a juvenile delinquent,” “fourteen year old child” (*In re Dora P*), “16-year-old child,” and “the child” (*In re D*). The courts clearly recognize the minors’ age of minority through child/juvenile status. At the same time, once they are adjudicated delinquent and tried for the crime of “prostitution,” their age does not mitigate the prostitution charge or their identity as “prostitutes.” The trials proceed as though the minors are adults, and, in fact, each judge clarifies that that is how the case will proceed, per the rules of juvenile justice. For example, Judge Bloom in *Dora P* affirms that had an adult committed the same acts as Dora, they would constitute second degree robbery, second degree assault and prostitution, and Dora’s case proceeds on those exact charges.

In contrast, the adult males who showed willingness to purchase sex from the minors are characterized rather differently, despite their behavior also qualifying as criminal conduct. There is no reference to their ages, but implicitly, they are above the age of majority. With the focus being on the offending behavior of girls, the “patron” males are largely absent from the narratives of each case. However, where they do appear, they are inculpable. The case decision of *Appeal no. 180* explains that the fifteen-year-old girl approached a “Baltimore City police officer then on duty in plain clothes...in a private car” and “offered to perform normal sexual intercourse for \$25.00.” The man is simply described as an undercover officer performing his duty, and does not figure into the narrative elsewhere. In contrast to the passive authoritative role of the undercover cop, in *Dora P* the adult male “customer” is presented as an “accosted” victim of robbery, assault and prostitution. In *D* the two arresting (male) officers observe D as several men slow down in their cars and engage her in

conversation before arresting her for prostitution, and making no arrests of men for patronizing.

In the latter case, one observes the line at which the narrative in the judge's opinion shifts from "child" to adultified non-child: "Following this period of observation, the officers drove up to the child and questioned her." Here, as a single statement, one imagines a "child" on the street, rather vulnerable compared to two adult male officers in a police car. However, next, the case reads: "During the course of the conversation she admitted that she was a prostitute..." D is no longer a "child," but a "prostitute." The opinion continues:

...that she had been in the area for seven and one-half months, and that during that period she had made between four and five thousand dollars. When asked, 'Who are you working for?', she replied 'I don't have a pimp. It's all for myself.

This also brings to mind Halter's (2008) study regarding police characterization of child prostitution. Halter observes that minors in prostitution who seem somehow "independent" or who are not under some kind of directly observable control are more likely to be labeled offenders, i.e. juvenile delinquents, in the parlance of juvenile courts, rather than "dependents," Persons in Need of Supervision (PINS), and so on.

Thus we can see from these cases that while the judges acknowledge the age of the minor, they nonetheless continued to try girls based on the same elements and merits as one would in an adult prostitution case. Minor status does not seem to play a significant role in protecting minors from prosecution for prostitution in any of these cases. Their age of minority only determined the type of court that tried them, but not the substance of the trial. Not only did age of minority fail to protect these girls from criminal prosecution, but the fact patterns and dispositions of their cases have continued for decades as cornerstones of prostitution laws used to prosecute children and adults alike. Though their age and status as a

“child” or “juvenile” are formally acknowledged, this does not preclude their liability, does not recognize any unique victimization of minors nor their legal incapacity to consent to sex.

Through these important cases that continue to guide prostitution law for adults and children alike, the neoliberal era is marked by minors’ ongoing liability for prostitution and denying any unique vulnerability or criminal incapacity that prompted Gilded Age or Progressive Era reforms regarding childhood and child protectionism. It must be emphasized that although these cases were adjudicated in the 1970s, they remain relevant, as reflected in their inclusion in the 2014 Treatise. The 1970s cases demonstrate the erosion of childhood in child prostitution legal discourse by the time of their adjudication. They omit race but racialize and adultify girls via the culpable “prostitution” identity, neglect class issues such as child poverty and focus on delinquency, and use minors in prostitution to bolster the notion that no sexism exists in the construction or enforcement of prostitution law.

Unlike in prostitution cases, the *Sawyer* case explains many of the tragic circumstances of the minors’ lives he exploited, having met one of the girls when she was 13 years old. Recall Tatianna, the girl who carried her teddy bear, and the way her image evoked innocent youth, though both of these girls were technically “prostitutes” by the same definitions applied to girls who were convicted of prostitution, such as *Dora P*, *D* and *No. 180*. Sawyer is portrayed as a domineering adult male figure, who controlled his “girls” by threat of harm or actual battery. Similarly, the *Zarif* case in Utah, brought against the Utah pimp and child pornographer, explains deceptive ways in which he enticed teenage girls to perform sex acts for adult men for money.

Illinois’ commitment to child protectionism is cracked and partial. Even its celebrated brand of progressivism is deeply dedicated to the priorities of law and order enforcement and

prosecutorial efforts that are at odds with child advocacy, particularly for minors in conflict with the law, even within well-established child protectionist frameworks. Reliance upon a strong ideal-victim identity and the emphasis on force, even subsequent to striking such a requirement for minors, also counteract notions of minors' victimization. The proclivity of the legal community is to embrace the criminal justice apparatus as an indispensable tool for resolving social problems. As those social problems are legally constructed in such a framework, lawmakers offer what they purport are tools of greater precision and technological advancement in service of reforming and improving but ultimately advancing the existing apparatus.

4.4 Emergent forms of penalization under a protective cover

Quasi/criminalization of minors in prostitution is not only reproductive of existing inequalities but also productive of race, class, gender and childhood. More than behavior and respectability, these are the constitutive elements of ideal or culpable victimhood and offender status. The victim/offender binary produces gender by making the prostitute identity synonymous with femaleness and non-citizenship, as persons whose presence threatens public health and denies municipalities of the peace, order and prosperity they aspire to. On the other hand, johns' identities continue to be defined by consumption, as the consumer identity remains hegemonic under neoliberal citizenship. Additionally, class and childhood are produced through inclusion of children in the criminal "underclass" to be managed and often put to profitable use.⁷⁷

Prostitution discourse blurs the boundaries between adult and child as well as victim and offender by collapsing the concept of age and subsuming the child identity and victimhood into the culpable identity of "prostitute." DMST discourse appears to reinforce

⁷⁷ This is not necessarily the same as the "productive" use to which children were put in traditional institutions such as children's homes, workhouses or asylums designed to maximize the extraction of children's labor.

boundaries between adult and child. DMST emphasizes child status and non-culpability due to incapacity to consent to commercial sex. It restores, *re-contextualizes* and extends the language of “age of consent” and “statutory rape”—the idea that minors cannot consent to sex—in the context of *commercial* sex, in order to conceptualize child prostitution as “DMST” rather than “prostitution.” However, the notion of DMST, created ostensibly to reconcile the contradiction and resolve the paradox of “child prostitute,” nonetheless competes on a continuum of criminal laws that allows for a range of labels to apply to minors in prostitution. This includes various forms of sex abuse (child rape, child sex abuse and statutory rape), sex trafficking and/or as sex offenders. This is addressed in greater detail in Chapter 5, but is worth mentioning here because despite the bifurcated and dichotomized yet selective blurring of prostitution and DMST, other long-standing conceptualizations of child victimization necessarily inform the official discourse of lawmakers on these matters.

Because of the power of law and order rhetoric in the American legal and political context, it is important to highlight that child protective discourse is deployable as a legitimizing tool for a law enforcement and criminal justice apparatus that has, particularly recently, been threatened with a crisis of legitimacy due to public exposure of and civil rights movement against police violence, particularly against African American youth. Child protectionism provides strong justification for state action, but a criminal justice intervention fashioned in a law-and-order framework—particularly one that focuses on targeting “low-level offenders” per the Broken Window theory of the neoliberal criminology that has dominated American (and American-style) law enforcement and lawmaking—threatens to criminalize or at least quasi-criminalize the very “victims” that it identifies as in need of rescue.

4.5 Quasi-criminalization: “Protective Custody”

Neither of the legal conceptualizations of “prostitution” nor “DMST” precludes the possibility of criminalizing minors. Both normalize at least the quasi-criminalization of minors as a “necessary” practice under auspices of benevolent, paternalistic child protection.⁷⁸ All states codify and practice some version of detaining minors, including those in prostitution, even if they have not been criminalized by being formally charged with a crime. Statutes, policy documents and legislative debates refer to this as “protective custody” or as “material witness” or “courtesy” holds. Legal authorities often argue for this necessity as advancing the protection of the minor (to protect her from pimps or traffickers), or “from herself” (to protect her from continuing prostitution and its attendant behaviors), but also to protect society from the minor. I also find that this practice is directly tied to the retributive law-and-order framing of the issue of child sex trafficking, which prioritizes securing the prosecution of pimps over child welfare. In order to extract material testimony from minors, police routinely arrest and detain minors in prostitution, often until the adjudication of cases against pimps or traffickers, but even beyond. All states codify and practice this form of confinement, but no state seems to have adequate and appropriate resources for minors in prostitution. This leads to what amounts to the indefinite, discretionary and arbitrary incarceration of persons whom the state designates as victims of child sex trafficking. My argument is that this is at the very least a form of quasi-criminalization of minors in prostitution, which forges their status as offenders or culpable victims (as co-conspirators in their own exploitation), re-victimizes girls through re-traumatization of criminal procedure and incarceration, and reasserts the disposability of minors in prostitution.

⁷⁸ This is not to pathologize the notion of fatherly protection or care for a child generally, but rather to cast doubt on whether such benevolence is possible via *parens patriae* within the framework of law and order and prosecutorial prioritization that largely comprises of heavily politicized competition between authoritative and criminal men within culturally masculinist institutional contexts of pimping, trafficking and criminal justice.

In human trafficking scholarship, the term “disposability” has been employed as a defining feature of the operation of modern day slavery, i.e. forced labor in the global capitalist economy (see e.g. Bales 2004). Whereas “old slavery” was legal and entailed legal ownership over persons, “new slavery” is marked by universal illegality, and lack of legally enforceable rights of ownership over persons. Although extremely exploitive, under formal slavery, owners viewed enslaved persons as long-term investments, which arguably served to curb severe forms of abuse that could jeopardize the ability of the enslaved person to perform the requisite labor or to produce offspring and reproduce the labor force. However, the current mode of [informal] slavery in a globalizing capitalist economic system is marked by lack of legal responsibility or long-term investment, and exposes millions of persons to precarious conditions and risk factors of human trafficking.⁷⁹ These include dispossession, conflict, environmental impact, and migration—whether forced, coerced or “voluntary,” as in smuggling. The large pool of persons to draw from, temporary relations and interchangeability of persons in contractual chains render forced labor disposable. I argue that the retributive return of neoliberal criminal justice also renders minors in prostitution disposable; those whom it otherwise identifies as hyper-vulnerable and super-exploited for purposes of legitimizing legal intervention serve an often unarticulated but more prioritized function of providing material witness testimony in service of enhancing prosecutorial efforts. Thus minors in prostitution become prosecutorial tools, valued, used and discarded instrumentally in accordance with law enforcement needs and criminal justice agendas. This is clarified by the lack of resources allocated to the rehabilitation and socio-economic justice for minors in prostitution, in contrast to the relative abundance of law enforcement and prosecutorial resources. The interlocking of socio-economically-driven disposability in the

⁷⁹ International legal discourse considers child prostitution a form of commercial-sexual exploitation of children, sexual slavery and one of the most hazardous forms of “labor.”

commercial-sexual exploitation of children is mirrored by the quasi-criminalization of minors in prostitution whom the criminal justice system continues to treat as expendable.

Most media coverage of child sex trafficking in the US either omits or cursorily mentions the arrest and especially the detention of minors in prostitution. This pattern is also found in legal commentary, with the exception of a handful of law review articles, which represent a small minority of scholarship, serves as a “secondary authority” at most, and most certainly a minority voice on the matter in the legal community (see, e.g. Brown 2007). Where it is mentioned, legally authoritative commentary glosses over it or, echoing law enforcement, and touts it as a necessary tool in the fight against sex trafficking.

The federal government, in the TVPA, prohibits what would include the incarceration of minors in prostitution as criminal sex offenders. It specifically states:

Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation (22 USC 7107(19)).

If minors in prostitution are viewed as commercially-sexually exploited, i.e. as sex trafficking victims, the way the TVPA construes them, then they are considered “victims of severe forms of trafficking.” Information regarding protective custody of minors in prostitution is limited, but based on available information, most minors who are not charged with prostitution are held in custody in order to secure their cooperation with law enforcement and prosecution, to gain knowledge of the sex industry, and/or to extract testimony helpful to prosecuting pimps or traffickers. Apart from emergency medical aid, no other resources are typically available to minors while in detention, whether in adult jails or juvenile justice facilities (Snow 2008).

Both Utah and Illinois allow incarceration of minors in prostitution even where they are identified as victims and not offenders. Utah, whose legal discourse overall demonstrates

strong commitment to retributivism, does not have a specific provision in its criminal/juvenile code regarding custody of minors in prostitution. However, Illinois, known for its child protective framework, has protective custody provisions in its criminal code to specifically justify the incarceration of minors in prostitution. The greatly celebrated Illinois Safe Children Act, Illinois' model DMST law, amended various sections of Illinois' Juvenile Court Act of 1987 and its prostitution statute to codify the practice. The Act defines "temporary custody," "temporary protective custody" and "shelter care" for abused, neglected or dependent minors, which encompasses minors in prostitution (705 ILCS 405/2-7). It states that police may take into custody abused, neglected or dependent minors without a warrant (705 ILCS 405/2-5(2)), while maintaining decriminalizing language: "the taking of a minor into temporary custody under this Section is not an arrest nor does it constitute a police record" (705 ILCS 405/2-5(3)). Illinois' prostitution statute states that minors, who are immune from prosecution for prostitution, shall be subject to temporary protective custody as specified in the Juvenile Court Act of 1987 (Prostitution, 720 ILCS 5/11-14(d)). It is important to note that legal commentators and anti-trafficking NGOs continue to laud these amendments and similar provisions across the country as "decriminalizing" to minors in prostitution. My point, however, is that it heralds a formally sanctioned form of quasi-criminalization and incarceration that specifically targets minors in prostitution who are otherwise constructed as victims of commercial-sexual exploitation.

Utah's code does not specify this practice, but this does not translate to decriminalization and the lack of targeting minors in prostitution. It simply means that minors are subject to routine rules of child custody, which have historically targeted minors in prostitution, and led to their criminalization and quasi-criminalization. Despite the legal reconceptualization of minors in prostitution as victims of sex trafficking rather than as juvenile delinquents, "the absence of appropriate shelter for DMST victims results in the

continued practice of detaining DMST victims with the general population of offenders in the juvenile justice facility” (Snow 2008: 2).

Utah has an overall retributive reputation, particularly when measured by laws of capital punishment such as its anachronistic death penalty method of execution by firing squad. At the same time, legal commentators praise its relatively successful rehabilitative juvenile justice policy of providing community-based programs. However, this is in the context of Utah’s extremely retributive initiatives against juveniles, such as allowing 14 year-olds to waive their right to an attorney or parent’s presence in adjudications. This occurs in the context of juveniles’ already diminished due process rights relative to adults and the criminalization of juvenile courts to the point that little remains to distinguish it from criminal court (Davis and Dent 2001). In studying the various states of the US beyond Utah and Illinois, reportage is unanimous regarding the lack of sufficient and appropriate resources for serving minors in prostitution. Criminal justice, including juvenile justice, captures minors when other resources are unavailable, or makes their qualification for resources contingent on their first being criminalized or quasi-criminalized, as much juvenile justice literature finds. This becomes a form of managing the “dark side” of the global capitalist economy—its predictable and increasing socio-economic inequalities—and those most impacted by them, through law and order; through law enforcement, criminal justice and the prison-industrial complex. The quasi-criminalization of minors in prostitution provides a relatively unexplored inlet into this process that economic sociologists and urban sociologists such as Loic Wacquant (2002, 2007, 2009) have exposed. In the case of minors in prostitution, however, even when they are constructed as vulnerable and abused victims of the worst aspects of society and its worst social actors, rather than as a despised “underclass,” the strength of law and order, retributivism and the culpable prostitute identity overpower the protective construct.

Very little legal discourse is devoted to the issue of indefinite detention of minors in prostitution as material witnesses against pimps and traffickers, and the same is reflected in media coverage of child sex trafficking. Arrest information reveals an odd pattern. In Utah, arrests of minors in prostitution since 2000 are as follows: from 2000-2007, the number of arrests fluctuated between 0 to 7 (Snow 2008: 18). After passage of Utah's DMST law in 2008, arrests doubled from the previously highest number, to 14, in 2009, and increased to 17 in 2010, then dropped to 11 in 2011, and down to 7 by 2012 (Utah Department of Public Safety, 2009, 2010, 2011 and 2012, Appendix A). Since the passage of its DMST law, Utah saw an overall increase in arrests of minors in prostitution. The decline since 2010 does not necessarily signify increasing leniency. It could simply reflect the lack of charges against minors in prostitution for the actual crime of prostitution or any crime, but it does not preclude or necessarily reflect decrease in their detention as material witnesses or for "protective custody." Similar to other jurisdictions, minors could also be, and often are, charged with offenses other than prostitution, for example "disorderly conduct." The point is that regardless of the specific legal citations, means of penalization are always available for those who do not fit the normative victim identity contingent upon normative race, class, gender and childhood in the process of criminalization. Legal commentary regarding Utah reports, "Prosecutors have reported charging the victims with misdemeanors to make sure they will be held in the juvenile detention facility and then available to testify" (Snow 2008, in Jeffs 2013: 251). For example in the *Uhrhan* (2013) case in Utah, a 17 year-old girl in prostitution was swept up and arrested along with a 20 year-old woman charged as a sex trafficker and a pimp in his thirties. The minor was characterized by law enforcement as a victim but was nonetheless arrested along with other targets in the sting. Her fate is publicly unknown, but looking at Utah and other states, she was likely incarcerated for some time. Anti-trafficking NGOs often agree with law enforcement justification of this practice. For

example, Shared Hope International laments that “DMST victims are saddled with a dual status of victim and delinquent,” but in the same paragraph endorses jailing minors in prostitution.

In order to secure a conviction of their trafficker/pimp, the victim must be available to testify at the preliminary hearing. If law enforcement does not charge the victim with three misdemeanors or place a material witness order on the DMST victim to hold her in detention, it is likely that she will abscond from Utah or be placed by CPS back with her family, which often makes her unavailable to testify. To prevent the unavailability, the DMST victim is held in the juvenile detention facility for 30-90 days awaiting the hearing to secure her testimony against her trafficker/pimp. (Snow 2008: 3)

This leads to self-contradictory follow-up statements such as: “The District Attorney who was criminally prosecuting the girl’s trafficker/pimp offered a deal to the DMST victim in which he would drop all charges against the victim (the 17 year-old) if she promised to come back and testify against her trafficker/pimp” (Id.: 29). This begs the question of why the “victim” is being “charged” as an offender in the first place.

Nevada and New York serve as further examples of the effect of this incarceration. In Nevada, one family court judge reported in 2010 that she would receive between three and five new cases of child prostitution per week, involving girls between the ages of twelve and seventeen, with greater than half from out of state (Goldman 2010, Website of Las Vegas Sun). A 14 year-old girl arrested there was kept in custody in a juvenile detention facility for 38 days in order to provide testimony against her pimp. The pimp entered a guilty plea such that the girl was never required to testify yet even after this, the state continued her incarceration due to her “criminal” conduct. Such detention of minors in prostitution is routine in Las Vegas (Brown 2007). Thus girls’ actual incarceration exceeds the purpose provided in rote arguments that the girls are being protected from dangerous pimps or that the detentions merely seek girls’ prosecutorial cooperation. What purpose it serves, apart from criminal punishment, is at best unclear. In the more widely publicized case of 12 year-old

Nicolette R (2004) in New York, the court rejected the young child's claim of inability to consent to sex based on statutory rape law and her child protection arguments that would divert her from criminalization. Instead they tried her for prostitution for offering oral sex to an undercover police officer, and placed her in a secure detention facility, citing her "lack of remorse and tendency to carry weapons." Echoing the construction of *Dora P* nearly thirty years earlier in that jurisdiction, a New York Times reporter wrote regarding the trial that prosecutors successfully argued that, "Nicolette was a hardened child who lacked remorse and who would return to her life on the streets unless she was imprisoned" (Kaufman 2004). A psychologist's testimony supporting her incarceration for public safety characterized her as "still enough of a child to suck her thumb occasionally, [but] she was also dangerous enough to carry razors" (Id.). The judge sentenced her to secure detention, commenting that Nicolette should attain "proper moral principles."

On the national and international levels it has been important to observe these processes unfold with regard to the child migrants from Central America discussed in the previous chapter. "Protective custody" has taken on a new dimension in the context of mass detention at immigration centers. These facilities increasingly resemble permanent borderlands for child migrants and their mothers. As we see with regard to how criminalization and child protection are becoming conflated in the domestic context, there are attempts at false equivalence between prison and "child care" (Libal 2016, Website of Grassroots Leadership). A Texas court recently refused to allow licensing immigration detention centers as "child care facilities," stating that such prisons counter the purpose and standards of child care facilities, including prohibition against children having to share bedrooms with non-relative adults. Licensing was admittedly meant to legitimize federal government detention of migrants, not to aid children, and would serve to lengthen their detention in a facility that re-traumatizes children fleeing from violence. The treatment of

Central American child migrants exemplifies the blurring of boundaries between child criminalization and child protection in the neoliberal age of austerity and refugee crises.

There is no punishment theory that justifies retribution against those constructed as victims. The construction of minors in prostitution as criminalized or quasi-criminalized individuals can only be legible in punishment theory if they are deemed offenders (prostitutes) or culpable victims (co-conspirators in their own trafficking). Both of these conform to historical constructions of prostitution and sex trafficking, which have traditionally been utilized to criminalize females in grossly disproportionate numbers. Minors in prostitution, despite the increasing popularity of legally reconceptualizing them as victims of child sex trafficking, are not ever completely viewed as victims. The legal-discursive framework that constructs the issue of child prostitution and its subjects never quite commits to straightforward child protectionism. It vacillates and equivocates between the prostitution and sex trafficking constructs, revealing its indeterminacy with regard to minors in prostitution as non-consenting child victims, under the surface of what appears a sympathetic and decriminalizing discourse. During the Gilded Age and Progressive Era we saw the emergence of modern notions of age of consent and statutory rape as the protective regime against CSEC, and the criminalization of prostitution as the punitive regime against “prostitutes.” The bifurcated construction of the two plays into the findings of Chapter 3 regarding the impossibility of White bourgeois girls being “prostitutes” and the working class girl or girl of color being constructed as bad girls and negative influences, fulfilling the role they have historically been relegated to in this context: the unrapeable seductress.

International human rights and federal law both prohibit incarcerating minors in prostitution for prostitution-related crimes. However, the state/federal split that places prostitution in the jurisdiction of states and sex trafficking in that of the federal government combined with the strength of the culpable prostitute identity and lack of resources create a

formidable barrier for child protectionism. Witness detention, a form of quasi-criminalization and incarceration, is due to the over-emphasis on retributivism rather than child protection. The zeal to prosecute pimps or traffickers impels law enforcement and prosecutors to extract witness testimony from minors at the sacrifice of child welfare. Pimps and traffickers' zeal to compete economically and attain personal enrichment also sacrifices child welfare in any way necessary. The consistent message from adults (whether criminal actors or legal authorities) to minors in prostitution is that they are disposable—from the intrafamilial or intracommunal abuses typically suffered in childhood, to the exploitation they experience in prostitution, to their treatment in institutions and criminal justice systems. Disposability is the common condition and outcome of the intertwining of socio-economic inequalities and legal-criminal injustice in the criminalization or quasi-criminalization of minors in prostitution.

To reiterate and to link the victim/offender binary to the adult/child binary, criminalization is the process of rendering certain behaviors punishable under criminal law. It is also a process of othering, strongly indicating the out-group status of those whom states perceive to be most threatening at a given time (Ellis 2012: 2). Police arrest and custody, detention and being adjudicated delinquent are considered criminalizing practices. The process of criminalization works against the view of children in normative childhood that presumes their innocence and attends to their protection. Along with prior criminal record and the gravity of current offense(s), pre-adjudication detention is considered among the best predictors of criminalization in models that account for demographics and other extralegal factors (Guevara, Herz et al. 2006: 262). Current DMST laws in both retributive and rehabilitative contexts use protective language but adopt quasi/criminalizing techniques such as arrest, temporary protective custody, witness detention, charging juveniles with crimes as a means of qualifying them for services, and threatening or bargaining with charges against

minors to induce their cooperation and to extract their testimony. These are barriers to the decriminalization of commercially-sexually exploited children.

The construct of prostitution on the one hand, and DMST on the other compete and coexist uneasily in the same two-tiered manner that opposing tendencies of retribution and rehabilitation do generally regarding punishment. This is also reflected in adult/juvenile tiers in justice systems, the delinquency and dependency tiers of juvenile justice, as well as the deviant or normative childhoods through which children's subjectivities are forged and that determine their identities as offenders or victims, and their punitive or protective treatments. These bifurcations mimic the chutes and ladders game of criminal procedure, but cumulatively form the criminalizing apparatus that exercises coercive control over exploited children who are suspended at such a crossroads. The indeterminacy of their status as victims or offenders reflects and reifies the child identity rendered malleable by adult power and available to fulfill adult demands, including prosecutorial imperatives above child protectionism, as well as the refusal to recognize child rights or full citizenship. Rather than preventing or protecting children from CSEC, the law corroborates with it and the victim/offender binary is deployed in ways that penalize minors.

CHAPTER 5: The Illusory Promise of Contract

Chapter 5 turns to the consent/non-consent binary as the third key theme around which legal discourse on child prostitution is organized, this binary represents another important aspect of how the child prostitute is rendered the “bad subject” of *criminalized multiplicity* through the confluence of processes of marginalization that compound criminality and over-determine criminalization. This chapter discusses the ways in which “consent” is understood in contractual terms, and how this imputes consent and, therefore, criminal culpability upon children in ways that render them rather indistinguishable from “consenting adult offenders.” The three binaries are mutually shaping and interdependent in these ways—the issue of non/consent interlocks with determination of victim/offender, which in turn depends on perceptions of adult/child. The construction of prostitution as a contract for goods or services and the subjection of minors to such a definition works against the notion that child prostitution is commercial-sexual exploitation, that minors are victimized by it, and, ultimately, that minors are children requiring child protection.

Despite the legal incapacitation of children from sex and commerce, they are rendered capable and culpable through the contractual interpretation of prostitution. This attests to the power of neoliberal market discourse over that of child protectionism, a dynamic that renders johns consumers rather than criminals in a context in which consumer identity is synonymous with citizenship, in contrast to the non-citizenship of the child identity and criminal identity. Through intertextual reading of prostitution in criminal exposure/transmission of HIV laws, we will see that the contractual imputation of consent combines powerfully with prostitution culpability to heighten the blameworthiness of prostitutes. This implicitly protects the consumer expectations of johns for STD-free sexual service while imposing a normative standard of childhood purity that is unrealistic for minors in prostitution. The measure of normative childhood purity burdens minors with the risk of being deemed even more

culpable than their adult counterparts because they not only violate commercial and sexual laws and norms that adults are subjected to, but also deviate from and fail to perform normative childhood. The contractual interpretation of prostitution survives the introduction of DMST into the vocabulary of child prostitution. Despite otherwise strong moral imperatives guarding against adult use of children's bodies for sex—as evidenced by collective hatred of pedophiles—the will to protect against commercial access to children's bodies is eroded once “consent” can be found in the contractual discourse of commercialization and commodification thereof. The issue of consent and its official verification or negation through contract has served as a key means of legitimizing capitalist order in post-slavery American society as a free and fair one. However, feminist and anti-racist theories of contract counter the dominant legal understanding of contract based on formal egalitarianism. These help clarify how the notion of contract bolsters neoliberal ideas of “responsibilization” and its reduction of multi-systemic problems to blaming of the self and of victims, in support of pathologization and criminalization. At best, contractarianism only allows arguing that prostitution is a legitimate economic choice made by the rational, calculating and knowledgeable individual. With a return to Gilded Age levels of social inequalities on the material level, undergirded by Social Darwinian revival on the ideological level, we are also threatened with the reanimation of politics and policies of that otherwise bygone era.

This chapter is divided into three sections. The first section shows how legal discourse regarding prostitution, as the primary discursive means of criminalizing and quasi-criminalizing minors in prostitution, constructs “prostitution,” and consequently, the issue of “consent” in contractual terms. The second section explains how the imputation of consent on minors combines powerfully with female prostitution culpability to heighten the blameworthiness of girls, especially when prostitution discourse is read intertextually with

that of criminal exposure or transmission of HIV. The third section discusses the racialized, classed and gendered aspects of the issue of consent, and how the adjudication of consent is socially and historically decontextualized. I conclude the chapter with a discussion of how the law imputes commercial and sexual consent on minors for purposes of criminalization and responsabilization. I argue that the compounding of structural inequalities, personal circumstances and punishment over-burdens minors while protecting the interests of male “consumers”—the hegemonic subjects of the social contract, and exonerating the state. This chapter is noticeably less focused on two-state comparison, as I argue that the identity of the child as a consenting seller of sex is common to both states because of their reliance on contractual language, which renders their political orientations of retributivism and rehabilitation with regard to punishment less relevant. Contractual discourse is powerful due to its subdued but pervasive nature for conveying “choice” and negating ideas of exploitation, and this tendency is noticeably present in Utah, Illinois and all states as well as federal law.

5.1 Terms of contract

The prostitution statutes of states, including Utah and Illinois, reflect the contractual language with which it is defined. Utah’s statute defines sexual solicitation (and in large part “patronizing”) as “when the person (a) offers or agrees to commit any sexual activity with another person for a fee; (b) pays or offers or agrees to pay a fee to another person to commit any sexual activity” (UCA 1953 §76-10-1313; UCA 1953 §76-10-1303). Prostitution is when a person “engages in any sexual activity with another person for a fee” (UCA 1953 §76-10-1302) Illinois’ prostitution statute states,

Any person who knowingly performs, offers or agrees to perform any act of sexual penetration as defined in Section 11-0.1 of this Code for anything of value, or any touching or fondling of the sex organs of one person by another person, for anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution (720 ILCS 5/11-14(a)).

Thus the language of contracts thoroughly permeates the legal discourse of prostitution throughout the US and on both national and state levels.

