

Attachments to Victimhood: Anti-Trafficking Narratives and the Criminalization of the Sex Trade

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journals.sagepub.com/home/sls**Marcus A Sibley** 

Carleton University, Canada

Abstract

Following the Supreme Court's decision in *Canada (Attorney General) v. Bedford* to strike down criminal law provisions related to the regulation of sex work, the government passed Bill C-36, ultimately reaffirming the project of criminalizing prostitution. Also known as the *Protection of Communities and Exploited Persons Act (PCEPA)*, Bill C-36 is part of a global trend that shifts the state's attention away from regulating sex work as a societal nuisance, and instead, puts forth a carceral agenda which situates sex workers as victims of an inherently exploitative and coercive sex trade – pivoting the punitive elements of criminal law onto clients and mythologized profiteers of the sex trade. Focusing on the testimonies of neo-abolitionists leading up to the implementation of Bill C-36, this article critically explores the ways sex work is constituted as a problem of 'trafficking' and how attachments to victimhood allow for renewed criminalization within this new regulatory framework.

Keywords

Affect, Bill C-36, PCEPA, risk, sex work, testimony, trafficking, vulnerability

Introduction

In the last decade, there has been a significant international effort to regulate and criminalize prostitution as part of the global strategy to combat sex trafficking. Many

Corresponding author:

Marcus A Sibley, Department of Law and Legal Studies, Carleton University, 1125 Colonel By Drive, Ottawa, ON K1S 5B6, Canada.

Email: marcus.sibley@carleton.ca

anti-trafficking organizations have partnered with lawmakers and police agencies to mobilize the use of anti-prostitution laws to end the ‘crisis’ of sex trafficking and abolish what they call ‘modern-day slavery’. Regulating prostitution plays an important role in the panic over sex trafficking. In fact, many neo-abolitionists see the two as inseparable. Many abolitionists argue that the sex trade must be understood through complex systems of gendered-based domination that place women in a position where all sexual transactions are expressed through idioms of coercion and exploitation. According to this paradigm, the possibility of consensual sexual exchange can never be realized within systems of patriarchal capitalism.

Under these conditions, the Nordic model has gained significant popularity among abolitionists. First implemented in Sweden in 1999, the regulatory framework moves away from criminalizing the sellers of sexual services and focuses instead on criminalizing those who purchase sex, and more broadly, those who facilitate the exploitation and coercion of those involved in sexual labour. Many countries including Canada and the United Kingdom (UK) have adopted similar approaches inspired by the Nordic model. In 2013, the Canadian landmark decision of *Canada (Attorney General) v. Bedford*¹ struck down *Criminal Code* provisions which had previously criminalized sex workers’ abilities to actively engage in harm reduction via screening clients, working indoors and hiring personnel (e.g. drivers, bodyguards, etc.). Like the UK’s *Policing and Crime Act* (2009), Canada’s approach has been to move away from governing prostitution as a social nuisance, and instead, focuses on recognizing sex workers as victims in need of state protection. In 2014, and in response to the Supreme Court’s ruling in *Bedford*, the Canadian government introduced and passed Bill C-36, adopting and implementing many of the legal and ideological pillars of the Nordic model. Titled the *Protection of Communities and Exploited Persons Act*, its legislative mandate seeks to address the ‘exploitative nature’ of prostitution while simultaneously protecting communities from those who lure women and girls into its grasp.

These legislative shifts offer a site of analysis that allows us to expose and challenge what Butler (2009: 11) refers to as the ‘orchestrating designs’ of political and legal interventions. Here, the methodological underpinning rests on how ‘[t]he frame’s journey exposes its cons’ (Carline, 2012: 210). In this case, the move from regulating sex work as a nuisance to the creation of legislation which, on its face, suddenly recognizes sex workers as vulnerable and ‘worthy’ victims, points to the need to explore how prostitution is framed under these new legislative conditions. How does this discursive reframing happen and what kinds of identity politics form the scaffolding for such legislative changes?

In exploring these questions, this article examines the regulatory and discursive framework surrounding Canada’s shift towards governing prostitution as a problem of human and sex trafficking. I contextualize the global trends towards adopting the Nordic model and how these regulatory systems mobilize a specific iteration of the trafficked subject – one that is constituted through a language of vulnerability and victimhood. Focusing on the Canadian context, I consider how the landmark ruling in *Bedford* allows the state to reinvent its regulatory framework from one focused on governing nuisance to a reimagining of sex workers as ‘worthy’ victims in need of saving. This created the political and legal opportunity to orient the continued criminalization of the sex trade

around the exploitative users and profiteers of the sex trade (e.g. purchasers, pimps and traffickers) while re-characterizing the ontological nature of sex work from that of a societal nuisance to an institution designed to violently exploit women.

Inspired by Carline's (2011, 2012) treatment of Butler's (2009) *Frames of War* and the tracing of vulnerability and victimhood in official state discourses related to similar trends in UK prostitution laws, I consider the political potential of framing sex workers as 'prostituted' and 'trafficked' victims in the Canadian context. Carline asks us to consider how the subject position of the sex worker – or in the case of the abolitionist narrative, the 'prostituted' girl – moves from one political context or frame to the next. The cleavage between legislative frameworks allows for a critical unpacking of the many articulations of both prostitution and *the prostitute*. In both contexts, the legislation specifically focuses on the restructuring of legislation away from targeting prostitution as a social nuisance, to one that is invested in curbing the exploitative practices of 'johns' and pimps. Unsurprisingly, Bill C-36's response to *Bedford* was less interested in recognizing and acknowledging sex workers as risk-taking subjects – a view the Supreme Court of Canada held as an important part of the sex trade. Instead, the government reframed the issues and debates regarding prostitution as a problem inextricably and indistinguishably linked to saving victims of trafficking.

