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THE SEXUAL POLITICS OF HUMANITARIAN REGULATION

By

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ABSTRACT OF THE DISSERTATION

"The Sexual Politics of Humanitarian Regulation"

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This dissertation is a critique of humanitarianism through the lens of two pieces of United States policy: the Trafficking Victims Protection Act and the President's Emergency Plan for AIDS Relief. Through discursive analysis of the congressional record, in addition to materials from media and popular culture with which it interacts, this dissertation investigates the humanitarian impulses of these policies in relation to their intended and unintended effects. By examining the effects of both policies, I demonstrate that they are counterproductive, if taken at their face value as projects to help and save. Far from being a problem of failed implementation, I suggest that these policies suffer from systematic defects in their very design, beginning with the claim that they reflect confusion between human rights and humanitarianism. I claim that the logic of humanitarianism governs both policies. This humanitarian form of governance is by definition uneven, and while deployed as a reflection of humane values, nevertheless has complex political motivations and outcomes. Most notably, both policies mobilize neocolonial language and symbols that mark the global South as barbaric and uncivilized, and the global North as harbingers of civilization and equality.

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Introduction: Domination Through Compassion

By almost any standard, "humanitarianism," rightly, has positive connotations. It is a word that indicates concern for humanity and commitment to widespread human well-being. Evincing a strong cosmopolitan strain, humanitarianism at its best draws upon ideas of shared humanity or a shared human condition; and encourages adherents to think their way into the viewpoints and experiences of others (Young-Bruehl 2010: 208-209).[1] When embroiled with political projects, however, humanitarian intent can be mobilized towards highly ambivalent outcomes. Many international aid and development projects, including the two policies on human trafficking and HIV/AIDS that are the focus on this dissertation, are framed in humanitarian terms, and fall under what James Scott (1998) has termed "schemes to improve the human condition,"—schemes which often fail. Scott's phrase is a net wide enough to catch projects as varied as development of infrastructure, health improvement schemes, agricultural innovations, and industrialization. Such schemes attempt to bring into existence ideal worlds (Ferguson 1994), usually with the West as the standard-bearer. Such idealism can initiate positive projects such as universal public education, social security, transportation and communication (Scott 1998: 340). However, in application, these schemes often ride roughshod over local knowledge, input, and context and do more to boost the moral and political status of donors than to address the root causes of the problems at the center of

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[1] Here I draw upon Elisabeth Young-Bruehl's (2010) description of the cosmopolitan spirit identified by Karl Jaspers and Hannah Arendt, the other two elements of which are a sense of the unpredictability of human affairs, and the appreciation of unconscious desires and motivations shared by all people. Though cosmopolitanism and humanitarianism are certainly not synonyms, humanitarianism draws on the two cosmopolitan elements identified above.

[2] Equality Now; Planned Parenthood Federation of America (Gloria Feldt); International

the policies. In this way, aid and development projects such as anti-human trafficking programs and HIV/AIDS prevention straddle multiple contradictions. Seemingly "pure gifts," they are caught within dueling logics, driven by the "politics of rescue" and "politics of forgetting." As theorized by Uma Narayan (2005), the politics of rescue casts westerners as a positive force in the global South while the politics of forgetting allows them to forget the multiple and various ways that they are complicit in the problems they identify there. The desire to express solidarity with people who struggle in the global South is often deeply entangled with uncritical and unreflexive projects supposed to help, or indeed, save residents of the global South. Expressions of cosmopolitan solidarity coexist with the "culturalization" of various pervasive social ills such as violence, poverty and rape (Razack 2004). When social problems in the global South are treated as "cultural problems," Western attention is diverted from structural forces that contribute to and exacerbate these problems. The global South is imagined as a place steeped in tradition and culture (the West is unmarked in this regard), while deflecting attention from structural factors in which the West is complicit such as legacies of colonialism and slavery, Western-led economic reform, and the exploitative terms of Western foreign direct investment.

This dissertation responds to the calls by Sherene Razack and Uma Narayan for feminist work, emerging from the global North, to redirect energies away from the politics of rescue and towards combating racist, imperialist, anti-immigrant policies of Western states. I examine two pieces of U.S. policy—the Victims of Trafficking and Violence Protection Act (2000) and the President's Emergency Plan for AIDS Relief (PEPFAR) (2003). Lawmakers have framed both policies as projects that will help and

save target populations (trafficked people and HIV-positive residents of the global South, respectively), and yet both have had ambivalent and even exclusionary results. Both are prominent (high publicity) policies that have drawn much praise for addressing pressing global challenges. And both have brought together supporters that span the political spectrum from conservative fundamentalists on the right to liberal feminists. In part, we may attribute the uneven results of the policies to their humanitarian framing at the expense of a rights-based framework. After introducing the Victims of Trafficking and Violence Protection Act and the President's Emergency Plan for AIDS Relief, followed by the methodological considerations guiding this project, I further elaborate on this argument in describing the structure of the dissertation.

The Trafficking Victims Protection Act (TVPA)

In the final years of the Clinton administration, Chris Smith, Republican congressional representative from New Jersey and Chair of the Human Rights Committee in the House of Representatives, had been attending international conferences on sex trafficking, which impressed upon him the need for more effective sex trafficking law in the US (McBride Stetson 2004: 257). He introduced a bill that would later become the Victims of Trafficking and Violence Protection Act of 2000 (referred to in this dissertation as the Trafficking Victims Protection Act, or TVPA). Thirteen women's groups joined forces to lobby Congress on the trafficking bill. Their primary concern was to eliminate the distinction made in the bill between forced and voluntary trafficking, on the view that prostitution itself is exploitation (McBride Stetson 2004: 259). When the administration did not prove receptive to their opinions, these women's groups turned to Chris Smith, an unlikely ally due to Smith's prominence in the anti-abortion

movement, and worked with him in shaping the final draft of the TVPA (McBride Stetson 2004: 259). Under the terms of the act, which went into effect in 2000, ‘‘sex trafficking’’ involves “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act” (Victims of Violence and Trafficking Protection Act of 2000: Sec. 103.8 (B)). The term ‘‘commercial sex act,’’ in turn is defined as “any sex act on account of which anything of value is given to or received by any person.” Any form of sex work, including stripping, could potentially fall under the definition of trafficking as found in the TVPA. The act does distinguish trafficking from “severe forms of trafficking in persons,” which includes:

> (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subject to involuntary servitude, peonage, debt bondage, or slavery.

While the distinction between severe and regular trafficking is more nuanced, the general usage to which the term trafficking has been put is a legacy of feminist and conservative Christian interests working in tandem, which some claim (McBride Stetson 2004, Kinney 2006) has led to a crackdown on many forms of voluntary sex work.

The George W. Bush administration, which openly embraced conservative Christian principles, was distinctly more willing to accept the anti-prostitution position, which links sex trafficking and virtually all forms of sex work. John Miller, the director of the State Department Trafficking Office, claimed that the federal government had been “‘working closely with faith-based, community, and feminist organizations’ to combat all forms of prostitution” (Weitzer 2007). Indeed, the second Bush administration did work closely with feminists. Most notably, 1970s-era radical feminist Laura Lederer, a leader

of the anti-rape movement and editor of *Take Back the Night* was engaged to work for the Department of State's Office to Monitor and Combat Traffic in Persons. Other prominent feminists such as psychotherapist and women's studies professor (CUNY) Phyllis Chesler and women's and gender studies professor (University of Rhode Island) Donna Hughes openly supported the second Bush Administration, claiming in *The Washington Post* that feminists "should stop demonizing the conservative and faith-based groups that could be better allies on some issues than the liberal left has been," and that "faith-based groups have become international leaders in the fight against sex trafficking" (Chesler and Hughes 2004). Thirteen feminist organizations publicly supported the Christian right approach to trafficking and prostitution.[2]

To fight trafficking, TVPA relies heavily on the criminalization of prostitution, and on shaming of countries that have not sufficiently "cracked down" on brothels (Kinney 2007: 189**).** As the eradication of prostitution came to be understood as necessary to the eradication of forced sex trafficking, some scholars have suggested that the shaming of countries slid quickly into the shaming and blaming of sex workers themselves (Sanghera 2007).

The President's Emergency Plan for AIDS Relief and The Anti-Prostitution Pledge

In 2003 George Bush announced the President's Emergency Plan for AIDS Relief and on May 27th of that same year obtained from the Congress legislative authorization

[2] Equality Now; Planned Parenthood Federation of America (Gloria Feldt); International Women's Health Coalition; NOW (Patricia Ireland); Women's Environment and Development Organisation; Catholics for a Free Choice; Protection Project; Coalition Against Trafficking in Women; Sisterhood is Global Institute; National Black Women's Health Project; Feminist Majority; Gloria Steinem; Center for Women Policy Studies (McBride Stetson 2004: 264; Hertzke 2004: 328-329).

for it, signing into law H.R. 1298, the "United States Leadership Against Global HIV/AIDS, Tuberculosis, and Malaria Act of 2003," otherwise known as the Global AIDS Act, sponsored by Henry Hyde (R-IL). This act authorized appropriations for projects combating HIV/AIDS specifically, through PEPFAR, the initiative for which the bulk of the funding was intended. Other appropriations were authorized for US participation in the Global Fund to Fight AIDS, Tuberculosis, and Malaria. Of fifteen billion dollars committed over five years (2003-2008), ten billion was allocated for fifteen focus countries dealing with HIV and four billion for other countries and additional HIV/AIDS research. One billion dollars was devoted to fighting both Tuberculosis and Malaria, in addition to HIV. That is to say, fourteen out of fifteen billion dollars, or ninety-four percent, was devoted to combating the spread of HIV/AIDS through PEPFAR.