Legal discourse regarding prostitution, which is the primary discursive means of criminalizing and quasi-criminalizing minors in prostitution, constructs “prostitution,” and consequently, the issue of “consent” in contractual terms. As discussed previously, Pateman and Mills have shown how contract has been the key tool of formal egalitarianism in the social and legal realms during Western modernity through the dominant but false presumption of civil equality in social relations. However, a contractual interpretation of prostitution imputes consent to even the one group denied formal equality, children. The power of neoliberal capitalist discourse of contract for interpreting social relationships, including criminal ones, has the effect of rendering child prostitution “consensual” when it is simultaneously understood as the ontological dark side of modern life and legally constructed as the worst abuse of the most vulnerable. This means that the standard for what can be considered exploitation is set impossibly high—measuring non-consent against the clear use of individualized force requiring episodic causality. Relying on contract as our primary mode of sociality and jurisprudence fails to see that the rules governing society re/produce disposability as the root condition of modern slavery, which is premised on Othering and minoritization.

*Defining society, freedom and consent in contractual terms:
early national efforts impacting exploitable children*

The early case of *Ruhl* (1859) clarified the adult/child and victim/offender dynamics of child prostitution in prohibiting the luring away of girl-children from paternal guardians and into prostitution. It also reasserted the social contract defining modern Western society, which established a fraternity of White men as equal public citizens and political subjects in negotiation with one another, but also as “kings” of their own domestic dominions—heads of

households—per the sexual contract embedded in it (Pateman 1988). As a case within which is ingrained language of the social contract, *Ruhl* defined girls as belonging to the family patriarch, requiring other men to ask for sexual access to and movement of children in their care. In defining normative, traditional children as chattel, it reasserted the terms of the social contract for non-enslaved children as apprentices or indentured servants.

Historically and from the outset, prostitution itself was conceived of in contractual terms in legal discourse, in the first racialized national immigration restriction. Supporting Pateman's (1988) argument that prostitution is (deceptively) conceived of in contractarian terms, the APIA defines it as a "contract of immigrant from China or Japan for service for immoral purposes." The official purpose of the law was to deny certification to vessels carrying immigrants into the US where passengers were found to be imported for "immoral purposes" of prostitution (or polygamy). This entailed

determining whether the immigration of any subject of China, Japan, or any Oriental country, to the United States, is free and voluntary...to ascertain whether such immigrant has entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes; and if there be such contract or agreement, the said consul-general or consul shall not deliver the required permit certificate.

The language of freedom and voluntariness was key to conceptualizing contract generally and in the prostitution context, including in what would later become termed "sex trafficking." Legal authorities could use "Oriental" women's consent to a prostitution "contract or agreement" to prevent their entry into the US because it imputed prostitution culpability on the female immigrant, specifically East Asian women. It established that the federal government would not recognize females immigrants' contracts for sex, conceptualizing prostitution as a sex contract while simultaneously criminalizing contracts for sex.

"Free consent" becomes paramount in this context, and the first signs of "trafficking" come into view in American law. The Act importantly defined the meaning of free consent

and contracts. It used notions of unfreedom, force and coercion to establish a violation of international sex trafficking and penalized with a fine of two thousand dollars and misdemeanor conviction (“imprisoned not exceeding one year”) the actions of “citizens of United States transporting subject of China or Japan without free consent,” i.e. those who “shall take, or cause to be taken or transported, to or from the United States any subject of China, Japan, or any Oriental country, without their free and voluntary consent,” and declared the resulting “contract for service void.” Specific to prostitution (or sex trafficking), the Act declares that, “the importation into the United States of women for the purposes of prostitution is hereby forbidden; and all contracts and agreements in relation thereto, made in advance or in pursuance of such illegal importation and purposes, are hereby declared void.” This contractual understanding of the sale of Asian women’s bodies is inextricably linked to the construction of Asian males as “coolies.” Viewed as cheap or slave labor, the prostitution of their female counterparts was also viewed as contractual, implicitly as labor, if illegitimate.

The punishment for sex trafficking was also much heavier than for forced labor. The fine for importing an East Asian woman for purposes of prostitution was considered a felony punishable by up to five years’ imprisonment with a fine of up to five thousand dollars. The 1875 APIA never defined the meanings of key words such as “consent,” “contract,” or “free,” as its progeny and contemporary law have attempted to do. Looking to the state-based case of *Ah Fong* (1874) from California, a precursor to the APIA, we see instead that the lack of consent of prostitutes might be inferred from the way in which the judge who drafted the decision characterized the Chinese immigrant woman and others detained. In that landmark case, Judge Fields defended the right of Ah Fong and the other Chinese women aboard the same ship as her to enter the US after embarking in San Francisco and being detained by state authorities who had determined that they were “lewd and debauched women,” i.e. prostitutes. In defending this right, Judge Fields described Ah Fong as a “frail child of China,” a

characterization not necessarily meant to remove culpability and will for evil but to allude to moral frailty—culpably weak and feeble—and thereby perhaps susceptible to prostitution.

Ah Fong did not discuss the issue of consent of the prostitute. Rather, it discussed issues *around* consent—will, free will, freedom, voluntariness, agreement, accord and contract—in reference to cross-border movement of migrants and governance among nation-states. Judge Fields first discussed “will” and “consent” to refer to forcible removal of Chinese women from the US through deportation, “against their will or consent.” The judge also referred to a governing treaty of the US with China (Burlingame Treaty) as an agreement to allow “free migration and emigration of their citizens and subjects respectively from one country to another, for purposes of curiosity or trade, or as permanent residents.” Conversely, it was also an agreement to protect persons from their respective countries from forced migration, i.e. from being transported across international borders “without their free and voluntary consent.” The nation-states of China and the US, as “the high contracting parties...join in reprobating any other than an entirely voluntary emigration for these purposes.” The subjects of the two countries, through agreement between the two nations, are allowed “free ingress...and egress,” or international cross-border movement into and out of their respective countries under terms of treaty. Judge Fields also noted that interstate travel and movement were allowed—that once Chinese subjects were allowed to enter the US, they were able to “go and come of their own free will and accord.”

Ah Fong was decided during the Reconstruction era and resistance to the retrenchment of slavery in regions outside the South. The case indirectly defined “freedom” in contrast to “slavery” in its denouncement of Southern legislators’ attempts in California to influence immigration law and exclude the Chinese by exercising states’ rights. At a time when Southern elites and politicians representing them adamantly disfavored federal intervention in order to regain “the Southern way” (slave economy and culture) to the extent

possible, Judge Fields asserted that the regulation of immigration is reserved for the federal government. He criticized former Southern legislators now operating in the California legislature for trying to exclude the Chinese in the same way that, under slavery, they excluded “free negroes from their [state] limits” out of fear that the presence of free Black people in slave states was “deem[ed] dangerous or injurious to their interests.” In shaping the relatively new post-slavery order—just around a decade after the Emancipation Proclamation (1863) that formally freed enslaved persons and end of the Civil War (1865)—the decision declared from the furthestmost point of the western frontier in California, that such exclusions cannot be allowed, especially because this would be tantamount to individual states making foreign policy, in violation of foreign treaties. “[A]t this day,” Judge Fields wrote, “no such power would be asserted, or if asserted, allowed, in any federal court.” As a case with far-reaching authority that helped federalize immigration law, *Ah Fong* defined “consent” in the international context of prostitution, which would eventually develop into “sex trafficking,” but here was expressed without explicitly requiring proof of force or other specific coercive means. In the international context, it contrasted “consent” to forced migration and forceful removal (deportation).

In the domestic post-slavery order, “freedom” was defined in contrast to enslavement and primarily as the freedom of movement across international and state borders. This case and the APIA also established an important contrast between the position of racialized immigrants and African Americans—the power of international law and foreign relations to trump states’ rights and a particular exercise of localized racial politics (“home rule”) over minoritized subjects—a power unavailable to African Americans. Immigrants could be shielded from certain detrimental impacts of racialization based on national origin discrimination in particular ways that African Americans could not with regard to racial discrimination. In this way, these early laws regulating sex and gender, aimed at East Asian

females, were productive of race itself, nuancing the concept with distinctions of immigration and national origin. *Ah Fong* and APIA represented efforts of nation re/building on the national and international levels through federal integrity and national unification in the face of ongoing domestic tensions around race and the exploitation of sexualized and racialized bodies. As pointed out in Chapter 3, no distinction was made between adult/child in the APIA. Therefore, nothing suggests a barrier to assessing East Asian minors based on the same criteria of contract and consent, thus subjecting them to the same presumptions of moral “frailty” and forcefully deporting them.

*Contracting the reproduction of the White nation:
Non-consent as kidnapping across international borders, and the irrelevance of child status*

During the Gilded Age and Progressive Era when key legislation was written, there was a decided focus on forging international relations through “contracting” among nation-states of the world, which would then translate to the domestic context. The International Agreement for the Suppression of the “White Slave Traffic” of 1904 (“White Slave Traffic Agreement”) served as a compact among the European states and the US to protect women and girls from “White slavery.” It focused far less on issues of consent of trafficked females, and almost exclusively on agreement between the “Contracting Governments” (and territories under their control through colonial rule or otherwise). The Agreement referred only singularly to the issue of non-consent of the trafficked female, in stating the purpose of the Agreement as “desirous of securing to women of full age who have suffered abuse or compulsion, as also to women and girls under age, effective protection against the criminal traffic known as the ‘White Slave Traffic.’” The words “compulsion” and “abuse” as well as “under age” were used to conceive of female non-consent to prostitution through an emergent concept of sex trafficking.

More indirectly, the 1904 Agreement refers to an offender against sex-trafficked females as he “who has caused them to leave their country,” which constructs the female as the victim of kidnapping, having been moved or transported across international borders without her consent. Here we see the formation of the concept of “sex trafficking,” as conceived in its legal origins. A very high bar was being set for establishing victimhood via non-consent and regardless of adult/child status—one must be the victim of kidnapping and forced migration—as “trafficking” was conceived of as forced movement across international borders. These dynamics endure in contemporary sex trafficking law through requirements of “force” to indicate non-consent and thereby trigger the state’s protection. Conditioning state protection on the finding of non-consent implies that a consenting person assumes the risk of what the contracting party may require of her, and thus responsabilizes the individual by understanding harmful outcomes as deserved consequences of the choices she made.

In contrast to the paucity of defining individual consent, the language of contract, agreement and consent were repeatedly referenced regarding the formation of the agreement among the world powers, through their “plenipotentiaries.” The 1904 Agreement forms among “contracting countries,” “contracting states” or “contracting parties,” wherein inter-governmental powers are “exchanged,” and in which each government “undertakes” watch over “women and girls destined for an immoral life.” Contractual discourse among colonial and imperial powers is significant for reasons of deciphering the sexual and racial dimensions of the “social contract” of modern Western civil society in the “White slavery” and “modern slavery” contexts, discussed below. Thus contractual discourse, including in prostitution and sex trafficking law, played a significant role in US nation re/building and in establishing international relations with other world powers.

The regulation of sex and gender and the criminalization of sex trafficking bolstered and legitimized the forging of such an agreement among hegemonic world powers. By way

of protecting White female sexual purity and exclusion of debauched foreign women, it helped define the ideal American citizen (as White) and define American females in contrast to corrupted and corrupting foreign women and non-White women domestically. Viewed as vessels of White national and cultural reproduction, the protection of White women from sex trafficking was analogous to the protection of Western societies in general, and thus provided justification for international agreement among its representative powers to surveil White females likely to enter prostitution. Girls were bound up in this process along with adult women, and no specifically child-protective rationale was offered. In the context of sex trafficking, the Agreement constructed “consent” as anything falling short of kidnapping and forced crossing of international borders, which continues to be the ideal scenario for successful prosecutions today. Unlike today, however, the same standard of non/consent was applied to women and girls alike, and thus went from federalizing the irrelevance of child status to the issue of consent, to internationalizing it.

The racialization of consent and equivalence of adult and child capacity

The APIA had viewed prostitution as contracts for sexual service when it involved foreign East Asian females, which the law merely declared void and a deportable offense. The 1904 Agreement that turned the attention of the law to White foreign females and the WSTA that applied to White American females viewed prostitution as trafficking and slavery. The prostitution of White females was constructed in distinctly non-contractual terms that rendered consent immaterial and expanded the definition of traffickers’ actions that produce non-consent. This distinction reinscribed racialized foreign females in the trope of “unrapeability” stemming from American slavery against African American females, and that which is generally ascribed to prostitutes, subjecting these groups to similar conditions with regard to their sexual integrity.

The Mann Act elevated the importance of the actions of traffickers, a characteristic that endures in modern trafficking law worldwide.⁸⁰ It invoked the power of the federal government to regulate interstate and foreign commerce, and focused on “knowingly transporting, etc...women or girls...for immoral purposes,” or “immoral practices,” including “prostitution” and “debauchery” (White Slave Trafficking Act). Then it proscribed “inducing” women and girls through interstate transportation “whether with or without her consent.” This is the single reference to female consent in the statute, which effectively rendered it moot. If the actions of the trafficker(s) met the legal standard for White slavery, the female was exonerated from prostitution due to her presumed non-consent. These sections use the language of coercion to describe the criminal actions of traffickers to negate female consent:

[A]ny person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for...any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice...” (Section 2); “persuade, induce, entice, or coerce, or cause...or aid or assist [to be such]” (Section 3).

Even though it seems female consent was rendered immaterial in the sex trafficking context, the relatively great focus on inducing and coercion by traffickers suggests that legislators equivocated on this issue by leaving open the possibility of children consenting to prostitution in the absence of a criminal wrongdoer. Lack of consent seems to depend on the extent to which traffickers coerced cross-border movement for prostitution, debauchery or immoral purposes. The motivation of the Act became clearer through its enforcement, as women would become liable for conspiracy under the Act, girls would continue to be arrested for prostitution, and racially and politically motivated prosecutions would unfold.

Thus by the Progressive Era we see a changing definition of consent as the race and national origin of the female subject changed. Persuade, induce, entice, compel and coerce

⁸⁰ The Act was amended as recently as 2000, at the same time the TVPA was passed. The TVPA also focuses on the criminal actions of traffickers, but its protections depend greatly on victims’ consent or non-consent.

were specified as other means of causing a (White) female to enter prostitution, not solely through force or kidnap as in the international Agreement, nor as contract in the APIA. However, it cannot be said that it specified special protections for girls over adult women when it comes to the issue of consent, since it, too, applies the same standard to both women and girls, making no distinction regarding sexual capacity on the basis of age. Thus the notion of consent was modified through racialization of prostitution as non-White and sex trafficking or slavery as White, on a kind of “reverse slavery” premise of foreign or non-White males’ exploitation of White females (Chapter 3). Emphasis on traffickers’ wrongdoing and the negation of White female consent reinforced the protective ethos toward White cultural reproducers expressed in its international counterpart, but with reservations expressed through requiring individual wrongdoing and providing no child protective distinctions.

Reading consent into child prostitution in the neoliberal era

Sex trafficking law had been justified under auspices of protecting White females, and its motives and usages often served patriarchal, racist and politically hegemonic ends that were not particularly child-protective and would prove selective regarding which children would be protected (see generally Pliley 2014). At the same time, prostitution was always kept separate from sex trafficking, and always deployable against those to whom consent could be ascribed. Cornerstone prostitution cases involving minors at the dawn of the neoliberal era in the 1970s reveal a contractarian construction of child prostitution seems to have solidified, with no meaningful distinction on the issue of consent between adult and child. Again, even though they were tried in the 1970s, these cases are cited in a current Treatise designed for lawmakers and practitioners. Wharton’s 2014 Treatise on Prostitution makes clear that the law reads “consent” to prostitution into the behavior of minors for acts that would otherwise be construed as crimes committed *against* minors. The commercial

mediation of behaviors otherwise deemed sex crimes against children rendered minors' legal incapacity to consent to sex irrelevant. The opinion of Judge Smith in the 1976 case of *In re Appeal no. 180* regarding a 15 year-old girl in Baltimore, Maryland demonstrates the construction of prostitution in contractual terms and its application even where minors are concerned. The judge conveys the commercializing and commodifying terms used to define prostitution as "the offering or receiving of the body for sexual intercourse for hire." He comments, "Whatever else one might say about the act of accosting and soliciting, it is doubtlessly intended to sell a product."⁸¹

Most "solicitation" is conceived of in contractual terms of "selling" (and in terms of female culpability (Chapter 4). Where "patronizing" is also outlawed, the law typically imagines a male "customer," which also conceives of the crime in contractual terms. A Detroit, Michigan ordinance regarding patronizing a prostitute cited in this case further solidifies the contractual nature attributed to prostitution. It reads, "It shall be unlawful for any male person to engage or offer to engage the sexual services of a female person for the purposes of prostitution, lewdness or assignation, by the payment in money or other forms of consideration." Thus, prostitution, including solicitation and patronizing, is conceptualized as involving a contract for "services," specifically "sexual services." Having taken the character of a service contract, the court explains that "accosting and soliciting" are "essentially commercial in nature," before referring to the male party to the crime as the "customer."

The court in *In re D* (1976) involving a 16 year-old girl in Portland, Oregon, bolsters the legal view of prostitution as the formation of an illegal contract for commercial sex, and solicitation as the attempt to do so. In prosecuting D for "loitering to solicit prostitution," the decision defines "prostitution" as meaning "an act of sexual intercourse or sodomy between

⁸¹ The interpretation of prostitution in the Page Law was as a contract for services, whereas here, it is interpreted as a contract for goods—that the child accosts adult men with intent to sell the "product" of sex. Contractual interpretation of prostitution has vacillated between referring to commercialized sex as goods or services.

two persons, not married to each other, in return for the payment of money or other valuable consideration by one of them.” The conduct of the fourteen-year-old Dora P (1979) is similarly characterized as a combination of aggressive sale (“accosting”) and contractual agreement. However, in her case, her act was felonized as a robbery because she failed to perform the sex act she promised to in “soliciting” the “customer.” If prostitution was merely and solely a contract, however, the legal response would be to provide restitution—to return payment plus “damages” to the injured party. But the criminalization of minors means that not only is the language of civil contracts deployed against her—by charging her not just with robbery and viewing solicitation as part of the robbery scheme—but also charging her with a prostitution offense. This means that Dora was penalized for failure to perform a sexual act as well as for committing two crimes, even though it appears that she was merely punished for performing two illegal crimes. As pointed out earlier, had she performed the sexual act, she would only have been charged with a misdemeanor prostitution offense. In this way the law implicitly enforces a contract for child prostitution by making its performance a misdemeanor and its failure to perform both a misdemeanor and a felony (robbery).

Thus, during the 1970s and the dawn of the neoliberal era, child prostitution was constructed in commercial-contractual terms that criminalized girls so long as they were identified as a “prostitute,” and in these cases adjudicated “delinquent.” This is contrary to the view of adult males having sex with underage girls as a crime against sexually incapable children. So far, in the prostitution context, we have not seen particularly child-protective priorities in these key sites of discursive formation regarding child prostitution and the issue of consent. The same standards of criminal and moral responsabilization seem operative in determining children’s capacity and culpability in prostitution.

TVPA and the establishment of DMST

Contemporary federal language in the TVPA, which continues to conceive of “trafficking” at the intersection of immigration and crime defines prostitution contractually as well, as “promiscuous sexual intercourse for hire” (22 CFR 40.24(b)). As discussed previously, federal law requires “force, fraud and coercion” in cases of adults. We have seen this requirement applied to minors who are “adultified” and/or deemed culpable victims or offenders in prostitution. Despite federal language referring to children’s incapacity to consent to sex trafficking (but not necessarily to prostitution). In defining the “minimum standards” that countries with significant levels of sex trafficking must adopt, the TVPA states:

For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault. (22 USC 7106 §108(a)(2)).

This language suggests that sex trafficking should be punishable on par with rape. The TVPA has specified children as “incapable of giving meaningful consent” to prostitution since its passage, first in the international sex trafficking context, then more recently in the domestic sex trafficking context. However, the “prostitution” context remains designated as the domain of states, and so compromises this presumption of minors’ non-consent. Federal level bifurcation of prostitution and DMST sustains this as well. DMST construes minors as incapable of consenting and does not contain contractual language the way legal texts regarding prostitution do. Assessing the impact of the TVPA on its tenth anniversary, a US Department of Justice report from 2010 describes minors as “a population so inherently vulnerable that the law requires no proof of their coercion” (DOJ Civil Rights Division 2010).

In 2008 the language of US federal law was modified again, invoking key framing concepts on the issue of child prostitution: prostitution, demand, consent, force, and state

sovereignty. Examining the TVPRA 2008 and its legal analysis by Monasky (2011), which compares sex trafficking laws of the US and Sweden, clarifies official US discourse and the government's position regarding prostitution. The law focused attention on addressing demand for prostitution, and explained that prostitution is not simply a "victimless enterprise" nor to be considered legitimate employment (Public Law 110-457, Title II, section 225(a)(1) and (a)(2); Monasky 2011: 2026). Therefore, it reinforces the longstanding US prohibition of prostitution.

Congress adopted language that seems to accord with an abolitionist position regarding prostitution, or at least a prohibitionist one.⁸² The naming of the TVPRA 2008 after British abolitionist William Wilberforce alludes at least to symbolic reverence of abolitionism, applied to the issues of sex trafficking and child prostitution as forms of modern day slavery. However, simultaneous developments that year and around DMST in 2010 demonstrate that, contrary to the abolitionist position that one cannot give meaningful consent to one's own exploitation, the government prefers maintaining a distinction between "forced" prostitution and prostitution by "choice." Upon closer examination of the Congressional debate we see the reification of bifurcated concepts of prostitution and sex trafficking through the discourse of prostitution as sex work and the invocation of state sovereignty. Congress demonstrated its deference to states' anti-prostitution laws by rejecting a US House of Representatives bill prior to passage of TVPRA 2008 (HR 3887). The language of this bill practically equated prostitution and sex trafficking. It replaced the

⁸² Although the two are often conflated, there are important differences between abolitionism and prohibitionism with regard to prostitution. Abolitionists recognize prostitution and its overconcentration among women and children as exploitive and problematic, whereas prohibitionists object to prostitution on moral grounds. Modern abolitionism does not blame persons in prostitution nor argues on grounds of sexual morality, and is associated with progressive movements, whereas the latter is a conservative, religious-based objection that focuses on the immorality that persons in prostitution engage in. Abolitionists advocate decriminalization of prostitutes but not of pimps or "clients," recognizing power differentials between persons able to purchase sex over those compelled to sell sex for economic reasons, and so as not to blame the victim; whereas prohibitionist efforts, viewing prostitutes as culpable victims, tend to lead to criminalization of prostitutes. Apart from some rural counties in Nevada, the US has adopted a prohibition model against prostitution since at least the Progressive Era.

requirement that a trafficker uses “force, fraud, or coercion” to induce a person into prostitution, with simply “persuades, induces, or entices” (Id.). The bill was defeated, but attempted to streamline federal law by consolidating the language of the WSTA (“persuades, induces, entices”) into the TVPA (Id.). State laws’ standards vary (Id.), but elimination of the “force” requirement tends to signal a more victim-centered approach. Conversely, maintaining the “force” requirement to prove victimization was a conscious decision to keep definitions of sex trafficking and prostitution from merging and hence to maintain two separate classes of persons who meet the definition of both. This outcome was based on “intense debate over whether prostitution is a choice and whether all persons in prostitution should be considered ‘trafficked’” (Id.: 2027). It appears that the conception of prostitution as “sex work,” as a choice and a profession, figured heavily in debates that ultimately disfavored the bill. Opponents of HR 3887 “believed it conflated prostitution with sex trafficking ...impermissibly affect[ing] women who chose to engage in prostitution as a profession” (Id.). Sex work discourse and its conceptualization of prostitution as sexual employment were utilized to maintain the bifurcation of prostitution and sex trafficking, undergirded by the neoliberal discourse of free choice and, essentially, the principle of freedom of contract.⁸³

Whether to modify or maintain this language was negotiated utilizing the principle of *state sovereignty*, which maintains separation of power between federal and state governments. To promote state-level enforcement of federal sex trafficking and child prostitution-related law, the TVPRA 2008 uses deferential language in addressing states and already existing criminal laws. It states that the language of the statute cannot be construed to “preempt, supplant, or limit the effect of any State or Federal criminal law” (Public Law 110-

⁸³ Freedom of contract is defined in Black’s Law Dictionary as “The doctrine that people have the right to bind themselves legally; a judicial decision that contracts are based on mutual agreement and free choice, and thus should not be hampered by external control such as governmental interference” (Garner 2006: 302).

457, Title II, section 225 (a)(1) and (a)(2)). However, it recognizes at the same that states' laws that criminalize sex trafficking victims as prostitutes limits the effectiveness of federal DMST law. Therefore, the TVPRA orders the Attorney General to construct a *model* state statute for the states to emulate "via an overhaul of state or local government prostitution and pandering laws," help states requesting federal assistance to modernize their local prostitution and pandering statutes, and to adopt a comprehensive approach to investigation and prosecution (Monasky 2011: 2026; TVPRA 2008 (b)(1)). Apart from this non-binding encouragement of states to comply with federal standards, the TVPRA 2008 contains no language challenging existing child prostitution law in any authoritative, binding way.

Giving such deference to states' criminal laws despite forceful language in federal law regarding the abuses and exploitation that women and children suffer, the law negotiates the key determinative issues of "consent" and "force" and limits its own effectiveness by invoking state sovereignty. As discussed previously, despite its appearance as a neutral legal principle, "state sovereignty" (alternatively, "states' rights") is historically, politically, economically and racially loaded, primarily used to prevent federal intervention in localized discriminatory practices (Cho 2009; Haney-Lopez 2014). The state sovereignty principle continues to be a powerful and popular tool of conservative politics in the US to argue against federal governmental "interference" in state and local affairs, and can be interpreted as a "code" or "dog whistle" for racialized, anti-feminist, and anti-child rights conservative politics. Language that alludes to the need for strong separation between state and federal jurisdiction and reassertions that prostitution falls within the domain of "police powers" of the individual states and their criminal laws needs to be understood in the context of its highly politicized use. State and local law enforcement have too often been found involved in localized child prostitution rings, and just as with localized civil rights violations in the past, federal law enforcement is more likely to be detached from local contexts and interests, and

therefore, at least theoretically more capable of successful intervention. Therefore, the abolition of what is legally defined as “modern slavery” or “sexual slavery” in the present day suffers from limitations placed on abolishing slavery in the past.

The use of sex work discourse of “choice” and “profession” suggests an emergent radical redefinition of prostitution from the seemingly abolitionist (but practically prohibitionist) position of the US government. Though legal commentators who advocate sex work feminism such as Berman (2006) identify troubling political alliances and co-authorships of sex trafficking laws among conservative, liberal and radical feminists, the statutory language modifications of 2008 and 2010 demonstrate the use of sex work discourse to disengage from federal law and retrench reliance on states’ criminal laws and police power. This remains unexplored and under-scrutinized for its impact on child/prostitution, which seems particularly urgent considering that it has historically functioned as a hallmark of neoconservative, neoliberal and libertarian positions favoring deference to market forces as well as laissez-faire or relativist approaches to regulation of health, welfare, safety and morals.

Had these discussed or centered children in their analyses, there may have been greater reluctance to separate prostitution and sex trafficking along lines of “choice.” Instead, child prostitution was subsumed in the bifurcation debate around consent/non-consent that determined to continue emphasizing choice. Another point of disconnect in these discussions is an apparent unawareness or unconcern for the criminalizing effect of maintaining this distinction, i.e. not working out the powerful ways in which non/consent and victim/offender mutually reinforce one another in criminalizing ways. Without addressing how the consent-culpability connection can be ruptured, it could only suggest an (implicit, subdued) argument for the legalization of child prostitution. Sex work feminists decry the “carceral state” and feminist utilization of “carceral politics” to support anti-prostitution and anti-sex-trafficking

efforts. However, the use of statutory modification to bifurcate the two can also reinforce the criminalization apparatus, particularly for minors. A child-centered analysis of carceral politics and a girl-centered feminism indicates that most DMST prosecutions occur in state courts, under state laws, and that more than half of all states fail to address and prevent DMST (Fahy 2016: 49), including that they overwhelmingly continue to criminalize minors in prostitution. For this to come into view requires particular attention to aspects of American law and political structure impacting children, particularly girls, which the political prioritization of individualized notions of consent, contract and market-based concepts of agency are unlikely to capture, at the risk of reinforcing some of the most insidious and pernicious structural foundations of the carceral state through problematic binaries and confluences.

Contemporary cases of minors: prostitution vs. DMST

Contemporary cases of minors in prostitution that have found their way to the public domain are ones that have received greater public attention. These include the cases of *Nicolette R*, *Bobby P*, and *Samatha R*. Like their 1970s counterparts, above, these girls were arrested and appeared before the courts on charges of prostitution. However, the origins of the contemporary cases are geographically concentrated, having been tried in New York City during the course of this research. This is unsurprising since New York City has been pioneering legislation in this area. One of the most influential cases in this area is the case of *Nicolette R* (2004), who was twelve years old at the time of her arrest for prostitution. Judge Lynch at the Bronx County Family Court explained that Nicolette had indeed violated the prostitution law of New York, “which involves charging a fee for sexual activity.” This was the same penal code and language involved in the other two cases. However, by the time *Bobby P* (2010) and *Samatha R* (2011) were adjudicated, New York had formally introduced the concept of DMST into law. The decision in *Samatha R* explains, “The Safe Harbour Act

added to the protections put in place by New York's Anti-Human Trafficking Act of 2006...which created the new offense of sex trafficking..." The statute appears to attempt to rewrite "the contract"—from a prostitution contract for sexual services with the minor as the offeror to a contract for services from the state to the minor as a victim of commercial-sexual exploitation. This shift is reflected elsewhere in the US where DMST laws have been adopted. The language of contract has not necessarily disappeared, but the place of offeror and offeree are often switched. For example, in the case of *Zarif* (2006) from Utah, the defendant accused of sex trafficking of minors is described as having offered the two minor girls a substantial amount of money (up to \$300) to perform sex acts with adult men. The acts that *Sawyer* (2015) from Illinois more forcefully required of minors are still explained as the exchange of sex for money.

The contemporary cases have served as a testing ground for the issue of consent and non-consent in child prostitution, much more directly than *Dora P* before them. The decision in the case of 16 year-old *Samatha R* (2011) grapples with the contradiction between statutory rape and minors' culpability for prostitution.

Another inconsistency that arises from prosecuting a 16-year-old child, such as defendant here, lies within the Penal Law itself, which provides that a 16-year-old cannot legally consent to engage in sexual intercourse (see Penal Law 130.05 [3]), and is a rape victim if she engages in intercourse with someone who is 21 or older (see Penal Law 130.25 [2]; 130.40 [2]); yet at the same time she is a criminal if she consents to have intercourse for money.⁸⁴

DMST appears to neutralize contractual language. The Department of Justice press release regarding *Sawyer* refers to the issue as "exploit[ing] children through prostitution" and as exerting "a high degree of control over all his victims," including by confiscating money they earned from commercial sex acts, and "impregnat[ing] three of them."