Drawing on the proposal of Bill C-36² and the testimony of witnesses called before the House of Commons' Committee on Justice and Human Rights in 2014, this article focuses on the testimonies of policing representatives and neo-abolitionist organizations in their accounts of the sex industry and how their testimonies inform understandings of prostitution's relationship to sexual violence, human trafficking and effective policy-driven responses.³ I unpack the ways police organizations use anti-prostitution offences to intervene in and simultaneously construct the problem of trafficking. Next, I explore how neo-abolitionists draw on personal experiences of violence to conflate all women participating in the sex trade as trafficked, exploited or coerced. Focusing specifically on testimony offered during these committee hearings, I offer a picture of anti-trafficking narratives that serve to draw us closer to scenes of violence and exploitation while simultaneously distancing us from the possibilities that sex workers can engage in mechanisms of risk prevention and harm reduction. Finally, I argue that the affective relationalities between the sex trade and tropes of human suffering constitute the sex trade as inherently dangerous and as a space where the utility of criminal law is privileged over other kinds of interventions. Such visceral and immediate imagery moves the discussions around sex work away from risk-management and instead frames sex workers as incapable of choice.

The Influence of Nordic-Inspired Governance

The global trend to end the criminalization of women selling sex, and instead, focus the prohibition on the sex trade by attempting to end the demand for sexual labour was first introduced by Sweden in 1999. Legislators in Sweden sought to construct the sex trade as a site where the sale of sex was emblematic of an exploitative culture of violence perpetrated by men against women (Justitiedepartementet, 2010). Over the next 20 years,

Finland, Norway and Iceland passed similar legal mechanisms aimed at punishing those who procure sexual services (Skilbrei and Holmström, 2011). In 2009, the UK and Wales passed similar legislative directives in section 14 of the *Policing and Crimes Act*, enacting a similar approach by criminalizing clients of sex workers while simultaneously ‘educating’ and ‘rescuing’ sex workers from the exploitative nature of prostitution. This approach offers a renewed coalition between neo-abolitionist agencies and the state to form a ‘welfare’ approach to prostitution, creating diversion and support programmes that aim to provide sex workers the tools to ‘exit’ the sex trade (Phoenix, 2009; Scoular and Carline, 2014; Scoular and O’Neill, 2007).

In the United States, specialized prostitution courts in Ohio, Nevada and Texas focus on criminalizing sex work through similar logics, constituting sex workers within a broader and much more familiar language as victims of institutionalized violence (Singh, 2017: 572). These specialized courts tend to position sex workers as the victims of socio-economic disenfranchisement, almost always framing their involvement in the sex trade as one that is compelled through tropes of poverty, addiction and trauma. Not dissimilar to other diversion programmes, these courts emphasize the need to overcome personal tribulation that seemingly coerce and force women to sell sexual services, and approach prostitution through the lens of ‘empathy’ rather than punishment (Shdaimah and Wiechelt, 2012). The focus on trauma and the seemingly empathetic approaches of the court create a dynamic in which the governance of sex work happens through a reorienting of traditional criminal justice processes away from their punitive roots, and instead, frames regulation as part of a system of ‘therapeutic’ interventions. These approaches fail to consider the ways sex workers negotiate a continuum of risks (Sanders, 2004), ultimately justifying a rhetoric that requires the state and its allies to intervene in the lives of those implicated in the sex trade.

Shifting Laws, Shifting Subjects: Changes to Canadian Sex Work Legislation

Canada’s most recent legislative reformation offers an interesting case study for governing through victim-centred approaches to prostitution. Prior to the 2013 *Bedford* decision, the act of selling sex was never itself criminalized. Instead, acts related to prostitution were criminalized, including: (1) the hiring of bodyguards, drivers and other personnel (living off the avails); (2) working indoors (operating a bawdy house); and (3) screening clients (communicating for the purpose of prostitution). In 2009, Terri-Jean Bedford, Amy Lebovitch and Valerie Scott brought forward a constitutional challenge to the *Criminal Code* provisions governing sex work. They argued that each provision violated section 7 of the *Charter of Rights and Freedoms* because the laws regulating sex work increased or heightened potential exposures to harm. Sex work advocates argued that the laws themselves offered a barrier to engaging in harm-reduction and risk-management strategies, inevitably creating a juridogenic condition whereby the law itself contributes to the potential harm of sex workers. The case was appealed to the Supreme Court of Canada where it held that although the sex trade maintains unique risks to sex workers, the criminalization of harm reduction strategies – namely working indoors, hiring bodyguards and

drivers, and pre-emptively screening clients – violated the constitutionally protected right to life, liberty and security of the person.

Concurring with the lower courts, the Supreme Court held that the criminalization of behaviours and activities that could potentially mitigate risks of harm was disproportionate to the legislative objective of regulating prostitution as a ‘nuisance’. The court writes:

Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes. A law that prevents street prostitutes from resorting to a safe haven such as Grandma’s House⁴ while a suspected serial killer prowls the streets, is a law that has lost sight of its purpose.⁵

Striking down the three *Criminal Code* provisions, Parliament had 1 year to replace its regulatory framework with one consistent with the *Charter*. On 4 June 2014, the Canadian government introduced Bill C-36, *The Protection of Communities and Exploited Persons Act (PCEPA)*⁶ as the legislative response to the impugned *Criminal Code* provisions. The bill, which received Royal Assent to law in November 2014, is heavily inspired by elements of the Nordic model, focusing on the criminalization of those who buy and create the demand for sexual labour.