The Anti-Prostitution Pledge

While H.R. 1298 was still in Congress, several amendments were made to it, most notoriously the addition of an anti-prostitution pledge, introduced by Chris Smith (R-NJ), the originator of TVPA. The anti-prostitution pledge required recipients of U.S. funds to abide by the following limitations: "No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking," and "No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking" (H.R. 1298 at 23-4). Grantees were required to sign a declaration that the activities of their organizations were in accord with these provisions. The anti-

prostitution pledge was initially intended to apply only to foreign NGOs, however in 2004 the Department of Justice advised that these funding restrictions could be applied to U.S. NGOs (Global Health Council 2006). The anti-prostitution pledge applies to bilateral organizations, but not multilateral organizations, and foreign governments, UN agencies, and the World Health Organization were exempted from the scope of the act (Global Health Council 2006; Center for Health and Gender Equity 2008). Those grantees subject to these provisions discovered that the restrictions pertained not only to funds provided by the U.S. government, but also the use of funding from private donors (Masenior and Beyrer 2007: 1158). That is to say, an organization that accepted PEPFAR funds could not use privately donated funds for projects that supported sex workers, whether the project focused on HIV/AIDS prevention, contraception, or health issues.

The Christian Right's activism on TVPA and the anti-prostitution pledge evinces, in Allen Hertzke's (2004) analysis, a new philosophy of "Going Forth" to "free God's children," which is part of a humanitarian ethic—an ethic that resonates in feminist anti-trafficking campaigns. Indeed, Hertzke notes that Laura Lederer's anti-trafficking work was closely paralleled by the work of Gary Haugen of International Justice Mission (IJM), a Christian human rights organization. According to Haugen, the younger generation of evangelicals no longer shies away from "liberal social gospel concerns" but rather seeks to engage with issues of abduction, forced labor, torture, etc. (Hertzke 2004: 319). Harnessing those sentiments, IJM has a heavy focus on sex trafficking and employs a network of undercover investigators abroad who orchestrate "rescue" missions for underage women working in brothels. Lederer and Haugen were brought together by

Michael Horowitz, a neo-conservative with the Hudson Institute think tank, in 1998 in order to work on sex trafficking legislation (Hertzke 2004: 321) and were instrumental in the advocacy networks that promoted the passage and vigorous application of the legislation (Hertzke 2004: 316-7). According to Hertzke, in making this introduction, Horowitz was linking Lederer and her feminist ally Jessica Neuwirth, to already existing networks of Christian activists who had pushed for the adoption of the International Religious Freedom Act, thus leading him to conclude that "Ironically, then, feminist activists find their best allies among evangelicals and other religionists in the faith-based constituency" (Hertzke 2004: 317).

In characterizing the conflation between prostitution abolition and anti-trafficking interventions, Jyoti Sanghera of the Global Alliance Against Traffic in Women (GAATW) has noted that "the road to hell may be paved with the best of intentions," but the consequence of these benign intentions are that "the trafficked woman may find herself literally [tossed] 'from the frying pan into the fire'" (Sanghera 2007: vii). Both feminist academics and activists have articulated deep concerns over the rights of migrant women and female sex workers in the wake of United States anti-trafficking legislation of the past fifteen years. Some (Bernstein 2010, Agustin 2007, Sanghera 2007, Kempadoo 2005) have noted that the anti-trafficking movement has not only failed to improve the lives and livelihoods of women and girls in the global South, but has increased their vulnerability, despite its stated goal of protecting them.[3] Similarly, the

[3] See TVPA section 102 (A): "The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of trafficker, and to protect their victims."

anti-prostitution and abstinence-heavy approach to the global AIDS crisis reflected in the United States President's Emergency Plan for AIDS Relief has drawn criticism for creating a policy that, while adept at treating already existing infections, fails to adequately address prevention needs (Herzog 2008, Masenior & Beyrer 2007). Overall reaction to these international policies has not been all or even mostly negative. Despite the criticisms advanced by some feminists, both sex trafficking and HIV/AIDS have proven to be popular "hot topics," support of which seems largely uncontroversial to the public. Perhaps the strongest testament to their popularly uncontroversial nature is the fact that they are both supported and informed by both conservative Christians and some feminists.

Cast in the language of humanitarian assistance, relief, and rescue, TVPA and PEPRAR position the United States as a benevolent actor, interested in the well-being of vulnerable populations, motivated solely by pressing need, and free from other economic, political, and military motives. This dissertation investigates the humanitarian impulses of these policies in relation to their intended and unintended effects. To assess the impartiality, neutrality, and independence of these humanitarian interventions, I examine how the policies were generated, the perspectives that influenced their content, and the results of their implementation. By examining the effects of both policies, I demonstrate that they are counterproductive, if taken at their face value as projects to help and save. Far from being a problem of failed implementation, I suggest that these policies suffer from systematic defects in their very design. I claim that both policies are governed by the logic of humanitarianism, or as Didier Fassin (2011) calls it, "humanitarian reason."

This is a form of governance that is global and uneven (Fassin 2011: xi-xii) and while deployed as a reflection of humane values, nevertheless has complex political motivations and outcomes.

My dissertation examines the apparently contradictory effects of these policies and offers an account of those contradictions. My analysis focuses on the inherently conservative nature of humanitarianism, which seeks to maintain the status quo while providing opportunities for those who benefit from it to accumulate moral capital and shoring up national, racial, sexual (and other) forms of privilege through covert forms of regulation. I also link these policies to a reconfiguration of colonialism's civility-barbarism dichotomy, which distinguishes the West from the rest by invoking cultural explanations for problems in the global South that the West has elected to resolve. In short, these contemporary "humanitarian" policies create positive and uplifting narratives about the West (particularly the United States) at the expense of communities in the global South. My argument is rooted in important ways in uncoiling humanitarianism from human rights, with which it is conceptually deeply entangled. Therefore I begin by attempting to establish the shared genealogy of human rights and humanitarianism, while also illuminating crucial differences in the two concepts. My goal is to demonstrate that while both academics and policymakers (to say nothing of the general public) lack clarity about their similarities and differences, if human rights were the dominant paradigm, policy effects would be less uneven. The truly powerful force of human rights can only be effectively marshaled if it is unmoored from humanitarianism.

Methods and Methodologies

This dissertation takes as its starting point apparent contradictions between the

stated goals and the outcomes of the TVPA and PEPFAR. The contradictions that interest me are how policies that claim goals such as ending the spread of HIV/AIDS or eradicating human trafficking, can end up exacerbating the spread of AIDS, or marginalizing trafficked people. To paraphrase James Scott (1998), how did these schemes to improve the human condition fail? However, this question cannot be a starting point. It risks leading to a project that attempts to uncover some kind of bad faith on the part of its practitioners, when, as Scott himself found, it ultimately boils down to a mix of high-modern idealism and realpolitik. Rather, this project seeks to examine the effects that are produced by discourses on HIV/AIDS and trafficking, which circulate widely in state documents, media depictions, and popular culture. Ultimately, my project is informed by a concern regarding how dominant discourses about people, particularly women of the global South, can indeed marginalize and disadvantage them. In keeping with Gayatri Spivak's (1985, 1988) conception of epistemic violence, I explore how representation can do violence to its objects. Toward that end, my methods include discourse analysis, Foucauldian archaeology, and feminist visual culture.

The arguments presented in this dissertation are based on analysis of a number of textual and visual materials. The most voluminous and substantial material consists of "official" (ie. generated by the state) texts generated in the process of policy creation. That is to say, from the time the bills proposing the TVPA and PEPFAR were introduced in the House or Senate to the time they were signed into law by the President, policymakers convened numerous forms of knowledge-gathering (and knowledge generating) events. These include discussion and debate in House and Senate about the bills in question; congressional hearings that hosted witnesses deemed relevant to provide

testimony; committee reports; materials from the news media or documentaries that were read into the congressional record; proposed amendments to drafts of bills, and indeed the presentation of the final text of the bill that was ultimately approved and became law. In addition to the materials generated during this process, I have consulted Presidential remarks upon signing bills into law; progress reports on policies as they are implemented (e.g. Institute of Medicine progress report on PEPFAR); and speeches by the Secretary of State upon releasing progress reports (e.g. the Annual Trafficking in Persons –TIP- reports). As bills came up for reauthorization, the process of debating, convening hearings, etc. was repeated, and I studied these texts as well. With respect to these materials, I have attempted to be as thorough as possible by reading all official materials that are available. Most have been accessible via online government archive (at Congress.gov, previously Thomas.gov; and Senate.gov). Other materials, such as reports on the activities or priorities of councils or commissions are available via defunct webpages that have been maintained online by the Department of State as an archive (e.g. the website of the now defunct President's Interagency Council on Women). Where it seemed relevant, I also read memoirs from relevant political actors who were active on issues of interest in this dissertation, such as Madeleine Albright's memoir *Madam Secretary* and George W. Bush's *Decision Points.*

Because a significant portion of this dissertation is devoted to demonstrating how moral capital is accrued in the West through policies like the TVPA and PEPFAR, I have found it necessary to trace the process by which the message of helping and saving is imbibed in mainstream Western society. Indeed as I will argue, popular culture both reflects and informs the state's humanitarian discourse. In order to effectively interrogate

this process, I have analyzed the text of a very popular anti-trafficking book (*Half the Sky*). I have also consulted visual materials from popular culture, such as images from *Half the Sky* and the Facebook game it inspired; a music video from a celebrity-led anti-trafficking campaign; and a box-office hit film about sex trafficking (*Taken*). I have also been attentive to the massive amounts of news coverage of both policies, both positive and critical assessments. Though I believe it would be impossible to be aware of more than a fraction of the vast commentary on these issues, I nonetheless incorporated news items that seemed particularly salient. Below, I offer some considerations relating to my methodological commitments in analyzing the materials listed above. However, as a feminist commitment to critical subjectivity makes clear, any attempt to occupy a neutral position from which to assess competing discourses necessarily obscures privilege masquerading as objectivity. Rather, I am committed to acknowledging my location of privilege as a white woman of middle class origin, residing in the global North. Such an acknowledgment not only entails a refusal to attempt to speak on behalf trafficked women or women of the global South, but also attempts to shed light on how representations of women of the global South as abject are part of positive collective self-presentation in the global North.