⁸⁴ This demonstrates that the legal system is aware of this inconsistency, as does the legal attempt to reconcile sexual crimes against children, statutory rape in particular, with prostitution through DMST laws. Each of the key binaries discussed in this research show various means through which they are deployed to sustain these contradictions regarding minors in prostitution, and thereby to penalize minors while promising protection.

DMST enters the foray of contractual discourse on prostitution and the language of abuse and exploitation on the other hand, seemingly as an antidote to the criminal culpability that a contractual reading of child prostitution entails through its imputation of consent on minors as “prostitutes,” or “solicitors” of prostitution. But does the reversal of offeree and offeror from child to pimp/trafficker, or the more direct negation of minors’ “consent” with the language of force, fraud or coercion do away with the contractual conception of the issue? Or recast minors in prostitution as non-consenting child victims, as “DMST” is claimed to do? What we do see at this stage is that “consent” has been a key issue regarding human trafficking, prostitution and sex trafficking from their conceptual inception and terminological origins in western legal discourse, which has constructed the phenomena and responses to it in contractual terms.

Contractual language of “offer” and “acceptance” and “assent” are prevalent in legal discourse constructing child prostitution. Prostitution is presented as an implicit contract in which “prostitutes” are sellers (solicitors) of sex, (which is disproportionately punished and presumes the “individual” of contract theory, even though children are incapable of consenting to commercial contracts or sex, and contracts for sex are illegal. Buyers of sex are constructed as consumers rather than criminals, despite their having committed the crime of patronizing. The role or identity of the “consumer” is one of the “central ideological mechanisms [shaping] citizenship in advanced capitalism” (Alexander and Mohanty 1997: xxxii). The identification of the adult male as a “consumer” defines the social relationship between the “john” and “prostitute” in advanced economies, defining “patronizing” as an act of consumption. This formulation contributes to the lack of culpability underlying the under-prosecution of johns, but also, as will be discussed, their protection and legal posturing, which over-burdens minors and over-punishes “prostitutes.”

5.2 Contractarian consequences

Chapter 4 showed that legal discourse defines “prostitution” as an act of female culpability, which bolsters the over-criminalization of females, despite the counter-construct of “DMST” that constructs minors as victims of sex trafficking. Examining the issue of “consent,” as constructed legally (and politically) through contractual discourse shows how consent is imputed to minors. Particularly when read intertextually with legal discourse of criminal exposure and transmission of HIV in prostitution, the imputation of consent on minors combines powerfully with female prostitution culpability to heighten the blameworthiness of girls. This intertextual reading of prostitution and “consent” through the criminal-legal discourse of HIV/AIDS is more revealing of lawmakers’ punitive stance against “prostitutes” and leniency toward “johns” than legal discourse directly addressing prostitution. Prostitution sex is treated as an illegal service or contraband (but a “good” or “service” nonetheless), and CE-HIV treats it as the sale of damaged goods to the consumer (“john”), sanctioning prostitutes for unfulfilled consumer expectations. This counteracts an understanding of the practice of child/prostitution as abuse or exploitation, or more broadly, as the exercise of inequalities of power or expression of social hierarchy.

Perhaps nowhere else is the consumer identity of johns stronger and contractual conceptualization of prostitution more evident than in the legal discourse of criminal exposure and criminal transmission of HIV laws. These laws are used to amplify punishment for prostitution on the grounds that prostitution activity contributes to the spread of HIV/AIDS. It is important to note, however, that prostitution and these types of HIV laws, as criminal laws, proscribe the behavior of individuals as harms against “the public,” which statutory language identifies as the aggrieved, or “the people,” which criminal cases identify as whom prosecutors are meant to represent when they prosecute criminals. This is significant because, as Chapter 4 demonstrated, legislators formulate a misleading

configuration of blameworthiness and culpability with regard to who is responsible for exposing or transmitting HIV through prostitution to “the public.” They often rely on heteronormative nuclear family models of social relationships that tend to exonerate patrons while condemning prostitutes, while using images of the innocent wife or child to legitimize punitive laws. Even though cases against minors under these types of statutes appear to be rare to non-existent, it says a great deal about how “prostitution” and “prostitutes” are constructed at law.⁸⁵ Prostitutes are deemed even more culpable in the HIV context, and the way that they are constructed through these laws reveals a great deal about how legislators actually view them. As previously discussed, when minors in prostitution are criminalized, it is because their behavior is viewed as “prostitution” and they themselves are viewed as “prostitutes.” HIV laws reveal more clearly the greater extent to which prostitutes are vilified and blamed for the public threats that prostitution is deemed to pose.

Current law (TVPA) expresses worry for the spread of HIV in the sex trafficking context, but has little else to say regarding the criminal exposure or transmission of HIV through prostitution. However, beginning in 1990, federal law “prompted many states to enact laws to criminally punish individuals who knowingly transmit or expose others to the virus” (Niemeier 2001). A framework was established conditioning the disbursement of federal funds for AIDS services to states that have enacted criminal exposure/transmission of

⁸⁵ It may be that our knowledge of such cases is impacted by the compounding of confidentiality in juvenile cases and testing for sexually transmitted diseases. In my own research as well as in reaching out to other researchers of child prostitution cases such as Stephanie Halter, I have not found specific cases of minors being prosecuted for exposing or transmitting HIV to others through prostitution. I have, however, found such cases of young women who are technically adults for having reached age of majority. For example, in Utah, a young woman in her early twenties was condemned in the media for her HIV-positive prostitution activity. Given that most prostitution begins in childhood and the research that confirms that minors in prostitution do very often contract HIV and are actually more susceptible to contracting it than adults, it is reasonable to discuss the HIV exposure laws in the child prostitution context. Minors suspected of prostitution have also historically been targeted, quarantined and punished for STDs, for example during the syphilis scare of the early twentieth century (Kahn-Chamberlain Act), for which girls were actually detained for much longer than women (Ditmore 2011: 53). Moreover, the apparent rarity of HIV convictions of minors is likely a reflection of the low numbers of convictions overall. Though HIV laws are ubiquitous, the number of actual charges are quite low (Lazzarini, Bray et al. 2002). However, 36 states total had any convictions, and where charges are brought and convictions secured, they are mostly in the context of sex crimes and prostitution (Id.).

HIV statutes (Howlett 1997). However, it is primarily on the state level that these laws are debated and passed. Both Utah and Illinois have such statutes and their approach to the issue and punitive rationale are similar, as across all other states that adopt such laws. Moreover, discussions of HIV/AIDS in legal discourse of DMST are also rare to non-existent despite the fact that compared to their adult counterparts, minors are more susceptible to contracting HIV and other sexually transmitted diseases, and minors have been demonstrably less efficacious with regard to adult male “customers” use of protection during sex acts (Klain 1999). An examination of both Utah and Illinois’ legal discourse regarding HIV laws reinforces the construction of patronizing as consumption, johns as consumers and the consent and attendant culpability imputed on prostitutes generally, which is then transferred to minors in prostitution, particularly when they are criminalized.

“Armed with Knowledge”: prostitution while knowingly HIV-positive

Prostitution in the HIV/AIDS context provides the clearest expression of the Utah Legislature’s conception of prostitutes as criminal sex offenders and the threat they pose to public health, safety, and morality. In 1993 (long before any reference to prostitutes as victims in 2012) the Utah House of Representatives debated HB 24, regarding “mandatory testing for HIV infection of convicted prostitutes and convicted patrons of prostitutes” (HB 24). Persons who commit prostitution while knowingly HIV+ are unequivocally referred to as sex offenders who commit criminal transmission or exposure of a deadly, communicable disease. Even though HB 24 refers to “prostitutes” and “patrons of prostitutes” on its face, the content of the legislative debate reveals that the House’s legislators are primarily focused on prostitutes. The bill is facially neutral regarding victim and offender, but the debate helps bring the criminal parties to light.

The sponsor of the bill, Representative Oscarson, explains that he proposes the bill in response to the County Sheriff, County Health and a “number of other groups” urging him to place it before the House. He continues that the problem is one that these persons of authority, institutions and “groups” believe needs specific attention—“and that is the...area of prostitution when those prostitutes are HIV carriers.” He refers to offenders as prostitutes as well as “customer or client” of a prostitute. The sponsor explains the behavior of offenders that the bill proscribes as conduct that “caus[es] reckless endangerment, such as an assault with intent to infect or deliberately transmit the virus” or to “willfully and wantonly go out and spread” a “criminal disease.”⁸⁶ Representative Oscarson describes offenders, “These people have already been arrested, they’ve already been charged with solicitation...and so, they’re a criminal...We also do a number of things with habitual criminals and repeat offenders. We give them heightened penalties all the time.” He then analogizes these offenders with persons who “sell drugs close to schools,” for whom the Legislature also enhances sentences. This suggests a moral equivalence between selling drugs to schoolchildren, and places the vulnerability of children to drugs on par with that of the class of persons whom HIV+ prostitution harms.

Representative Oscarson paints HIV+ prostitutes as offenders who are not only habitual but also incorrigible. Because convicted prostitutes are subject to mandatory HIV testing by the state, he argues, a prostitute who is later arrested after being informed that s/he is HIV+ should be considered a repeat offender. To further drive this point, he encases HIV+ prostitutes in an analogy regarding armed robbery, for which he claims that, “most cases are repeat offenders.” Representative Oscarson goes on to admit that HIV-related education and treatment programs in his state are inadequate, but implies nonetheless that the problem is the prostitutes’ incorrigibility. In a jumbled statement, the Representative attempts to persuade

⁸⁶ Listening to this speech, it is unclear whether use of the word “criminal” here is intentional or accidental.

his colleagues that HIV+ prostitutes are rather hopeless, and thus enhanced sentences are just deserts.

I probably need to...bring up the idea...we do have a few treatment programs—yes, we need more treatment programs—we need better education. But the people—according to County Health Department—tell me that they’ve talked and brought in prostitutes and they know many of them who are HIV [sic], have begged them—everything to get into treatment programs—but it has a less than a ten-percent cure rate in some of these programs.

From what is discernable, the County Health Department has access to and contact with prostitutes who have tested positive for HIV and is unsuccessful in convincing them to enter treatment programs. On the other hand, too few programs are available and the ones that exist are largely failures with a “less than ten-percent cure rate,” though it is unclear what “cure rate” means in the context of HIV since it is incurable, only treatable. Although the emphasis is on the futility of attempting to modify the behavior of HIV+ prostitutes, the fact remains that if treatments and programs are largely unavailable or inadequate (with inferably dismal success rates), then there is nothing for them to adhere or respond to or be measured by. Thus although resources are inadequate or non-existent, HIV+, drug-addicted prostitutes are expected to essentially self-manage once they are informed of being positive. Again, the ambiguity and incoherence of these thoughts makes it difficult to decipher a clear meaning and intent. However, vacillating between the claims of prostitutes’ incurability, unreasonableness and incorrigibility and glossing over the inadequacy of state programs leaves the impression that HIV+ prostitutes are blameworthy and deserving of the enhanced penalties outlined in the bill.

Just after he completes his thought regarding the less-than-ten-percent cure rate, Representative Oscarson makes several statements referring to prostitutes. He quickly comments on and wraps up the issue of ineffective state programs. Then he makes certain remarks that are rather inarticulate and incoherent, and others that reveal his lack of

knowledge on the matter. At the same time he conflates prostitutes and HIV+ prostitutes in his speech so as to construct an identity of both that is intertwined and indistinguishable. This part of his speech merits lengthy quotation for the same reason that necessitated doing so for Representative Ray's speech on prostitution, above. It is another major example of the Legislature's disjointed articulation and at times erroneous understanding of the issue.

Continuing from his admission to the state's failed programs regarding HIV+ prostitutes,

Representative Oscarson states:

We need to do a better job. I'm not gonna argue that point at all. We don't have those...and because of the cost...I [doubt] this Legislature would...permit those...when they're allowed put them on any of those programs right now. Maybe this [bill] is not the best alternative, but it's the best one right now we can come up with for a small segment of our population...who, in many cases, the prostitutes themselves are...feeding the habit, dealing in drugs and stuff like that, and so they *have* to work. And [unintelligible]...told me that a prostitute always does 10 to 15 tricks a night. Based on a year, that's about 86,000 [sic] tricks. Yeah...uh...we don't know exactly the number that could be infected with sexual transmission [sic]...and I could probably get into all kinds of different ways, we have...what they do without that, but it's important to understand that for safety issues, for our citizens, if John is sleeping at home, his family and offspring...there's a ninety percent chance his offspring will be contract [sic] with AIDS...and that is—that's murder...b/c right now we have no way of dealing with AIDS and the cure of it. With that introduction, I'll just open up to questions.

Again, this sort of unclear and inarticulate speech is impressionistic and suggestive. It is able to get away with not clearly expressing its meaning or making logical connections by tapping into the audience's presumptive notions about the subject matter of the speech and having the audience do the work of making connections between the intermittently coherent phrases. At best, the Utah House has accepted the sponsor's argument based on legislators having made some kind of logical sense of it for themselves, or without active, critical listening. At worst, they have passed a bill for other practical or pragmatic reasons such as expediency, likely without having reviewed the text or reflected on its consequences.

Though Representative Oscarson admits that, "we need to do a better job," he simultaneously refuses to confront the state's failure to address the public health of the spread

of HIV from HIV+ prostitutes and patrons to the broader population. As quickly as he admits to the state's ineffective programs, he firmly closes the issue with a refusal to debate it—"I'm not gonna argue that point at all." He not only concedes the deficiency of the state's public health response, but divulges the likely inadequacy of the bill that he is proposing, "Maybe this is not the best alternative, but it's the best one right now we can come up with *for a small segment of our population...*" (emphasis added). This latter phrase about the smallness of the population, which is hastily tacked onto the pragmatic argument for an unsatisfactory bill, suggests that even if the bill may have undesirable consequences, it only pertains to an insignificant minority of the population.

This diminishing of the population in terms of numerosity and significance is immediately followed by claims of HIV+ prostitutes' motives. "The prostitutes"—presumably HIV+ prostitutes who continue "to work" despite their diagnosis and illness—feeding their drug habit, "dealing in drugs,"⁸⁷ and "stuff like that." Both comments—regarding the smallness of the population and their dishonorable motives—have the effect of diminishing HIV+ prostitutes as a group. At first the phrase that Representative Oscarson adds afterward—"and so they *have* to work"—seems sympathetic or at least pitying. However, he proceeds with a disjointed interjection of how many "tricks" he has heard prostitutes "always" do per night, followed by a gross miscalculation that 10-15 "tricks" an evening equals 86,000 per year. This imparts an insensitivity toward what persons in the situation he describes must endure—drug addicted, HIV-infected, and having to exchange sex for money with several men a night. It is also seemingly meant to convey the magnitude—again, grossly miscalculated—of the potential risk of exposure and transmission that HIV+ prostitutes present to uninfected persons. It is unclear what the Representative means in the next few lines of fragments, but by bringing up "safety" as the issue "important

⁸⁷ Another reference associating HIV+ prostitutes with drugs and drug dealers is encased in this speech, though the Representative possibly meant that the prostitutes are drug *users*.

to understand” regardless of whether we know the actual number of what he might be referring to when he says “we don’t know exactly the number that could be infected with sexual transmission,” he states its purpose as “for safety issues, for our citizens” (HB 24). This effectively excludes HIV+ prostitutes from the definition of “citizen,” instead classifying them as diseased, deadly outsiders.

Despite the bill’s naming prostitutes and patrons as offenders, the Legislature continues to be decidedly focused on prostitutes as the problematic vectors of HIV except for Representative Oscarson’s brief but significant mention of “John,” a hypothetical HIV+ buyer of sex who is also a husband, since he has a “family” and potential or actual offspring. The example of John makes the otherwise missing link between “our citizens” and a seemingly insular group—HIV+ prostitutes and buyers who expose or transmit the virus through their criminal activities to one another. Here, “our citizens” refers to law-abiding citizens who are uninfected with HIV—a sexual partner and their offspring. The danger to these citizens’ safety is that the HIV+ buyer infects his unwitting sexual partner, who is normatively a wife in this context given that she is “family.” For John’s offspring to be infected in this context means that his infected wife passes it to their offspring through gestation or breastfeeding.⁸⁸ Not citing any data or studies, Representative Oscarson claims that “there’s a ninety percent chance” that the child will contract “AIDS.” Though it is HIV that is contracted, which later develops into AIDS, this mistake is easily lost and rendered insignificant amidst other errors and problematic issues dogging this speech. But his main point is that “that’s murder” because there is no cure for AIDS. In this equation, it is ultimately HIV+ prostitutes who are murderers. In keeping with the history of STD laws intersecting with prostitution law, and the way in which gender and heterosexuality have been policed through the discourse of disease, the public health threat is not constructed as

⁸⁸ The Center for Disease Control (CDC) in the United States recommends that HIV/AIDS-infected women do not breastfeed babies (Website of Center for Disease Control 2016).

one in which HIV+ buyers infect prostitutes or as reciprocation between buyers and prostitutes, but rather that the buyer contracts HIV from a prostitute that he transmits to his wife, the upstanding feminine subject. Such understandings in a retributive context create an even greater impetus for ascribing consent to prostitution behavior. As pointed out, these laws exist in both Utah and Illinois (and many other states), such that a retributive or rehabilitative orientation of the state's criminal politics does not necessarily prevent the passage of such punitive laws against some of the most vulnerable bodies.

There are both gendered and hetero-normative presumptions regarding the identities of the parties to this crime. Barring child sex abuse or other ways that the legislature imagines HIV is transmitted (e.g. Utah still outlaws spitting by HIV+ persons), the public health threat relies on the following chain of transmission: prostitute → buyer → wife → child. This is the implied order, which is also reflected in the order in which they are discussed in the sponsor's speech. In this context the 86,000 sex acts that the prostitute supposedly engages in per year is meant to highlight how much of a risk she poses to others by doing so, not how much she is put *at* risk by others, even though the operation of prostitution requires that there be substantially more "buyers" than prostitutes. This debate has already established the recklessness, incorrigibility and wantonness that mark the HIV+ prostitute, and none of the Representatives henceforth discuss prostitutes in terms of being at-risk or as victims in this debate.

In support of the bill, Representative Hunter states the following:

Since AIDS has become a political issue rather than a medical issue, the problem is as though we give HIV a right or a civil right to exist, indirectly, in protecting people's civil rights. This bill applies to people who know—who've been informed—that they have HIV. And as such, they—armed with that knowledge—if they go out into the community and—either in the act of prostitution or in soliciting or becoming a customer of a prostitute—then they help to spread the AIDS virus. If they do that with knowledge, then I think they are guilty of a crime. And I think that this bill addresses that issue. No one has the right to give another person the HIV virus. That is not a

civil right and should not be protected by our laws. I want to stand with Representative Oscarson on this bill. I commend him for—I know he’s taken a lot of heat on it—and I commend him for still standing and still pushing it forward. And I want you to know that I stand with him on this issue and I urge my colleagues here in the House to support this bill and let’s do something about wiping out the HIV threat that is so prevalent in our society today and is gaining ground. We are not winning at this point.

Because no Representatives make the argument at any point in this debate that spreading HIV is a civil right, Representative Hunter is setting up a straw man argument that he then attacks in support of the bill. An outlandish position such as the one he describes is easily attacked, but no Representative challenges his characterization of the opposition. Furthermore, he ends his presentation of the HIV/AIDS public health issues with a war analogy—a war that “we” are losing. Inferably, the enemies in this war are HIV+ prostitutes and those who “become a customer of a prostitute,” the former—active and blameworthy, the latter—passive and perhaps not as much to blame.

It is also important to note the ways in which the legislature expands and collapses the scope of this issue, enlarges and diminishes the significance of HIV+ prostitutes. It diminishes them as a population, as discussed above, but highlights and even aggrandizes the threat that they pose to the public. Thus they are a small and rather disadvantaged minority group, but likely at their own behest and a great peril nonetheless. Representative Oscarson diminishes the bill when necessary (to downplay its potentially detrimental impact), but inflates its importance to argue for its necessity and to pass it.

Also in support of the bill, Representative Kilpack makes a forceful speech that emphasizes the dangerous and murderous aspects of the proscribed behavior and also cites a rather bizarre example:

I feel that I must rise and speak in [sic] behalf of this bill. I think for some reason in this country we’re terribly afraid of identifying those with HIV. I think that’s sad. This is a serious medical problem. If a prostitute is arrested, she is automatically tested. Then she is required to divulge as much as possible her last contact or contacts

and make every attempt to find them and to cure this, and to stop this disease before it spreads. This is a fatal disease, and there is no protection to protect either the prostitute or her partners. It is exactly the same as firing a bullet at an individual only the reaction is delayed. The bullet may not explode for ten years. The bullet is fired. It *will* be fatal. That person *will* die. If I were HIV+ and I took a 2PC syringe and I put it in my vein and I withdrew 2 PCs of blood and I turned to my unsuspecting friend next to me, who is on the phone, and I quickly gave him a drop of HIV+ blood, would I be guilty of murder? Even though he isn't going to die for ten years? I've only disrupted his *life*. He can't have a normal relationship with any member of his family. Everyone'll be afraid to play golf with him b/c he gets violent when he misses, and he may hurt himself and bleed all over us. It is disgusting to me that we cannot take some measure to identify the people who have the HIV. If we are approaching 2 million people in this country who are carrying the HIV virus, who are either active or carrying that virus—you realize that's 1 in 125 people? I think we need to start somewhere. We're not imprisoning these prostitutes because they have HIV; they're being imprisoned because they're breaking the law. We're taking the opportunity to identify a person with HIV and protect those who may be subjected to her at some future time...be subjected to him *or* her...at some future time. I stand strongly in favor of this bill (emphases in speech).⁸⁹

The statement “protect those who may be subject to her in the future” is the most explicit purpose of the statute. It clarifies whom the law intends to protect: buyers. Buyers are typically the persons who “may be subjected to her at some future time.” Legislators express a desire to protect buyers despite the facts that: 1) by patronizing a prostitute buyers break the law and are therefore a criminal class, just the same as the prostitutes, and 2) prostitutes are for the most part at far greater risk of HIV contraction from others than are buyers as a result of having multiple, relatively indiscriminate sexual partners.

Several other things occur in this speech. First, there is a claim that there is a disallowance of being able to “identify” HIV carriers in the United States. Secondly, there is an implication that, as Representative Hunter suggested, civil rights is to blame for the lack of frank discussion regarding how to deal with and curb HIV/AIDS. Third, there is a suggestion

⁸⁹ It should be noted that the “him or her,” albeit belatedly injected, is important, as there are particular issues for men and boys in prostitution who sell sex to men, and thus are subjected to these punishments. Research on HIV prevalence shows the particular risks LGBT persons in prostitution face. Among gender non-conforming persons, particularly male-to-female transgender prostitutes, an estimated 27.7% are HIV-positive (Herbst, Jacobs et al. 2008), with infection rates highest among African-Americans (56.3%). Greatest risk is associated with unprotected anal intercourse with multiple sexual partners (Herbst, Jacobs et al. 2008), which is particularly common in prostitution (see also Schepel 2011).

that disclosure of an HIV+ prostitute's sexual history will help cure AIDS. Fourth, there is a characterization of those who contract HIV when purchasing sex as unsuspecting murder victims. Fifth, the example of the golf players may signify the legislator's lack of connection to communities of HIV/AIDS carriers and how the virus is transmitted. Apart from not explaining why exactly an angry golf-miss leads to self-harm and how that leads to "bleeding all over us," which in turn infects the golf-mates, the analogy does not work on another level. The syringed attacker in the example intended to infect his "unsuspecting friend," which not only casts a negative light of betrayal on the act, but also implicates the moral character of this hypothetical person for betraying a friendship and attacking an unsuspecting individual, whereas no special relationship or friendship necessarily exists between prostitutes and patrons. Moreover, patrons cannot be viewed as "unsuspecting" because the bill recognizes that patrons assume the risk of exposure to HIV, and prostitution is not motivated by the intent to spread HIV.

Representative Webber argues for treating the prostitute and patron equally in terms of punishment, by motioning to change the degree classification for a violation from either group of offenders to "Class B misdemeanor" because the bill currently holds patrons liable for the lesser Class C misdemeanor. In arguing for this "equal" treatment, the Representative condemns the "supposed good men" who "merely gets a slap on the wrist." Though he acknowledges that "the prostitute is trying to earn a living and...sometimes is driven there because of difficult circumstances" and that "the customer is not driven there because of hardship," he concludes that "we ought to at least treat the customer with the same severity as we treat the prostitute." The bill sponsor, Representative Oscarson, agrees to the change in degree classification to be the same for both groups of offenders. He then concludes the debate with the following statement:

This is a very narrow bill looking at a narrow segment of our population who have been told repeatedly of the problems they have—that they’re illegally doing something to begin with—but who—after their own—will continue to do that—it becomes a health threat to our citizens—the unsuspecting citizens.

He again refers to the target offenders as “a narrow segment” of the population and their incorrigibility. His statement implies that being repeatedly reminded of their problems should be an effective method of preventing HIV+ prostitutes from engaging in prostitution and that “the problems that they have” are the same for both prostitutes and patrons. He also implies that both groups are merely “after their own,” or selfishly motivated, which is the reason they refuse to stop engaging in sex while HIV-positive.

Eighteen years later, in 2011, the Utah Senate debated Senate Bill 50 (SB 50), which enhanced the penalties for these crimes further—from a Class B misdemeanor to a third-degree felony—and was brought forth with the assistance of the Prosecutors’ Association. The debate was brief as only the sponsor, Senator Stephenson, made a short statement in which he referred to offenders as an “HIV-positive offender that repeatedly engages in prostitution or sexual solicitation, who knows or should know they had a positive test result.” The phrase “should know” signifies that the intent of the law is not only to hold criminally liable HIV+ prostitutes who actually know that they are HIV+, but also to impute “constructive knowledge” to them, allowing for their criminal liability even when they do *not* actually know whether they are infected.

Illinois’ HIV laws

Along with Colorado, Utah is one of two states whose “provision for prostitution and/or solicitation is the state’s only legislation related to HIV exposure through consensual sex” (Galletly and Pinkerton 2004). In 1990, health officials in Salt Lake City, “proposed that if individuals who had been convicted of prostitution and informed of their HIV-positive status were later convicted of prostitution or solicitation, they should be placed in a

‘mandatory treatment facility’ for ‘recalcitrant’ offenders” (Dalrymple-Blackburn 1995). As demonstrated in the Utah legislative debate, “(A)mong many legislators...prostitutes...as archetypal ‘incurable’ disease transmitters, have been regarded as a major public health threat” (Id.).

Illinois, despite its progressive reputation, paved the way for such laws. In *The People of the State of Illinois v. Henrietta Adams, et al.* (1992), a case from Cook County in which Chicago is situated, defendants Henrietta Adams and Peggy Madison were convicted of prostitution and ordered to undergo medical examinations to determine whether they were HIV-positive. Both defendants refused, arguing that the court-ordered test was an “illegal search and seizure” that denied their equal protection rights. The court of appeals declared that the statute regulating prostitutes to undergo HIV testing is constitutional, and that the state has the right to order such tests for public health reasons. Illinois law regarding mandatory HIV testing of persons convicted of prostitution claims to act on behalf of “the victim” and “the public” when the configuration of HIV exposure and transmission is confounded in legal discourse: if the prostitute is the exposor or transmitter, then the john is “the victim” or “the public.”

Acting in accordance with the best interests of the victim and the public, the judge shall have the discretion to determine to whom, if anyone, the results of the testing may be revealed. The court shall order the cost of any such test shall be paid by the county and may be taxed as costs against the convicted defendant (Ill. Rev. Stat. 1989, ch. 38, par. 1005-5-3(g)).

Illinois punishes the “criminal transmission of HIV [which happens when a person]...knowing that he or she is infected with HIV...engages in intimate conduct with another,” continuing to detail “intimate conduct” that risks exposure and transmission. Even during the relatively early years of passage, legal commentary on these laws reported that,

The motivation for such legislation is the concern that prostitutes will act as a ‘bridge’ for the transfer of HIV into the heterosexual community. There is no evidence that

widespread transmission of the virus is occurring through infected prostitutes. Sex workers are more likely to receive infection through shared needles or from infected sex partners, than they are to infect their clients. Indeed, the evidence shows that female prostitutes are at risk of being infected by their clients, but not the reverse. (Howlett 1997)

Nonetheless, illustrating the amplified culpability that attends such laws, enhanced penalties for HIV-positive prostitution can convert prostitution charges to homicide, and raise misdemeanors to felonies. Because prostitutes are considered to be in a high risk group, “A prosecutor could even argue that presence in a high risk group amounted to a constructive knowledge sufficient for a manslaughter or murder prosecution” (Closen, Bobinski et al. 1994: footnote 26). As mentioned, minors are most at risk for the demand of unprotected sex from “customers,” due to customer expectation of their disease-free bodies, which is wrongly presumed due to their young age, “partly in hopes of minimizing their risk of exposure to HIV” (Boonstra and Cohen 2006). In this way child prostitution is a major contributor to the problem of HIV/AIDS, and also fuels demand for it while additionally encouraging demand for increasingly younger children (Boonstra and Cohen 2006). Minors are also the least likely to be able to resist such demand (Klain 1999). Moreover, girl children are at greatest risk of contracting HIV due to both their young age and their female gender. International legal discourse in the early 1990s had identified that “A most pressing challenge is the prevention of the spread of the HIV virus and the present and future care of thousands of prostituted minors who have contracted AIDS” (Healy 1995). As mentioned, girls have also historically been criminalized and over-punished in detention as prostitutes quarantined for STDs, especially syphilis (Ditmore 2011: 53).

Legal commentators point out that the function of crackdowns on prostitutes for ostensible public health reasons is to legitimize the prostitution market. HIV laws, as the progeny of past STD laws, have functioned as a basis for the protection of johns, and to legitimize the regulated prostitution market. “Creating the illusion of controlling venereal

disease in order to promote the prostitution market was the original basis of regulated prostitution” (Barry 1996). Indeed, in legal markets, prostitutes are the ones subjected to regular and constant invasive testing (Bingham 1998), which comports with this history. Not only does HIV testing legitimize the prostitution industry and its legalization, but it also encourages and increases the demand for unsafe sex. Arguing generally regarding the myth that legalization decreases economic exploitation by pimps and brothel owners, Giobbe (1993) reported a global pattern of women in prostitution being subjected to mandatory HIV testing, including in Nevada brothels. “This policy has actually increased the risks of transmitting the virus. Johns assume the prostituted woman is HIV negative, and therefore refuse to use condoms, increasing the risk of infection, particularly to the woman” (Id.).