In their technical paper, the Department of Justice (2014: 3) notes:

Bill C-36 reflects a significant paradigm shift away from the treatment of prostitution as ‘nuisance’, as found by the Supreme Court of Canada in *Bedford*, toward treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls (sic).

It goes on to claim that the objectives are informed by conclusions drawn from research, which hold that entry into the sex trade is often informed by socio-economic precarity, that prostitution is extremely dangerous and ‘poses a risk of violence and psychological harm to those subjected to it, regardless of the venue or legal framework in which it takes place’ (Department of Justice, 2014: 4). Despite articulating the law as a new regulatory paradigm, the report goes on to frame sex work as a problem related to public nuisance:

Prostitution also negatively impacts the communities in which it takes place through a number of factors, including: related criminality, such as human trafficking and drug-related crime; exposure of children to the sale of sex as a commodity and the risk of being drawn into a life of exploitation; harassment of residents; noise; impeding traffic; unsanitary acts, including leaving behind dangerous refuse such as used condoms or drug paraphernalia; and, unwelcome solicitation of children by purchasers. (Department of Justice, 2014: 4)

Bill C-36 offers little in the way of a radically new approach from the pre-*Bedford* framework, but lends a new rhetorical position in that it ‘recognizes that prostitution’s victims are manifold; individuals who sell their own sexual services are prostitution’s primary victims, but communities, in particular children who are exposed to prostitution, are also victims, as well as society itself’ (Department of Justice, 2014: 4). The

community, and society writ large, are abstract concepts onto which the harms of prostitution can be attached. Though couched in a language of victimhood, this configuration of criminalization tends to harken back to the pre-*Bedford* regime of focusing on the regulation of prostitution as a societal nuisance.

The new provisions of Bill C-36 attempt to regulate four specific elements of prostitution: (1) purchasing; (2) advertising; (3) procuring; and (4) material benefits. The purchasing and advertising provision attempts to curb the demand for prostitution by placing criminal sanction on the purchasing and advertising of sexual services. The criminalization of material benefits attempts to address the struck down provision related to living off the avails of prostitution. Its implementation is meant to punish traffickers and pimps by targeting ‘... the development of economic interests in the exploitation of the prostitution of others, as well as the institutionalization and commercialization of prostitution [...]’ (Department of Justice, 2014: 6). Lastly, the procurement clause of the bill attempts to criminalize the ‘luring’ of young women and girls into the sex trade:

Specifically, the procuring offence criminalizes procuring a person to offer or provide sexual services for consideration or recruiting, holding, concealing or harbouring a person who offers or provides sexual services for consideration, or exercising control, direction or influence over the movements of that person, for the purpose of facilitating the purchasing offence (section 286.3). (Department of Justice, 2014: 8)

Bill C-36 erases any potential for recognizing the countless ways sex workers engage in entrepreneurial forms of risk-management, marking a commitment to a project that interrogates and critiques what Ahmed (2014: 16) refers to as the ‘intimacy between freedom and force’. The polarities between compulsion and voluntariness are less defined, and in some instances, completely negated. The relationalities between the carceral state and the ‘prostituted’ or ‘trafficked’ victim are maintained through certain affective dispositions – ones that romanticize notions that non-exploitative sexual transactions exist in the shadows of a much larger illicit economy of sexual coercion and fetishizing the need for legal intervention as the foundation for an anti-sex work agenda.

Since anti-trafficking measures are already established in the *Criminal Code*, the new legislative regime seeks to frame the issue of prostitution as one closely related if not inextricably linked to the problem of exploitation in order to justify criminalizing the demand for sexual labour. It is no surprise that the majority of witnesses called to testify at the Parliamentary committee hearings focus on the constitutive elements of the bill as a serious or meaningful attempt to curb sex trafficking. As a result, Bill C-36 is heralded by abolitionists as a noble effort on the part of the state to take seriously the conditions which give rise to the proliferation of sexual exploitation. This shift is accomplished quite viscerally through the affective shifts towards victimhood. While the legislative effort of Bill C-36 sustains the ongoing project to criminalize elements of sex work and retain many of its nuisance-regulating functions, it does so by emphasizing a reconceptualization of sex worker victimhood (Lawrence, 2015).

How then does the state steer away from nuisance-management and assemble the sex trade as a site of victim-making? How do sex workers become reimagined through anti-

trafficking and abolitionist discourses, not as the objects of carceral intervention, but as 'grievable' subjects (Butler, 2006, 2009)? Through the mantras of rescuing exploited women and the establishment of safer communities, the project of repositioning sex workers in relation to the existing carceral infrastructure should be understood through certain affective investments (Ahmed, 2004; Berlant, 2011) – ones largely aimed at reinventing the prostitute subject as victim rather than offender, nuisance or pariah. These affective relationalities work to position those involved in the sex trade as incapable of consenting to the possibility of specific risks, drawing the lines of victimhood around all sex workers as inherently vulnerable without distinguishing specific ways of managing risk. What follows is an analysis of the ways in which those called to testify at Bill C-36 Parliamentary hearings actively conflate sex work and sex trafficking through modalities of victim and victimhood.

The Contours and Ambiguities of (Sex) Trafficking

The sex work landscape across Nordic-inspired regimes fail to differentiate trafficking from consensual sexual labour. In fact, much of this discursive framing relies heavily on the collapsing of agency and exploitation into a paradigm whereby consenting adults can never fully engage in a mutually beneficial sexual transaction. For abolitionists, the conditions under which women sell sex is are always coercive and exploitative. This argument is an extension of radical feminisms of the 1970s which present heterosexual relations – structured by the conditions of patriarchy and misogyny – as always constituted through unequal power relations that subjugate women for the benefit and pleasure of men (see Barry, 1979).