Discourse Analysis: Words Without Texts and Speakers Without Subjectivities

Discourse analysis takes as its starting point the assumption that language (broadly conceived) organizes our ways of thinking into ways of acting in the world (Gannon & Davies 2007: 82) and that we ourselves are, to a greater or lesser degree, discursively constituted. Discourses themselves are defined by Gannon and Davies as "complex interconnected webs of modes of being, thinking, and acting" which are "in

constant flux and contradictory." The premises of discourse analysis of most stripes are identified by Phillips and Jorgenson as (1) a critical approach to taken for granted knowledge; (2) the belief that all knowledge is contingent; and (3) that knowledge of the world is created through social interaction (5-6). Different interpretations of the world are represented in sets of explanations, arguments, images, and even actions. Taken as a whole, these "groups of statements," (Foucault 1972) form a discourse. Different and contradictory discourses compete for explanatory dominance over the same terrain: (i.e. in their attempt to capture reality, knowledge claims are both incomplete and contentious) (Jørgensen and Phillips 2002: 12-13). There are always discourses, or systems of meaning, that are dominant at any given time, and because of their dominance they appear natural and timeless and for a time move out of the realm of contestation, but alternative discourses are always present, even if marginal.

In this dissertation, I map struggles over the meaning of particular signs (Jørgensen and Phillips 2002: 25-6). By treating trafficking as a discursive field, I examine how meaning is made around certain signs like women, victim, sex (pleasure/danger), sex work, slavery, and freedom. Competing discourses treat these same signs in very different ways, which have real effects, punishment being just one. By exploring alternative discourses, it is possible to show how the seemingly objective is established discursively and therefore to expose the effects as possibilities rather than inevitabilities.

Archaeology: The Limits of Discourse

If discourse analysis as I have discussed it thus far allows me to deal with discourses' circulation and contestation over terrain in the present, Foucault's notion of

"archaeology" entails examining the limits of discursive formations, "the rules that determine which statements are accepted as meaningful and true in a particular historical epoch" (Jørgensen and Phillips 2002: 12). Foucault tells us that discourse is not a timeless, ideal form. It is rather a fragment of history (Foucault 1972: 117). In other words, whereas theoretically any set of statements regarding a particular object is possible at any given time, only a limited set of statements does in fact emerge. Archaelogy traces the outlines / limits of the sets of statements that emerge. Archaeology treats systems of thought as "discursive formations" "independent of the beliefs and intentions of individual thinkers…[and] displace[s] the human subject from the central role it play[s] in the humanism dominant in our culture since Kant" (Gutting 1999: 321). By mapping the limits of trafficking and HIV/AIDS as discursive fields, critically examining their dominant framing as problems whose causes are located in specific cultures and places, and solutions located in other, more privileged spaces, I can compare the shifting limits of the discourse over time. My approach has been influenced, for example, by Ann Laura Stoler (2002), who traces the limits of the possible in colonial discourse surrounding colonized women. She notes that colonized women in the early life of colonies were constructed as sources of comfort for European men and liaisons between them and local people and culture. As white women (previously dangerous distractions) were encouraged to move to the colonies, "local" women became "evil influences."

Similarly, it is productive to examine previous discourses around slavery. In the late 19th and early 20th centuries, the language of "slavery" emerged to describe women's real and potential sexual labor in periods of change and women's perceived increased

autonomy (Kempadoo 2005). The current discourse mirrors this earlier discourse, which followed the abolition of trans-Atlantic slavery and the internationalization of wage labor. As Kempadoo has it, "ideas about the mobility and trade of women's labor and bodies that emerged around 19th century indentureship and debt bondage systems ignored the impacts of colonialism and demands of patriarchal, racialized capital, and attached prostitution and "loose" sexual relations to notions of a degraded women's sexuality and the immorality of migrant men" (2005: xix). If an examination of discourses that served as forerunners of the current discourse can problematize it for the period in question, it encourages us to question how those same or similar formulations are limited in the present. Thus to probe contemporary discourses on trafficking and sexual slavery, I situate contemporary slavery discourse in relation to the uses and limits of slavery discourse during the first wave of slave abolitionism in the 17th and 18th centuries.

The Challenge of Critical Subjectivity

Will Kymlicka has noted that the hallmark of liberal society is the ability to revise one's ends, but is careful to note that beliefs about the value of particular practices are largely determined by the meanings attached to them by one's culture (1995: 82-3). In other words, one can never occupy a space that is value-free from which to analyze the variety of available lifestyles—they are always already qualified by discourse—the value-laden words and images through which we have come to know them. Indeed, one's own subject position will inevitably determine the breadth of options one perceives as existing and available. In much the same way, discourse analysis is a valuable tool for identifying the variety of discourses in competition for the same vocabulary, but for my

purposes it is problematic to assume that the analyst/theorist can occupy a space external to these discourses.

Discourse analysis helps me to identify, expose, and problematize potentially racist and orientalist discourses which are able to live on in the (arguably neo-colonial) fields of development, global health, and anti-trafficking. These discourses represent modernist, Enlightenment modes of thinking, according to which objective knowledge and indeed *truth* about the material world can be obtained. They reflect an objectivist epistemology, which suggests that it is possible to escape all of one's illusions. Along with this comes the assumption that the closer "we" are to truth, the better we know how to organize the world around us. The discourse of colonialism has been one according to which humanity's movement towards enlightenment is represented at its earliest stages by non-Westerners, people of color and people of the global South; and at its most advanced stage primarily by white, European men and their descendants. In contrast to this are post-structural discourses critical of development initiatives (Ferguson 1994; Scott 1998; Escobar 2011). The basis of this critique of modernist, Enlightenment assumptions underpinning dominant development discourses is their totalizing claims—to know what is best, and best for all.

A Foucaultian approach to discourse would encourage us to examine the discursive field, being attentive to the effects produced by the discourses in question. As feminist theorists such as Donna Harraway (1988), Susan Bordo (1990), Nancy Hartsock (1990), Janet Ransom (1993), and others have noted, the vantage point required to study the discursive field as a whole and explore alternatives as equivalent is presumably neutral—or no vantage point at all, which might as well be another totalizing discourse.

The risk here is that the claim to neutrality can only ever obscure a position of power: "As Bordo (1990) has argued, there is a paradoxical sense in which the Archimedean point returns when theory becomes preoccupied with the rejection of essentialist premises. The theorist proceeds as if it is possible equally to attend to all possible realities" (Ransom 1993: 141). To attend to all possible realities means that the theorist is not somehow necessarily embroiled in a particular discourse, and also that the theorist cannot take a side, lest she risk being ensnared in the world of mere *doxa.* Since a crucial and defining contribution of feminist methodology has been to emphasize the importance of subjectivity, embodiedness, particularity, and yes, *doxa* (see Elshtain 1982), it is important to consider what possibilities strict adherence to the assumptions of objectivity close off. To modify an oft-heard assertion about the divine, whenever your methods open a door, they close a window.

If, as Edward Said claimed, "The act of representing others almost always involves violence to the subject of representation," (quoted in Eileraas 2003: 807), feminist scholarship has been at the forefront of efforts to attend to this reality, and to develop an apparatus of study that avoids such violence. Juliet Williams (2009) and Seema Arora-Jonsson (2009) have each offered ways of dealing with this challenge. Williams notes that in the wake of the publication of Gayatri Spivak's "Can the Subaltern Speak?" the feminist methodological imperative has been an emphasis on self-representation (Williams 2009: 615), and argues that "One can only begin to displace orientalist ideology by exposing and disrupting "the imaginings of the West that serve as the basis for orientalist representations of its others" (Williams 2009: 616). She terms this work of exposure "double critique:" "analyses that not only aim to disclose orientalist discourses

of the non-West and the West but also foreground the interplay between these discourses" (Williams 2009: 617). For her part, Jonsson refers to the technique of "reversing gaze," whereby she examines the discourse of equality in a Northern European country from the standpoint of a women's collective in the Global South. This reveals how its favorable self-comparison with peoples of the Global South allows Sweden to ignore its own shortcomings where gender equality is concerned. There is a good reason for raising the possibility of double critique and gaze reversal here. To push back against something, to turn it around, requires digging in with one's heels, planting one's feet in a specific location. Central to these approaches is a refusal to treat all discourses as equivalent possibilities. One's position determines not only one's ability to recognize some discourses for what they are, but also one's failure to recognize others at all. Feminists and postcolonial scholars have recognized that the ability to claim neutrality is usually the purview of members of privileged groups. Certain (particularly oppressed) subject positions enable their placeholders to see inaccuracies and false claims in other (particularly privileged) discourses. It is imperative to my project, therefore, to develop an approach to discourse analysis which avoids the claim that there is no truth, only discourse. This stance allows oppression to continue. As Nancy Hartsock aptly comments, "Domination, viewed from above, is more likely to appear as equality" (1990: 168). Hartsock worries that discourse analysis that treats all discursive fields as equivalent possibilities is only the Enlightenment redux, a late twentieth century totalizing discourse of its own (1990: 164). Such a position does not allow for subjectivity, and yet resistance must be embodied and perspectival. For this reason, a feminist discourse analysis will do well to develop a discursive analysis that works as a

critique, but heeds Hartsock and allows its practitioners to move beyond critique into construction (Hartsock 1990: 163). I understand this project as being the work of "double critique" and gaze reversal described by Jonsson and Williams. In sum, though it may not be possible to be certain of transcendent truths, it is entirely within the vision of this project to identify a discourse as something "not right"—as oppressive and undesirable—and to resist it. Studies of feminist visual culture, as I demonstrate below, can assist us in pinpointing moments of knowledge production.