Thus we can see many forces at work that encourage child prostitution and demand for it, particularly when we examine HIV laws, which are constructed in ways that bolster a contractual view of child prostitution, impute consent to minors and protect the “consumption” of their commercial-sexual exploitation. When there is a “consumer” expectation embedded in HIV laws, consumers expect children to be free of STDs, and the law tends to uphold the interests of johns, the law subjects minors to a normative standard of childhood purity that is unrealistic for minors in prostitution. This normativity burdens minors with the risk of being deemed even more culpable than their adult counterparts should they be involved in prostitution with “reckless disregard” for their being at high risk of HIV contraction and transmission. Legal discourse of HIV exposure and transmission, even if rarely applied, creates a hostile social and legal environment for “prostitutes,” including minors. Along with the inversion of victim/offender, implicit contractual consent points to the hyper-culpability of minors in prostitution. Johns are persons least in need of protection due to their under-targeting and under-prosecution as well as their greater structural power and individual bargaining power (as purchasers of sex with those who need the money), and those most

likely to subject minors to unprotected sex from which they risk contraction of deadly diseases.

A faulty configuration underpins the current structure of culpability in HIV law that prescribes the same punishment for johns and prostitutes for criminal exposure or transmission of HIV, when johns are the ones who spread HIV to “innocent” (non-criminal) partners, typically conceived of as wives. Prostitutes solely or almost only spread to another *criminal* party, johns. These laws also very strongly presume individual rational choice, and therefore the possibility of deterring HIV-positive prostitution behavior through greater retributivism. The implication is that prostitutes, even HIV-positive prostitutes merely choose not to do something else to earn money or survive; that they maliciously or recklessly prostitute themselves and spread HIV. The fallacious rationale of prostitution culpability expressed in criminal exposure/transmission of HIV laws identify “prostitutes” as a “high-risk” underclass that deserves greater targeting and increased punishment, and over-burden them with greater and highly unrealistic standards of morality and responsibility. Revealing lawmakers’ amplified retributivism toward “prostitutes” and leniency toward “johns” than legal discourse regarding prostitution itself, the criminalization of HIV in this context solidifies the problematic conception of prostitution as an illegal service or contraband. It treats HIV+ prostitution as the sale of damaged goods or unsatisfactory service to the consumer, even though johns have no such right because they are not consumers but criminals at law. Contra the concept of DMST, such laws counteract the idea of child prostitution as abuse or exploitation. Rather than acknowledge the material realities and power differentials between the parties. They represent the inverse of child protection. The dynamics that HIV law exposes demonstrate that DMST has much greater hurdles to overcome in the face of such strong prostitution culpability, especially when DMST discourse omits the issue of HIV.

5.3 Race, class and gender: decontextualized consent

The use of contractual language in the international compact of the White Slave Traffic Agreement of 1904 is significant because understandings of civil society in western nations during modernity and late modernity have relied heavily on a contractual notion of social relations in which the “social contract” conveys the accord struck among free and equal citizens. Pateman and Mills as well as intersectional theorists have pointed out that the social contract is a political fiction better described as an accord among White western males with regard to the reconfiguration of their own post-feudal nation-states around male fraternity and citizenship (patriarchy), as well as organization of the world through colonialism, slavery and expropriation (Pateman 1988; Mills 1997; Pateman and Mills 2007).

Any notion of “consent” is contingent on this historical and social context. Grahn-Farley’s and O’Connell-Davidson’s discussions of freedom and unfreedom are useful for understanding how the contradiction between the fundamental human rights principle that “everyone is born free” is reconciled with the reality that “some are less free than others” (Grahn-Farley 2003). Though declaratively universal, the liberal definition of freedom relies upon the unfreedom of others because freedom is often defined as and measured by the exercise of power over others (Grahn-Farley 2003). The social contract of liberal humanism and its ideal subject—rational, Western, masculine, adult—developed in tandem with market relations underpinned by contract theory⁹⁰ (Pateman 1988). Liberal political thought has generalized contractual relations to become the “guiding and universal principle of human sociality” and “social and political relations” in contemporary Western societies, forming the “dominant conceptual framework used to make sense of power relations and dependency”

⁹⁰ See also Glenn (2002) regarding the concept of “unequal freedom,” explaining how feudalism and slavery have been maintained after their formal abolition through contracts maintaining conditions of quasi-slavery. Contract obscures unfreedom when contractual interpretations are interpreted as free and fair exchange. In reference to rights discourse and the reallocation of resources, both positive freedom (“freedom of”) and negative freedom (“freedom from”) are useful concepts for understanding and struggling against deprivation and relative powerlessness (Cheek 2000: 60, in Sye 2008).

(O’Connell-Davidson 2005: 2, 11). Contract underwrote the transformation of hegemonic power relations in the shift from feudalism to capitalism using commercial and labor contracts and the “reordering of patriarchy” that constructed the social contract of liberal humanism. The commodification of labor, which views the body as an individual’s personal property to sell for labor (not for sex), has been the lifeblood of capitalism particularly since industrialization (Pateman 1988). The social contract constructed the “public sphere,” which included the market, in a binary dualism of public-versus-private life resulting from the “reordering of patriarchy”—from one type (monarchical rule under a king) to a male fraternity of governance and commerce amongst themselves “while ruling over their women” in the private sphere under the sexual contract (O’Connell-Davidson 2005: 12, discussing Pateman 1988). In nineteenth century Britain, wives were not independent legal subjects, their civil position “resembled that of a slave,” husbands could legally enforce their wives’ labor and obedience through violence and be “sold by husbands at public auction” (Pateman 1988: 191; O’Connell-Davidson 2005: 12). At the same time, a racial contract instituted the enslavement of Africans “based on the very opposite of equal rights between buyers and sellers” (Mills 1997; Harman 2008: 249).

The common theme of slavery and unfreedom in the lives of non-ideal humanist subjects, or minorities, has extended to children who were deemed paternal property (Munro 2008; Grahn-Farley 2003: 923). However, in late modernity the subordination of all minority groups except children is “concealed behind the fiction of the contract and civil equality” (O’Connell-Davidson 2005: 19). Though “husbands can no longer demand obedience from wives, and white people can no longer demand that black people show them deference and respect, adults still generally expect that children will obey them, defer to them and respect them simply on the basis of their status as adults” (Id.). In this context, the experience of

what is merely subordinating another group often masquerades as the exercise of “freedom” (Grahn-Farley 2003).

In *Ah Fong* (1874) San Francisco’s Judge Fields refused to discriminate against Chinese women immigrants deemed prostitutes on the basis of their race. However, in denouncing discriminatory Chinese exclusion, he ascribed the Chinese woman in language suggesting her lack of feminine virtue, similar other foreign prostitutes in his city.

I have little respect for that discriminating virtue which is shocked when a frail child of China is landed on our shores, and yet allows the bedizened and painted harlot of other countries to parade our streets and open her hells in broad day, without molestation and without censure.

The phrase “child of China” refers to persons of Chinese national origins. However, when prefixed with “frail” (“frail child of China”) and juxtaposed against the showy display of daytime harlotry, it suggests infantile femininity and, in its archaic sense, a woman of weak character and morality, but one whose presence and weakness are no less desirable than the brazen commercial sexuality of other foreign prostitutes tolerated in San Francisco.

The somewhat girlish characterization of Chinese women seemed to negate the “consent” of prostitutes embedded in the contractual language of the APIA passed the following year. The APIA defined the meanings of freedom, contract and, by implication, “consent” in a racialized context. The specification and targeting for exclusion of East Asian women as prostitutes and “forbidden immigrants” took place in a social and historical context of tension created by business and political interests against Chinese labor (“coolies”), who were exploited through quasi-slavery to build the Transcontinental/Pacific Railroad during US westward expansion in the post-slavery economy (Calavita 2010; Glenn 2002). Language of the Act linked racialization, criminalization and non-citizenship. A header declared, “Immigration of alien convicts, and of women for purposes of prostitution, forbidden.” Section 5 of the Act then reads, “[I]t shall be unlawful for aliens of the following classes to

immigrate into the United States...[convicted felons] in their own country...and ‘women imported for the purposes of prostitution.’ It simultaneously prohibited “contracting to supply labor of cooly...to supply to another the labor of any cooly...in violation of...laws prohibiting the cooly-trade,” with a fine of five hundred dollars and imprisonment for up to one year. In lumping the criminal class with Chinese men as coolies and Chinese women as prostitutes, racialization and criminalization intertwined. At the time Chinese immigrants, laborers and their female partners were viewed as slave-like and lacking the liberated faculties of political subjectivity appropriate for citizenship in American democracy (Abrams 2005). At the same time, they were viewed as slave-masters for their practice of polygamy as well as stereotyped as “Oriental brothel keepers” in legal, political and popular discourse. The law bolstered this in its early anti-sex trafficking efforts by constructing the Chinese as fit for quasi-slave labor, while requiring regulation of their presence to prevent a slave-like (and non-Christian) people from US citizenship. In the context of such exclusion, any language suggesting the legal incapacitation of Chinese women was less for purposes of their exoneration from the consent required to criminalize and deport for prostitution, and functioned more to exclude them from citizenship because their men (and they themselves, as both pre-suffrage women *and* Chinese) had insufficient comprehension of “freedom.” The Act targeted precisely the demographic of Chinese that the state, its private partners, citizens and residents were content to commercially and/or sexually exploit in the new, expanding economy, while refusing to perform the American end of the bargain to extend full citizenship and formal equality.

As previously discussed, despite Illinois’ historical reputation for progressivism and child protection, its pioneering efforts in the area of sex trafficking led to passage of the White Slave Traffic Act (1910). Ernest Bell, the leader of the Illinois Vigilance Association and US District Attorney for Chicago was greatly influential in drafting the Act. Bell clearly

identified in his writings the race, ethnicity and nationality of those whom he held responsible for the White slave traffic in the US, referring to “Oriental brothel slavery,” Parisian/French and Jewish brothel keepers. However, he was careful to quickly follow this with the claim that it is not their nationality but their “crimes” that compels White slavery law. The Page Law (1875) racialized immigration via anti-prostitution, and the Mann Act (1910) continued the racialization of immigrants but against additional groups and in the more domestically focused criminal sphere, via anti-trafficking regulation.

As mentioned, by the time the WSTA was drafted, the focus of culpability had already shifted away from adult male perpetrators to female delinquents due to a second wave of White purity reform during the Progressive Era (Odem 1995). Thus it is unsurprising that even though the Act says “whether with or without her consent,” it came to be used against women themselves. The history of the Act’s racist and politically motivated enforcement coupled with its disuse for the protection of girls suggests that the statute’s conflation of “women and girls” had the effect of infantilizing adult women in order to justify greater scrutiny of their behavior and to police the racial boundaries per anti-miscegenation, under the pretext of protecting females from sex trafficking. The advent of this law occurred at a time when women were not formally full citizens, since they did not yet have the right to vote. The stated purpose of the statute was the protection of White females, formally denying male perpetrators the defense of the woman’s “consent” to being “transported for immoral purposes,” but ultimately holding women liable as conspirators in their own trafficking. Importantly, it constructed women through the legally and politically necessary language of interstate *commerce*, as this was the only means through which the federal government could justify its intervention into crime occurring in state jurisdictions, particularly during Jim Crow hyper-vigilance for states’ rights.

However, the regulation of sex trafficking as the regulation of commerce had the effect of objectifying trafficked female bodies, by combining its characterization of commerce with the language of chattel slavery and the movement of women across state lines, as though it were the interstate transportation of commodities. Objectification and commodification is a general effect of the term “trafficking,” doing little to contest the notion of people and female sexuality as the objects of contracts, which undergirds the legal construction of prostitution.

The emphasis on consent as an element of sex crimes in general has been problematic. The adjudication of consent is often used to hedge against perceived or potential abuses of laws protecting females from sexual assault and sexual abuse. US rape laws express worry regarding the potential for malicious prosecution of men and having to rely on female testimony as evidence for crimes occurring in private, citing severe reputational damage to males through rape allegations and convictions. For instance, in Utah, the standard language used in contemporary rape cases derives from *State v. Howard* (1975), under Utah’s statute used to determine the circumstances of “sexual offenses against the victim without consent of victim.” *Howard* essentially “balances the interests” of rape victims and the interests of men accused of rape: “In serving ends of justice and protecting public interest in rape prosecution, it is important that utmost care be exercised to protect not only woman who claims to have been outraged, but also man who is so accused.” This is an inequitable “balancing of interests” that can only occur because of its seeming egalitarianism, radically decontextualized from material conditions regarding the gendered power imbalances of sexual victimization. Apart from statistics that consistently show that perpetrators of rape are disproportionately male, only two percent of rape accusations are ever proven false, while it is estimated that forty percent of rapes go completely unreported (Website of Stanford University, Men Against Abuse Now 2016). This de-legitimizes the fears expressed in law regarding false accusations

of rape and statutory rape, which historically animated resistance to such statutes, and which continue to inform notions of consent and what counts as evidence thereof. The ability of males to implement law based on their largely unfounded fears (to protect themselves at others' expense) attests to their privilege as a master class under the law that determines the meaning of consent in sexual contexts. This dynamic replicates in the contractarian understanding of child/prostitution, including in the HIV laws discussed above.

The commercial mediation of the issue of sexual exploitation combined with equivocation regarding the issue of consent renders the involvement of commercial transaction the equivalent of "consent." It places undue significance on the act of commercial exchange as well as consent for understanding commercial-sexual exploitation, particularly in the context of great structural inequalities, including of bargaining power, which legitimizes responsibilization, victim blaming and criminal culpability.

Class, economic and neoliberal dimensions

From the outset, with the Alien Prostitution Importation Act (1875), the issue of "consent" and its official verification or denial was key to establishing the new industrial capitalist economic order of the US at the time. The moral authority of the emergent system—as the most recent revision of the social contract regarding economics, class and social order—depended on the legitimacy of the contract, i.e. as a valid contract that represents freedom and fairness. In place of structural notions of freedom brought about by an equitable and just "social contract," law has focused on finding freedom ("consent") in individual contracts (on the individual level), from which it requires extrapolating that "freedom" is the aggregate effect of consensual (freely entered) contracts. "Free entry" into contracts is equated with "consent," which signifies the operation of a free society under just

law. Formal egalitarianism makes law appear as though its role in society is the legal enforcement of the terms of actual contracts and, thereby, the social contract.

Individualized notions of consent underwriting individual contracts bolsters neoliberal ideas of “responsibilization,” the reduction of multi-systemic problems to self-blaming and victim-blaming, which supports pathologization and criminalization. These processes impute “choice” on the individual—that the individual’s circumstances are the sum result of one’s more-or-less freely determined personal choices—burdening the individual with what are more accurately structural problems that routinely produce such results.

The 1970s cases of minors arrested and adjudicated for prostitution omit individual or structural circumstances of the girls. One can only infer the circumstances of the arrested and prosecuted girls from a combination of related scholarship and contextual clues, such as the “high vice” area in which the 15 year-old of *In re Appeal No. 180* was observed by police and arrested for solicitation. By all accounts, including other prostitution cases available from the jurisdiction, the high vice area of Portland is 82nd Avenue, which as recently as the 1990s has been legally documented as a socially and economically marginalized neighborhood. This is similar to the neighborhood of Times Square and Evans Motel in Manhattan in the 1970s, where Dora P was arrested, and, more recently, Sutphin Boulevard in Jamaica, Queens County, New York, where Nicolette R was arrested in 2004. These have all been areas reputed for street prostitution and identified as such by law enforcement and the judiciary in legal texts. They are also communities of color and impoverished neighborhoods. When case decisions amend locations of arrest with “an area known for prostitution,” they are often supporting law enforcement’s reasonable suspicion of girls in the area. But they are also ascribing the race, class and gender of geographical areas known for street prostitution and the demographics most disproportionately represented in its population, namely girls of color

in settings of “urban decay.” Today, such areas are often undergoing processes of gentrification, and experiencing the attendant increase of law enforcement presence that leads to hyper-policing and DMYC (Hudson 2015, Sacta (2016).

The personal circumstances of the girls can also be inferred by, for example, their absences from judicial proceedings, which judges count against them. Procedural absenteeism is often due to running away from foster homes or escaping from detention or residential facilities pending adjudication, often prompted by the same circumstances that led girls into prostitution to begin with. In the case of *Dora P*, “By the time the appeal was heard, [she] had been placed in a foster home and had then disappeared” (Ball 1993: 176). This attests to persistently inadequate resources for commercially-sexually exploited minors sufficient for stabilizing their lives, allowing them to become reliable or punctual. Foster care is identified a “feeder” institution for child prostitution, and Dora’s disappearance may well reflect such systemic failures.

On the other hand, DMST cases, as discussed in Chapter 4, highlight the personal circumstances of girls, particularly those circumstances attributable to direct force, fraud or coercion by the defendant, to seemingly neutralize the materiality of the issue of girls’ consent/non-consent. However, as previously noted, this is a strategic emphasis—to amplify the state’s prosecution case against defendant-pimps, usually men of color, and especially African-Americans. Where girls are themselves on trial for prostitution, their minoritarian status and personal circumstances have only recently entered the discourse of case decisions, particularly after passage of Safe Harbor laws. For example, in *Bobby P* (2010), the case decision mentions 16 year-old Bobby’s entry into prostitution at the age of 12, her childhood neglect, being in the child welfare system and conflicts with the law. However, her history, particularly conflicts with the law, her child being taken away from her, and patterns of

behavior suggesting “self-destruction” and “immaturity” were actually used to justify the court’s classification of her as a delinquent rather than a person in need of supervision (“PINS”). Like other prostitution cases, it also echoes “police communications” used to make such arrests, using the language of contracts to explain Bobby’s behavior—that she “had agreed to engage in sexual activity with an undercover police officer in exchange for money”—even where police initiate the “transaction” by soliciting the minor. Moreover, while sometimes appearing to render the issue of consent irrelevant, mention of girls’ circumstances and hardships even in DMST cases do nothing to counteract the New York requirement of first criminalizing the girl—finding her guilty of prostitution because it would be a crime if committed by an adult, usually for purposes of establishing juvenile court jurisdiction—before providing her with “safe harbor” resources.

The concept of contract underwrote the very first anti-trafficking law in 1875 (APIA), which enshrined notions of freedom of contract and constructed them as oppositional to prostitution, but with the actual intent of preventing females from East Asia entering the US during a time of widespread anti-Chinese sentiment. East Asians, particularly the Chinese, were derided as slave-like, and therefore unfit to be American citizens, and deemed perfectly suited for quasi-slavery in the post-slavery American economy. This demonstrates foreign/international and economic policy used to manage the domestic socio-economic order. “Choice” and “consent” (and the notion of contracts underlying them) can be seen as inherently classed concepts, both historically (Glenn 2002) and presently under neoliberal ideology that attributes a persons’ economic conditions to the aggregate consequences of choices made by the “individual,” i.e. by the “rational economic man.” The ways in which the issues and subjects (potential victims) of “prostitution” and “trafficking” are compartmentalized (and over-compartmentalized) have discursive (terminological) and material (political and social-hierarchical) roots. Orthodox economic theory, including

contractarian theory and the “Law and Economics” school—which, according to Pateman (1988), has a particularly strong grip on American legal and political discourse—has no real conception of exploitation (Scott and Marshall 2009). Trafficking discourse (and Anglo-American law generally) reflects this by viewing exploitation (like abuse) as an aberration committed by pathological individuals against other individuals. This detracts from the reality that exploitation is diffuse in the global capitalist economy and its localized operations. It fails to recognize that in modernity and late modernity, this has always over-burdened “minorities,” despite statistically confirmed global, national and state patterns, including in Utah and Illinois, which suggest structural inequality/subordination. Discussing *the racial contract* Mills (1997: 3-5) explains contract “has become just a normative tool, a conceptual device to elicit our intuitions about justice,” but critical examination of the way in which this discourse is deployed can “help us to see through the theories and moral justifications offered in defense of them.”

This suggests that there are both legal and extralegal ramifications for conceptualizing prostitution as contract, namely viewing children as consenting and culpable agents of prostitution as a crime against the public. Pateman (1988) points out the sexual (“gender”) dimension. The prostitution contract is not simply an employment contract between a capitalist and a worker. Rather, the prostitution contract retains the same oppressive character of an employment contract—relation of domination and subordination in a structural sense; unequal bargaining power in an individual sense—but also exercises patriarchal sex-right (right to access female sexuality). Thus prostitutes in the capitalist market are not only subordinate to capitalists but also to masculine workers. Glenn (2002) points out how race and gender inequalities are legitimized through contracts that reproduce de facto slavery in new ways. These critiques help illuminate how contractual discourse is problematic with regard to conceptualizing prostitution—child prostitution in particular—especially for the

ways in which it imputes consent upon its subjects in a context in which prostitutes are over-criminalized and children are targeted for criminalization. What these critical takes on contract demonstrate is that there is always something more at work than individual contracts—that society is made up of more than their aggregate result, and law also does much more than merely enforce freely entered agreements between equal citizens. The cumulative social effect with regard to race, gender and class, and certainly childhood, might be better understood as “the natural outcome of a systematic *disparity* in power” (Mills 1997: 139). The power to impute consent via contract, I find, is starkly revealed in attributing consent via criminal capacity for prostitution to children, the sole group that does not enjoy formal equality in American law and society.

5.4 Imputing commercial and sexual consent to minors

Prostitution has always required reading “consent” into the behavior of those who commit it, which is done via contract. It is striking, however, that this is read into the behavior of minors as well, since those below the age of majority are considered legally incapable of consenting to contracts and sex in the “civil” realm, but once the behavior is criminalized, as “commercial sex,” they are deemed as having the capacity for both. This comports with antiquated legal discourse regarding the interpretation of the criminal behavior of children, such as “malice supplies the age” wherein age, child status and childhood protections are abruptly negated upon criminal action, as though a child suddenly becomes an adult, and as though the demonstration of criminal capacity demonstrates adulthood. Childhood becomes synonymous with innocence in this way.

Passage of the WSTA occurred during a great spike in immigration to the US at the turn of the last century, in response to which Congress became zealous regarding addressing moral issues such as prostitution (Chacon 2006: 3013-14). This led to “renewed attention to and revisions of the Alien Prostitution Importation Act, and ultimately, the enactment of the

Mann Act,” which included incorporation of “girls” into the APIA in 1903 and the Mann Act in 1910 (Id.: 3014). A century later the TVPA would focus even more so on minors. However, the TVPA only absorbs Mann Act provisions into itself without any substantive revisions, simply amplifying the harshness of criminal punishment for pre-existing and previously defined crimes, while leaving intact the state-based criminalizing apparatus that imputes consent to minors. Even the designated age of minority in those earlier laws that appeared to make perpetrators strictly liable based on the victim’s age nonetheless used the language of “induce or coerce” on the part of the trafficker of a girl, suggesting that even though consent is a moot point in such a case, it still depends on the victim being induced or coerced, demonstrating equivocation regarding the issue of “consent” even where the victim was a minor.

The irresolute issue of consent is especially perplexing given co-development of child sex trafficking laws with age-of-consent-based laws such as statutory rape during first wave feminism and child sex abuse during second wave feminism. To the feminist mind—then and now, Black and White—these have always been interrelated matters (see e.g. Odem 1995). The rare discourse regarding Black females’ sexual victimization in the context of child prostitution and sex trafficking discusses these matters together. Illustrating this in the contemporary Black feminist context is a talk titled “Passionate Presence,” between feminist theorist bell hooks and Salamishah Tillet, founder of a Chicago-based non-profit organization that mobilizes youth to end violence against girls. The dialogue between hooks and Tillet regards Black feminist survivorship of attempted and actual sexual assault as girl children. Hooks and Tillet discuss this in the context of Black girls comprising forty percent of the victims of DMST in the US, suggesting the interrelationship of these crimes with regard to race, gender and sexual violence. However, cases like *Nicolette R* (2004) show how these

laws are compartmentalized and how that is used to deny relevance between them simply because they are separated in the code, as well as to deny the relevance of age and consent.

Although appellant was 12 years old at the time of her arrest and thus would have been deemed, pursuant to Penal Law § 130.05 (3)(a), incapable of consenting to any sexual act rendered unlawful by Penal Law article 130, this circumstance was irrelevant to the issue of whether she was properly found to have committed an act, which if committed by an adult, would constitute the crime of prostitution. The statute defining prostitution, Penal Law § 230.00, contains no age requirement. Penal Law § 130.05 (3)(a) provides that underage status is a type of incapacity to consent that would constitute "[l]ack of consent" under section 130.05 (2)(b), an essential element of every offense defined in Penal Law article 130. There is nothing in the Penal Law to support the conclusion that section 130.05 (3)(a) was intended to bear any relationship to Penal Law § 230.00, which involves charging a fee for sexual activity. Accordingly, the court properly denied appellant's motion to dismiss the petition.

Coupled with the compartmentalization of "solicitation" from "patronizing," which Chapter 4 discussed as legally unrecognized sex discrimination, the refusal to apply age-of-consent to child prostitution similarly guarantees the over-punishment of girls and under-prosecution of men.

In Anglo-American law minors are generally deemed incapable of consenting to commercial contracts under what is termed the "infancy doctrine," and cannot bind themselves to a contract (Goodfellow 2005: 135, 139). However, the fear of minors taking advantage of adults who contract with minors has created a conflict of interest between adults and children in terms of the law of actual contracts. The commercial-sexual context is susceptible to the interlocking of worries of children acting in bad faith in the commercial marketplace with similar preoccupation regarding their acting criminally with impunity. As mentioned in Chapter 3, the Anglo-American legal doctrine of "malice supplies the age" was animated by the worry that not executing a ten-year-old boy for a crime he was found guilty of committing would signal to other children that they can act criminally with "impunity." The process of criminalization erodes the dominant notion of modern childhood that promises special protections on the basis of children's lack of capacity. Thus age of majority

and culpability spring into being and childhood abruptly ends when a minor demonstrates criminal capacity, the end of innocence. Normative childhood ends and deviant childhood begins, wherein age of minority becomes irrelevant. Similarly, contract has led to the reduction of the age of majority, and the erosion of childhood insofar as childhood is dependent on age. Substantial marketplace participation of minors as consumers, those who enter commercial contracts, has led to legal reduction of the age of majority in order to prevent minors from taking advantage of adults by avoiding their own performance under the contract (Id.: 136).

Minors have been legally bestowed with commercial capacity under popular presumptions that modern youth are “more sophisticated” about commerce and, therefore, the current legal trajectory is that minors must be held accountable for their commercial actions and that contracts with minors must be enforced (Id.). Otherwise they will be too disruptive of the efficient workings of the market, which relies heavily on forming and performing contracts. Apart from contracts for “necessaries,” contracts with minors are voidable by the minor (Id.: 139). The rationale for this exception was conceived at the dawn of first wave feminism and White purity reform establishing age-of-consent based laws, in 1880 in the case of *Turner v. Gaither*. The concern guiding the allowance of a contract for necessities was that children may starve if they are unable to purchase necessary goods when adults are deterred from entering contracts with them for fear of their reneging (Goodfellow 2005: 140). By the neoliberal era, specifically during the 1980s, the definition of “necessaries” expanded significantly and the age of majority for commercial contracts, including service contracts, had been reduced from twenty-one to eighteen (Id.: 140, 136). Thus, generally, minors legally lack the capacity to enter commercial contracts, and are void or voidable.

The contractual conception of prostitution—and by extension, child prostitution—renders these practices as the formation of sexual-service contracts, wherein the minor is the

offeror and the adult male the offeree. “Solicitation” is punished as an inchoate crime of attempting to form such an illegal contract by “offering sexual services.” Wharton’s 2014 Treatise on Prostitution, which incorporates the 1970s cases of minors in prostitution as cornerstones of prostitution law, bears reiteration to illustrate that the law constructs the issue of prostitution, including child prostitution, in contractual and commercial terms, which it identifies as the primary reason for its criminalization.

It is the commercial aspect of prostitution, entailing the concomitant evils of professional vice, which attracts the attention of the criminal law. Accordingly, prostitution statutes require the element of ‘price.’ The requirement is commonly phrased in terms of a ‘fee,’ or ‘money or its equivalent,’ or as under the Model Penal Code, the accused is a prostitute if he or she engages in sexual activity ‘as a business.’ (2 Wharton’s Criminal Law §264, 15th edition).

The cornerstone prostitution cases of minors in prostitution from the 1970s do not grapple with the issue of “consent” on the part of the minor, but rather ascribe it to the girls’ behavior, which is characterized as criminal and contractual. In the case of 14 year-old Dora P, the judge described the “undisputed facts” of the case of Dora and the adult male as her having “offered to engage in sexual acts with him for a fee of \$10; he agreed.” The rest of the case reads as a bait-and-switch scenario in which Dora P is luring, deceptive, and culpable. At the same time *Dora P* comes closest to engaging the issue of minors’ consent by contesting her ability to consent to prostitution for purposes of establishing criminal liability. Her law guardian moved to dismiss the prostitution charge against her by arguing that Dora could not have legally consented to sex at the age of fourteen, and therefore, could not be convicted of prostitution. The judge recounted the ground for her dismissal argument, “inasmuch as the respondent was under the age of seventeen years she was deemed incapable of consenting to a sexual act.” However, the court refused to engage “the defense that respondent was incapable of consent because of her age” for procedural reasons, that it “was abandoned in Family Court” (the lower court) so that it is not required to be adjudicated on appeal, and therefore, it was never worked out. Moreover, an insidious facet of Dora P’s case

is that the implicit contract read into child prostitution actually punishes minors for not performing sex with the adult male. Even though Dora was formally charged with prostitution and robbery, she committed a specific crime that feminist criminologists have identified as “viccing” (Maher and Curtis 1998). Viccing is a common “act of resistance” by prostitutes that is “intimately linked with women’s collective sense of the devaluation of their bodies and their work...as a way of contesting this devaluation” (Id.: 126). It is also a response to the “deteriorating conditions” of street-level prostitution to avoid the increasing risks associated with going through with the sex act and increasing dangers that have rendered females “more vulnerable and more victimized” (Id.: 128). The irony that the all-male panel of judges and legal commentators henceforth seem to have missed is that had 14 year-old Dora performed the sex act she solicited to lure the man she ultimately “robbed” of \$40, she would have been charged at most with the misdemeanor of prostitution rather than the felony of robbery. Charging and prosecuting her with both prostitution *and* robbery when she clearly did not intend to perform any sex act but rather intended to commit robbery has the effect of encouraging or even coercing girls to be sexually abused by adult males, or else they risk being charged with a felony rather than a misdemeanor. Punishment that is compounded in this manner when prosecutors and judges could have viewed Dora’s false pretense of prostitution behavior as simply part of her robbery scheme, which is a sufficiently serious charge, suggests the enforcement of the male’s expectation as a consumer of sex from the minor. This is regardless of how reviled, fearful or betrayed children may feel of being in prostitution to adult men, or resentful of the adult world in general, to prompt them to resist such acts through viccing would-be “customers” who are certainly no less morally condemnable or criminally culpable.