Similar to consciousness-raising efforts of the 1970s against pornography and prostitution, contemporary anti-sex work abolitionists have engaged in a moral crusade against the commodification of sex and have aligned with the carceral project of advocating for increased criminalization of sexual transactions. This is revealed quite vividly in the testimony of many neo-abolitionists called to testify before the Parliamentary committee (see also Porth, 2018). Told through the language of risk and harm reduction, the sex trade is characterized by sex work advocates as a competitive labour market that allows for and embraces the freedom of sexual expression and the creation of sexual art/content and must be protected under the law (Jeffrey and MacDonald, 2006; Sanders, 2004). Neo-abolitionists, on the other hand, configure the dimensions of the sex trade through idioms of victimhood and heightened proximities to violence. Here, the sex trade is articulated through a language of compulsion, negating the possibilities of choice, and drawing the prostitute subject around oscillating polarities of both criminality and victimhood.

For many sex work and sex trafficking scholars (Andrijasevic, 2007; Doezema, 1999; Munro, 2005; Weitzer, 2011), the trafficked victim exists as a subject that obscurely reflects a variety of ambiguously coercive and exploitative practices often linked to organized crime. Defined largely through its relationship to the forced or compelled involvement in illicit exchanges of sex, iterations of trafficking often fail to contextualize or consider the negotiation of consent in sexual transactions or the ways in which sex workers seek to control and write the terms of sexual encounters (Chapkis, 2003).

Sections 279.01 and 279.04 of the Canadian *Criminal Code*, for example, define traffickers as '[e]very person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation . . .'. According to section 279.04(2) of the *Criminal Code* exploitation relies on the use of threats, deception and abuses of authority or positions of trust.

By virtue of its definition, the Canadian government acknowledges that accurate rates of trafficking are quite difficult to establish (Ibrahim, 2018). Much of what we know related to the rates of sex trafficking remain ambiguous. As Weitzer (2011) suggests, there is an enormous disparity between what the media and anti-trafficking organizations report to be the 'real numbers' on trafficking and what is revealed in official statistics. Official reports on human trafficking in Canada are scarce. Between 2005 and 2012, only 25 trafficking-related convictions have been secured. No other official governmental data on trafficking have been released since, though the government's official position is that the conviction rate related to trafficking offences remain 'relatively low' (Public Safety Canada, 2019: 11).

Roots and De Shalit (2015) note that while there have been some successful uses of anti-trafficking laws to convict men who force women into providing sexual services, these crimes are generally covered by other *Criminal Code* provisions related to kidnapping, forcible confinement or sexual exploitation.⁷ Abusive relationships involving sex workers are sometimes constituted under the rubric of sex trafficking, though Roots (2013) argues that the blurred distinction between abusive interpersonal relationships and exploitative sexual arrangements are not so easily discernable and risk being conflated. At the same time, police efforts at the local and national levels to combat human trafficking almost always conflate consensual sexual labour with exploitation. As Roots and De Shalit (2015) document, raids on sex work establishments such as massage parlours and brothels are done by anti-trafficking task forces, but almost never result in the laying of any trafficking charges. To this extent, trafficking is not as easily discernible as abolitionist suggest, though the increased use in anti-trafficking initiatives by law enforcement signal the continued efforts that sustain trafficking as a moral panic related to fears of 'white slavery' (Fedina, 2015).

Bill C-36 continues this project of conflating prostitution and trafficking by defining the constitutive elements of sex work – that is the sale of sexual labour – as indistinguishable from exploitation. In this sense, the bill attempts to legislate prostitution as a form of trafficking. As a result, abolitionists and policing organizations support the use of prostitution-related offences as a way of pre-emptively intervening in circumstances that they have already constituted as instances of trafficking, despite the inability to prove by any meaningful definition that trafficking exists at the alarming rates they suggest.

'Would-Be' Victims and the Policing of Trafficked Women

The following sections of this article examine the triad between carceral state actors, including neo-abolitionists, 'law and order' politicians and police. In an effort to move away from *Bedford's* emphasis on the need to recognize the myriad ways sex workers

manage risk, police organizations called to testify assert a kind of ‘boots on the ground’ ethnographic account of the ways in which sex trafficking operates in the context of the sex trade. Police agencies largely welcomed the reforms of Bill C-36 because they introduced broadly defined tools that allowed police to actively suss out and probe for ‘trafficking’ victims.

York Regional⁸ Police Chief, Eric Jolliffe, testifies to the merits of introducing such intentionally broad legislation to combat the limits of trafficking provisions which are founded on ambiguously defined concepts of exploitation and coercion:

A 2014 York Regional Police initiative resulted in the arrest of 10 men for human trafficking in relation to the sexual exploitation of a number of women and girls, 40% of whom were under 18 years of age. Although we did not initially have grounds to lay human trafficking charges, we were able to rely upon prostitution-related offences to separate these men from their victims. This gave us the opportunity to gain the trust of the victims, eliciting comprehensive statements to form the basis of human trafficking charges, as well as connecting those victims to support agencies.

You see, without the *Criminal Code* tools we would not be able to suss out the would-be victims and create the distance between the victims and the abuser. This is time consuming and often takes several attempts to gain the trust and confidence to help victims escape their abusers, not dissimilar to domestic violence.⁹

In order to lay trafficking charges police organizations would need to establish a coercive relationship between victims and their exploiters. Prostitution-related offences allow for the bypassing of this evidentiary requirement, and instead, only requires proof of an illicit sexual transaction. At the same time, the police get to rewrite the script by stating that their surveillance and targeting of women – in the form of prostitution raids – is justified as part of the project to end trafficking. The material offence (i.e. prostitution) is eclipsed by a larger moral project to end the exploitation of women (i.e. trafficking) and the two become conflated through the organizational responses to prostitution. As the head of the policing organization notes, criminal law is the very mechanism through which policing institutions recognize and ultimately produce victimhood.