Feminist Visual Culture

Visual culture, or analysis of the visual, can fall under the rubric of discourse analysis if we understand image as a kind of text. Just as Alev Cinar (2008) claims in her study of veiling and the secular Turkish state, exclusion happens not just verbally but visually. Part of the puzzle that I am studying is the widespread support for mainstream anti-trafficking campaigns. Yet I cannot privilege congressional debates, presidential speeches, and U.S. "Trafficking in Persons," (TIPs) reports, if I am interested in popular support for anti-trafficking efforts, because most people do not consult these sources. Most people *do*, however, see images (in and on books; advertisements, movies, music videos) and watch documentaries and movies on trafficking and forced or illegal migration. Feminist theories of the image "focus on the power of vision in constructing the social and the privileging of the (male) gaze in meaning and knowledge production…critique representation and the deconstruction of its existing regimes with reference to gender and sexual difference, always in complex asymmetrical relationship to class, race, ethnicity, sexuality, etc." (Oleksy & Golanska 2009: 6). The primary benefit of studying images of trafficking is that the image captures one, or multiple,

moments of knowledge production (Hall 1997: 53). Thus, in chapter two, I blend discourse analysis of a popular anti-trafficking book with visual analysis of the images in that book, in a music video for a popular anti-trafficking campaign, and in a Hollywood film about trafficking. Examining the production of knowledge in such visual materials allows for a deeper analysis of how they articulate with other sites of knowledge production such as policy. They also help to expose how policy is not just a response to current discourse, but is itself a dominant force in shaping it.

Structure of the Dissertation

Chapter one is devoted to an examination of the complex ways that human rights and humanitarianism occupy related yet distinct intellectual terrains, which are frequently confused with each other. The confusion is understandable, given their shared genealogy and concern for human dignity. However, as I will demonstrate, humanitarianism and human rights diverge sharply in responding to the French Revolution. Through an analysis of that divergence, I excavate the conservative dimensions of humanitarianism that help to explain the contradictory nature of TVPA and PEPFAR.

In chapter two I introduce the first of the policies: the TVPA, by providing both a legislative history of its adoption, and some historical circumstances that explain the emergence of trafficking as a global issue in the 1990s. Analysis of "official" (state) discourse reveals that the policy was framed as a form of "new abolitionism" confronting modern day slavery, however it focuses disproportionately on the sexual exploitation of women and children, and their victimization at the hands of men, primarily from the global South. Indeed, it associates sex work fairly rigidly with sex trafficking and thus attempts to eliminate both. While it yields a self-congratulatory and celebratory story

about the global role of the U.S. as a humanitarian, abolitionist state, TVPA distracts from deeper structural factors that lead to risky migration, and proposes solutions that either exacerbate global inequalities or leave them intact. Moreover, these solutions reveal ambivalence towards, and mistrust of migrants, which belie the framing of anti-trafficking as a simple helping and saving project.

Making use of both textual and visual materials from popular culture, chapter three links official discourse on trafficking to the trafficking discourse produced in popular culture. In this chapter I draw out, via multiple examples, the neo-colonial treatment of (sex) trafficking as a problem of "culture" in the global South; victim-blaming; the re-inscription of the logic of masculinist protection (Young 2003); and ideals of female purity and innocence. The anti-trafficking message is delivered, like the congressional information-gathering process, in highly emotive terms that largely ignore the complicity of the West. I also explore the process by which knowledge produced about trafficking in popular culture is mutually constitutive with the knowledge produced by the state.

Chapter four turns back to official channels by providing a legislative history of PEPFAR, demonstrating its clear humanitarian intent, shaped by conservative policymakers. As such, the policy is framed as a "saintmaker" of sorts, much like the TVPA, in that it is presented as a project of moral uplift targeted abroad. However, also like the TVPA, the policy is premised on a great deal of sexual regulation, associating the evils of HIV/AIDS with the perils of non-monogamous, non-heterosexual sex. As anti-trafficking legislation marginalizes sex workers, so does PEPFAR, by explicitly and systematically denying any assistance or support to them through its anti-prostitution

pledge. The forms of overt sexual regulation inherent in PEPFAR have made its supposedly humanitarian benefits tremendously uneven.

The fifth chapter considers the TVPA and PEPFAR *together*, by taking up explicitly the question of how apparently humanitarian interventions can reveal exclusionary, discriminatory, and even damaging effects on marginalized populations. Using the XIX International AIDS Conference as a "double mirror," which reveals how domestic policy reflects the mixed messages of humanitarian policy abroad, I suggest that the inherent unevenness of humanitarianism provides a vehicle for the state to shore up its exterior and interior frontiers by excluding particular groups and subjecting them to neglect, danger, and death. The sex worker is a particularly regulated figure, as the success of both policies pivot largely on the exclusion of sex workers, an exclusion that is intensified when race, gender, class, and sexuality are come into play.

Ultimately, I conclude that although TVPA and PEPFAR may be understood on their face variously as "regimes of care" (Ticktin 2011); biopolitics (Foucault 2003); or modernist projects of helping and saving, they are all humanitarian interventions. Although both policies are at times presented in vague or passing terms as related to "human rights," their dominant paradigm is decidedly not so. A firmer adherence to a rights-based framework would emphasize both trafficked people and HIV/AIDS patients as *entitled* to particular goods for which they do not need to be thankful to the West. Since this argument threatens to present human rights in too sanguine a light, the concluding chapter engages a version of the non-Western critique of rights, and suggests why human rights should be retained as a concept and a political strategy.

Chapter One: Excavating Humanitarianism: The Use and Abuse of "Human Rights"

"The idea of human rights is taken more seriously now than it has been for centuries," so says Jeremy Waldron in a 1987 commentary on the use of human rights as a political strategy and benchmark for legitimacy. Yet, less than thirty years after this seemingly sanguine statement was made, there are good reasons for believing that human rights is a concept under threat. The threat is at least three pronged: the ubiquity of the term, the instrumental use of rights to justify the violence of empire and neo-colonialism, and the cynical ignorance or denial of pressing rights issues by the so-called "great powers" has left little room for meaningful engagement with human rights. The first threat, ubiquity of rights language, may reveal the dilution of the concept to the point of meaninglessness. For example, in reaction against a recent, award-winning anti-rape campaign in Edmonton, Alberta, a "men's rights" group produced and disseminated a number of posters denying the reality of sexual assault and treating it as an act of revenge by women. This "men's rights" campaign, aimed at pushing back against consciousness raising regarding women's rights, featured slogans such as "Just because you regret a one-night stand doesn't mean it wasn't consensual" (Sands 2013). Another element of ubiquity relates to the fact that rights, since their first formal expression in the French *Déclaration des Droits de l'Homme,* have, through wider application, become more, not less abstract—abstraction being one of the strongest critiques leveled against rights by critics such as Burke (1793), Bentham (1843) and Marx (1997). Corporations' access to certain rights via corporate personhood is one example. Another is the expansion of the term "rights" to a variety of different services to which they do not appear necessarily

related. The Canadian Radio-television and Telecommunications Commission (CRTC), for example, has now released a "Wireless Code" establishing the rights of wireless consumers. This includes, for instance, the "right to have your phone unlocked after 90 days," (CRTC 2013) an anti-climactic outcome of the long and often bloody struggles for rights of the past three centuries. Certainly, this use of the term can be explained by distinguishing legal rights from human rights—however the distinction is largely lost in popular usage.

The concept of human rights is also threatened by its instrumental use and the cynicism and skepticism that have, quite correctly, taken hold of the public and policymakers alike. The recent wars in Afghanistan (2001) and Iraq (2003) relied on public justifications based on human rights abuses in those countries, primarily against women in the former, and Saddam Hussein's repression of civil and political rights and oppression of the Kurdish and Shiite minorities in the latter. The concept of rights is also threatened with meaninglessness because even acknowledged rights are violated as a matter of course in blatant and egregious ways while powerful countries, in the sway of corporations and private interests, pay lip service to rights but perpetuate their violation. Perhaps the most egregious example of this is the refusal of G-20 countries to make any forward progress in mitigating and decelerating the effects of climate change, which infringe disproportionately on the rights of people of the Global South, particularly women, indigenous peoples and peoples of island nations.

Considering these threats to the meaning of rights, we may counter Waldron's claim by suggesting that the idea of human rights means less now than it has since the adoption of the 1949 Universal Declaration of Human Rights—which marked the

pinnacle of international recognition of human rights. In this dissertation, my focus is on the first threat to human rights—their careless use and concomitant lack of specificity, and how this confusion is bad for policy. In this chapter I will present the theoretical foundation for my later exposition of the relationship of rights discourse and humanitarianism discourse to two foreign policies: the Trafficking Victims Protection Act and the President's Emergency Plan for AIDS Relief. In what follows, I will first discuss the common roots of human rights and humanitarianism within the increasing cultural concern with bodies and suffering in 18th and 19th century Europe. Despite their common roots, I propose that while human rights spring from the spirit of the French Revolution and its *Déclaration*, humanitarianism must be understood as a conservative, reactionary force, springing from a backlash against that revolution, particularly Edmund Burke's. I suggest that even amongst academics, human rights and humanitarianism are insufficiently distinguished, and this confusion is also evident in policymaking, which pays lip service to rights, but evinces a humanitarian ethic. I argue that some undesirable contradictions in foreign policy stem from this confusion, and suggest instead a firmer adherence to a rights-based approach to foreign policy.

Trajectories: Human Rights in Politics

The importance of the French Revolution in developing the character of modernity in the West, and specifically in mobilizing rights as a political instrument, cannot be denied and should not be ignored. As Burke correctly opined, it was "the most important of all revolutions" because it was "a revolution in sentiments, manners, and moral opinions" (Burke 1793). Prior to the *Déclaration des Droits de l'Homme*, rights had been immaterial, rooted in the Lockean idea of *natural* rights (i.e. pre-political,

inhering in nature rather than contract). Indeed, as critics of the *Déclaration* swiftly pointed out, it still relied on a highly controversial concept of rights that pre-existed an assumed social contract, their origins being one of nature, reason, or consensus (Waldron 1987: 15-17). The *Déclaration* did, however, codify these ideals in law and entrench the right to revolution if those rights were not met. It gave Europe a political vocabulary for a moral disposition. Burke (1793) and Bentham (1843), among the toughest critics of the *Déclaration,* were not opposed in principle to the idea of encoding particular entitlements ("rights" is too strong a term) but insisted that what gave any so-called "rights" their force was in fact the force of positive law and beyond that was a vacuum.