Historically, the law has had little sympathy for disempowered females who find themselves in abusive conditions, particularly when “contracted” into those conditions. US

law has enforced contracts against women in situations of quasi-slavery (Glenn 2002: 199-200). The compounded punishment of minors who engage in “viccing,” or the increased perception of culpability based on the presumption of greater commercial capacity and sophistication for minors who are deemed “independent,” for instance, because they do not work for a pimp (*In re D* (1976) are means of “bringing down the full force of the law” against minors in prostitution. This reverberates historically with the way unwitting immigrant women coerced into “quasi-slavery” labor contracts circa the 1860s-1870s in the US were punished physically or through imprisonment when they would find means to “resist abusive treatment” and “miserable living conditions” (Glenn 2002: 199-200). Thus although contracts for sex are formally illegal, as slavery was formally illegal when quasi-slave contracts were being effected, the law tacitly enforces them through punishments and leniencies unevenly meted out between female contractual subjects and consumers or contractors.

The presumption of minors’ commercial capacity erodes age of majority protections in the criminal context, i.e. where contractual behavior is read into criminal behavior, and vice versa. Commercial capacity becomes equated with consent, which is then used to criminalize minors, or hold them criminally liable in the same way that they would be commercially liable under an un-voidable contract for goods or services. If “commercial” is the only difference between “prostitution” and what the law typically understands as child rape, child sex abuse or statutory rape, then this demonstrates the power of commercial mediation to impute consent on minors. Reading “consent” into “sexual” activity that minors do not have the legal capacity to consent to demonstrates equivocation on “sexual exploitation.” The law reads commercial transactions as consensual because it reads into the conduct the formation of a contract—the “exchange” of money or something of value for “sex.” In this formulation, a minor’s dire economic circumstances, e.g. child poverty, which

prompt her to prostitute herself, somehow translate to *greater* capacity to consent to a sexual act.

The case of *Bobby P* (2010) exemplifies the imputation of commercial and sexual capacity to minors and how this renders them personally responsible for their commercial-sexual exploitation and justifies their punishment. The court in *Bobby P* justifies its election of a more punitive disposition against the minor (denying her PINS petition and adjudicating her “delinquent”)—even after detailing her troubled history and hardships—through a two-step process typical of cases that criminalize or quasi-criminalize minors. First, the court establishes her implicit consent to illegal commercial-sexual activity through the contractual language of prostitution, and second, makes the issue of personal “choice” paramount using the language of responsabilization. The first is established despite the undercover policeman being the “solicitor.” In his deposition the officer who arrested Bobby recalled the incident:

[She] said to me in sum and substance, 'what do you want?' I replied, in sum and substance, 'a quickie', which I intended to mean oral sex, and made a hand gesture [which] indicated oral sex'. The respondent then said to me, in sum and substance, 'you want a blowjob?', which I understood to mean oral sex. I asked the respondent how much for the blowjob and she replied, in sum and substance, 'fifty dollars'. The respondent then got inside of my vehicle.

The court interpreted this as the formation of the contract implicit in the legal construction of prostitution. Again, this is despite the fact that Bobby was not the solicitor or “accosting” party in this scenario. By imputing commercial consent, the decision also imputes sexual consent, to complete the commercial-sexual equation of “prostitution.” Then, the court detailed Bobby’s personal history and troubles.

Although the respondent is only 15 years old, she has suffered deprivation at the hands of her own parents who have previously neglected her and whose parental rights have long been terminated. Notwithstanding the demonstrated inability of her own parents to care for her, the state through its courts and public and private social service agencies have attempted to provide the respondent with stability and the necessities required to become a healthy and well-adjusted adult. However, there is no indication that these efforts have proved successful. According to the supervisor at

New York Foundling, respondent has been involved in prostitution since the age of twelve, and attempts to correct this self-destructive and dangerous behavior have failed. Respondent has regularly run away from her foster home for long periods of time when her whereabouts have been unknown to those charged with caring for her.

Despite the extreme constraints and hardships of her young life, the court held that prostitution was Bobby's personal choice. Rather than the commercial-sexual exploitation of a girl child by adult males, prostitution is rendered "*self-destructive behavior*," and Bobby's involvement in it is presented as evidence of her incorrigibility. The state nonetheless exonerates itself of responsibility despite its unsuccessful "attempt" to rehabilitate Bobby. This outcome is not interpreted as the failure of its rehabilitation programs or inadequacy of resources to meet the complex needs of multi-problem youth victimized by child neglect and commercial-sexual exploitation, but rather attributed to the personal choices of the girl. Therefore, Bobby should be held responsible for her personal failings and deficiencies.

...giving proper consideration to the respondent's extensive history, her behavioral pattern, her choice to engage in the 'street life,' even at the cost of temporarily losing custody of her own infant child, and her demonstrated lack of sound judgment and maturity, the Court finds it would be unwise to and inappropriate [to adjudicate her as a PINS].

The court extracts "choice" from these circumstances of extreme constraint and hardship to achieve personal responsabilization and deny that a child who entered prostitution at age twelve and continued through age sixteen (at the time of the case) is commercially-sexually exploited.

The commercial consent presumed of prostitution compounds what the law perceives as immoral juvenile sexuality. In juvenile justice prostitution has historically had a "compounding effect...on the already conflicted moralistic relationship that juvenile courts have to sexuality... 'The commercial context is regarded as compounding the stigma of behavior that might ordinarily be regarded as merely immoral'" (Schwartz 2008: 251, quoting Zimring 2004). As we have seen in the cornerstone prostitution cases of minors from

the 1970s and the more recent twenty-first century cases hailing from New York, despite the competing discourse of DMST, the law continues its historic tradition of victim blaming in the sense that it constructs girls as non-consenting victims of sex trafficking, but does not hesitate to criminalize them through the discourse of prostitution, which constructs their behavior in illegal-contractual terms. Nor does the law hesitate to quasi-criminalize minors through DMST law that first requires their legal incapacitation on the basis of their “natural” vulnerability. Continuous with its historical construction as White slavery, the interpretation of child prostitution in the 1970s and contemporary cases as an attempt on the part of the minor to form a contract for goods or services is objectifying, and diminishes harms associated with the practice. This is despite legal recognition of such harms and the use of those harms to justify the passage of legislation for as long as prostitution statutes have been in place. Unlike some nuances in the construction of victim/offender and its relevance to retributivism, the contractual construction of consent/non-consent is consistent across state regimes, defining “consent” and “choice” in similar ways.

Most scholarship and legal battles focus on sexual consent of minors and their in/capacity for such, not commercial (civil) capacity, but examining both exposes the contortionism of imputing consent on minors and rendering them criminally culpable. Notions of consent and non-consent have been defined through three major discourses: age of consent/statutory rape, prostitution and sex trafficking (now including DMST). However, the law keeps these separated. Statutory rape was conceived of as a “strict liability” crime that based consent on strict standards of age, prostitution required consent to commercial sex, and sex trafficking requires force, fraud or coercion, or, in the case of DMST, simply age of minority of the victim. Differentiation between and among age-of-consent-based laws and prostitution compartmentalizes them into different crimes, refusing to acknowledge their similarity in order to uphold contractarian notions of consent and responsibility, in order to

maintain the possibility of minors' consent and, therefore, criminal capacity/culpability. This has the effect of coercing minors in prostitution to perform as prostitutes (see, e.g. Dora P). Commercial consent of minors shows that "childhood" requires criminal "innocence," while the sexual consent of minors shows that it requires *sexual* innocence. Legal discourse regarding child prostitution traffics in cultural fantasies of childhood innocence, adding another normative layer of expectation and conformity to ideal type and performance, which further burden the child. This can be understood as "multiplicity" in the sense of compounded inequalities and injustices—the raced, classed and gendered normativities and inequalities that interact with normative childhood and punishment to over-burden minors in prostitution under regimes of criminalization and quasi-criminalization.

5.5 Multiplicity: incorporating childhood and punishment

"Consent" has served as a tool of legitimizing governance rather than meaningful conceptualization of minors' behavior, circumstance or broader structural forces. Consent (the lack thereof) is used to legitimize the passage of laws and the creation of international civil society through instruments such as the White Slave Traffic Agreement (1904), but the historical trajectory has been that the non-consenting female victim class becomes the targeted and criminalized class, as demonstrated in WSTA cases that held women liable for conspiracy to traffic themselves (*Holte* 1915; *Gebardi* 1932, holding that the woman conspired to traffic herself by providing active assistance in her own transportation). As we have seen, consent to a crime is also used to negate the protection of minors in prostitution, to renege on the social contract promise to protect citizens.

Beginning in the Progressive Era, girls were brought more explicitly into the purview of legal discourse on prostitution and sex trafficking. In 1903, the APIA was amended to include "girls" (Chacón 2006), and in 1910 the Mann Act furthered APIA 1875 in referencing "alien women and girls engaged in prostitution or debauchery in this country."

However, even minors identified as sex trafficking victims have historically been (and are now) arrested for “prostitution.” *In re Carey* (1922), the case of a minor prosecuted for prostitution in San Francisco as well as the high profile case of rock-n-roll star Chuck Berry evidence the ongoing practice of quasi/criminalizing minors for prostitution from early to mid-century. Carey was defined as a “fallen woman” and depicted in terms of feminine culpability for prostitution as criminal offerors through solicitation. Berry was convicted of violating the WSTA and served twenty months for interstate transportation of an “underage Apache girl who was weeks later arrested on a prostitution charge” (Website of Public Broadcasting Service). As mentioned, such prosecutions were politically and racially motivated, most prominently in the case of Jack Johnson, the famous African-American boxer. In that case, the court found Johnson guilty of trafficking even though the woman he transported was an adult prostitute who would normally be characterized as a “fallen woman” from whom society requires protection. Johnson was aggressively prosecuted in 1913 “motivated by public outrage over his marriages to white women” (Id.). Thus international trafficking was defined by racialized immigration, while domestic interstate trafficking was highly racialized, with men of color, particularly African-American men targeted by law enforcement and prosecutors. This is a dynamic that continues to play out in current DMST cases in which girls of color are targeted and quasi-criminalized as “witnesses,” while men of color receive historically unprecedented sentences for pimping, now referred to as trafficking.

The neoliberal era has seen ostensibly greater emphasis on implementing the protection of minors and amending the WSTA. In 1978 Congress made the protection of minors gender-neutral, and in 1986 it added increased protection for minors but also included adult males to the class of potential victims. This neutralization of gender and age and seemingly increased “inclusiveness” of legal discourse creates an air of legitimacy, while merely increasing punishments. Increased retributivism and the expansion of the scope of

such laws also entails expansion of state prosecutorial power and the increased allocation of resources toward prosecution and the criminal justice system, including law enforcement and the public and private facilities of detention and incarceration that comprise the prison-industrial complex. This co-occurs with the neoliberal erosion of childhood protections through social spending cuts and divestment from human development such as education and health care, while increasing benchmarking, accountability and the burdens of greater performance on children in an era of educational and economic hyper-competition. The social contract, and its embedded subsidiary contracts—the sexual contract (including the prostitution contract), racial contract and domination contract—have been rewritten in such terms. The exclusionary non-citizenship of “minorities,” including people of color, women and children, continues to haunt American legal discourse that adjudicates those whom it identifies as the least powerful and most vulnerable of all—children who suffer abuse and/or commercial-sexual exploitation. It either omits entirely or admits and translates to culpability the structural and personal circumstances of minors in prostitution that come before the courts and stand in conflict with the law. Legal discourse achieves this through equivocation and selective deployment of “consent” and “non-consent,” the boundaries of which it blurs in selective ways that guarantee the over-punishment of girls, particularly girls of color. The legitimacy of the social contract derives from the freedom and fairness that it ostensibly represents, along with guaranteed protections from the state. This legitimacy is also required for punishment. The social contract and punishment are mutually reinforcing in this way. Contract principles that impute consent on the minor in prostitution for purposes of criminalizing her but protect the “john,” including via HIV laws that overlap with prostitution laws, construct him as a consumer and clarify that the consumer is paramount, as well as who is being protected from whom.

Contemporary cases like *Bobby P* (2010) exemplify the way in which commercial and sexual consent are imputed on minors with the effect of holding them personally responsible for failures and deficiencies “downstream” at the point of legal conflict, while absolving the state of its “upstream” role of ensuring at the very least the childhood protections it promises a class of persons it constructs as vulnerable, incapable and in need of special protection. Under a criminal framework and in the context of great inequalities, the state never entertains the crucial element of socio-economic or distributive justice. In the US it never has to even consider child rights as understood internationally.

While prostitution discourse focuses on agency, capacity, and the evil-doing of minors, DMST negates consent by focusing on age, or force, fraud and coercion. Legal discourse does not incorporate a conception of constrained agency or understanding of exploitation as diffuse. Instead, despite the historical and contemporary onus of race, class, gender and age-based relations and the constraints these produce, minors carry the burden and responsibility of child prostitution rather than (highly under-prosecuted) adult buyers, exploiters or the state. Because legal discourse conceives of “choice” as individualized and rational, neoliberal notions of “responsibilization” guide interpretations of minors’ behavior. Minors are over-burdened with the amplified inequalities and precipitating factors that coerce people into prostitution. Minors in prostitution are also over-burdened with (unhelpful) responses to child prostitution. The sex workers’ rights approach to prostitution, which is increasingly being applied to child prostitution, interprets what are structural relations of domination and subordination as mere “constraints” that are insufficient to negate “consent.” It also conflates “agency” with “consent” to child/prostitution. These are extensions of the sexual, racial and domination contracts to children. The commodification of sex through prostitution renders it merely a contract for sexual services, which begs the question of whether rape of a person in prostitution should be reconceptualized as merely the theft of services. Sex workers’ rights,

which relies so heavily on liberal legal regimes for “protection” of the alleged “sexual freedom” of prostitution, largely fails to address how this formulation would empower or maintain the integrity of the female body. Three decades later the question remains of how females can achieve equal standing to male workers or capitalists when the sexual contract (and “patriarchal sex-right” embedded in it) render females subordinate to both capitalists and male workers (Pateman 1988).

The interpretation of child prostitution through contractual understandings of social relations yields an illusory promise of protection to minors and justifies criminalizing or quasi-criminalizing responses to minors in prostitution. This mirrors the legal liberalism of the social contract, and the assumption that actual contracts mirror the (more or less) freely entered social contract, notwithstanding “the lottery of birth” and childhood dependency. Law and society provide the illusory promise of the social contract (formal egalitarianism), which does not provide protection in exchange for freedom. Sex workers’ rights, as an alleged alternative view of prostitution that is increasingly extending its framework to include what is agreed to be child prostitution on international, national and state levels, relies heavily on contractarian principles and is, therefore, limited in the same ways. Dominant approaches to prostitution, child prostitution, and sex trafficking ignore social hierarchy and structural, interactive power dynamics of race, class, gender, childhood and punishment. Legal discourse obscures and discursively neutralizes these relations, while socially, politically and historically decontextualizing them. This allows for the individualization of responsibility, even of children. Without addressing distributive justice or the im/possibility of children being full and equal citizens, the interpretation of child prostitution through contractual understandings of social relations yields an illusory promise of child protection, while denying children’s “civil freedom,” and justifies their quasi/criminalization.

Prostitution is almost universally understood in contractual terms, even if the object of the contract (commercialized sex) is illegal. This chapter has shown the implications this has for imputing commercial, sexual and criminal capacity to minors, which ensures that the binary of consent/non-consent is deployed in ways that penalize minors in prostitution otherwise understood as non-consenting child victims of commercial-sexual exploitation. Despite apparent attempts to resolve them, the child becomes marked by contradictions and inconsistencies of which the legal system is aware but leaves indeterminate. Contractual discourse enables equivocation on the issue of consent, which sustains this indeterminacy. Particular attention should be paid to the ways in which constructing the issue in contractual and consumerist terms renders minors culpable and “johns,” who are overwhelmingly adult and male, as mere “consumers.” Moreover, the citizenship and masculinity of johns remain intact, unlike the non-citizenship and denial of normative childhood to minors in prostitution, in no small part due to the lack of blameworthiness of the “customer” in this context. In these ways a multiplicity of criminality over-burdens minors with the likelihood of being deemed even more culpable than their adult counterparts. These dynamics reify children’s capacity for “consent” and criminal culpability, while heightening their non-citizenship status through the socio-economic lockout process of criminalization.

CHAPTER 6: Conclusion

“In my own work, the reason for describing forms of racialization is that once identified, their normative outcomes can hopefully be disrupted and dismantled.”

- Suki Ali, “Racializing research: Managing power and politics?”

6.1 Racialization, Criminalization and Non-Childhood

Racialization is a social process, “a set of discursive practices which continually produce and regulate ‘race’ as a concept and social category,” and which “has real meaning and effect,” including its facilitation of mapping inequalities onto forms of racialized difference (Ali 2006: 473). Understanding racialization requires investigating “how it is that discourses of ‘race’ operate to produce an understanding of people, things, cultures and places” (Id). It is a particularly important line of enquiry in light of the prevalence of race-neutral language that is racially impactful. Racialization is reproduced through legal discourse, including legislative, statutory and judicial discourse on child prostitution. The legislative debates, statutes and cases discussed throughout previous chapters have used both explicitly racial and race-neutral language to racialize commercially-sexually exploited minors. Facially neutral language requires greater social, historical, legal and political contextualization to expose its power to racialize subjects. The legal discourse analyzed in previous chapters reveals several race-neutral means through which this is achieved, including racial coding, the criminalization, adultification and hyper-sexualization of subjects, and the use of legal formal egalitarianism. Racial “codes” (or “dog whistles” in the political context) are one of the major means through which facially neutral language can be deployed in ways that are racializing. This includes the splitting of international and domestic sex trafficking, the split between federal and state jurisdiction, references to geographical locations (regions, nations, neighborhoods, residence, streets and suites) in which incidents of child prostitution occur, and law-and-order ideas of responding to child prostitution.

Although anti-trafficking law is facially neutral, it retains inequalities through omission and silence by severing its continuities with chattel slavery. Features of the “White slavery” narrative also survive in the TVPA in various forms, to perpetuate terms that can operate to produce racialized identities, such as “international” versus “domestic” and “federal” versus “state.” In particular, leaving it to state discretion whether to criminalize minors in prostitution and excluding domestically “trafficked” minors from federal schemes pertaining to international trafficking has had the effect of reinforcing the historical barrier between children and their national government that is charged with their civil rights. With law enforcement action spatial racialization through jurisdiction, residence and borders becomes particularly important for the issue of child sex trafficking. Sociological theories of childhood urge attention to the neighborhood context as “a very important factor in the socialization of poor black children,” (Handel, Cahill, et al. 2007: 271) to which I would add understanding the over-policing and criminalization of children in these spaces as a childhood hazard.

6.2 Neoliberalism and the Erosion of Childhood

That the key difference at law between “prostitution” and “child rape” or “statutory rape” is the exchange of money or something of value tells us that economics and class are of utmost importance to the issue of child sex trafficking. The elemental difference that creates this tension between child prostitution and other forms of sexual exploitation is “commercial,” and commercial exchange evokes commodification, contract and the consent implicit in these. This is a capitalist market reading of human action and agency; one that is always most interested in preserving the privilege of the consumer—the late capitalist re-embodiment of the ideal humanist subject. Law confounds whether prostitution is an issue of contracts or crime. At present, it draws selectively from both notions in ways that detrimentally impact minors.

American legal discourse regarding child prostitution is largely characterized by the omission of class rather than substantive class-based or class-conscious formulation. At the same time it is *classing* in the sense that it creates class conditions such as the ascription of class status and socio-economic assessment of juvenile delinquency in the courts. The particular types and patterns of omission do not suggest an absence of economic theory, however, but rather evidence the type of class and economic theory that American legal discourse on child prostitution espouses—the dominant, US-originated neoliberal jurisprudence of *Law and Economics*. This is evident in the tendency of legal discourse to avoid characterizing or teasing out the concept of “exploitation,” and primarily viewing exploitation as episodic, individualized and pathological aberration in accord with the uncritical economic approach of law and economics theory. The way in which “choice” acts as neoliberal class-related code in the distinctly ideological dimension of the legal-discursive classing process demonstrates law-and-economics thinking. “Choice” also underwrites neoliberal responsabilization—imputing individualized responsibility for the effects of macro-structural phenomena. This can be connected to law-and-order thinking and its brand of criminal responsabilization that increasingly manages these effects through the carceral state and its private partners. This encompasses emergent forms of penalization meted out in the blurred boundaries of adult/child, victim/offender, consent/non-consent, incarceration/temporary protective custody.

6.3 Multidimensional Gender and Feminist Multiplicity

My critique of sex work theory after engaging with this research for years revolves around what I find is its radical departure from an aim that seems to me the common denominator of feminisms—sexual autonomy and integrity. The in/ability to possess and maintain sexual autonomy and integrity has been one of the major identifying markers of female status across the life course under the modern Western social contract, and thus the

fulcrum of feminist struggles across race and class, though to varying degrees and with qualitative differences in historical treatment.⁹¹ By sexual autonomy and integrity I mean the ability of persons to engage in sex motivated by their own sexual desire; to maintain sexual relations on their own terms and based on mutual affirmation. This notion may seem vague, but conceptualizing it may start with the question of to what extent the sexual mind, will and affect have been colonized by forces disciplining us to “desire” the very things hegemonic values require of us, including the need and/or desire for commercial gain. This can help move beyond a contractual notion of “consent.” Any inability to refuse unwanted sex falls along the continuum of sexual violence, and the commodification, industrialization or privatization of and contractual consent to sex do not eschew this continuum but rather can be plotted along it. Implicit or explicit claims that the act of simply earning money—regardless of how it is generated—is empowering requires an uncritical view of capitalism, patriarchy, racism and the particular ways in which children are not only affected by but central to the re/production of these, including through prostitution in its legal or illegal forms.

Prostitution has profound implications for all women and for the social construction of gender. I interpret the valid sex work theory claim that “when prostitute women aren’t safe, no woman is safe” (Ditmore 2011: 158) as an important admission that prostitution has great social significance and is representative of gender relations throughout society. This resonates with de Beauvoir’s theory that prostitution represents the quintessential role that women are to be relegated to, but also echoes decades of feminist attention to and activity around the issue based on a realization that the fate of all females is bound up with that of the prostitute. However, because sex work theory does less to problematize the role and broader consequences of prostitution itself, in order to focus more on arguing its merits of

⁹¹ The social bond imagined and implemented by the social contract has worked to detach the female body from its soul and keep them apart, and female subjects have been inscribed into the broader community as persons whose sexuality is controlled by patriarchs or patriarchal figures.

empowerment, it contradicts itself by claiming on the one hand that prostitution implicates all women, while arguing on the other that, essentially, it is none of our business because “consent” and the prostitute’s individual “choice” are paramount.

Although sex work theory attempts to render prostitution as merely “work”—as problematic or unproblematic as any other kind of work—this characterization diminishes the importance of sex, sexual relations and gender that is core to prostitution. Not only does sex work theory diminish the fact that prostitutes do not pursue or welcome the sex of prostitution (primarily or at all) due to their own sexual desire, but it also inadequately addresses the Marxist feminist critique that prostitution does not merely entail the subordination of [sex] workers to capitalists, as wage slaves or employees; rather, prostitutes are also subordinated to male wage slaves or employees who purchase their bodies for sexual use. This implies a double subordination—both on the grounds of class and gender. Capitalism requires the commodification of bodies, to “contract” the use of our physical and cognitive labor, which arguably detracts from one’s physical and cognitive integrity and autonomy, but prostitution additionally requires the sexual use of bodies, which detracts from one’s physical, cognitive and sexual integrity and autonomy.

Since lack of control for one’s sexual integrity and autonomy has been a key marker of females and feminized bodies as well as the distinction between female and male social position, it is crucial to emphasize its importance. The sexual contract embedded in the social contract has been about compromising female sexual autonomy and integrity. The inability to refuse sexual access to one’s body—whether through forensically identifiable acts of criminally culpable individuals or through potential or actual starvation or poverty, or forces of relative deprivation—is at the core of the sexual contract that compromised and requires compromising female sexual autonomy and integrity. Though sex work theory points to the ability of prostitutes to “refuse service” to clients under legalization schemes, it is clear that

there are severe limits to exercising this kind of discretion, particularly if the agreement to have sex is to be based on mutual sexual attraction. If this is even possible, it would only be for the most popular and privileged (the exception to the rule); a person in prostitution would simply not earn adequate income by rejecting clients but for those s/he is sexually attracted to. For women of color and children (and especially children of color) who must sell sex for survival or material well-being, this is particularly stark given their social and economic devaluation in prostitution hierarchy, which requires them to sell themselves more often or to take greater risks in order to generate the same income as their White, adult counterparts. Thus to the class- and gender-based Marxist feminist critique of prostitution I add the critique of race and childhood, to emphasize the inadequacy of “sex work” for theorizing prostitution, but especially child prostitution.

This is precisely what places “voluntary” prostitution (especially child prostitution) on the same continuum as sex abuse, sex trafficking and rape. That it is “agreed to” (or “offered” or “solicited”) does not mean that the acts or their nature change; the same acts are still required, and not for the purpose of female sexual desire or fulfillment. In terms of sex work, prostitution is sex abuse and rape constructed in contractual terms—driven by material *necessity*. This is not to stigmatize those labeled as *prostitutes* for committing acts that fall short of feminist sex, to shame those in prostitution for not acting on their sexual desire or blame them for our inability to cultivate this in and through a pro-female social ecosystem. Rather it is to take a critical stance against the practices and institution of prostitution and the claim that it is actually or potentially a tool of liberation “for women,” as it traffics in the reproduction of social hierarchy along every empirical dimension explored in this study. If it is simply commercial gain that is the “empowering” part of prostitution, then an argument needs to be made for how wage work is empowering and/or transcendent of racist, patriarchal capitalism. If it is the “sex” part of prostitution that is empowering, then an argument needs

to be made for how the commodification of sex is any more empowering than sex tied to familial or relational patriarchy. If it is the combination of generating money through sex that is meant to be empowering, particularly for “women,” then the Marxist feminist question remains of how the subordination of the wage worker combined with the sexual subordination of the sex worker add up to female empowerment, particularly when considering childhood, race and immigration.

To view commodification as sexual autonomy has required sex work theorists to argue for the merits of financial independence that “sex work” presumably promises, and to premise the merits of such independence on breaking from the often abusive or patriarchal family structures and values that women and children find themselves in. But this is to substitute one set of patriarchal relations for another—claiming that commodification and objectification on the market are somehow less harmful (and even helpful) to women than patriarchy of the familial, relational and social domain. Some sex work theorists even concede that the sex industry is patriarchal and sexist, but that capitalizing on this is liberating for women, at least financially. Prostitution violates female sexual integrity in similar ways as legislatures and judiciaries are thought to according to feminist legal critiques (e.g. Pether 1999). Like law, prostitution values some females and their sexuality above others. What difference if that valuation occurs through a pricing menu based on age, race and appearance, all of which have mattered a great deal in both contexts?⁹²

⁹² I have not focused on the role of “beauty” in this research, but one only need read Angela McRobbie’s (2009) critique of post-feminism and substitute the oppressive nature of neoliberal marketing for female consumption with that of prostitution to reveal how the two operate alike in evaluating women’s worth through oppressive (unattainable and/or unsustainable) beauty standards, with the sex industry certainly bolstering the beauty industry. In the case of prostitution, the beauty standard is more directly commodified but interlocks with the complex social significance of beauty and the elusive fulfillment of such standards through consumption. Prostitution upholds oppressive beauty standards that feminists critique elsewhere, as in McRobbie’s work, which also critiques the sex industry and sex work theory, though more cursorily.

6.4 The adult/child binary and sex work theory

Childhood and child prostitution have historically presented a great challenge to sex work theory, which, I argue, they have not managed to overcome. Sex work theory has at least two main tendencies with regard to the adult/child binary: separatism or conflation. The former, like the law, maintains the adult/child boundary along lines of age, based on legal/arbitrary age boundaries from the perspective of strictly interpreting prostitution as an employment or service contract from which minors are legally excluded. The latter is achieved through extension of sex work theory to minors, through encroachment. Sex work theory collapses the boundary and extends adulthood or adult age/status to those otherwise defined as minors by law, especially to 16-17 year-olds—the largest age group of minors in prostitution—by claiming that they have adult capacity for prostitution (see, e.g. Shanahan 2013). Like the law that waives minors into the adult justice system, sex work theory engages in selective adultification for the purposes of inscribing minors into adult structures in which they could easily be fitted but for their age. This requires categorizing minors—who have structurally less social, economic, political and civil power and resources than their adult counterparts—with adults, even though minors as a social group are unable to dominate adults as a social group in either the realm of law or prostitution.⁹³ In this way sex work theory engages in the retroactive application of adult prostitution and adult-based sex work theory to minors. This is despite the possibility of building an argument for the opposite, since many studies show that prostitution often begins in childhood.⁹⁴ The retroactive application of the adult-based framework of sex work to child prostitution goes against an

⁹³ Here, I have specifically in mind Grahn-Farley's (2002) discussion of boys waived into adult prisons being rendered sex slaves to adult men, and O'Connell-Davidson's (2005) finding that in her examination of prostitution around the world, she has found that children occupy the lowest rungs, endure the worst conditions, and materially gain the least compared to their adult counterparts. Since prostitution in the US often begins at the ages of 12-14, if there is any "advantage" to being in prostitution longer, then minors beginning at that age are markedly disadvantaged from those who are much older but have not yet "aged out" of prostitution.

⁹⁴ And when it is not the prostitution itself that begins during childhood, then the contributing factors to prostitution certainly most often do in the US.

inter-generational, life-course perspective on prostitution that follows the subject along the sequential trajectory of the life course, and effectively erases or diminishes the significance of childhood to prostitution. The extension and retroactive application of sex work theory—premised upon the consenting adult agent—to children is especially troubling given that some children are more vulnerable to prostitution than others, particularly children in poverty or at risk of poverty. By omitting or inadequately addressing structural inequalities, sex work theory concedes that some women simply must be prostitutes, and thus the role of the feminist is to strive to merely improve this status, experience and condition for women.⁹⁵ By extension, it argues the same for children. Given that child/prostitution thrives on and reproduces social inequalities of race, class, gender and childhood (and age, generally), this framework is acquiescent to social hierarchy, in which is ensconced prostitution hierarchy—mutually reflective in the socio-economic distance between girls of color in street prostitution and White adult “high-end call girls.”