Since prostitution-related offences target specific acts within a given sexual encounter or transaction, i.e. negotiating the purchase and or communicating for the purposes of sexual commerce, police maintain easier evidentiary thresholds to justify the surveillance of sex workers and their clients. Accordingly, the use of prostitution laws is essential to produce the trafficked victim. Bill C-36 criminalizes specific elements of sexual transactions while maintaining the rhetorical position of reducing and preventing sex trafficking. This allows prosecutors to convict based on technical elements of a sexual transaction while politicians tout that the law works to curb exploitation and coercion without ever having to meet those burdens of proof vis-à-vis criminal law.

The continued use of prostitution-related offences as a way of ‘rescuing’ would-be victims allows police and neo-abolitionist groups simply claim to a kind of ‘first-hand’ knowledge of how exploitation works without ever having to realize its legal definition. When questioned by a Member of Parliament (MP) as to why the existing trafficking

framework could not be used, President of the Canadian Police Association, Tom Stamatakis, explained that Bill C-36 will be used to pre-emptively intervene where police suspect trafficking is taking place:

- MP: Yes, but that was only one year ago. The exploitation and the trafficking weren't struck down, so they're still in force.
- Tom Stamatakis: Right, but when we're talking about the most marginalized or vulnerable women, we were using those provisions before to intervene, to intercede, and to try to make a difference. The issue is what do we do now, since *Bedford*. I think that Bill C-36 provides us now with some of those tools that we can continue to employ.
- MP: But what kinds of tools...? This is what I want to know...
- Stamatakis: Well, it would be the provisions around [s.]213 where the communication gives us an opportunity to intervene; the provisions around someone engaging in sex trade activities in front of a school, in a park, where it's causing other issues; the provisions around preventing youth from being drawn into the sex trade. Those are the kinds of tools that Bill C-36 provides that I think the police can use to protect vulnerable people in our community.¹⁰

Stamatakis states that prior to *Bedford*, police agencies across the country used the communication clause of the *Criminal Code* to intervene in perceived trafficking cases. In granting the police pre-emptive tools to intervene in cases they 'know' to be related to trafficking prostitution-related offences fulfil the carceral pledge to combat trafficking. But if the problem of trafficking is so glaringly obvious to police organizations, why do police require a legislative work-around? If exploitation and coercion is so easily discernible to the agencies who claim to have developed the tools for identifying and responding to trafficking, why not prosecute under the existing trafficking framework?

The answer is twofold. First, it allows police organizations and other state-based actors who benefit from carceral intervention to expand the existing mechanisms of punishment and policing powers through the language of intervening at the level of gender-based violence. In Canada and elsewhere, we are likely entering a carceral epoch whereby police will point to increasing prostitution charges as evidence of their successful fight against trafficking. Second, it creates the need for the continued enforcement of prostitution as a nuisance-related crime, yet it conceals this broader mandate under guise of pre-emptively saving 'would-be' victims.

The UK has implemented a similarly inventive approach. As Scoular and Carline (2014) point out, the *Policing and Crime Act* (2009) shifts the burden of proving exploitation and coercion away from the state and onto the purchasers of sex themselves. Redrafted as a strict liability offence, the legislation removes the need to prove the buyer's knowledge that those involved in the sex trade are coerced or exploited. They write, 'Throughout the reform process, the government argued that requiring any knowledge of the exploitation would render a conviction too difficult to achieve. Nevertheless, this does not in and of itself support the imposition of strict liability' (Scoular and Carline, 2014: 611). In essence, the UK government has also removed its need to prove the requirements of trafficking by removing the need to establish the intent to exploit sex

workers. For Carline, the *Policing and Crime Act* does not provide a major transformation to the existing framework; rather, the shift in focus towards trafficking, according to her, is part of what Butler might call ‘a con in the reform process’ (Carline, 2012: 214). Despite the new ideological focus on victimhood, exploitation and the prevention of trafficking, previous elements of the existing framework remain largely intact and continue to work towards criminalizing sex workers and regulating prostitution in relation to nuisance-related enforcement.

In both the Canadian and UK context, removing the need to prove coercion requires specific and unique interventions – ones which place emphasis on the tactics of police and their enforcement of prostituted-related provisions to combat trafficking. This anti-trafficking rhetoric is further complicated by the strong coalition between state and non-state actors. As Timea Nagy (Founder, Walk With Me Victim Canada Services) notes, the triad between police, victim, and anti-trafficking support services forms an essential relationship for rescue-based approaches. She testified,

From our perspective, over 70% of the people who use our service come through a police link. Therefore, if there is no trust in that triangle of police, the person in the sexually exploited situation, and our organization, the exit strategy, in our view, will fail.¹¹

Police are not only complicit in producing the pre-emptive or would-be victim, they work in tandem with non-governmental organizations to mystify and conflate all sex workers as vulnerable and trafficked victims. While these sections have explored the ways legislative and policing iterations of trafficking have served to reconfigure the sex workers as a would-be victim, the following sections focus on the ways neo-abolitionists and their organizations constitute sex workers within an affective economy of which sustain those very attachments to victimhood.