The vitriol which the *Déclaration* inspired in critics and which was only intensified by the Terror, points to a conflict between Enlightenment-era commitments to the acquisition of (true) knowledge and the emotional appeal of rights as a tool with which one could criticize the status quo from a position outside the existing political structures. That is to say, when laws and government fail, the concept of natural rights provides a basis from which to criticize the existing order and appeal to a higher, or better, standard. As strong as critiques have been, one cannot deny the benefits in the long term of the French Revolution in terms of the enfranchisement of a variety of previously outcast groups. Lynn Hunt (2007) refers to a scale of conceivability according to which, once one disenfranchised group gained entry into political life post-Revolution, yet more abased disenfranchised groups become imaginable as political actors (Protestants, free blacks, Jews), thus opening the door to their enfranchisement. The enfranchisement of women, she notes, remained shamefully unrealized for another 150 years. Nevertheless, the Revolution was an undeniably explosive event.

Out of the crucible of the eighteenth century, whose multiple philosophical, theological and political conflicts were crystallized in the French Revolution, emerged the fledgling versions of our contemporary concepts of humanitarianism and human rights. While the Lockean concept of natural rights had been volleyed about for one hundred years prior to the revolution, reactions, both favorable and unfavorable to the principles of the *Déclaration,* determined two particular dispositions toward human suffering—quite apart from the commitments that they consolidated in political theory amongst liberals, socialists, and conservatives. The rationalist assumptions underlying the principles of the *Déclaration* and appealed to by many of its defenders founded the rights it identified in nature and asserted them to be knowable *a priori*—i.e. through reason. More importantly, it framed these rights as entitlements, placing the citizen at the center as one who can and should make demands of the state. This, in an important sense, shifted primary responsibility for approximating (or according to Burke and Bentham, the impossible and utopian task of *realizing*) a regime of egalitarianism and classical liberal rights onto the average citizen.

While rights were understood by the framers of the *Déclaration* to be natural, they were clearly only realizable in the context of political community, protected as positive law or otherwise as an abstract basis for the critique of existing laws. With the encoding of the "Rights of Man and the Citizen," the idea of "natural rights" and many of its attendant problems faded, leaving the slightly less problematic concept of the rights of man, still highly contested. As Waldron aptly notes, natural rights in the eighteenth century was "an idea whose time has come too late in politics to coincide with its philosophical respectability" (1987: 18). Nevertheless, the idea stuck and remains a

respected and celebrated *political* idea, if not a *philosophical* one. Liberal thinkers responding to Burke's denunciation of the French Revolution, specifically the Declaration, attempted to justify the position that citizens have a right and responsibility to enjoy the substance of rights that preexist the social contract. By contrast Burke's conservative (anti-rationalist) commitments led him to criticize the self-serving demands encouraged by rights-talk and instead to emphasize the *duties* of the privileged and educated in uplifting the poor. The spirit of humanitarianism, with its emphasis on duty, not right, springs from this conservative soil.

Human rights and humanitarianism are both linked inextricably with religious movements of their own and preceding eras. Micheline Ishay identifies the Protestant Reformation as the event that helped to launch the wider Enlightenment struggle for human rights, as it opened the possibility for religious freedom in a Catholic-dominated Europe (2004: 76). This agitation led to the Peace of Westphalia, ensuring freedom of religion for *states*, which created the environment in which Enlightenment calls for *individual* freedoms, such as Locke's *Letter Concerning Toleration* (1689) and the separation of church and state, could be made. This ideal of individual moral autonomy, hallmark of the Enlightenment, exerted a heavy influence on the "founding fathers" of the United States, leading to the freedom of religion and thought being the first rights institutionalized through the first amendment to the U.S. Constitution (Ishay 2004: 78-83).

If anti-slavery abolitionism can be thought of as the touchstone movement in the humanitarian tradition (discussed further, below), the American and French Revolutions were watershed events for the development of human rights. Religion's role in the

emerging humanitarian disposition was sometimes a counter-cultural reaction. Latitudinarian preachers trying to combat Puritan pessimism about human nature in late 17th and early 18th centuries did so by introducing a realm of virtue oriented around a new spirit of benevolence (Barnett 2011: 49). Barnett identifies this as a "period of rapid societal transformation marked by an expanding market, urbanization, and modernization" (2011: 52), which led to the breakdown of traditional forms of community, producing social dislocation and rampant indulgence of vices. One response was religious experimentation, most importantly evangelicalism, and a millenarian desire to create a more perfect religious society (2011: 52-3). In the same way, Burke's conservative reaction against the Declaration called on people's impulses such as generosity and compassion to create desirable change in society, rather than the revolutionary approach advocated by rights.

Burke's reaction to the French revolution (and to Richard Price's support of it) sparked what is probably the most prolific set of debates about rights as understood in the late eighteenth century. We know that Burke was deeply suspicious of the revolutionary solutions proposed by the *Déclaration* and instead turned back to traditional, hierarchical society (Hunt 2007: 177) for answers. Directly contradicting the proponents of rights, Burke believed that inequality was not the problem but rather the solution. Responsible, compassionate behavior among the members of the privileged classes would justify their very existence by virtue of their commitment to the public good. Through education and proper socialization, benevolent aristocrats had a finely tuned "prejudice" (i.e. intuition) that, based on countless generations of practice and internalization, would allow them to

act decisively when required, and in ways that had through long use proven themselves to be sources of stability rather than chaos.

> [I]n this enlightened age I am bold enough to confess, that we are generally men of untaught feelings; that instead of casting away all our old prejudices, we cherish them to a very considerable degree, and, to take more shame to ourselves, we cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them. We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations, and of ages (Burke 1793).

This perspective, incidentally, was to some extent vindicated by the ensuing chaos of the Terror (Waldron 1987: 81-2; Hunt 2007: 177-8), which should remind us that Burke was not an uncaring elitist (Waldron 1987: 89) but simply considered prudence to be "the first of all virtues."

It might also be surprising to note that, despite the fact that natural rights had been previously criticized for having no clear foundation and being flights of fancy, Burke felt that rights as spelled out in the *Déclaration* were cold, while prejudice retained an important emotional appeal. Rights, universal and predetermined within the constitution as a one-size-fits-all concept, was to him coercive and compelled people to act as automatons[4] – in contrast to "love of God" or "awe of kings" (Hunt 2007: 177-8) which created strong emotional impulsion to act justly. That the traditional societies of England and France had not, to date, provided satisfactory solutions to popular unrest (hence the very occurrence of the Revolution) might lead us to question whether the *noblesse oblige* of Burke's account was any less abstract or fanciful than rights language. Mary Wollstonecraft, who penned the first riposte to Burke, captured the spirit of popular

[4] Here Burke anticipates contemporary critiques emerging from the global South of rights as specifically 'Western' impositions, a critique that will be addressed in the concluding chapter of this dissertation.

dissatisfaction with the state of affairs created by relying on the compassion of nobles, and the absurdity of justifying it via sentiment:

> If there is any thing like argument, or first principles, in your wild declaration, behold the result:--that we are to reverence the rust of antiquity, and term the unnatural customs, which ignorance and mistaken self-interest have consolidated, the sage fruit of experience: nay, that, if we do discover some errors, our feelings should lead us to excuse, with blind love, or unprincipled filial affection, the venerable vestiges of ancient days (1790: 9-10).

Wollstonecraft appeals to the necessity of a rights framework, for if one must rely on the good graces of another, the two lives can never be weighed equally. It is from this inequality that circumstances arise in which a rich man can pay a fine for killing a poor man, while a poor man may lose his life for killing a rich man's deer. In this sense, she notes, Burke confuses power with right and ignores the potential to abuse power (1790: 19). For the poor to *hope* for compassion is simply inadequate. Wollstonecraft was a defender of the rights of the *Déclaration.* Burke was advocating a charity-based approach that leaves hierarchies in place and assumed the good graces of nobles to redress suffering—an approach we now call humanitarianism. From here, then, I would like to proceed by considering current conceptualizations of humanitarianism.

Contemporary Humanitarianism

I would like to make a link between the humanitarian ethic as it is now popularly understood, and the conservative ethic embodied in Burke's retort to rights and the *Déclaration.* First, then, let us draw out the most likely meanings of humanitarianism as we now find it in the globalized twenty-first century. Humanitarianism has at least two registers: one broad, colloquial, and with wide resonance; the second with a referent in international law. Turning to the first, humanitarianism currently is associated with

varying forms of relief, and with cases of emergency, even when the situations in question were predictable, or have been "emergencies" for decades (Calhoun 2010: 30**)**, such as the cases of Congo, Haiti, or Somalia. Humanitarianism revolves around the alleviation of human suffering—and in that sense has everything to do with those living in situations of precarity, as Didier Fassin has rightly pointed out (2012: x). Current examples of humanitarian outreach include response to contexts of medical crises, displacement, natural disaster, and environmental disaster, and protecting civilians in armed conflict. The form of response can include relief, recovery, development, and peace building (UNOCHA 2010 b). It is commonly associated with international relief organizations such as the International Committee of the Red Cross (ICRC), medical organizations such as *Médecins Sans Frontières* (MSF)/Doctors Without Borders, and international bodies such as the United Nations High Commission on Refugees (UNHCR). There is a, by now almost intuitive, assumption that humanitarianism's projects are neutral (i.e. apolitical). Beginning with the founding of the International Committee of the Red Cross in 1859 on explicitly neutral principles between warring parties and surviving by virtue of that neutrality until the 1990s, Michael Barnett (2013) traces a popular narrative about the development of humanitarian interventions, which claims that humanitarian groups were only able to successfully carry out their missions due to their commitment to impartiality and neutrality.[5] Certainly, Aryeh Neier makes it clear that the ICRC, perhaps the exemplary humanitarian institution, has incurred much

[5] In fact, Barnett ultimately disagrees with the accuracy of this much-invoked trajectory, though other academic practitioners like Calhoun (2010) and Stirrat (2006) confirm it. However, since it constitutes popular wisdom about humanitarianism and its accuracy is not relevant at this point in our discussion, we will proceed with an association between humanitarianism and neutrality.

criticism in its long history over refusals to make public denunciations – most famously its silence regarding Nazi Germany's mass exterminations of European Jews (2013: 130).