Law and sex work theory have maintained the boundary between child and adult prostitution for the common purpose of maintaining their legitimacy. Law exempting children from criminal culpability for prostitution is premised upon the idea that children are naturally, developmentally incapable of willingly engaging in prostitution, and/or that they cannot appreciate the consequence of their actions the way adults do or should do.⁹⁶ Therefore, it draws age-based boundaries in order to appear just, while simultaneously blurring those boundaries as its commitment to retributivism increases. Similarly, sex work theory that separates child and adult prostitution specifically in order to legitimize adult prostitution while denouncing child prostitution relies upon contractual and criminal boundaries of age. Child prostitution is inconvenient and disruptive to the protagonist and

⁹⁵ In effect, the sex work framework quashes any challenge to the institution or practice itself, and often interprets this as an attack on the practitioners, specifically prostitutes.

⁹⁶ Our laws do not acknowledge that the vulnerabilities that mark children as a social category are socially and legally constructed.

core narrative of sex work theory, and threatens its conceptual and political legitimacy, through its very existence but particularly when child prostitution is understood as integral to prostitution generally. However, as sex work theory has gained popularity and acceptance—evidenced by the common, generic usage of the term “sex work” as a neutral term despite its specific social and political genealogy—its proponents have become less diffident about encroaching this formerly preserved boundary and applying their framework to children. What is integral and foundational is then rendered in more passive terms, “the presence of children in the sex trade” (O’Connell-Davidson 2005).

The extension of sex work theory into child prostitution is problematic and is not multi-conscious, much like most sex work theory. Sex workers rights critiques are not necessarily useful for child prostitution. The problem facing minors in prostitution is not the lack of recognition of their sexuality or sexual agency. Their greatest problem is not the obstruction of their ability to freely prostitute themselves, such as being forcibly rescued and coddled as innocent victims. In fact, minors in prostitution are more prone to over-sexualization and being rendered non-innocent by virtue of their involvement in prostitution as well as the race- and class-based biases and disproportionalities that render minors “non-children.” Minors, particularly children of color and those in conflict with the law, are quite often treated as presumptively guilty, particularly when criminological theories such as “super predator” theory are in vogue, circulated in legal and political discourse, and have lasting impact through codification. The lack of recognition of victimization for children of color and those in conflict with the law comports with that which Black feminism has pointed out for women of color. The urgency of problematizing the over-sexualization of women of color and sexualization of children of color is clear against a backdrop in which the denial of sexual victimization of females of color has contrasted with the guarding, preservation and, ultimately, control of White feminine sexuality through tropes of innocence.

Overall, sex work theory exhibits problematic constructions of adult/child relations. Feminist and feminist-criminological critique have centered on problematizing paternalism and maternalism (e.g. Doezema 2010). In these, paternalism represents the ideological dimension of state interference in individual lives and decisions, while maternalism marks the relationship between social workers, “moral crusaders” and the girls they “rescue.” However, the negative reiteration of these terms or notions has the concerning effect of transgressing the valid critique of punitive or rehabilitative child protection agencies, to construct the family or parent-child relations in general as intrinsically problematic. Parental protection of children is not itself problematic, and rather necessary in the current social structure. Feminists of color have also interjected in predominantly White feminist arguments that family is not necessarily the greatest site of oppression for women and children of color, particularly given that historical forces have often worked against and denied them family integrity and unity, and kinship has often provided sanctuary from racism outside the home or immediate community. Thus, a non-specific critique of paternalism can disservice feminist and pro-child policy by unwittingly bolstering general anti-statism of the neoliberal, libertarian or laissez-faire varieties. Broad anti-maternalism similarly threatens to undermine any importance, necessity or desirability of intergenerational female relations, e.g. by disparaging anti-trafficking activists for simply replicating mother-daughter dynamics with girls under their care. Emerging research on girlhood can be helpful for understanding the particularities of this social position, but requires theorizing multiplicities within it in order to avoid the default subjectivity of White, bourgeois femininity common to the expansion of feminist theory into new theoretical terrain and subjecthoods.

Sex work theory and the victim/offender binary: the im/possibilities of victimization

Sex work theory has a problematic conception of victim/offender. When theorizing sex work, White, Transnational, Third World and postcolonial feminisms have primarily

been concerned with resisting the “victim” label on their respective subjects. This is an important effort, particularly in light of the way ideal and culpable victimhoods routinely cast suspicion upon and deny victimization to potential and actual victims of sex trafficking. However, the anti-victimhood of sex work theory has been remiss regarding the Black feminist critique of the denial of their sexual victimization. Perhaps this is due to a perception that White and subaltern women are idealized victims of sex trafficking, and therefore the primary task of feminists is to resist the victim label because it is stigmatizing and disempowering, in favor of narratives of survivorship. However, this does not reconcile the fact that the denial of victimization in the sex trafficking and prostitution contexts is commonplace and systemically routine. This is evident in police policy of “keeping closed doors closed” with regard to prostitution (Halter 2008: 15), the extremely rare granting of *T visas*, the law’s denial or selective granting of victim status to females of color, as well as the ways in which this denial is built into institutional codes regarding governmental benefits and welfare generally. Like law and governments, sex work theory casts severe doubt on narratives of victimization. In doing so, it throws the proverbial baby out with the bathwater. Transnational sex work theory helpfully identifies and critiques the ways in which subaltern and Third World women’s victimization, including through sex trafficking and prostitution, is manipulated to serve racist, imperialist ends often under the auspices of benevolent (White, western) feminist intervention (e.g. Kempadoo, Augustin). This also often implicates subaltern males as the prime perpetrators of savageries and barbarisms against subaltern females as passive non-agents to justify such interventionism. However, casting doubt on victimization narratives for the sake of restituting *discursive* agency to females rendered passive through them has the undesirable effect—within liberal legal regimes—of denying *material* benefits to those detrimentally impacted by sex trafficking and/or prostitution.

This exposes the particularly hazardous enterprise of sex work theory. On the one hand, proponents of the sex work paradigm argue for extreme reliance on the law—through legalization and regulation of prostitution, which requires enforcement of human and civil rights of prostitutes. At the same time, it vehemently opposes the very tool that subjects and rights bearers in liberal legal regimes are expected to utilize to make claims—legal victimhood. Rights are the concessions that liberal legal regimes make to minorities—those who are detrimentally impacted by social hierarchy. Rights are the tools with which minorities (the structurally injured) and individual claims-makers (the episodically injured) can reclaim their losses, remedy their pain and suffering and/or bring perpetrators to justice. Under rights-based liberal schemes, proof of victimization (and perpetration) is indispensable.

Sex work theory is unable to reconcile the contradiction of its anti-victimhood rhetoric with its heavy reliance on the law for protection of sex workers. This stems from sex work theory's uncritical and/or equivocal approach to the law. Under prohibition, the state and police are identified as the prime enemies of sex workers, more so than "clients" or pimps and traffickers, euphemistically referred to as "market facilitators" in recent research on child prostitution (Shanahan 2013). Under legalization, sex work theory imagines the law as the apparatus through which the human rights of sex workers are asserted and empowering schemes of prostitution are implemented and maintained. However, the assertion of rights under liberal law requires claims of victimization, and fitting fact patterns into "standard and coherent narrative frameworks...[that get] matched with the narrative pattern of the legal rule" (Douzinas and Gearey 2005: 68). Sex work theory adopts many legal standards and notions of individualized, pathological or aberrational injury in the prostitution context. Anything short of "sex trafficking"—prostitution achieved through force, fraud or coercion, committed by identifiable perpetrators against identifiable victims—is consensual, voluntary, agentic and a matter of personal choice.

This diminishes the structural injuries of minoritized persons that place them at greater risk for being “trafficked” or entering prostitution, which then requires any claimant to adopt the legally constructed victim narrative. The sex work framework replaces one stigma for another; it replaces the stigma of “prostitution” (that “sex work” supposedly eradicates) with the stigma of “victim,” yet would require the aggrieved to claim the legally prescribed victim narrative. It creates a contradictory and prohibitive scheme upon which legalization of sex work is founded and within which claims-makers are to operate. Moreover, it loses sight of the fact that the claims-making process and the ability to articulate one’s injuries and claims in pursuit of justice need not act as branding an identity or status upon an individual, and instead can be empowering—whether on the individual or collective level—and does not have to be at odds with survivorship. The liberal legal framework renders complicated victim narratives illegible, requiring that the landscape of harm be made to fit its prescriptive map. The resistance of sex work theory to the intrinsic quality of legal liberalism and its prescribed victimization narratives that construct victimhood as a status or identity is futile due to its reliance on this framework for legitimacy and enforcement.

At the same time that sex work theory corroborates with law and governments regarding victimization, it neutralizes “offenders” and renders them relatively inculpable through similar means that the law deploys. The requirement of intentional, individualized misbehavior that underwrites sex trafficking law renders anything less innocuous. For example, O’Connell-Davidson (2005) argues that not all child sex tourists are pedophilic “penis wielding colonizers”; some are merely “opportunistic” purchasers of sex who happen to do so from a minor merely due to her availability—since minors are “present in the sex trade”—not because the sex tourist purposely set out to have sex with a minor. The perspective of the adult male purchaser is privileged here. Similar to how discrimination law assesses wrongs, *de facto* child sex tourism is rendered harmless because it is the action of an

“opportunistic” john, as opposed to *de jure* child sex tourism by an intentional child abuser—even though the harm to the child is the same.

6.5 Sex work theory and non/consent

The critical legal discourse analysis of Pether (1999) is greatly concerned with issues of consent and gendered violence. Her analysis of the legal discourse of rape yielded a pattern of “normalization of what feminists would see as forced sex, a pervading assumption that women ‘consent’ to forced sex, and a criminal sanctioning of forced sex of kinds perceived as inconsistent with chaste femininity, such as that involving violence or ‘deviance’” (Pether 1999: 85). Sex work theory does little to counteract this, as it relies on the same consent/non-consent dichotomy used to differentiate “sex trafficking” from “prostitution.” Even after in-depth, critical and historical analysis of laws from a sex workers’ rights framework, the theory comes to an “impasse” on this issue, hardly distinguishable from legal discourse.

With regard to the non/consent binary, sex work theory has three problematic effects when applied to adult or child prostitution. First, it diminishes the objectification inherent in commodification by characterizing prostitution as the subject of a “service” contract. The contractual construction of prostitution in sex work theory that renders prostitution a contract for sexual “services” makes consent the most important finding for its legitimacy and enforceability. Once consent is found, it diminishes “the terrifying instability between people and things” that not only the personification of objects such as dolls entails (Bernstein 2011: 222), but also that the objectification of persons achieves, including through the sexual objectification that prostitution engenders. Moreover, although sex work theory emphasizes “service,” prostitutes sell (or “rent”) their body parts (goods) as well as sex (service), suggesting a form of chatterlization. Second, the logical conclusion of the commodification inherent in and the contractual construction of prostitution is to reinforce the “unrapeability”

of its subjects by rendering rape merely the theft of services and/or property damage. Historically, from the Antebellum period up to the criminalization of prostitution during the Progressive Era, (primarily White, adult) prostitutes used the (private) criminal justice system to sue men for assault and/or theft, claims which were based in property law that treated the body as one's private property. Sex work theory has largely taken an uncritical view of this era while focusing on the Progressive Era as repressive, and has failed to demonstrate how its proposals of legalization would differ. For example, Linehan (2014) idealizes the child prostitutes of the Gilded Age by repeatedly emphasizing their "choices" and "agency," and arguing that Progressive Era reforms destroyed these. She omits the property-based legal model of prostitution at the time and the inability of children to exercise it, while downplaying that a common defense of persons accused of prostituting children was to argue the child's knowledge, choice and free will in prostitution. Third, sex work theory diminishes sex and sexual subordination by emphasizing "pleasure" and "sexuality," which respectively privileges the viewpoint of male clients as "the demanding consumer," and makes prostitution seem an orientation rather than sexual commodification driven by socio-economic inequalities. The contractual construction of prostitution in both law and sex work theory—in which the exchange of money is proof of "consent" and mutuality—diminishes the unilateralism of the sexuality and pleasure supposedly transpiring in the transaction. It projects an illusion of more or less even power dynamics between individually-bargaining, economically rational parties.

The legal-discursive opposition of "prostitution" to "sex trafficking" has its corollary in sex work theory, which views the latter with skepticism because anti-trafficking efforts are "seen to entail increasing the power of the state over the sex industry" (Doezema 2010: 26-27). Yet increasing the power of the state (and its private counterparts) is precisely what legalization and the social normalization of prostitution entails, but sex work theory

anticipates that this will lead to a less repressive form of protection for women. This is despite legalization in Nevada and other non-US jurisdictions leading to the expectation that women “work” in licensed brothels as part of workfare programs that require welfare recipients to transition to “work.” Legal liberalism, rights and neoliberal law-and-economics are unable to dispel this sort of coercion—the raced, classed, gendered and sexualized coercion endemic to characterizing prostitution as consensual work based on a contract for sexual services. Contracts require enforcement, and enforcement involves the state and private power structures.

6.6 The Importance and Significance of Childhood

The child and childhood challenge us to rethink the sociology of sex work, to take a multidimensional approach to the focus on gender by integrating race, class and age, and to understand how the issue of child prostitution has reflected as well as shaped the construction or erosion of modern American childhood. The focus on genealogical legal construction of the child and the social process of infantilization expose parallels in the treatment of children and enslaved or quasi-enslaved persons. Elements of their treatment as chattel/property and as socially excluded non-citizens survive in the contemporary construction of childhood. Child status and infantilization are intimately connected with disciplinarian modes of governance. Legal responses to child prostitution that seemingly manage the harms of social inequality and the confluence of contributing factors to CSEC employ essentialist understandings of childhood. They do not recognize the socio-legally constructed nature of childhood vulnerability, and therefore cannot recognize the role of law in reproducing those very inequalities.

The legal-discursive construction of child prostitution points to the social, cultural and political significance of childhood as shaped by and shaping race, class and gender. The binaries of adult/child, victim/offender and consent/non-consent are the emergent themes of

legal discourse regarding child prostitution. However, the multiplicities of race, class, gender and childhood construct and blur the boundaries between each side of the binary in ways that overburden children with the contributing factors of child prostitution and over-determine the quasi/criminalization of children for prostitution.

Although there is clearly much to be said on this issue, I conclude with a few select recommendations that stand out at this juncture in the research. The US should ratify the UN Convention on the Rights of the Child. It is in line with “American values,” it is post-colonial and can be considered “neutral” law for its unique balance of social, economic, civil and political rights, and considers children to be “full humans” and rights-bearing subjects (Grahn-Farley 2013, 2008, 2011). However, I urge a critical approach to child rights that recognizes the multidimensionality of identities constructed through legal and social processes, and the ways in which these are structured by White, adult-centric masculine norms best addressed through equitable distributive justice of human, organizational and material resources away from national and global elites and toward those who have less (Grahn-Farley 2003).

With specific reference to the issue of child sex trafficking we must recognize the commercial-sexual exploitation of slavery and work to dismantle the processes of institutionalized racism, sexism, classism and childism identified in this research. Adopting a framework of multiplicity whose objective is the methodical examination of salient dimensions of the issue helps to see these processes at work and to identify their roots. We cannot assume that the language of victimization (or survivorship), diversion or welfare are sufficient, or to presume that the “special” status of children in society signifies chivalry and adequate protection. Systems built on notions of child protection, rights, empowerment or equity can only be as successful as the human, organizational and economic resources allocated them. Extricating the notion of freedom from “contract,” dispensing with legal

liberalism (and conservatism), disentangling “trafficking” from its association with cross-border movement, to focus on exploitation and developing an effective language with which to convey these issues should be seen as parts of the bigger social project for equity in which legislation and rights are not the aims but the tools.

REFERENCES

- (1859). *State v. Ruhl*. WestLaw. **8**.
- (1896). *Plessy v. Ferguson*. 163 U.S. 537, 552, 16 S.Ct. 1138, 1144, 41 L.Ed. 256.
- (1989). United Nations Convention on the Rights of the Child. United Nations Treaty Series. 1577 UNTS 3.
- (2006). *United States of America v. Arash Alexander Zarif*. Federal Appendix, United States Court of Appeals, Tenth Circuit. **192 Federal Appendix 784**.
- (2015). *Datquinn Sawyer v. United States of America*. 2015 WL 2147969, United States District Court, ND Illinois Eastern Division.
- Adelson, W. J. (2008). "Child Prostitute or Victim of Trafficking?" St. Thomas Law Journal **6**: 96-128.
- Agustin, L. (2007). Sex at the Margins: Migration, Labour Markets and the Rescue Industry. London, Zed Books.
- Alexander, J. M. and C. T. Mohanty (1997). Introduction: Genealogies, Legacies, Movements. Feminist Genealogies, Colonial Legacies, Democratic Futures (Thinking Gender) J. M. Alexander and C. T. Mohanty. New York, Routledge.
- Alexander, M. (2012). The New Jim Crow: Mass Incarceration in the Age of Colorblindness. New York, The New Press.
- Alexander-Floyd, N. G. (2012). "Disappearing Acts: Reclaiming Intersectionality in the Social Sciences in a Post-Black Feminist Era." Feminist Formations **24**(1): 1-21.
- Ali, S. (2003). Mixed-Race, Post-Race: Gender, New Ethnicities and Cultural Practices. Oxford and New York, Berg.
- Ali, S. (2003). "To Be a Girl: Culture and Class in Schools." Gender and Education **15**(3): 269-283.
- Ali, S. (2006). "Racializing Research: Managing Power and Politics?" Ethnic and Racial Studies **29**(3): 471-486.
- Allsopp, M. (2009). Invisible Wounds: A Genealogy of Emotional Abuse and Other Psychic Harms. PhD, London School of Economics.
- American Bar Association (ABA). (2012). "The History of Juvenile Justice: Part 1." Retrieved 9 May 2015, from <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>.
- Annitto, M. (2011). "Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors." Yale Law and Policy Review **30**: 1-70.

Aoki, K. (2003). "Does Nothing Ever Change; Is Everything New?: Comments on the "To Do Feminist Legal Theory" Symposium." Cardozo Women's Law Journal

9(2): 415-422.

Babb, L. C. (2012). "Utah's Misguided Approach to the Problem of Sex Trafficking: A Call for Reform." Journal of Law and Family Studies 14: 277-298.

Bakhtin, M. (1981). The Dialogic Imagination: Four Essays by MM Bakhtin. Austin, Texas, University of Texas Press.

Bales, K. (2004). Disposable People: New Slavery in the Global Economy. Berkeley, University of California Press.

Bales, K. (2009). The Slave Next Door: Human Trafficking and Slavery in American Today. Berkeley, California, University of California Press.

Balos, B. (2004). "The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation." Harvard Women's Law Journal 27(1): 137-175.

Banakar, R. and M. Travers (2005). Theory and Method in Sociolegal Research. Oxford, Oxford: Hart Publishing.

Barker, D. C. and J. D. Tinnick (2006). "Competing Visions of Parental Roles and Ideological Constraint." American Political Science Review 100(2): 249-263.

Bauer, M. and B. Aarts (2000). Corpus construction: a principle for qualitative data collection. Qualitative researching with text, image and sound: a practical handbook. M. Bauer and G. Gaskell: 19-37.

Bay-Cheng, L. Y. (2015). "The Agency Line: A Neoliberal Metric for Appraising Young Women's Sexuality." Sex Roles 73: 279-291.

Beal, F. M. (1970). Double Jeopardy: To Be Black and Female. The Black woman: An anthology. T. Cade. New York, Signet: 90-100.

Beal, F. M. (2008). "Double Jeopardy: To Be Black and Female." Meridians 8(2): 166-176.

Beckett, K. (1996). "Culture and the politics of signification: The case of child sexual abuse." Social Problems 43(1): 57.

Berman, J. (2006). "The Left, The Right, and The Prostitute: The Making of US Antitrafficking in Persons Policy." Tulane Journal of International and Comparative Law 14: 269-293.

Bernstein, E. (2012). "Carceral Politics as Gender Justice? The "Traffic in Women" and Neoliberal Circuits of Crime, Sex, and Rights." Theoretical Sociology 41: 233-259.

Bernstein, R. (2011). Racial Innocence: Performing American Childhood from Slavery to Civil Rights. New York, New York University Press.

- Best, J. (2002). "Constructing the sociology of social problems: Spector and Kitsuse twenty-five years later." Sociological Forum **17**(4): 699-706.
- Bianchi, S. M. (1999). FEMINIZATION AND JUVENILIZATION OF POVERTY: Trends, Relative Risks, Causes, and Consequences. Annu. Rev. Sociol. **25**: 307-333.
- Birkhead, T. L. (2012). "Delinquent by Reason of Poverty." Washington University Journal of Law & Policy **38**: 53-107.
- Birkhead, T. R. (2011). "The "Youngest Profession": Consent, Autonomy, and Prostituted Children." Washington University Law Review **88**(5): 1055-1115.
- Bittle, S. (2002). "When protection is punishment: Neo-liberalism and secure care approaches to youth prostitution." Canadian Journal of Criminology **44**(3): 317-350.
- Blair, C. M. (2010). I've Got to Make My Livin': Black Women's Sex Work in Turn-of-the-Century Chicago. Chicago, University of Chicago Press.
- Blommaert, J. (2005). Discourse: A Critical Introduction. Cambridge, Cambridge University Press.
- Blumenthal, M. (2009). Republican Gomorrah: Inside the Movement that Shattered the Party. New York: Nation Books.
- Boris, E., S. Gilmore and R. Parreñas (2010). "Sexual Labors: Interdisciplinary Perspectives Toward Sex as Work." Sexualities **13**(2): 131-137.
- Bourdeau, J. (2010). "Prostitution, In General." American Jurisprudence **2**(63C): 1-3.
- Bousfield, K. and A. T. Ragusa (2014). "A sociological analysis of Australia's NAPLAN and My School Senate Inquiry submissions: the adultification of childhood?" Critical Studies in Education: 1-16.
- Bradley, L. and L. Moschella (1998). Programs that Work: Working with Prostitutes. Female Offenders: Critical Perspectives and Effective Interventions. R. T. Zaplin. Gaithersburg, Maryland, Aspen Publishers.
- Brannigan, A. and E. G. Van Brunschot (1997). "Youthful Prostitution and Child Sexual Trauma." International Journal of Law and Psychiatry **20**(3): 337-354.
- Brayley, H. and E. Cockbain (2014). "British Children Can Be Trafficked Too: Towards an Inclusive Definition of Internal Child Sex Trafficking." Child Abuse Review **23**(3): 171-184.
- Brockman, J. and D. E. Chunn (1993). Gender Bias in Law and the Social Sciences. Investigating Gender Bias: Law, Courts, and the Legal Profession. J. Brockman and D. E. Chunn. Toronto, Ontario, Thompson Educational Publishing, Inc.
- Brown, G. (2007). "Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds Against Teenaged Prostitutes." Catholic University Law Review **57**: 471-506.

Brown, G. (2008). "White Man's Justice, Black Man's Grief: Voting Disenfranchisement and the Failure of the Social Contract." Berkeley Journal of African-American Law & Policy **10**(2): 287-312.

Brown, W. (2015). Undoing the Demos: Neoliberalism's Stealth Revolution. Cambridge, Massachusetts, MIT Press.

Buckley, C. (2016). "Forced Labor in the United States: A Contemporary Problem in Need of a Contemporary Solution." Human Rights & Welfare, from <http://www.du.edu/korbel/hrhw/researchdigest/slavery/us.pdf>.

Bühler-Niederberger, D. (2010). "Childhood Sociology in Ten Countries: Current Outcomes and Future Directions." Current Sociology **58**(2): 369-384.

Bumiller, K. (1988). The Civil Rights Society: The Social Construction of Victims. Baltimore and London, The Johns Hopkins University Press.

Burawoy, M. (1979). Manufacturing Consent: Changes in the Labor Process Under Monopoly Capitalism. Chicago, University of Chicago Press.

Bureau of Justice Statistics (2011). Most Suspected Incidents of Human Trafficking Involved Allegations of Prostitution of an Adult or Child, US Department of Justice,.

Burman, E. and J. Stacey (2010). "The Child and Childhood in Feminist Theory." Feminist Theory **11**(3): 227–240.

Bush, W. S. (2010). Who Gets a Childhood? Race and Juvenile Justice in Twentieth Century Texas. Athens, Georgia, USA, University of Georgia Press.

Buss, D. and D. Herman (2003). Globalizing Family Values: The Christian Right in International Politics. Minneapolis, Minneapolis: University of Minnesota Press.

Butler, C. (2015). "The Racial Roots of Human Trafficking." UCLA Law Review **62**: 1464-1514.

Butler, J. (1990). Gender Trouble. London, Routledge.

Calavita, K. (2010). Invitation to Law & Society: An Introduction to the Study of Real Law. Chicago, University of Chicago Press.

Canham, M. (2012, 14 December 2016). "Census: Share of Utah's Mormon residents holds steady." Salt Lake Tribune, from <http://www.sltrib.com/sltrib/jazz/53909710-200/population-lds-county-utah>.

Carbin, M. and S. Edenheim (2013). "The intersectional turn in feminist theory: A dream of a common language?" European Journal of Women's Studies **0**(0): 1-16.

Carrabine, E., P. Cox, M. Lee, K. Plummer and N. South (2009). Criminology: A Sociological Introduction. London, Routledge.

Carson, C. E. (2013). "Among the new words." American Speech: A Quarterly of Linguistic Usage **88**(2): 196-214.

- Carter, V. and E. Giobbe (1999). "Duet: Prostitution, Racism and Feminist Discourse." Hastings Women's Law Journal **10**: 37-56.
- Carter, V. and E. Giobbe (2006). Duet: Prostitution, Racism and Feminist Discourse. Prostitution and Pornography: Philosophical Debate About the Sex Industry. J. Spector. Stanford, Stanford University Press.
- Casas-Cortés, M. (2015). "A Genealogy of Precarity: A Toolbox for Rearticulating Fragmented Social Realities in and out of the Workplace." Rethinking Marxism: A Journal of Economics, Culture & Society **26**(2): 206-226.
- Chacon, J. (2006). "Misery and myopia: understanding the failures of U. S. efforts to stop human trafficking." Fordham Law Review **74**(6): 2977-3040.
- Chapkis, W. (2003). "Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants." Gender and Society **17**(6): 923-937.
- Children's Aid Society. (2016). "The Orphan Trains." Retrieved 13 December 2016, from <http://www.childrensaidsociety.org/about/history/orphan-trains>.
- Cho, S. (2009). "Post-racialism." Iowa Law Review **94**(5): 1589-1649.
- Chunn, D. E. (2003). "Book Review: Privatization, Law and the Challenge to Feminism." Osgoode Hall Law Journal **41**: 711-718.
- Cicchino, P. M. (1996). "The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States." Journal of Law and Policy **5**(5): 5-105.
- Clawson, H. J., N. Dutch, A. Solomon and L. G. Grace (2009). Human Trafficking Into and Within the United States: A Review of the Literature. Office of the Assistance Secretary for Planning and Evaluation.
- Closen, M. L., M. A. Bobinski, D. Hermann, J. F. Hernandez, G. P. Schultz and J. K. Strader (1994). "Criminalization of an Epidemic: HIV-AIDS and Criminal Exposure Laws." Arkansas Law Review **46**: 921-983.
- Cohen, M. L. (1989). How to find the law. St. Paul, Minnesota, St. Paul, Minnesota : West.
- Cohen, M. L. and K. C. Olson (2013). Legal Research in a Nutshell. St. Paul, Minnesota West Academic Publishing.
- Cooper, F. R. (2011). "Hyper-incarceration As a Multidimensional Attack: Replying to Angela Harris Through *The Wire*." Washington University Journal of Law and Policy **37**.
- Correa, J. G. (2011). "The targeting of the east los angeles brown berets by a racial patriarchal capitalist state: Merging intersectionality and social movement research." Critical Sociology **37**(1): 83-101.
- Corsaro, W. A. (1997). The Sociology of Childhood. Thousand Oaks, California, Pine Forge Press.
- Corsaro, W. A. (2015). The Sociology of Childhood. Los Angeles, SAGE Publications.

- Covey, R. and C. Myers Morrison (2011). Criminal Justice Responses to the Economic Crisis. Globalization of Crime: Criminal Justice Responses. Ottawa, Canada, The International Centre for Criminal Law Reform & Criminal Justice Policy, and International Society for the Reform of Criminal Law.
- Crenshaw, K. (1989). "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." University of Chicago Legal Forum **140**: 139-167.
- Crenshaw, K., P. A. Ocen and J. Nanda (2015). Black Girls Matter: Pushed Out, Overpoliced and Underprotected. New York, Center for Intersectionality and Social Policy Studies.
- Cuff, E. C. (1998). Perspectives in Sociology: Classical and Contemporary. London, London Routledge.
- Curtis, R., K. Terry, M. Dank, K. Dombrowski, B. Khan, A. Muslim, M. Labriola and M. Rempel (2008). The Commercial Sexual Exploitation of Children in New York City. New York, John Jay College of Criminal Justice.
- Dalrymple-Blackburn, D. (1995). "AIDS, Prisoners, and the Americans with Disabilities Act." Utah Law Review **839**: 839-884.
- Dank, M. (2009). The Lost Children of New York City: Population estimate, network attributes and the role of social capital in the commercial sexual exploitation of children in New York City. Doctor of Philosophy, The City University of New York (CUNY).
- Davies, J. M. (2015). "The Criminalization of Sexual Commerce in Canada: Context and Concepts for Critical Analysis." Canadian Journal of Human Sexuality **24**(2): 78-92.
- Davis, A. and G. Dent (2001). "Conversations: Prison as Border: A Conversation of Gender, Globalization and Punishment " Signs **26**(4): 1235-1241.
- Deflem, M. (2008). Sociology of Law: Visions of a Scholarly Tradition. Cambridge New York, Cambridge University Press.
- Demasters, T. (2013). "17-year-old girl among those arrested in St. George prostitution sting." Retrieved 7 January 2017, from <http://fox13now.com/2013/08/25/17-year-old-girl-among-those-arrested-in-st-george-prostitution-sting/>.
- Devens, C. (1992). "'If We Get the Girls, We Get the Race': Missionary Education of Native American Girls." Journal of World History **3**(2): 219-237.
- Dijkstra, B. (1996). Evil Sisters: The Threat of Female Sexuality in Twentieth Century Culture. New York, Holt and Company, Inc.
- Ditmore, M. H. (2011). Prostitution and Sex Work. Santa Barbara, California, Greenwood.
- Doezema, J. (2010). Sex Slaves and Discourse Masters: The Construction of Trafficking. London and New York, Zed Books.