Critiquing the Visceral: Risk, Vulnerability and Victimhood in the Sex Trade ‘Slaughterhouse’

A carceral rebirthing of anti-prostitution legislation cannot sustain iterations of the trafficked victim on its own. It requires a surrounding exchange of testimonial and rhetorical devices that affectively situate the trafficked victim as a recognizable and grievable subject through normative articulations of victimhood. The testimony of survivors of sex trafficking offer insight into how these manoeuvres manifest in political and legal realms. Taking up the call by McGarry and Walklate (2015) to unpack testimonies of victimhood, I argue that the experiential knowledge offered by victims of sexual exploitation serve to invoke feelings of empathy, guilt and a renewed faith in the carceral system. They may also bring about an inherent scepticism in their mythologizations and dramatizations of the illicit sex trade. Following the thread that trafficking is pre-emptively woven into imagined representations sex trade, I examine how neo-abolitionist make affective investments in positioning those in the sex trade as already-made victims. In the previous sections, I argue how official state-based actors construct would-be victims that can never be fully realized without criminal law. In this section, I map the specific discursive manoeuvres used by neo-abolitionists that

construct sex workers within a vernacular of victimhood and constitute all forms of sexual exchange within a framework of trafficking. Whereas police operate according to their own legal and institutional guidelines, neo-abolitionists have constructed the sex trade to compliment this carceral-legal paradigm. Focusing on the risk of harm as opposed to legality, neo-abolitionists reposition sex workers away from the risk-taking, risk aware subjects are found in *Bedford*, and instead, challenge this rubric through a language of inherent vulnerability and absolute victimhood – constituting all forms of sex trade involvement as coercive and non-consensual (see Sibley, 2018).

Concerned with how testimony offers a snapshot into the lives of their narrators and the lived realities from which they emerge, McGarry and Walklate (2015) warn that testimony should be understood as neither fictional nor objective storytelling. Instead, they write, ‘Its intentions are to illustrate the lived experiences of harmful events in ways that are purposefully emotive, truthful and critical’ (McGarry and Walklate, 2015: 87). Victims offer a unique position when their voices are amplified through specific political platforms, since the potential of offering first-hand accounts of violence serve to pull us closer to the events of crime and victimhood while also serving as a kind of paternalistic warning against one’s proximity to those involved in the sex trade. In this sense, testimony offers its own unique genre of political and legal speech. For Miller and Tougaw (2002: 11), ‘Testimony attempts to bridge the gap between suffering individuals and ultimately communities of listeners, whose empathetic response can be palliative, if not curative’. At the same time, it leaves room for the production of certain knowledges related to trafficking.

Returning to Nagy’s testimony, we see that her personal experiences of sex trafficking attempt to attach themselves to the sex trade writ large:

I originally entered the sex industry when I was forced into it by traffickers. Sometime after my rescue I went back to the business for a few months, responding to a huge financial crisis. I already knew what I had gotten myself into and I voluntarily returned, but my choice to prostitute myself was to make a living, to avoid becoming homeless, and to be able to put food on my table.¹²

Brian McConaghy, founding director of Ratanak International and former forensic scientist for the Royal Canadian Mounted Police, reifies this false equivalency, defining ‘human trafficking and prostitution as inseparable and simply different elements of the same criminal activity, which exploits vulnerable women and youth. The separation of these elements [he views] to be largely academic’.¹³

The academic nature of the question is an important one in that it reveals an inherent suspicion in the conflation of sex trafficking and sex work. Weitzer (2011: 1348) argues the impossibility of quantifying actual rates of sex trafficking in that ‘... the numbers and trends asserted are impossible to substantiate, given two fundamental evidentiary problems: (1) the clandestine nature of trafficking, and (2) the lack of a baseline from which to measure changes over time’. Barring this, neo-abolitionists continue to the frame the sex trade as requiring immediate police intervention. In fact, Weitzer (2005: 953) holds that many studies take the particularly traumatic accounts of trafficking victims and superimposes them onto all sex workers regardless of their willingness and

capacity to consent to sexual negotiations. This is not to say that the experiences of victims of sex trafficking are illegitimate, but it is important to be critical of how this framework fuels the neoconservative rhetoric that sex trafficking has spiralled beyond the control of an already punitively oriented law and order agenda.

This is perhaps best exemplified when Nagy goes on to describe how she speaks on behalf of all women who have exited or are still 'stuck' in the sex trade:

In the media these days we hear the voices of women sex workers who demand their human rights be respected in their choice of work. Those women represent a small percentage of women in prostitution. Studies estimate the number of women voluntarily making an informed choice to do sex work is between 1% to 10%.

I speak for the other 90% of prostituted women and men whose voices are largely not being heard in this debate precisely because they are still trafficked and they are still forced to do this work. I speak for the 60% to 95% of women in the sex trade, based on numerous studies, who were sexually molested or assaulted as children. I was sexually molested between the ages of 12 and 17, and that background sets you up to be abused again.

I speak for the 70% to 95% of people who were physically assaulted while in sex work. My first encounter when I was sex trafficked was in a massage place where three Russian men entered the room, and I more or less just became meat. Three men started to take pieces out of me. I was lying on this very cold massage table and I closed my eyes and I looked up and I wondered if anyone had seen this and would anyone rescue me, only to find out later my so-called bodyguard was watching the whole thing on video.¹⁴

The affects of victim testimony are never contained within the bounds of the personal. Instead, they transcend individual subjects and attach themselves onto those who may consider themselves exploited. The supposed inherent dangers of trafficking animate the sex trade and its presupposed victims through personal storytelling. Bridget Perrier (Co-founder, Sextrade101) went on to share her experience in the sex trade:

I was lured and debased into prostitution at the age of 12 from a child welfare-run group home. I remained enslaved for 10 years in prostitution. I was sold to men who felt privileged to steal my innocence and invade my body. I was paraded like cattle in front of men who were able to purchase me, and the acts that I did were something no little girl should ever have to endure here in Canada, the land of the free.¹⁵

The trafficked subject, as Weitzer (2007: 448) argues, is almost always described in ways that contribute to the constellations of emotion felt by intended audiences, as seen in open Parliamentary hearings:

Casting the problem in highly dramatic terms by recounting the plight of highly traumatized victims is intended to alarm the public and policy makers and justify draconian solutions. At the same time, inflated claims are made about the magnitude of the problem. A key feature of many moral crusades is that the imputed scale of a problem (e.g., the number of victims) far exceeds what is warranted by the available evidence.