Humanitarianism's mission is palliative rather than radical, despite occasional references in recent years to a hoped-for paradigm shift towards addressing root causes.[6] Miriam Ticktin's study of humanitarianism as it relates to French immigration politics leads her to conclude that humanitarianism as she has observed it is about caring rather than curing (2011: 62). She also identifies a process she describes as the "medicalization of the social," according to which "an emphasis on the suffering body guides all action." A decade earlier, Arthur and Joan Kleinman referred to this as the "pathologization of suffering:"

> Indeed to receive even modest public assistance it may be necessary to undergo a sequential transformation from one who experiences, who suffers political terror to one who is a victim of political violence to one who is sick, who has a disease. Because of the practical political and financial importance of such transformations, the violated themselves may want, and even seek out, the re-imaging of their condition so that they can obtain the moral as well as the financial benefits of being ill (1997: 10).

Michael Barnett (2011:16) defines humanitarianism by contrasting it with human rights (one of few people to do so explicitly, albeit very briefly):

> Human rights relies on a discourse of rights, humanitarianism a discourse of needs. Human rights focuses on legal discourse and frameworks, whereas humanitarianism shifts attention to moral codes and sentiments. Human rights typically focuses on the long-term goal of eliminating the causes of suffering, humanitarianism on the urgent goal of keeping people alive.

Turning to its legal moorings, historically, humanitarianism is related to the law of war, one of the oldest fields of international law. This branch of law delimits

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[6]UNOCHA referred to this shift in a 2010 report from the Secretary General: "To meet humanitarian needs more equitably and predictably, the humanitarian system is increasingly, albeit not yet consistently, responding to underlying vulnerabilities rather than merely shock-driven stresses" (UNOCHA 2010 a).

boundaries for the humane treatment of prisoners of war, combatants, affected civilians, restraint regarding military targets, and so on. Discussions of "just war" have been part of political theory at least since St. Augustine. Prior to the twentieth century, humanitarian law (law of war) referred to customary rules established in Europe based on the "continuous and uniform" practices established in internal ordinances and bilateral agreements among states, and confirmed by the early authors of international law (Schindler 1982: 935). Neier (2012) and Barnett (2011) (as is commonly the case) link contemporary humanitarian law to the creation of the ICRC as the result of its founder, Henry Dunant witnessing the effects of the Battle of Solferino.[7] His concern for the care of the sick and wounded in war led not only to the creation of the ICRC, but to the publication of a book about it, which raised the profile of the sick and wounded in war, and led to the first Geneva Convention of 1864 (Neier 2013: 119). In addition, use of the telegraph in reporting from war zones increased popular awareness of the effects of war (Neier 2013: 119-120). War reporting led to rules regulating armed conflict such as the Lieber code resulting from the U.S. Civil War (1863) (addressing treatment of non-combatants and prisoners) (Neier 2013: 121). The Lieber Code led to international efforts to limit the atrocities of war, such as the Hague Convention of 1899, which detailed rules for the conduct of hostilities (e.g. respect for edifices devoted to art, religion, science, charity, and infirmaries, etc) (Neier 2013: 122). Contemporary humanitarian law is largely governed by the four Geneva Conventions adopted in the wake of WWII and "ratified by virtually every country in the world" (Neier 2013: 128) and the two additional Protocols of 1977. These humanitarian laws of war apply only during periods

[7] 1859 battle between France and Austria; see Dunant (1939), *A Memory of Solferino*.

of armed conflict (Neier 2013: 125). These details regarding the humanitarian strain of international law are important to our purposes insofar as our goal is to identify clearly the meanings of humanitarianism so that we may contrast these meanings with those of "human rights."

Humanitarianism, Human Rights and the Rise of Sentiment

There is widespread agreement that modernity in the west, in the past two to three hundred years specifically, has been characterized by a significant expansion of human concern for one's fellows, even those far distant (Laqueur 2009, Barnett 2011, Ishay 2004**,** Hunt 2007, Ticktin 2011). Laqueur (2009) cites the past two centuries as a time of "moral progress" during which "the circle of the we" has been expanded in unprecedented ways. This meant an expansion to include distant others—those beyond the boundaries of one's immediate experience, unlike Biblical charity for example, which only required extending hospitality to those in one's vicinity. Michael Barnett describes it as an "empire of humanity" characterized by an expansion of the ethics of care, alongside the growing governance of humanitarianism (2011: 8). Ironically, given the centrality of the concept "human" to both terms, this expansion of care or concern also meant the inclusion of animals, as seen in the emergence of anti-vivisectionists of the 19th century, for example. The centrality of sympathizing with suffering is perhaps most famously manifested in Jeremy Bentham's assertion that the question as to whether another being deserves humane treatment is not whether one can think, but whether one can suffer.[8] Halttunen describes this emerging norm of compassion as a "cult of

[8] "[A] full-grown horse, or dog, is beyond comparison a more rational, as well as a more conversible animal, than an infant of a day, or a week, or even a month, old. But suppose

sensibility" in which compassion is understood as distinctively human, and cruelty as savage (Halttunen 1995: 303).

A fascination with suffering has in fact been manifest in two interconnected cultural trends. If the first is the expression of sympathy, the second can be more accurately described as voyeurism, or what Karen Halttunen (1995) has called "the pornography of pain." Arthur and Joan Kleinman, reflecting on the phenomenon of social suffering, have cautioned that the meanings and modes of suffering are diverse: "There is no single way to suffer; there is no timeless or spaceless universal shape to suffering" (1997: 2). Humanitarianism represents a shift in attitudes towards pain in European culture of the 18th and 19th centuries. Karen Halttunen (1995)[9] traces the increasing cultural aversion to pain in "Anglo-American" culture through the emergence of sentimental art, particularly literature. Linked to moral philosophies of the day that relied on sentiment for guidance in moral issues (e.g. Hume, Burke, Smith), such expressive endeavors sought to excite and teach sympathetic responses in viewers or readers (Halttunen 1995: 307) by graphically conveying suffering or cruelty. Sentimental fiction, Gothic fiction, and later, sensationalistic non-fiction accounts of murder, marked pain as a "source of moral horror" (Halttunen 1995: 311) and a newly emerging taboo in European culture (Halttunen 1995: 318) where previously it was understood as merely inevitable (Halttunen 1995: 310-312). Gothic fiction and murder accounts over the

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the case were otherwise, what would it avail? The question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer?"* (Bentham 1789: 309, footnote continued from 308).

[9] In what follows I can only offer an inadequate recounting of Halttunen's excellent description of the emergence of pain as a cultural taboo in "Anglo-American" culture and its complicated relationship both to public morals and to pornography and voyeurism. However, I recommend a full reading of "Humanitarianism and the Pornography of Pain" for a fuller account.

course of decades degenerated into increasingly cruder accounts, and pain emerged as a dominant theme in pornography—a genre which trades in, and thus reveals, contemporary taboo (Halttunen 1995: 315).[10] However, the use of graphic accounts of cruelty and suffering by humanitarian reformers became for them a critical dilemma. Their argument that cruelty and suffering (e.g. slavery, corporal punishment, public execution) harmed those who suffer it, those who perpetrate it, and especially those who witness it by creating an appetite for it (Halttunen 1995: 323-4), made their "educational" accounts of cruelty for public consumption potentially deleterious to public morals. By inviting readers to imagine the suffering of victims, humanitarians often recreated the cruelty for consumption by others, thus exposing them to the moral dangers of witnessing (Halttunen 1995: 327). The danger, they hoped, was mitigated by including in writing their own horrified responses, which were intended as moral cues for audiences, instructing them in humane responses to human (and animal) suffering (Halttunen 1995: 330). These efforts indicate the extent to which humanitarians relied on sentiment to educate audiences, bringing them around to particular moral positions within political life.

"Feeling for" the pain of another requires an imaginative leap between self and other. This imaginative leap may have been conditioned by sentimental art, however such art only made sense within the context of the increasing importance of individual bodies and a newfound sense of bodily integrity. The emerging importance of the body can be

[10] The fact that the genre degenerated into crude and often sadistic voyeurism reveals that viewers actually related to both the perpetrator and the victim. This illustrates that sentimental art and its offshoots evoked pleasure and pain simultaneously, making it a source of "the sublime" according to Burke's standards (Halttunen 1995: 311).

traced throughout the 18th century in the negative response among Enlightenment writers and legal reformers towards torture and cruel punishment (Hunt 2007: 81-2). In addition, it can be seen in practices reinforcing individualization of the body and bodily integrity. For example, new reactions of disgust at bodily fluids led to innovations like the handkerchief and sleeping separately**.** Portraiture marked the importance of individual identity (Hunt 2007: 82). "Torture ended because the traditional framework of pain and personhood fell apart, to be replaced, bit by bit, by a new framework, in which individuals owned their bodies, had rights to their separateness and to bodily inviolability, and recognized in other people the same passions, sentiments, and sympathies as in themselves" (Hunt 2007: 112).

Uncle Tom's Cabin, by Harriet Beecher Stowe, is frequently held up as exemplary of the sentimentalist fiction so important to educating the sentiments, and imparting humane values to readers. Its heartrending narrative exposes in a deliberately raw fashion some of the worst excesses of slavery in America. As such, it is useful in illustrating the centrality of *emotion* as an explicit contrast to *reason* as a tool for moral assessment. The emotional Mrs. Shelby is held up as a model of humanity and Christianity while her husband is presented as one held hostage to his rather cold economic calculations, which run counter to his feelings of common humanity with his slaves. Mrs. Shelby, portrayed as a kind and responsible mistress beloved of her slaves, expresses support for her slave Eliza when the latter runs away to save her only child from being sold to a different master. While she speaks to the slaves charged with catching Eliza and inquires too anxiously into Eliza's fate, Mr. Shelby admonishes her:

> [Mr. Shelby:]'Come, come, Emily,' said he, passing his arm round her, 'you are cold and all in a shiver. You allow yourself to feel too much.'
> [Mrs. Shelby:]'Feel too much! Am not I a woman,—a mother? My God! lay not this sin to our charge.'
> [Mr.Shelby:]'What sin, Emily? You see yourself that we have only done what we were obliged to.'
> 'There's an awful feeling of guilt about it, though," said Mrs. Shelby. "I can't reason it away.'