- Dorling, D., D. Gordon, P. Hillyard, C. Pantazis, S. Pemberton and S. Tombs. (2008). "Criminal Obsessions: Why Harm Matters More Than Crime." Retrieved 13 December 2016, from https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Criminal_obsessions.pdf.
- Douzinas, C. and A. Gearey (2005). Critical Jurisprudence: The Political Philosophy of Justice. Oxford, Hart Publishing.
- Dreyfus, H. L. and P. Rabinow (1983). Michel Foucault: Beyond Structuralism and Hermeneutics Chicago, Chicago University Press.
- ECPAT USA (2013). And Boys Too: An ECPAT-USA discussion paper about the lack of recognition of the commercial sexual exploitation of boys in the United States, ECPAT-USA
- Ellis, H. (2012). "Editor's Introduction: Juvenile Delinquency, Modernity, and the State." Social Justice **38**(4): 1-10.
- Estes, R. J. (2001). The Sexual Exploitation of Children: A Working Guide to the Empirical Literature. Philadelphia, Pennsylvania, Center for Youth Policy Studies.
- Etten, T. J. and R. F. Petrone (1994). "Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations." Juvenile and Family Court Journal **45**(3): 65-90.
- Fahy, S. (2016). "Juvenile prostitution and safe harbor laws." Understanding juvenile justice and delinquency.: 44-62.
- Fairclough, I. (2011). "Practical reasoning in political discourse: The UK government's response to the economic crisis in the 2008 Pre-Budget Report." Discourse & Society **22**(3): 243-269.
- Fairclough, N. (1992). Discourse and Social Change. Oxford, Polity Press.
- Fairclough, N. (2010). Critical Discourse Analysis: The Critical Study of Language. Harlow: Pearson Education Limited.
- Farley, A. (1997). "The Black Body as Fetish Object." Oregon Law Review **76**: 457-535.
- Fernandez, K. M. (2013). "Victims or Criminals? The Intricacies of Dealing with Juvenile Victims of Sex Trafficking and Why the Distinction Matters." Arizona State Law Journal **45**: 859-890.
- Figueiredo, D. d. C. (1998). "An Analysis of Transitivity Choices in Five Appellate Decisions in Rape Cases." Fragmentos **8**(1): 97-113.
- Filindra, A. (2014). "The Emergence of the "Temporary Mexican"." Latin American Research Review **49**(3): 85-103.
- Flasher, J. (1978). "Adultism." Adolescence **13**(51): 517-523.

- Fleaharty, K. (2014). "Targeting the "Tricks" of the Trade: A Comparative Analysis of Prostitution Laws in Sweden and the United States." Oregon Review of International Law **15**: 443-466.
- Flower, B. (1895). Age of Consent. The Arena. Boston, The Arena Publishing Company. **14**: 21.
- Flower, B. (1895). Legislators on the Age of Consent. The Arena. Boston, The Arena Publishing Company. **13**: 223.
- Flowers, R. B. (1998). The Prostitution of Women and Girls. North Carolina, USA, McFarland and Company.
- Flowers, R. B. (2011). Prostitution in the Digital Age: Selling Sex from the Suite to the Street. Santa Barbara, California, Praeger Publishers.
- Flynn, M. (2013). "Prostitution sting: four adults, one juvenile arrested." Retrieved 7 January 2017, from <http://www.stgeorgeutah.com/news/archive/2013/08/24/prostitution-sting-four-adults-one-juvenile-arrested/- .WHEsC7GZOvM>.
- Foucault, M. (1978). The Will to Knowledge: The History of Sexuality 1. London, Penguin Books.
- Franklin, K. (2014). "Gender Labor, Assimilationism, and Transformative Practices: The Relational Negotiations of Cisgender Women and their Transgender Men Partners." Sociology Compass **8**(6): 648-659.
- Fraser, N. and L. Gordon (1994). "A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State." Signs: Journal of Women in Culture and Society **19**(2): 309.
- Frug, M. J. (1992). "A Postmodern Feminist Legal Manifesto." Harvard Law Review **105**: 1045-1075.
- Fudge, J. and B. Cossman (2002). Introduction: Privatization, Law, and the Challenge to Feminism. Privatization, Law, and the Challenge to Feminism. B. Cossman and J. Fudge. Toronto, University of Toronto Press.
- Fudge, J. and B. Cossman (2002). Privatization, Polarization, and Policy: Feminism and the Future. Privatization, Law, and the Challenge to Feminism. B. Cossman and J. Fudge: 403-420.
- Fulton, B. (2012). "The steadfast Scrooge: BYU law professor Richard Wilkins dies." Retrieved 7 January 2017, from <http://archive.sltrib.com/story.php?ref=/sltrib/entertainment2/55356433-223/wilkins-family-law-legal.html.csp>.
- Galletly, C. L. and S. D. Pinkerton (2004). "Toward Rational Criminal HIV Exposure Laws." Journal of Law, Medicine and Ethics **32**(2): 327-337.
- Gardner, M. R. (1987). "Punitive juvenile justice: Some observations on a recent trend." International Journal of Law and Psychiatry **10**(2): 129-151.

Garner, B. A. (2006). Black's Law Dictionary. St. Paul, Minnesota, West Publishing Company.

Geldens, P., S. Lincoln, P. Hodkinson, E. Renold and J. Ringrose (2011). "Schizoid subjectivities?" Journal of Sociology **47**(4): 389-409.

Gill, J. T. E. (1996). Discourse Analysis: Practical Implementation. Handbook of Qualitative Research Methods for Psychology and the Social Sciences. J. Richardson. Leicester, BPS Books.

Giobbe, E. (1993). "An Analysis of Individual, Institutional, and Cultural Pimping." Michigan Journal of Gender & Law **1**: 1-57.

Giroux, H. A. (2003). The Abandoned Generation: Democracy Beyond the Culture of Fear. New York, Palgrave.

Glanton, D. (2012, 23 October 2012). "In a blue state, voters taken for granted in presidential race." Chicago Tribune, from http://articles.chicagotribune.com/2012-10-23/news/ct-talk-glanton-ignored-illinois-voters-20121023_1_romney-campaign-mitt-romney-illinois-voters.

Glenn, E. N. (2002). Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor. Cambridge, Massachusetts, Harvard University Press.

Goddard, C., L. De Bortoli, B. J. Saunders and J. Tucci (2005). "The Rapist's Camouflage: "Child Prostitution"." Child Abuse Review **14**(4): 275-291.

Goff, P. A., M. C. Jackson, B. A. L. Di Leone, C. M. Culotta and N. A. Ditomasso (2014). "The Essence of Innocence: Consequences of Dehumanizing Black Children." Journal of Personality and Social Psychology **106**(4): 526.

Goldberg, D. T. and J. Solomos (2002). A Companion to Racial and Ethnic Studies. Malden, Mass., Malden, Massachusetts: Blackwell.

González, M.-T. (2015). "Hunger, Poverty, and the Criminalization of Food Sharing in the New Gilded Age." Journal of Gender, Social Policy & the Law **23**(2): 231-282.

Gozdziak, E. M. (2008). "Challenges, Dilemmas, and Opportunities in Studying Trafficked Children." The Anthropology Quarterly **81**(4): 903-924.

Gozdziak, E. M. (2016). Trafficked Children and Youth in the United States: Reimagining Survivors. New Brunswick, New Jersey, Rutgers University Press.

Gozdziak, E. M. and E. A. Collett (2005). "Research on Human Trafficking in North America: A Review of Literature." International Migration **43**(1/2): 99-128.

Grace, L., M. Starck, J. Potenza, P. A. Kenney and A. H. Sheetz (2012). "Commercial Sexual Exploitation of Children and the School Nurse." The Journal of School Nursing **28**(6): 410-417.

Grahn-Farley, M. (2000). "Not for Sale! Race & Gender Identity in Post-colonial Europe." New York Law School Journal of Human Rights **17**: 271-297.

- Grahn-Farley, M. (2002). "A Child Perspective on the Juvenile Justice System." Journal of Gender, Race & Justice **6**: 297-335.
- Grahn-Farley, M. (2003). "A Theory of Child Rights." University of Miami Law Review **57**.
- Grahn-Farley, M. (2008). "Neutral Law and Eurocentric Lawmaking: A Postcolonial Analysis of the UN Convention on the Rights of the Child." 34 Brooklyn Journal of International Law **34**: 1-32.
- Grahn-Farley, M. (2011). "The UN Convention on the Rights of the Child and the Forgotten History of the White House Children's Conferences, 1909-1971." Transnational Law and Contemporary Problems **20**: 307-376.
- Grahn-Farley, M. (2013). The Shared History of the UN Convention on the Rights of the Child and the White House Children's Conferences: 5.
- Greene, J., S. Ennett and C. Ringwalt (1999). "Prevalence and correlates of survival sex among runaway and homeless youth." American Journal of Public Health **89**(9): 1406-1409.
- Guevara, L., D. Herz and C. Spohn (2006). "Gender and Juvenile Justice Decision Making: What Role Does Race Play?" Feminist Criminology **1**(4): 258-282.
- Hacking, I. (1999). The Social Construction of What?. Cambridge, Massachusetts, Harvard University Press.
- Haight, W. (2002). African-American Children in Church: A Sociocultural Perspective. Cambridge, Cambridge University Press.
- Hall, A. and J. Midgley (2004). Social Policy for Development. London, SAGE Publications.
- Hall, S. (1997). Representation: Cultural Representations and Signifying Practices. London, SAGE Publications.
- Halliday, M. A. K. (1973). Explorations in the Functions of Language. London, Edward Arnold.
- Halliday, M. A. K. (1985). An Introduction to Functional Grammar. London, Arnold.
- Halter, S. (2008). Law Enforcement's Reconceptualization of Juvenile Prostitutes from Delinquency Offenders Masters of Arts, University of New Hampshire.
- Halter, S. (2010). "Factors That Influence Police Conceptualizations of Girls Involved in Prostitution in Six U.S. Cities: Child Sexual Exploitation Victims or Delinquents?" Child Maltreatment **15**(2): 152-160.
- Handel, G., S. E. Cahill and F. Elkin (2007). Children and Society: The Sociology of Children and Childhood Socialization. New York, Oxford University Press.
- Haney-Lopez, I. (2010). "Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama." California Law Review **98**(3): 1023-1074.

Haney-Lopez, I. (2014). Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class. Oxford, Oxford University Press.

Harman, C. (2008). A People's History of the World. London, Verso.

Harper, E. (2013). School-based Prevention of Commercial Sexual Exploitation: A Special Focus on the Needs of and Effective Services for At-Risk Urban African American Girls. PhD Dissertation, Georgia State University.

Harris, A. P. (1990). "Race and Essentialism in Feminist Legal Theory." Stanford Law Review **42**: 581-616.

Harris, A. P. (2003). "Bad Subjects: The Practice of Theory and the Constitution of Identity in Legal Culture." Cardozo Women's Law Journal **9**(515-525).

Harvey, D. (2005). A Brief History of Neoliberalism. Oxford, Oxford University Press.

Haslanger, S. A. (2013). Resisting reality social construction and social critique. Oxford, Oxford University Press.

Herbst, J. H., E. D. Jacobs, T. J. Finlayson, V. S. McKleroy, M. S. Neumann and N. Crepaz (2008). "Estimating HIV prevalence and risk behaviors of transgender persons in the United States: A systematic review." AIDS and Behavior **12**(1): 1-17.

Hill-Collins, P. (2000). Black Feminist Thought : Knowledge, Consciousness, and the Politics of Empowerment. New York, Routledge.

Hillyard, P. and S. Tombs (2004). Beyond Criminology? Beyond Criminology: Taking Harm Seriously. P. Hillyard, C. Pantazis, S. Tombs and D. Gordon. London and Ann Arbor, Pluto Press.

hooks, b. (2000). Feminist theory : from margin to center. Cambridge, Mass., Cambridge, Mass. : South End Press.

Howlett, J. (1997). "Women and HIV: The Barriers to Protection." Circles: Buffalo Women's Journal of Law and Social Policy **5**(20): 1-23.

Huckin, T., J. Andrus and J. Clary-Lemon (2012). "Critical Discourse Analysis and Rhetoric and Composition." College Composition and Communication **64**(1): 107-129.

Hudson, A. (2015). How Punitive and Racist Policing Enforces Gentrification in San Francisco. TruthOut. Sacramento, California.

Hughes, D. M. (2005). "Race and Prostitution in the United States." Retrieved 22 May 2014, from <http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm>.

Hutchby, I. and J. Moran-Ellis (1998). Children and Social Competence. London, Falmer.

Hutchinson, D. L. (2001). "Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination." Michigan Journal of Race and Law **6**: 285-317.

International Labour Organization (2012). ILO Global Estimate of Forced Labour: Results and Methodology. Geneva, Switzerland, International Labour Office (ILO) Special Action Programme to Combat Forced Labour (SAP-FL).

Jabour, A. (2013). "Prostitution Politics and Feminist Activism in Modern America: Sophonisba Breckenridge and the Morals Court in Prohibition-Era Chicago." Journal of Women's History **25**(3): 141-164.

Jacobstein, J. M. (1990). Fundamentals of legal research. Westbury, N.Y, Westbury, N.Y : Foundation Press.

James, A. and A. Prout (1997). Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood, Second Edition. London, Falmer Press.

Javidan, P. (2003). "Invisible Targets: Juvenile Prostitution, Crackdown Legislation and the Example of California." Cardozo Women's Law Journal **9**(2): 237-254.

Javidan, P. (2012). "Global Class and the Commercial-Sexual Exploitation of Children: Toward a Multidimensional Understanding." Columbia Journal of Race and Law **1**(3): 365-381.

Jeffreys, S. (2000). "Challenging the Child/ Adult Distinction in Theory and Practice on Prostitution." International Feminist Journal of Politics **2**(3): 359-379.

Jeffs, M. (2013). "Punishing Pimps and Johns: Sex-Trafficking and Utah's Laws." Brigham Young University Journal of Public Law **28**(1): 219-256.

Jenks, C. (1996). Childhood. London, Routledge.

Johnson, E. M. (2014). "Buyers Without Remorse: Ending the Discriminatory Enforcement of Prostitution Laws." Texas Law Review **92**: 717-748.

Kara, S. (2009). Sex Trafficking: Inside the Business of Modern Slavery. New York, Columbia University Press.

Kaufman, L. (2004). "Finding a Future for a Troubled Girl With a Past." Retrieved 7 January 2017, from http://www.nytimes.com/2004/09/15/nyregion/finding-a-future-for-a-troubled-girl-with-a-past.html?_r=0.

Kearney, M. C. (2009). "Coalescing: The Development of Girls' Studies." Feminist Formations **21**(1): 1-28.

Kehily, M. J. (2004). Understanding Childhood: An Introduction to Some Key Themes and Issues. An Introduction to Childhood Studies. M. J. Kehily. Berkshire, England, Open University Press: 1-21.

Kempadoo, K. and J. Doezema (1998). Global Sex Workers: Rights, Resistance and Redefinitions. New York, Routledge.

Kennedy, E. (2014). No Childhood Here: Why Central American Children are Fleeing their Homes, American Immigration Council.

- King, D. K. (1988). "Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology." Signs **14**(1): 42.
- Klain, E. J. (1999). Prostitution of Children and Child Sex Tourism: An Analysis of Domestic and International Responses Washington, DC, National Center for Missing and Exploited Children.
- Kozinski, A. (1998). "Should Reading Legislative History Be an Impeachable Offense? ." Suffolk University Law Review **37**: 807-823.
- Kramer, L. A. and E. C. Berg (2003). "A Survival Analysis of Timing of Entry into Prostitution: The Differential Impact of Race, Educational Level, and Childhood/Adolescent Risk Factors." Sociological Inquiry **73**(4): 511-528.
- Kristeva, J. (1986). Word, Dialogue and Novel. The Kristeva Reader. T. Moi. Oxford, Basil Blackwell: 34-61.
- Kunz, C. L., D. A. Schmedemann, A. L. Bateson, S. Deer and M. Konar-Steenberg (2012). The Process of Legal Research: Authorities and Options. New York, Aspen Publishers.
- Kwan, P. (1997). "Intersections of Race, Ethnicity, Class, Gender & Sexual Orientation: Jeffrey Dahmer and the Cosynthesis of Categories." Hastings Law Journal **48**: 1257-1292.
- Lamb, C. (2001). "The Child Witness and the Law: The United States Judicial Response to the Commercial, Sexual Exploitation of Children in Light of the UN Convention on the Rights of the Child." Oregon Review of International Law **88**: 63-86.
- Lane, E. C. (2003). "Correlates of Female Juvenile Delinquency." International Journal of Sociology and Social Policy **23**(11): 1-14.
- Law, S. (2000). "Commercial Sex: Beyond Decriminalization." Southern California Law Review **73**: 523-610.
- Lazar, M. M. (2005). Politicizing Gender in Discourse: Feminist Critical Discourse Analysis as Political Perspective and Praxis. Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse. M. M. Lazar. Hampshire, Palgrave Macmillan.
- Lazzarini, Z., S. Bray and S. Burris (2002). "Evaluating the impact of criminal laws on HIV risk behavior." Journal of Law, Medicine and Ethics **30**(2): 239-253.
- Lee, M. (2011). Trafficking and Global Crime Control. London, SAGE Publications.
- Lehti, M. and K. Aromaa (2006). "Trafficking for Sexual Exploitation." Crime and Justice **34**: 133-227.
- Lehtonen, S. (2007). Feminist critical discourse analysis and children's fantasy fiction—modelling a new approach Past, present, future – From women's studies to post-gender research. Umeå, Sweden
- Leidholdt, D. A. (2003). Prostitution and Trafficking: An Intimate Relationship. Prostitution, Trafficking and Traumatic Stress. M. Farley. New York, Routledge: 167-183.

- Leonard, G. (2003). "Towards a Legal History of American Criminal Theory: Culture and Doctrine from Blackstone to the Model Penal Code." Buffalo Criminal Law Review 6: 691-705.
- Lerum, K. and B. Brents (2016). "Sociological Perspectives on Sex Work and Human Trafficking." Sociological Perspectives 59(1): 17.
- Lillywhite, R. and P. Skidmore (2006). "Boys are not sexually exploited? A challenge to practitioners." Child Abuse Review 15(5): 351-361.
- Lindsey, L. L. (2010). The Sociology of Gender: Theoretical Perspectives and Feminist Frameworks. Gender Roles: A Sociological Perspective. L. L. Lindsey. New York, Pearson: 1-21.
- Linehan, M. (2014). Sex, Abortion, and Prostitution in the Lives of Gilded Age Chicago Girls. Children and Youth during the Gilded Age and Progressive Era. J. Marten. New York, New York University Press.
- Lipman, P. and N. Haines (2007). "From Accountability to Privatization and African American Exclusion: Chicago's "Renaissance 2010"." Educational Policy 21(3): 471-502.
- Lolai, D. (2015). ""You're Going To Be Straight or You're Not Going To Live Here": Child Support for LGBT Homeless Youth." Law & Sexuality: A Review of Lesbian, Gay, Bisexual & Transgender Legal Issues 24: 35-99.
- Lorde, A. (1983). The Master's Tools Will Never Dismantle the Master's House: Writings of Radical Women of Color. This Bridge Called My Back. C. a. G. A. Moraga. New York, Kitchen Table: Women of Color Press: 98-101.
- Lucas, A. M. (1995). "Race, Class, Gender and Deviancy: The Criminalization of Prostitution." Berkeley Journal of Gender, Law and Justice 10(1): 47-60.
- Lutnick, A. (2016). Domestic Minor Sex Trafficking: Beyond Victims and Villains. New York, Columbia University Press.
- MacKinnon, C. (2011). "Trafficking, Prostitution, and Inequality." Harvard Civil Rights-Civil Liberties Law Review 46: 271-309.
- Maher, L. and R. Curtis (1998). Women on the Edge of Crime: Crack Cocaine and the Changing Contexts of Street-Level Sex Work in New York City. Criminology at the Crossroads: Feminist Readings in Crime and Justice. K. a. L. M. Daly. Oxford, Oxford University Press.
- Marson, S. M. and R. M. Powell (2014). "Goffman and the Infantilization of Elderly Persons: A Theory in Development." Journal of Sociology and Social Welfare 41(4): 143-158.
- Marten, J. (2014). Children and Youth During the Gilded Age and Progressive Era. New York City: New York, New York University Press.
- Martin, D. L. (2002). Both Pitied and Scorned: Child Prostitution in an Era of Privatization. Privatization, Law and the Challenge to Feminism. B. a. J. F. Cossman. Toronto, University of Toronto Press: 355-402.

- Mayall, B. (2013). A History of the Sociology of Childhood. London, Institute of Education Press.
- McCluskey, M. (2008). "Constitutionalizing Class Inequality: Due Process in State Farm." Buffalo Law Review **56**: 1035-1057.
- McRobbie, A. (2011). "Beyond post-feminism." Public Policy Research **18**(3): 179-184.
- Meshkovska, B., M. Siegel, S. E. Stutterheim and A. E. R. Bos (2015). "Female Sex Trafficking: Conceptual Issues, Current Debates, and Future Directions." Journal of Sex Research **52**(4): 380-395.
- Mies, M. (1998). Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour. London, Zed Books.
- Miller, C. R. and N. Haltiwanger (2004). "Prostitution and the Legalization/Criminalization Debate." Georgetown Journal of Gender and the Law **5**: 207-241.
- Mills, C. (1997). The Racial Contract. Ithaca, New York, Cornell University Press.
- Mills, C. (1997). The Racial Contract. Ithaca, New York.
- Minda, G. (1995). Postmodern Legal Movements: Law and Jurisprudence at Century's End. New York and London, New York University Press.
- Minow, M. (1987). "Foreword: Justice Engendered." Harvard Law Review **101**(1): 10-10.
- Mir, T. (2013). "Trick or Treat: Why Minors Engaged in Prostitution Should be Treated as Victims, Not Criminals." Family Court Review **51**: 163-170.
- Miriam, K. (2005). "Stopping the Traffic in Women: Power, Agency and Abolition in Feminist Debates over Sex-Trafficking." Journal of Social Philosophy **36**(1): 1-17.
- Moallem, M. (2005). Between Warrior Brother and Veiled Sister: Islamic Fundamentalism and the Politics of Patriarchy in Iran. Berkeley, University of California Press.
- Moallem, M. (2006). "Feminist Scholarship and the Internationalization of Women's Studies." Feminist Studies **32**(2): 332-351.
- Monasky, H. (2011). "On the Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, But Not the Victim--Sweden's Sexköpslagen in America." William Mitchell Law Review **37**(4): 1989-2011.
- Moore, M. (2006). "Should young people involved in the sex industry be seen as victims?" The Police Journal **79** (1).
- Moraga, C. and G. Anzaldúa (1983). This Bridge Called My Back: Writings by Radical Women of Color. New York, Kitchen Table: Women of Color Press.
- Morris, M. W. (2016). Pushout: The Criminalization of Black Girls in Schools. New York, The New Press.

- Munro, E. (2008). Effective Child Protection. London, SAGE Publications.
- Munro, V. E. (2008). "Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking." Journal of Law and Society **35**(2): 240-264.
- Murrin, J. M., P. E. Johnson, J. M. McPherson, A. Fahs, G. Gerstle, E. S. Rosenberg and N. L. Rosenberg (2008). Liberty, Equality, Power: A History of the American People. Belmont, California, Thompson Wadsworth.
- Muslim, A., M. Labriola and M. Rempel (2009). The Commercial Sexual Exploitation of Children in New York City, Volume Two: Formative Evaluation: The New York City Demonstration. New York City, Center for Court Innovation, John Jay College of Criminal Justice.
- Musto, J., C. A. Jackson and E. Shih (2015). Prostitution and Sex Work. International Encyclopedia of the Social & Behavioral Sciences, Elsevier Ltd.: 279-285.
- National Center for Children in Poverty. (2016). "Child Poverty." Retrieved 30 December 2016, from <http://www.nccp.org/topics/childpoverty.html>.
- National Center for Youth Law. (2012). "Stopping Victimization of Vulnerable Children in California." from http://www.youthlaw.org/publications/yln/2012/jan_mar_2012/stopping_victimization_of_vulnerable_children_in_california/.
- Naveh, E. J. (1992). Crown of Thorns: Political Martyrdom in America From Abraham Lincoln to Martin Luther King, Jr. New York, New York University Press.
- Nellis, A. and B. Richardson (2010). "Getting Beyond Failure: Promising Approaches for Reducing DMC." Youth Violence and Juvenile Justice **0**(0): 1-11.
- Newman, D. M. (2012). Sociology: Exploring the Architecture of Everyday Life. Los Angeles, SAGE Publications.
- Nichols, J. (2008). Prostitution, Polygamy, and Power: Salt Lake City, 1847-1918. Champaign, Illinois, University of Illinois Press.
- Niemeier, D. P. (2001). "The Criminal Transmission of AIDS: A Critical Examination of Missouri's HIV-specific Statute." Saint Louis University Law Journal **45**: 667-708.
- Nii-Amoo Dodoo, F. (2005). "Africa in American Sociology: Invisibility, Opportunity and Obligation." Social Forces **84**(1): 593-599.
- Novkov, J. (2000). "Historicizing the Figure of the Child in Legal Discourse: The Battle over the Regulation of Child Labor." The American Journal of Legal History **44**(4): 369-404.
- O'Connell-Davidson, J. (2005). Children in the Global Sex Trade Cambridge, Polity.
- O'Connell-Davidson, J. (2006). "Will the Real Sex Slave Please Stand up?" Feminist Review(83): 4-22.

- O'Neill, M. (2001). Prostitution & Feminism: Towards a Politics of Feeling. Cambridge, Polity.
- Obasogie, O. K. (2006). "Anything but A Hypocrite: Interactional Musings on Race, Colorblindness, and the Redemption of Strom Thurmond." Yale Journal of Law and Feminism **18**: 451-495.
- Obasogie, O. K. (2014). Blinded By Sight: Seeing Race Through the Eyes of the Blind. Stanford, Stanford University Press.
- Oberman, M. (1994). "Turning Girls into Women: Re-evaluating Modern Statutory Rape Law." Journal of Criminal Law & Criminology **85**(1): 15.
- Ocen, P. A. (2015). "(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors." UCLA Law Review **62**: 1586-1640.
- Odem, M. (1995). Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States 1885-1920. Berkeley, North Carolina: USA University of North Carolina Press.
- Ollus, N. (2015). "Regulating forced labour and combating human trafficking: the relevance of historical definitions in a contemporary perspective." Crime, Law and Social Change **63**(5): 221-246.
- Omi, M. and H. Winant (1986). Racial Formation in the United States: From the 1960s to the 1980s. New York and London, Routledge & Kegan Paul.
- Omi, M. and H. Winant (2015). Racial Formation in the United States. New York, Routledge.
- Orchard, T. (2007). "Girl, Woman, Lover, Mother: Towards a new understanding of child prostitution among young Devadasis in rural Karnataka, India." Social Science & Medicine **64**(12): 2379-2390.
- Orchard, T. (2015). "Children in global sex work and trafficking discourses." Retrieved 13 December 2016, from <https://www.opendemocracy.net/beyondslavery/treena-orchard/children-in-global-sex-work-and-trafficking-discourses>.
- Organisation for Economic Co-operation and Development (2016). Child Poverty. L. a. S. A. Directorate of Employment, Social Policy Division.
- Parreñas, R., H. Cam Thai and R. Silvey (2016). "Guest Editors' Introduction Intimate Industries: Restructuring (Im)Material Labor in Asia." Positions **8**(1): 1-15.
- Pateman, C. (1988). The Sexual Contract. Stanford, California, Stanford University Press.
- Pateman, C. and C. Mills (2007). Contract & Domination Cambridge, Polity Press.
- Patton, S. (2007). That Mean Old Yesterday. New York, Washington Square Press.
- Pether, P. (1999). "Critical Discourse Analysis, Rape Law and the Jury Instruction Simplification Project." Southern Illinois University Law Journal **24**: 53-94.

Polaris Project (2010). Human Trafficking Statistics, Polaris Project Human Trafficking Resource Center.

Potter, H. (2013). "Intersectional Criminology: Interrogating Identity and Power in Criminological Research and Theory." Critical Criminology **21**(3): 305-318.

Prince, N. M. (2008). "Resilience in African American Women Formerly Involved in Street Prostitution." ABNF **19**(1): 31-36.

Qvortrup, J. (2009). Childhood as a Structural Form. The Palgrave Handbook of Childhood Studies. J. Qvortrup and W. A. Corsaro. London, Palgrave Macmillan.

Qvortrup, J., M. Bardy, G. Sgritta and H. Wintersberger (1994). Childhood Matters: Social Theory, Practice and Politics. Aldershot, Avebury.

Reagle, J. (2016). "The obligation to know: From FAQ to Feminism 101." New Media & Society **18**(5): 691-707.

Reeve, P. W. (2015). Religion of a Different Color: Race and the Mormon Struggle for Whiteness. Oxford, Oxford University Press.

Reeves, F. W. (1983). British racial discourse : a study of British political discourse about race and race-related matters. Cambridge [Cambridgeshire]

New York, Cambridge Cambridgeshire

New York : Cambridge University Press.

Ribeiro, M. O. and A. de Fátima Dias (2009). "Child-Juvenile Prostitution: A Systematic Literature Review." Revista da Escola Enfermagem da USP **43**(2): 462-468.

Roberts, D. (1997). Killing the Black Body: Race, Reproduction, and the Meaning of Liberty. New York, Vintage Books.

Rogers, P. (2015). "Officers Allege Widespread Corruption Inside Chicago Police Department." Retrieved 9 May 2015, from <http://www.nbcchicago.com/investigations/Chicago-Police-Officers-Allegations-of-Corruption-291607971.html>.

Roithmayr, D. (2003). "A Bad Subject." Cardozo Women's Law Journal **9**(2): 501-505.

Roos, P. (1997). "Occupational feminization, occupational decline? Sociology's changing sex composition." The American Sociologist **28**(1): 75-88.

Ross, E. A. (1901). "The Causes of Race Superiority." Annals of the American Academy of Political and Social Science **18**: 67-89.

Sacta, K. a. B. G. d. C. (2016). Gentrification and Hillcrest: How will our school evolve as Jamaica becomes the "New Williamsburg"? New York Daily News. New York City, New York.