Doezema (2001) considers how the use of emotive and immediate language in trafficking narratives mark those implicated in the sex trade as politically contingent and malleable subjects – ones that are absolved from criminality, and instead, constituted through a lexicon of vulnerability and victimhood. She suggests that governmental and non-governmental organizations often tout an image of the ‘typical’ trafficking victim as young, naïve, easily deceived and deserving of a better life. The lured or trafficked subject is a powerful identity and one that Aradau (2004) suggests is constituted through a politics of pity.

Aradau (2004: 259) writes, ‘The most important task for the politics of pity is therefore one of identifying trafficked women through dis-identifying them from such a dangerous subject. To garner pity from spectators, trafficked women must be specified as non-dangerous’. The politics of pity entangles itself with an ethics of care, transforming the dynamics of self-responsibilization by ‘appealing to an imaginary of common suffering’ (Aradau, 2004: 261). Descriptors of bloodied and butchered bodies coupled with idioms of enslavement work to frame suffering as constitutive of the entire sex trade. Victimhood in this sense harkens on tropes of passivity and powerlessness – proximally connected to suffering – while narratives governing informed choices in entering the sex trade, whether constrained or not, remain distal:

Visceral images create a sense of immediacy through the joining of emotion and objectivity, which occurs formally through realist, photographic images, as well as through affect-laden narrations and displays of destroyed bodies. Both the visual and affective dimensions of these displays are nondiscursive. They are sensual, as opposed to cognitive, forms of communication. (Allen, 2009: 172)

Immediacy breaks the traditional monotony of institutional governance and mundane bureaucratic responses. McGarry and Walklate (2015: 87) write, ‘[testimony] is concerned with an “urgency” to recount the lived experiences of harm, oppression, or marginalization (i.e. racism, violence, genocide) as experienced by others’. Though the importance of listening to and understanding how violence affects those implicated within the complicated structures of the sex trade, Aradau (2004: 262–263) reminds us, ‘Despite these unifying representations of inflicted pain, not all victims have been physically abused, abducted and then repeatedly raped, beaten up, their bodies burned with cigarettes ends’. This viscerality, as I argue, is emblematic of the broader state-based objectives which seek to reorient sex trade involved people as always already victims. The ways in which neo-abolitionists construct the sex trade in the legal imaginaries as a site of perpetual violence and coercion is marked by an unrelenting effort to erase difference among those in the sex trade and refuse to consider the contextual nature of the decision to enter the sex trade.

The discourse of the trafficked victim, for example, allows for risk to be positioned with certainty and continuity (Walklate and Mythen, 2011). Megan Walker, Executive Director of the London Abused Women’s Centre, told MPs in the committee hearings her organization ‘[does] not recognize prostitution or sex trafficking as work. We refer to this as “prostituted women” or “women in prostitution.” I would ask that today you respect that language when you are addressing questions to me or any of the panellists’.¹⁶

This genre of narrative 'is concerned with an "urgency" to recount the lived experiences of harm, oppression or marginalization (i.e. racism, violence, genocide) as experienced by others' (McGarry and Walklate, 2015: 87). For abolitionists, victimhood and risk coalesce in ways that remove the possibility to recognize the utility of risk management. As Larissa Crack (Co-founder, Northern Women's Connection) puts it:

Violence has been, and always will be, associated with prostitution. This holds true for a large proportion of women involved in the sex trade who admit to experiencing abuse and violence as a direct result of the sex trade. It doesn't matter if women are given 2 seconds or 20 minutes to assess and screen the men looking to buy sex. When women are required to identify violent offenders, their immediate safety will be put at risk. Predators can be manipulative, charismatic, and smooth talkers; all of which would make it easy for them to move past any so-called safety practices put in place by sexually exploited women, and we cannot put this onto the backs of women who are placed in this position.¹⁷

Crack went on to further discuss the violence she encountered while being forced into the sex trade:

I have been held at gunpoint and watched my friend get murdered in front of my eyes. I was tied down for days at a time and injected with numbing drugs while men paid to rape me. I was drugged. I've been beaten and thrown out of the vehicles of men who didn't want to pay for the service they had received and suffered multiple injuries from the pimps who wouldn't accept anything under a predetermined amount of revenue. After all of these abuses that I have endured, the worst part is now living with and hearing others talk about the sex trade as if it were a choice, a form of employment that could become normalized if Bill C-36 is not passed, and constantly hearing that what I went through could have been prevented by having a bodyguard or by having the privilege of working inside.¹⁸

Speaking in the language of intrinsic risk serves to aggregate the individual and diverse experiences of sex trade workers into a univocal narrative. To reiterate, the *Bedford* ruling recognized the various ways sex workers manage and engage with risks in the sex trade, acknowledging that sex workers are risk-aware and risk-taking subjects. Crack's testimony, and others like it, serve to undermine this epistemological position. How one comes to know the sex trade depends heavily on how one interacts with it. Those who engage in what has been called the 'survival' sex trade may in fact have a different conceptualization than that of an independent service provider. Language that compels political and legal actors to erase those sophisticated viewpoints serve as a reminder that the arguments against sex work are largely rooted in the rhetoric of victimhood.