Another wife and mother, Mrs. Bird, is held up as a model of humanity whose ability to follow her heart/emotions is exemplary. Described as a woman of four feet, with a "peach-blow complexion and the gentlest, sweetest voice in the world" whose courage is not even adequate to stand up to a mid-sized cock-turkey, Mrs. Bird's passions are nonetheless inflamed by the evils of slavery. Upon discovering that her senator husband has voted in favor of a law prohibiting Ohioans from providing food or shelter to runaway slaves from Kentucky, she declares her intention to break the law the first chance she gets. After listening to her appeal for the "poor, starving creatures" who have been "abused and oppressed," her husband gently reproves:

> [Mr. Bird:] But, Mary, just listen to me. Your feelings are all quite right, dear, and interesting, and I love you for them; but, then, dear, we mustn't suffer feelings to run away with our judgment; you must consider it's not a matter of private feeling—,there are great public interests involved,—there is such a state of public agitation rising, that we must put aside our private feelings."
> [Mrs. Bird:] 'Now John, I don't know anything about politics, but I can read my Bible; and there I see that I must feed the hungry, clothe the naked, and comfort the desolate; and that Bible I mean to follow.'

The obvious connection between women and nature or women and feeling, suggests that there is something in femininity at odds with reason and inherently in touch with emotion and primitive feeling. In this case it is to the benefit of humanity. The insertion of the women's seemingly private concerns into what their husbands view as economic or political matters testifies to the newfound importance of bodies as subjects of social

importance. The overriding importance of these selections, however, is that they explicitly celebrate a rejection of reason as an unreliable source of truth and instead highlight emotion as a key to assessing moral rectitude.

Thus far, we have an account of humanitarianism as springing from changing cultural attitudes towards pain, the increasing importance of individual bodies, and sentimental art, which led to an emphasis on feeling and intuition as guides to knowledge of right and wrong, and therefore civilized behavior. This emphasis was clearly displayed by reactions against the French Revolution, particularly Burke's *Reflections on the Revolution in France.* A linchpin linking the cultural importance of humanitarian emotions in the 18th and 19th centuries to current manifestations of humanitarian intent was the founding of the ICRC, which served as the model for and continues to exist alongside present-day humanitarian organizations. However, this story of an uncomplicated humanitarianism whose continuity has been uninterrupted to the present day should not be left untroubled.

Legacies of Colonial Excess

Lest we accept as unproblematic the narrative of an expanding human heart, a broader historical perspective allows us to juxtapose this ostensible expansion with the brutality and indifference of European colonization that existed alongside it, even during the era of slavery abolitionism. Colonization relied on a variety of methods that, although packaged as a civilizing mission, were ferociously violent and inhumane. From dispossession of land to head taxes and new restrictive laws, life in the colonies was uprooted in every way imaginable. Forced labor occurred well into the twentieth century. Even under conditions where slavery was technically abolished or socially taboo, it was

covered up by the euphemism of "volunteer labor." Such a regime in the notorious Belgian Congo included kidnappings, chained gangs, forced marches with little or no nourishment carrying heavy loads—including children and animals—separation of families, and the removal of infants from their mothers' arms, discarded to die in the grass. "Children's colonies" in which African children were stolen from their communities, abused and malnourished, in order to raise soldiers for Leopold's army (the Force Publique) were documented at the turn of the twentieth century (Hochschild 1998: 129-135), a mere two decades before the first convention against child labor. Adults did not fare better. In French Congo, male recruits were misled about conditions of work and transported too far from their homes to return, kept in labor camps working to build the French railroad. These workers were notoriously malnourished, overworked, and earned less than 1% of their French counterparts' salaries—the death toll peaking at 2,892 in 1927 (8 workers per day) (Pépin 2011: 34-36). In Achille Mbembe's terms even post-slavery, the plantation system, the conditions in the colonies, and the apartheid regime have all served as examples of the continued "terror formation" of slavery (2003: 22).

The extent of colonial sexual violence against women is well known, to the point that colonization is almost synonymous with rape and the murder of women. Indeed, its pervasiveness in the "Americas," where women were often rounded up like cattle, has been credited with uniting previously warring Amerindian communities against the Spanish, and consolidating resistance to missionization (Castañeda 1993: 16). In addition to the violence inflicted upon them, female colonial subjects were treated with reprehensible instrumentalism, incorporated into households as concubines or more rarely as wives, only to be cast off with their "Euro-Asian" children (in the case of the Dutch

Indies) when European wives arrived, or their male partners returned to Europe (Stoler 2002: 47-49). Male colonizers relied upon local women as sources of physical and emotional comfort and as local go-betweens. However these women continued to represent the threat of (symbolic and literal) contagion and treated as vectors of disease. This included mandatory medical testing and treatment and, as late as 1940s French Libya, fingerprinting—trends that have continued with more contemporary treatment of women around U.S. military bases, globally (Stoler 2011: 46, Pépin 2011: 99; Moon 1997: 78-79). These assorted examples give but a glimpse of colonialism's excesses—indeed colonialism is inseparable from excess. Contrary to being an age characterized by the expansion of the human heart, one preeminent scholar of slavery characterizes modernity as a time of heart *hardening*, noting that far from becoming sensitized to suffering, even white Europeans who themselves became slaves on corsairs often became slavers upon their own escape (Drescher 2009: 30-33).

Relatedly, the technologies of humanitarian intervention were invented and continuously "improved upon" precisely in this colonial context. As Craig Calhoun has argued, colonial governments were the pioneers not only of disaster response but also of the disasters themselves. Humanitarianism emerged as part of the colonial metropole's management of its possessions, giving it a managerial in addition to a merely moral orientation (2010: 40-1). Humanitarianism emerged at approximately the same time as what Foucault identified as a shift in the orientation of biopower from a disciplinary mechanism to a security mechanism, which shifted political thinking to the level of the population rather than the individual (Foucault 2007: lectures 1-3). One aspect of this shift was the emerging connection drawn between the security of the population and the

security of the sovereign, the latter relying on the former. In other words, interventions such as vaccination programs were as much or more about the stability / security of populations (and hence their sovereigns) than a concern with human dignity or an expansion of the human heart. This complexity within humanitarianism's mission, incidentally, still applies. "[H]umanitarian action has a managerial orientation, minimizing the threats that displaced populations pose to the otherwise smooth operation of global economies. Effective humanitarian action may reduce population flows that threaten the population welfare of richer countries or it may reassure those anxious about immigration generally that they are nonetheless responding to human needs" (Calhoun 2010: 41). In short, humanitarianism is, among other things, an effective mechanism for dealing with western anxiety about, or perhaps granting Western immunity from, glaring global inequality, while retaining the privilege that results from it.

Judith Butler has clarified the uneven quality of the apparently expanding human heart by pointing out that it was entirely contingent upon producing some bodies as worthy of compassion and therefore grievable, and other bodies as ungrievable. The latter's lives become characterized by "precarity," since they are shut out from both access to the substance of their needs, and are not grieved when their lives are lost. Such was the case with the LGBTQ community at the height of the HIV/AIDS epidemic, and of the African continent, which was virtually shut-out in the early years of anti-retroviral drugs (Butler 2009). Neither LGBTQ persons nor Africans was understood as worthy of compassion, and indeed both were understood as being morally responsible for their illness—unlike the highly sympathetic married mother infected via blood transfusion, or from her unfaithful husband.

Since the 2001 attacks on the World Trade Center in New York, compassion for bodies perceived as Arabic or Muslim have become markedly ungrievable, despite the fact that at least forty-one times as many Iraqi civilian lives have been lost as a result of the American-led war in Iraq since 2003, than those which were lost on 9/11.[11] The association of Muslims and/or Arabic peoples with terrorism occurs in conjunction with the production of non-Arabic peoples as victims. Gillian Rose (2009) traces how, in the wake of the 2005 suicide bombings in London, the media's reporting on both perpetrators and victims encouraged a self-self alliance, or a "pain alliance" (following Berlant 1998) between readers and the victims of the attacks. Victims were represented as "Londoners," despite the international links of many of the victims—any victim participation in or connection to cultural practices not associated with London were ignored. By the same token, the media consistently emphasized the international connections of the British terrorists, and repeatedly printed close-ups of their faces, constructing "a visible, terroristic, black masculinity" (Rose 2009: 52) marking them as outsiders despite their British birth. According to this "visual economy," only members of one's own community have access to public grief and mourning, while those associated with what is outside the community are unworthy of concern.

This is the social context in which detention centers like Guantanamo Bay have been able to emerge and remain, even long after presidential promises to close it. The practice and even perfection of torture techniques in this and other American-financed or supported institutions around the globe on bodies deemed ungrievable has allowed the

[11] Figure attained by taking 123,107, the most conservative Iraqi body count estimate from *iraqbodycount.org* and dividing by 3000—the figure generally used to quantify the 9/11 body count.

state to expand its power in the face of the individual's pain. As Elaine Scarry describes torture, "Now, at least for the duration of this obscene and pathetic drama, it is not the pain but the regime that is incontestably real, not the pain but the regime that is total, not the pain but the regime that is able to eclipse all else, not the pain but the regime that is able to dissolve the world" (1985: 56). This infliction of pain on ungrievable bodies has long been a standby of modern western state-making and should therefore deeply trouble the narrative of the expanding human heart, particularly as a marker of western civilization. Indeed, as Scarry has noted, torture fundamentally reverses all symbols of civilization (1985: 44).

I will now turn to considering the place of human rights in this account by suggesting that the use of the term "humanitarianism" and that of "human rights" are often confused. Further, both terms could benefit from more conceptual clarity regarding their respective meanings.