- Sampson, R. J. and S. W. Raudenbush (1999). "Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods 1." American Journal of Sociology **105**(3): 603-651.
- Sanders, T., M. O'Neill and J. Pilcher (2009). The Sociology of Sex Work. Prostitution: Sex Work, Policy and Politics. London, SAGE Publications.
- Sanders, T., M. O'Neill and J. Pilcher (2013). Prostitution: Sex Work, Policy and Politics. Los Angeles, SAGE.
- Sarat, A. and J. Simon (2003). Cultural Analysis, Cultural Studies, and The Law: Moving Beyond Legal Realism. Durham, North Carolina, Duke University Press.
- Sarri, R. and Y. Hasenfeld (1976). Brought to Justice? Juveniles, the Courts and the Law. Ann Arbor, Michigan, University of Michigan Press.
- Sayer, A. (1997). "Essentialism, social constructionism, and beyond." The Sociological Review **45**(3): 453-487.
- Schepel, E. (2011). A Comparative Study of Adult Transgender and Female Prostitution. Master of Social Work, Arizona State University.
- Schwartz, S. (2008). "Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York." Columbia Journal of Gender and Law **18**(1): 235-280.
- Scott, J. and G. Marshall (2009). Oxford Dictionary of Sociology. Oxford, Oxford University Press.
- Sekaquaptewa, P., R. Bubar and J. Cook (2008). A Victim-Centered Approach to Crimes Against American Indian & Alaska Native Children: Resource Guide and Workbook for Drafting New or Amended Tribal Laws on Crimes Against Children. Hollywood, California, Tribal Law & Policy Institute: 1-213.
- Selo, E. (1976). The Cottage Dwellers: Boys and Girls in Training Schools. The Female Offender. Lexington, Massachusetts, Lexington Books.
- Sereny, G. (1985). The Invisible Children: Child Prostitution in America, West Germany and Great Britain. London, Deutsch.
- Shanahan, R. (2013). Youth Engaging in Prostitution: An Examination of Race, Gender and Their Intersections. PhD, University of Maryland.
- Shared Hope International (2012). Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation's Children. Vancouver, Washington.
- Shared Hope International. (2016). "State Report Cards: Protected Innocence Challenge." Retrieved 14 December 2016, from <https://sharedhope.org/what-we-do/bring-justice/reportcards/2016-reportcards/>.
- Shifman, P. (2003). "Trafficking and women's human rights in a globalised world." Gender & Development **11**(1): 125-132.

Silbert, M. H. and A. M. Pines (1982). "Entrance into Prostitution." Youth and Society **13**(4): 471.

Sklair, L. (2002). Globalization: Capitalism and Its Alternatives, Third Edition. Oxford, Oxford University Press.

Smith, A. (2004). "Boarding School Abuses, Human Rights, and Reparations." Social Justice **31**(4): 89-102.

Smith, L. A., S. Healy Vardaman and M. A. Snow (2009). The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children. Arlington, Virginia, Shared Hope International.

Snow, M. (2008). Domestic Minor Sex Trafficking: Salt Lake City Assessment-- Identification of domestic minor sex trafficking victims and their access to services. Arlington, Virginia, Shared Hope International.

Snyder, H. N. (2012). Arrest in the United States, 1990-2010, Bureau of Justice Statistics,.

Soothill, K. and T. Sanders (2004). "Calling the tune? Some observations on Paying the Price: a consultation paper on prostitution." Journal of Forensic Psychiatry & Psychology **15**(4): 642-659.

Spivak, G. C. (1988). Can the Subaltern Speak? Marxism and the Interpretation of Culture. C. Nelson and L. Grossberg. Urbana, Illinois, University of Illinois Press: 271-313.

Stark, C. and C. Hodgson (2004). "Sister Oppressions: A Comparison of Wife Battering and Prostitution." Journal of Trauma Practice **2**(3-4): 16-32.

Stephens, S. (1995). Children and the Politics of Culture. Princeton, Princeton University Press.

Stuart, F. (2014). "From 'Rabble Management' to 'Recovery Management': Policing Homelessness in Marginal Urban Space." Urban Studies **51**(9): 1909-1925.

Sye, J. (2008). Children's Community Nurses Perceptions and Practices Regarding Children's Rights to Health: A Discourse Analysis. Masters of Health Science, Auckland University of Technology.

Takaki, R. (1993). A Tale of Two Decades: Race and Class in the 1880s and 1980s. Race in America: The Struggle for Equality. H. Hill and J. Jones, James E. Madison, Wisconsin, University of Wisconsin Press.

The Associated Press. (2014). "Las Vegas man sentenced in Utah prostitution case." Retrieved 7 January 2017, from <https://www.ksl.com/?sid=30944533>.

Thorne, B. (1993). Gender Play: Girls and Boys in School. Buckingham, UK, Open University Press.

Tong, R. P. (1998). Feminist Thought: A More Comprehensive Introduction, Second Edition. Boulder, Colorado, USA, Westview Press.

- Tonkiss, F. (2006). Contemporary Economic Sociology: Globalisation, Production, Inequality. London, Routledge.
- Tonkiss, F. (2008). "Global Political Economy: Power, Labour, Politics." Sociology Compass 2(2): 577-593.
- Townsend, P. (1993). The International Analysis of Poverty. London and New York, Routledge.
- Townsend, P. (2002). Poverty, Social Exclusion and Social Polarization: The Need to Construct an International Welfare State. World Poverty: New Policies to Defeat an Old Enemy. P. Townsend and D. Gordon. Bristol, Policy Press.
- Townsend, P. (2004). From Universalism to Safety Nets: The Rise and Fall of Keynesian Influence on Social Development. Social Policy in a Development Context. T. Mkandawire. Geneva, Palgrave Macmillan and UNRISD: 37-62.
- Treviño, A. J. (1998). The Sociology of Law: A Bibliography of Theoretical Literature. Lewiston, NY, Lewiston, New York: Edwin Mellen Press.
- Truong, T. (2015). "Not a Choice, Not a Job: Exposing the Myths about Prostitution and the Global Sex Trade." Journal of International Women's Studies 17(4): 283-291.
- Tyler, D. A. (2005). Our Corner of the World: African American Women in Utah Tell their Stories 1940-2002. Lanham, Maryland, University Press of America.
- Ulrich, S. (2004). Dr. Guttmacher's Pregnancy, Birth, Family Planning. 49: e1-e1.
- UNICEF (2006). Child Protection Information Sheet. New York, United Nations Children's Fund.
- UNICEF (2006). Commercial Sexual Exploitation, UNICEF.
- UNICEF (2008). UNICEF Annual Report, United Nations Children's Fund.
- UNICEF Innocenti Research Centre (2005). Trafficking for Sexual Exploitation and other Exploitative Purposes. Florence, Italy, UNICEF.
- United Nations Office of Drugs and Crime (2012). Global Report on Trafficking in Persons. Vienna, Austria, United Nations Office on Drugs and Crime.
- United Nations Office of Drugs and Crime (2014). Global Report on Trafficking in Persons. R. a. T. A. Branch. Vienna, Austria, Division for Policy Analysis and Public Affairs.
- United Nations Office of Drugs and Crime (2014). Trafficking in children on the increase, according to latest UNODC Report. More than 2 billion people not adequately protected from human trafficking by their national legislation, says report; raises concern about low conviction rates. U. N. O. o. D. a. Crime. Vienna, Austria, United Nations Office of Drugs and Crime.
- United Nations Treaty Collection. (2016). "Convention on the Rights of the Child." Retrieved 13 December 2016, from

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en.

United States Census Bureau--Illinois. (2010). "State & County QuickFacts." Retrieved 9 May 2015, from <http://quickfacts.census.gov/qfd/states/17000.html>.

United States Census Bureau--Utah. (2010). "State & County QuickFacts." Retrieved 9 May 2015, from <http://quickfacts.census.gov/qfd/states/49000.html>.

United States Congress. (2016). "Optional Protocol No. 2 to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography." Retrieved 13 December 2016, from <https://www.congress.gov/treaty-document/106th-congress/00037/B/document-text>.

US Department of Justice (2014). Department of Justice Announces New Priorities to Address Surge of Migrants Crossing into the US. Washington, DC, US Department of Justice.

US Department of Justice: Office of Justice Programs. (2004). "Juvenile Justice Resources: Girls." Retrieved 10 February 2010, 2004, from <https://www.ojjdp.gov>.

Utah Intergenerational Welfare Reform Commission (2014). Utah's Third Annual Report on Intergenerational Poverty, Welfare Dependency, and the Use of Public Assistance: Intergenerational Welfare Commission Annual Report, Department of Workforce Services (DWS).

Valdes, F. (2002). Outsider Scholars, Legal Theory and OutCrit Perspectivity: Postsubordination Vision as Jurisprudential Method. *Crossroads, Directions and a New Critical Race Theory*. F. Valdes, J. McCristal Culp, Jerome and A. P. Harris. Philadelphia, Temple University Press.

van Dijk, T. (2004). Racist Discourse. *Encyclopedia of Race and Ethnic Studies*. E. Cashmore. London, Routledge: 351-355.

van Dijk, T. (2008). *Discourse and Context: A Sociocognitive Approach*. Cambridge, Cambridge University Press.

Varzari, J. K. (2001). *Revealing or Remediating Discrimination? Critical Discourse Analysis and Environmental Law in Alberta*. Master of Arts in Communications, University of Calgary.

Wacquant, L. (2002). "From Slavery to Mass Incarceration." *New Left Review*(13): 41-60.

Wacquant, L. (2007). *Urban Outcasts: A Comparative Sociology of Advanced Marginality*. Cambridge, Polity.

Wacquant, L. (2009). *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham and London, Duke University Press.

Wagg, S. and J. Pilcher (1996). *Thatcher's Children? Politics, Childhood and Society in the 1980s and 1990s*. London, Falmer Press.

- Walkowitz, J. R. (1992). City of dreadful delight : narratives of sexual danger in late-Victorian London. London, London : Virago.
- Walls, N. E. and S. Bell (2011). "Correlates of Engaging in Survival Sex among Homeless Youth and Young Adults." Journal of Sex Research **48**(5): 423-437.
- Wilkins, R. J. (2003). "Why the United States Should Not Ratify the Convention on the Rights of the Child." St. Louis University Public Law Review **22**.
- Wing, A. K. (1997). Critical Race Feminism: A Reader. New York, New York University Press.
- Wing, A. K. (2000). Global Critical Race Feminism: An International Reader. New York and London, New York University Press.
- Wing, A. K. (2003). Critical Race Feminism: A Reader, Second Edition. New York, New York University Press.
- Winn, M. T. (2010). "'Betwixt and Between': Literacy, Liminality, and the Celling of Black Girls." Race, Ethnicity and Education **13**(4): 425-447.
- Wodak, R. (2007). "What is Critical Discourse Analysis?" Forum: Qualitative Social Research Retrieved 14 December 2016, from <http://www.qualitative-research.net/index.php/fqs/article/viewArticle/255/561>.
- Wodak, R. (2009). The Discourse of Politics in Action: Politics as Usual. Basingstoke, Palgrave Macmillan
- Wodak, R. and M. Meyer (2009). Methods of Critical Discourse Analysis. Los Angeles, SAGE Publications.
- Woodhouse, B. B. (2008). Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate. Princeton, New Jersey, Princeton University Press.
- Woodward, C. V. (2002). The Strange Career of Jim Crow. Oxford, Oxford University Press.
- World Bank. (2016). "Population ages 0-14 (% of total)." Retrieved 20 December 2016, from <http://data.worldbank.org/indicator/SP.POP.0014.TO.ZS>.
- Wyness, M. (2006). Childhood and Society: An Introduction to the Sociology of Childhood. London, Palgrave Macmillan.
- Wyness, M. (2013). "Global standards and deficit childhoods: the contested meaning of children's participation." Children's Geographies **11**(3): 340-353.
- Young, J. (2003). "Merton with Energy, Katz with Structure:: The Sociology of Vindictiveness and the Criminology of Transgression." Theoretical Criminology **7**(3): 389-414.
- Young-Bruehl, E. (2012). Childism: Confronting Prejudice Against Children. New Haven, Yale University Press.

INTERNET REFERENCES

- American Bar Association (ABA) (2012). "The History of Juvenile Justice: Part 1." Retrieved 9 May 2015, from <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>.
- Anderson, M. D. (2015). "Where Teachers Are Still Allowed to Spank Students: Corporal punishment is legal in 19 states." Retrieved 13 December 2016, from <http://www.theatlantic.com/education/archive/2015/12/corporal-punishment/420420/>.
- Backyard Broadcast. Retrieved 2 January 2017. <http://www.backyardbroadcast.org>
- Buckley, C. (2016). "Forced Labor in the United States: A Contemporary Problem in Need of a Contemporary Solution." Human Rights & Welfare. from <http://www.du.edu/korbel/hrhw/researchdigest/slavery/us.pdf>.
- Canham, M. (2012). "Census: Share of Utah's Mormon residents holds steady." Retrieved 2 January 2017, from Salt Lake Tribune <http://www.sltrib.com/sltrib/jazz/53909710-200/population-lds-county-utah>.
- Center for Disease Control. 2016. "When should a mother avoid breastfeeding?" Retrieved from 7 January 2017, from <http://www.cdc.gov/breastfeeding/disease/hiv.htm>
- "Children and Youth in History." Retrieved 2 January 2017, from www.chnm.gmu.edu.
- Children's Aid Society (2016). "The Orphan Trains." Retrieved 13 December 2016, from <http://www.childrensaidsociety.org/about/history/orphan-trains>.
- Demasters, T. (2013). "17-year-old girl among those arrested in St. George prostitution sting." Retrieved 7 January 2017, from <http://fox13now.com/2013/08/25/17-year-old-girl-among-those-arrested-in-st-george-prostitution-sting/>.
- Dorling, D., et al. (2008). "Criminal Obsessions: Why Harm Matters More Than Crime." Retrieved 13 December 2016, from <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Criminal%20obsessions.pdf>.
- Flynn, M. (2013). "Prostitution sting: four adults, one juvenile arrested." Retrieved 7 January 2017, from <http://www.stgeorgeutah.com/news/archive/2013/08/24/prostitution-sting-four-adults-one-juvenile-arrested/#.WHEsC7GZOvM>.
- Fulton, B. (2012). "The steadfast Scrooge: BYU law professor Richard Wilkins dies." Retrieved 7 January 2017, from <http://archive.sltrib.com/story.php?ref=/sltrib/entertainment2/55356433-223/wilkins-family-law-legal.html.csp>.
- Glanton, D. (2012, 23 October 2012). "In a blue state, voters taken for granted in presidential race." Chicago Tribune. from http://articles.chicagotribune.com/2012-10-23/news/ct-talk-glanton-ignored-illinois-voters-20121023_1_romney-campaign-mitt-romney-illinois-voters.
- Goldman, Abigail. 2010. "What Should Clark County Do With Teenage Prostitutes?" Retrieved 2 January 2017, from <http://lasvegassun.com/news/2010/mar/22/what-should-clark-county-do-teenage-prostitutes>.

Hughes, D. M. (2005). "Race and Prostitution in the United States." Retrieved 22 May 2014, from <http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm>.

Kaufman, L. (2004). "Finding a Future for a Troubled Girl With a Past." Retrieved 7 January 2017, from http://www.nytimes.com/2004/09/15/nyregion/finding-a-future-for-a-troubled-girl-with-a-past.html?_r=0.

Libal, Bob. 2016. "Texas court blocks licensing of family detention camps as childcare facilities." Retrieved 2 January, 2017, from <https://grassrootsleadership.org/releases/2016/12/breaking-texas-court-blocks-licensing-family-detention-camps-childcare-facilities>

National Center for Children in Poverty (2016). "Child Poverty." Retrieved 30 December 2016, from <http://www.nccp.org/topics/childpoverty.html>.

National Center for Youth Law (2012). "Stopping Victimization of Vulnerable Children in California." from http://www.youthlaw.org/publications/ynl/2012/jan_mar_2012/stopping_victimization_of_vulnerable_children_in_california/.

Orchard, T. (2015). "Children in global sex work and trafficking discourses." Retrieved 13 December 2016, from <https://www.opendemocracy.net/beyondslavery/treena-orchard/children-in-global-sex-work-and-trafficking-discourses>.

Poole, M. (2014). "When we talk about police shootings, we need to talk about gender." from <http://feministing.com/2014/12/17/when-we-talk-about-police-shootings-we-need-to-talk-about-gender/>.

Public Broadcasting Service. "Knockout: Mann Act." Retrieved 12 January 2016, from <http://www.pbs.org/unforgivableblackness/knockout/mann.html>.

Robertson, S. "Annotation: "Review of the Age-of-Consent Legislation in Texas." Retrieved 14 December 2016, from <https://chnm.gmu.edu/cyh/primary-sources/4>

Rogers, P. (2015). "Officers Allege Widespread Corruption Inside Chicago Police Department." Retrieved 9 May 2015, from <http://www.nbcchicago.com/investigations/Chicago-Police-Officers-Allegations-of-Corruption-291607971.html>.

Salt Lake City Weekly. "Threats force anti-human trafficking agency to close services." Retrieved 2 January 2017, from <https://www.cityweekly.net/BuzzBlog/archives/2011/03/24/threats-force-anti-human-trafficking-agency-to-close-services>

Salt Lake Tribune. "Threats close Utah program serving victims of modern slavery." Retrieved 2 January 2017, from <http://archive.sltrib.com/article.php?id=51522934&itype=CMSID>

Shared Hope International (2016). "State Report Cards: Protected Innocence Challenge." Retrieved 14 December 2016, from <https://sharedhope.org/what-we-do/bring-justice/reportcards/2016-reportcards/>.

Stanford University, Men Against Abuse Now. (2016). "Myths about false accusation."

Retrieved 10 January 2016, from http://web.stanford.edu/group/maan/cgi-bin/?page_id=297.

State of Illinois. (2015). "Crime in Illinois 2015." Retrieved 2 January 2017, from http://www.isp.state.il.us/docs/cii/cii15/cii15_SectionI_Pg11_to_244.pdf

State of Utah. (2014). "2014 Crime in Utah Report." Retrieved 2 January 2017, from <http://site.utah.gov/dps-criminal/wp-content/uploads/sites/15/2016/02/2014-Crime-in-Uah.pdf>.

The Associated Press (2014). "Las Vegas man sentenced in Utah prostitution case." Retrieved 7 January 2017, from <https://www.ksl.com/?sid=30944533>.

UN News Centre (2014). "Trafficking in children on the rise, says new UN report." Retrieved 20 December 2016, from <http://www.un.org/apps/news/story.asp?NewsID=49423#.V-GqtTtqHww>.

United Nations Treaty Collection (2016). "Convention on the Rights of the Child." Retrieved 13 December 2016, from https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en.

United States Census Bureau--Illinois (2010). "State & County QuickFacts." Retrieved 9 May 2015, from <http://quickfacts.census.gov/qfd/states/17000.html>.

United States Census Bureau--Utah (2010). "State & County QuickFacts." Retrieved 9 May 2015, from <http://quickfacts.census.gov/qfd/states/49000.html>.

United States Congress (2016). "Optional Protocol No. 2 to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography." Retrieved 13 December 2016, from <https://www.congress.gov/treaty-document/106th-congress/00037/B/document-text>.

US Congressman Ted Poe. 2016. "Laws In 36 States Still Criminalize Child Trafficking Victims; New Report Offers Solutions." Retrieved 2 January 2017, from: <http://poe.house.gov/2016/2/laws-in-36-states-still-criminalize-child-trafficking-victims-new-report-offers-solutions>.

US Department of Justice: Office of Justice Programs (2004). "Juvenile Justice Resources: Girls." Retrieved 10 February 2010, 2004, from <https://www.ojjdp.gov>.

Wodak, R. (2007). "What is Critical Discourse Analysis?" Forum: Qualitative Social Research. Retrieved 14 December 2016, from <http://www.qualitative-research.net/index.php/fqs/article/viewArticle/255/561>.

World Bank (2016). "Population ages 0-14 (% of total)." Retrieved 20 December 2016, from <http://data.worldbank.org/indicator/SP.POP.0014.TO.ZS>.

APPENDIX

Appendix A: List of Primary Sources

(In order of reference in text)

“Human trafficking of a child,” UCA 76-5-308.5

“Involuntary sexual servitude of a minor,” 720 ILCS 5/10-9(2)(c))

“Sexual solicitation—Penalty,” UCA 76-10-1313

“Patronizing a prostitute,” UCA 76-10-1303

“Human trafficking of a child—Penalties,” UCA 76-5-308.5

“Offenses Against Public Health, Safety, Welfare, and Morals—Prostitution—Definitions,” UCA 76-10-1301(1)

“Prostitution,” 720 ILCS 5/11-14

Arash Alexander Zarif, Defendant-Appellant. 192 Fed.Appx. 784, 2006 WL 2411442 (C.A.10 (Utah))

Trafficking Victims Protection Act 2000 (TVPA) 22 U.S.C. §§7101-05 (2000).

“Human trafficking—Human smuggling,” UCA 76-5-308

Utah House Bill 121 (2011) “Sexual solicitation amendments” Floor debate, available at Website of Utah Legislature: <https://le.utah.gov/~2011/bills/static/HB0121.html> (Last accessed: 10 July 2015).

“Kidnapping, Trafficking, and Smuggling,” UCA 76-5-307(1)

Utah House Bill 163 “Human Trafficking Amendments,” available at Website of Utah Legislature:
<http://le.utah.gov/asp/audio/index.asp?Sess=2008GS&Day=0&Bill=HB0339&House=H>.
(Last accessed: 10 July 2015).

“Aggravated human trafficking and aggravated human smuggling—Penalties,” UCA 76-5-310

Wilkins, R. J. (2003). "Why the United States Should Not Ratify the Convention on the Rights of the Child." St. Louis University Public Law Review **22**.

“Emancipation of Minors Act,” 750 ILCS 30

“Petition for emancipation,” UCA 78A-6-803

Reavy, Pat and Sandra Yi. “Arrests highlight 'prevalent' problem of human trafficking in Utah,” 1 April, 2014. Website of Deseret News, available at:
<http://www.deseretnews.com/article/865599989/Arrests-highlight-prevalent-problem-of->

human-trafficking-in-Utah.html. (Last accessed 2 January 2017).

Scott, Kimberly. 14 August 2015. "8 Utahns indicted for child sex trafficking," Website of St. George News, available at: <http://www.stgeorgeutah.com/news/archive/2015/08/14/kss-8-utahns-indicted-for-child-sex-trafficking/#.Wdf5rkyZOvN>. (Last accessed 2 January 2017).

Gardiner, Jennifer. 14 August 2015. "Child Sex Ring Busted in Utah," Website of Gephardt Daily, available at: <http://gephardtaily.com/local/several-people-charged-with-child-sex-trafficking-in-utah/>. (Last accessed 2 January 2017).

Ortiz, Marcos. Undated. "Human Trafficking: The Victims," Website of Good 4 Utah, available at: <http://www.good4utah.com/news/local-utah-state-news-/human-trafficking-the-victims/206350731>. (Last accessed 2 January 2017).

Winslow, Ben. 10 June 2015. "Massage parlor raids believed to be the biggest human trafficking bust in Utah history," Website of Fox 13 Salt Lake City, available at: <http://fox13now.com/2015/06/10/massage-parlor-raids-believed-to-be-the-biggest-human-trafficking-bust-in-utah-history/>. (Last accessed 2 January 2017).

Illinois House Bill 1299, "Predator Accountability Act," available at Website of Illinois General Assembly: <http://www.ilga.gov/senate/transcripts/strans98/09800025.pdf>

"Soliciting for a Juvenile Prostitute" 720 ILCS 5/11-15.1(a)

Illinois House Bills 6462 and 6129, Illinois Safe Children Act (2010), available at Website of Illinois General Assembly: <http://www.ilga.gov/house/transcripts/htrans96/09600120.pdf>

Illinois Safe Children Act of 2012 (House Bill 6362)

"Non-defenses," 740 ILCS 128/25 (2012)

"Neglected or abused minor," 705 ILCS 405/2-3(2)(vi)

"Abused and Neglected Child Reporting Act," 325 ILCS 5/3(h)

"Prostitution," 720 ILCS 5/11-149(d)

"Juvenile Court Act of 1987," 704 ILCS 405/2

Illinois House Bill 5278 (2012), Floor debate, available at Website of Illinois General Assembly: <http://www.ilga.gov/senate/transcripts/strans92/ST050602.pdf>

"Trafficking in persons, involuntary servitude, and related offenses," 720 ILCS 5/10-9(c)(1)-(3)

Datquinn Sawyer, Petitioner, v. United States of America, Respondent., F.Supp.3d, 2015 WL. United States District Court, ND Illinois Eastern Division. 2147969.

The State of Iowa v. Ruhl (1859) 8 Clarke 447, 8 Iowa 447.

Alien Prostitution Importation Act (1875) Act of Mar. 3, 1875 (Page Law), ch. 141, 18 Stat. 477 (repealed 1974).

Chinese Exclusion Act, Act of May 6, 1882, ch. 126, 22 Stat. 58 (repealed 1943).

Flower, B. (1895). "Age of Consent." The Arena. Boston, The Arena Publishing Company. **14**: 21.

Flower, B. (1895). "Legislators on the Age of Consent." The Arena. Boston, The Arena Publishing Company. **13**: 223.

William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 22 U.S.C.A. §§ 7101-7112 (Supp. 2009).

White-Slave Traffic Act (Mann Act), ch. 395, §§2, 6, 36 Stat. 825 (1910) (codified as amended at 18 USC §§2421-2424 (2000)).

L'Hote v. City of New Orleans, 177 US 587, 596 (1900)

Addams, Jane. 1912. "A New Conscience and an Ancient Evil," available at Website of the Gutenberg Project: <http://www.gutenberg.org/files/15221/15221-h/15221-h.htm>. (Last accessed: 11 July 2015).

Paynter Wilson, Samuel. 1910. "Chicago and its Cess-Pools of Infamy," available at Website of Internet Archive: <https://archive.org/details/chicagoitscessp00wils>. (Last accessed 2 January 2017).

Turner-Zimmermann, Jean "Chicago's Black Traffic in White Girls" are available at: <http://www.gutenberg.org/files/31615/31615-h/31615-h.htm>. (Last accessed: 11 July 2015).

White Slave Traffic Act (1910) Congressional Debate. United States House, 45 Congressional Record 811, 19 January 1910.

International Convention for the Suppression of the White Slave Traffic 84, May 18, 1904, available at Website of United Nations Office of Legal Affairs: http://untreaty.un.org/English/CTC/ch_VII_8p.pdf. (Last accessed 2 January, 2017).

Hoke v. United States (1913) 227 US 308.

United States v. Holte, 236 U.S. 140, 145 (1915).

Gebardi v. United States, 287 U.S. 112 (1932).

Salt Lake City v. Allred, 20 Utah 2d 298, 437 P.2d 434 (1968).

Wharton's Treatise on White Slavery (2013) 2 Wharton's Criminal Law §271, 15th edition.

United States v. Garrett (1975) CA8 Mo, 521 F2d 444.

Utah House Bill 92 (1991), Floor debate, "Prostitution, pimping & pandering, and patronizing a prostitute," available at Website of Utah Legislature: http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=818&meta_id=72817

Utah House Bill 276 (2012), “Prostitution,” Floor debate, available at Website of Utah Legislature:

http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=628&meta_id=72708

The People of the State of Utah v. Uhrhan (2013)

“Human trafficking—Human smuggling,” UCA 76-5-308

Utah House Bill 254 “Human Trafficking Victim Amendments,” Floor debate, available at Website of Utah Legislature: <https://le.utah.gov/~2014/bills/static/HB0254.html>

“Prostitution,” UCA 76-10-1302 (2015)

“Enhanced penalties—HIV positive offender,” UCA 76-10-1309

Illinois House Bill 1319, State of Illinois, 94th General Assembly, House of Representatives, Transcription Debate, 27th Legislative Day. 9 March 2005.

The Illinois Safe Children Act (2010), State of Illinois, 96th General Assembly, House of Representatives, Transcription Debate. 120th Legislative Day, 25 March 2010.

Federal Bureau of Investigation. 2010. “Press Release: Three Chicago Men Charged in Child Prostitution Probe,” Website of Federal Bureau of Investigation, available at: <https://www.fbi.gov/chicago/press-releases/2010/cg090910a.htm>. (Last accessed 21 December 2016).

Wharton's Criminal Law Database updated September 2014, Charles E. Torcia
Part III. Offenses Against Morals Chapter 16. Prostitution and Related Offenses.

United Nations Convention on the Rights of the Child. (1989). United Nations Treaty Series. 1577 UNTS 3.

United States of America v. Arash Alexander Zarif. (2006) Federal Appendix, United States Court of Appeals, Tenth Circuit. 192 Federal Appendix 784.

In re Appeal No. 180 (1976) 278 Md. 443, 365 A.2d 540.

Dora P. (1979) 68 A.D.2d 719, 418 N.Y.S.2d 597.

In the Matter of D (1976) 27 Or.App. 861, 557 P.2d 687.

Victims of Trafficking and Violence Protection Act of 2000, H.R.3244, Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified at 22 U.S.C. §§ 7101-7110).

US Department of Justice Civil Rights Division. 2010. Report on the Tenth Anniversary of the Trafficking Victims Protection Act, Website of US Department of Justice, available at: http://www.justice.gov/crt/about/crm/trafficking_newsletter/tvpaanniversaryreport.pdf. (Last accessed 21 December 2016).

Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (amending scattered sections of the United States Code).

Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (amending scattered sections of the United States Code).

“Actions against governments failing to meet minimum standards,” 22 USC 7107(19)

“Prostitution,” 720 ILCS 5/11

Utah Department of Public Safety, 2009: Crime in Utah, Bureau of Criminal Identification, Website of Utah Department of Public Safety, available at: <https://bci.utah.gov/utah-crime-statistics/crime-in-utah-2009/>

Utah Department of Public Safety, 2010: Crime in Utah, Bureau of Criminal Identification, Website of Utah Department of Public Safety, available at: <https://bci.utah.gov/utah-crime-statistics/crime-in-utah-2010/>

Utah Department of Public Safety, 2011: Crime in Utah, Bureau of Criminal Identification, Website of Utah Department of Public Safety, available at: <https://bci.utah.gov/utah-crime-statistics/crime-in-utah-2011/>

Utah Department of Public Safety, 2012: Crime in Utah, Bureau of Criminal Identification, Website of Utah Department of Public Safety, available at: <https://bci.utah.gov/utah-crime-statistics/crime-in-utah-2012/>

In re Nicolette R., 9 AD 3d 270, New York Appellate Division (2004).

In re Ah Fong, 1 F. Cas. 213 (C.C.D. Cal. 1874) (No. 102).

In the Matter of Bobby P., a Person Alleged to be a Juvenile Delinquent, Respondent. 2010 NY Slip Op 20207 [28 Misc 3d 959].

People v. Samatha R. (2011), 941 N.Y.S.2d 540.

Utah House Bill 24 (1993), “Mandatory testing for HIV infection of convicted prostitutes and convicted patrons of prostitutes,” Floor debate, available at: http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=9188&meta_id=37067

Utah Senate Bill 50 (2011), “Enhanced penalties for HIV offender amendments,” Floor debate, available at: <http://le.utah.gov/asp/audio/index.asp?Sess=2011GS&Day=0&Bill=SB0050S01&House=S>

The People of the State of Illinois v. Henrietta Adams, et al. (1992) 149 Ill.2d 331, 597 N.E.2d 574, 173 Ill.Dec. 600.

State v. Howard (1975) 544 P.2d 466.

In re Carey, 57 Cal.App. 297, 207 P. 271 (3d App.D.1922).