Conclusion

The prospect of aligning sex trade involved people constituted as always already victims denies the possibility of sex worker entrepreneurialism. Testimonies of the sex trade as inherently violent and as a site of trafficking create affects that make possible the repositioning of penal sanctions onto the purchasers of sexual services while articulating

the need of carceral institutions to protect those implicated in the sex trade. The state's renewed positions seemingly satisfy the Supreme Court's requirement to ensure that criminal law cannot exacerbate risks of harm for the express purpose of regulating nuisance. Instead, the state's official position, along with its neo-abolitionist allies, has been to reformulate and reconceptualize sex workers not as nuisances but as exploited victims.

This has many practical uses for the carceral state. First, it allows the government to reinvent its criminalizing logics. If criminal law, according to the Supreme Court, cannot be used to regulate sex work as a societal nuisance, then rescuing sex workers from an inherently exploitative system of subjugation will ultimately justify criminalization. Second, it allows police to support anti-prostitution legislation under the guise that it will assist in pre-emptively exposing and uncovering sex trafficking victims. For policing organizations, the use of anti-prostitution laws is an effective tool for stopping instances of trafficking despite never having to prove or establish the legal and criminal elements of human trafficking in the first place. In this sense, trafficking is further mystified and its legal definitions continue to be blurred as anti-prostitution legislation becomes inseparable from the project of combatting trafficking.

The alliance between policing organizations and anti-trafficking groups continue to strengthen the nexus between abstract and immeasurable criminal activities and the hardening of a law and order agenda. Through their own realities and experiential knowledge, neo-abolitionists create a mythology of violence that seeps beyond personal accounts and attaches itself to the sex trade writ large. The stories of violence which have been taken up in this article shed light on areas of criminological inquiry which are often difficult to access by researchers. Though they claim to be rooted in statistical certainty, the spectacles of violence, suffering, and trauma are galvanized via the affects of personal testimony. Attachments to victimhood, made through the visceral retelling of violence and harm brings us closer to the scenes of violence. They compel us through language to imagine sex work as inescapably bound to coercion.

Neo-abolitionist accounts of victimhood work to constitute an imagined 'prostituted' subject – one whose identity is animated through the affective labour of political and legal testimony. It simultaneously challenges previous iterations of prostitution as nuisance while offering renewed state-based interventions that are instrumentalized to prevent exploitation. These ambiguities in regulatory objectives point to a cleavage in the discursive framing of prostitution laws in Canada and the seemingly unstable subject positions of sex workers as both victims and offenders. It exposes what Butler (2009) and Carline (2012) suggest are the imbedded ruses of identity politics that justify a continued punitive intervention couched in a language of paternalism (Bruckert and Hannem, 2013). Personal testimony offers insight into the ways in which accounts of violence proffer as political and legal artefacts, calling for the need to critically examine the affects of personal narrative and the ways they inform understandings of victimhood.


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ORCID iD

Marcus A Sibley  <https://orcid.org/0000-0002-3241-6153>

Notes

1. *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101.
2. Though passed into law as the Protection of Communities and Exploited Persons Act, the legislation is commonly referred to as Bill C-36 and I refer to it as such in order to ground my analysis in the moments leading up to the legislation's implementation.
3. Many of the same witnesses were called to testify months later at the Senate Standing Committee on Legal and Constitutional Affairs. For the purposes of this article, I draw only on the testimony from the House of Commons committee.
4. Grandma's House is a non-profit organization in Vancouver, British Columbia which provides a safe space to support street-involved sex trade workers and engages in pro-sex work advocacy.
5. *Bedford (Attorney General) v. Canada* at para 136.
6. The full title of the bill reads as: 'An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts'.
7. Section 153(1) of the *Criminal Code of Canada* defines sexual exploitation as an exploitative relationship between someone in a position of authority or trust over a young person. The provision reads: 'Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or (b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.'
8. York Region is a collection of independent townships north of Toronto, Ontario, Canada with a population of approximately 1.1 million residents.
9. House of Commons, Standing Committee on Justice and Human Rights, 9 July 2014, 7 July 2014, 41st Parliament, 2nd sess., no. 38, p. 7.
10. House of Commons, Standing Committee on Justice and Human Rights, 10 July 2014, 41st Parliament, 2nd sess., no. 43, p. 16.
11. House of Commons, Standing Committee on Justice and Human Rights, 7 July 2014, 41st Parliament, 2nd sess., no. 33, p. 2.
12. House of Commons, Standing Committee on Justice and Human Rights, 7 July 2014, 41st Parliament, 2nd sess., no. 33, p. 1.
13. House of Commons, Standing Committee on Justice and Human Rights, 10 July 2014, 41st Parliament, 2nd sess., no. 43, p. 7.

14. House of Commons, Standing Committee on Justice and Human Rights, 7 July 2014, 41st Parliament, 2nd sess., no. 33, p. 1.
15. House of Commons, Standing Committee on Justice and Human Rights, 9 July 2014, 41st Parliament, 2nd sess., no. 39, p. 1.
16. House of Commons, Standing Committee on Justice and Human Rights, 8 July 2014, 41st Parliament, 2nd sess., no. 36, p. 2.
17. House of Commons, Standing Committee on Justice and Human Rights, 9 July 2014, 41st Parliament, 2nd sess., no. 40, p. 6.
18. House of Commons, Standing Committee on Justice and Human Rights, 9 July 2014, 41st Parliament, 2nd sess., no. 40, p. 6.

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