Humanitarian Sentiment: A Reappraisal

In her excellent and engaging book *Inventing Human Rights*, historian Lynn Hunt traces the emerging role of emotion and sympathy for suffering bodies along much the same lines as does Halttunen. However, rather than distinguishing between the rationalist basis proposed for rights in the French Declaration and the appeals to emotion (as "prejudice") that were largely a critique of, and alternative to rights, as I have suggested above, Hunt concludes that popular concern with the body led to a view that rationality and emotion were mutually reinforcing (2007: 109-110). She folds together the newly emerging discourse of "rights of man" during the French Revolution and the appeals to sentiment stemming from concern with the body. The result is that everything resulting

from both the revolution and the emphasis on sentiment is marked as "human rights." So, for example, Hunt notes that in the period between 1815-1948 when the concept of human rights flagged, it is "benevolent societies," particularly abolitionist ones, that kept human rights alive (210), rather than recognizing benevolent societies as promoting something other than rights (i.e. charity). By way of ultimate prescription, she returns to the idea that (following Adam Smith), both "rational evocations and emotional appeals" are the best means of promoting human rights. "The history of human rights shows that rights are best defended in the end by the feelings, convictions, and actions of multitudes of individuals, who demand responses that accord with their inner sense of outrage" (213). The fact that in the same chapter, Hunt cites the "27 million slaves" in the world today without providing a source for this figure, should remind us that emotion is a potentially dangerous political tool. The type of organization that Hunt identifies as keeping the flame of rights alive between the end of the French revolutionary era and post WWII—benevolent societies —is precisely what Barnett more convincingly identifies explicitly as humanitarian (eg. ICRC, colonial "civilizing missions," etc).

To make matters more confusing, in Micheline Ishay's thorough history of human rights, such pre-moderns as Confucius, Hammurabi, the Greek Stoics and Buddha serve as but a few examples of those who made "early ethical contributions" to human rights (Ishay 2004). Ishay traces rights all over the world from ancient history to the present. And yet, these three books (Hunt, Ishay and Barnett) *should* provide some clear guidance as to what exactly is at the core of their subject matter. This lack of clarity about what are human rights and humanitarianism is our first problem. The second is that often, the shared history between humanitarianism and human rights leads to the conclusion that,

having a common genealogy, they are synonymous. So to take Hunt again as our example, humanitarian is confused with human right, emotional with rational.

If we move forward in time, from the origins of human rights and humanitarianism to present day uses of these terms, we can confirm that they do indeed have different meanings, motivations, and implications. I argue that the lack of clarity between the two concepts can and sometimes does lead lawmakers to understand their role in making foreign policy as "humanitarian," which leaves some foreign policy open to the charge of what I will call "uneven humanitarianism."

Contemporary humanitarianism, true to historical form, is largely understood as disinterested. Indeed, it has been characterized as seeming "morally pure"—a reflection of lost faith in economic development and political struggle (Calhoun 2010: 29-30). Jock Stirrat and Heiko Henkel, however, have made persuasive arguments that the very structure of humanitarian relief (although not humanitarian intent) is conditional and reproduces inequality. Humanitarian aid is typically channeled through NGOs, which due to their reliance on "ordinary people" through donations, volunteers, and low-paid employees, appear disinterested. This appearance is belied by the fact that they must compete for contracts, however, and are therefore market-oriented (Stirrat and Henkel 1997: 69-70). In order to fit western donor visions of what relief "should be," NGOs must ensure that their interventions are highly visible, *appear* effective, and are delivered in a timely manner. This means that humanitarian crises that appear "photogenic" to western audiences become highly (and often bitterly) contested ground for a variety of NGOs. These ultimately reach an "unstable equilibrium" in carving up the space of intervention, leading to ineffective interventions. Stirrat uses the example of a small

NGO building useless but photogenic boats for impoverished fishermen in the wake of the Sri Lankan tsunami in 2004 (Stirrat 2006: 14-16). Stirrat terms this phenomenon "competitive humanitarianism," and explains that disaster becomes a way for NGOs to stake a claim to new or continued effectiveness (2006: 16). The implication of competitive humanitarianism's obsession with visibility and conformity to donor expectations is that less photogenic crises, and more complex issues, may be ignored.

Didier Fassin, former vice-president of MSF and medical anthropologist, has characterized humanitarianism as a mode of governance involving NGOs, international agencies, states and individuals and concerning all those touched by situations of precariousness (2012: x). Fassin moves the lessons learned by Stirrat beyond the NGO context to consider the state's explicit relationship to humanitarianism. Invoking the January 2010 earthquake in Haiti, Fassin highlights the competition between France and the United States, which tried to outdo one another in their provision of troops, physicians, goods and money, all the while ignoring their fraught relationships with Haiti both historically and in the present. Observing their apparent benevolence in January 2010, "[w]e could forget that only 6% of Haitian asylum seekers are granted the status of refugee in France, representing one of the lowest national rates, far behind those coming from peaceful countries, or that thirty thousand Haitians were on the deportation lists of the U.S. Immigration and Customs Enforcement Agency" (Fassin 2010: xi-xii).

Considering the possibility of humanitarian aid or development as a "pure gift" in the Maussian sense, Stirrat and Henkel claim that it is only so on the "giving end," where it appears as a form of asceticism on the part of donors. They propose a three step "biography of the gift," according to which a humanitarian gesture is "progressively

transformed into an interested, accountable, and non-free transaction." In step one, a pure gift is made. In step two, international NGOs become entrapped in the web of rules and regulations governing the use of donations, turning them into "accountable items." And finally, as the northern NGO transfers the gift to a southern (i.e. "local") NGO, the transfer is marked by calculation, negotiation, and sometimes suspicion. The international NGO demands in return projects that match up with its own ideas of development (Stirrat and Henkel 1997: 76). In this way, a seemingly disinterested gift becomes personalized and concretized (1997: 77-78). Stirrat and Henkel also make the important observation that the gift of development or humanitarianism is not "pure" but reciprocal, in that at the very least even anonymous gifts allow donors to transcend an immoral world as moral beings: "just as the form of the gift changes as it moves from donor to recipient, so does the form of reciprocation. Furthermore, just as the form of the gift at the donor's end of the continuum is most abstract and most universalized, so is the form of its reciprocation" (1997: 79).

As the structural challenges listed above indicate, humanitarianism is largely about donors—donor pride in giving, donor perceptions regarding what receiving communities need, and often, donor's religious or moral dispositions. This is because of humanitarianism's roots in Burkean ideas about compassion and responsibility among haves, towards the inevitable have-nots. Humanitarianism assumes the fixity of inequalities and sets itself towards projects of alleviation. Because humanitarianism is about the giving end (i.e. the apparently pure gift), it is applied unevenly. Whatever speaks to the heart (or interests) of a donor—be it a philanthropist, an average citizen, or a government (all usually channeled through NGOs)—becomes the object of a

humanitarian intervention. As Stirrat has indicated, the result of this is frequently a disproportionate focus on "photogenic" or sensationalistic events. More mundane forms of inequality go unremarked. Furthermore, in order for those who are privileged with wealth, power and responsibility to be able to exercise their ascetic ministrations to the less fortunate (and thus overcome an immoral world), the continued existence of the less fortunate is necessary. Humanitarianism then is fundamentally *uneven*. When human crises are understood as "humanitarian" issues they are framed so as to encourage bystanders (usually in wealthier states) to understand self, or their country, as potential rescuers.

When puzzling over why the very popular movement against human trafficking has lacked an economic analysis, Jennifer Suchland (2014, forthcoming) offers a very insightful and persuasive account of why such an analysis has been eclipsed by the parallel discourses of violence against women and transnational crime, especially in the context of postsocialism. To her keen analysis I would add that, framed as a humanitarian crisis rather than an economic one, the sensational elements of trafficking are foregrounded, its "pornography of pain" making it a selling feature in media and among policymakers. "[W]hat we represent and how we represent it prefigure what we will, or will not, do to intervene. What is not pictured is not real. Much of routinized misery is invisible; much that is made visible is not ordinary or routine" (Kleinman, Das and Lock 1997: xiii). Not only is the mundane economic explanation "boring"—to acknowledge it would be to acknowledge fundamental, global economic inequalities. If addressed in good faith, the very disparities that allow rich states of the Global North

(and their individual citizens) to accumulate moral capital at the expense of the periphery's unfortunates would disappear. Or, to quote Stirrat and Henkel once more, "there is a very pragmatic sense in which difference is essential if the flow of gifts is to continue. The poor, the starving, the powerless are essential if the giving is to continue. […] In the end, this could be seen as no more than a recognition that the surplus that is available for the giving of gifts is the product of precisely the same system of production, exchange, and distribution that produces the poor who receive these gifts" (1997: 80).

On the Virtues of a Human Rights Frame

In contrast to a humanitarian approach, a human rights-based approach focuses on rights as entitlements, enshrined in national and international laws or upheld by international treaties as standards. International legislation, like the Universal Declaration of Human Rights, and treaties such as the Convention Eliminating All Forms of Discrimination Against Women (CEDAW) "introduce the principles of equality, non-discrimination, transparency, and accountability" (O'Neill 2003) as authoritative norms against which state conduct must be measured. Ideally, human rights "level" the field of intervention by insisting that standards are observed regardless of the feelings of "donor" states. When private donations are involved via personal allocation of funds directly to an NGO—as opposed to donating as a citizen of a state, via taxes—there is not much to be done to remedy uneven humanitarianism. Yet, when the donor is a state operating through foreign aid and dictated by foreign policy, insisting on human rights as the dominant paradigm is a necessary step to making intervention more effective and straightforward (i.e. not a reflection of realpolitik, instrumentalism, neo-colonialism, and so on).

A rights-based approach to foreign policy would explicitly acknowledge that the state is a duty bearer with responsibilities dictated by international law, rather than a philanthropic organization. "Human rights transforms people from being merely "inhabitants" of a territory dependent on government largesse into full-fledged citizens of a state, capable of demanding and receiving fulfillment of the full panoply of human rights necessary to live a dignified life" (O'Neill 2003). Ultimately, I conclude that taking rights seriously, by applying a rights-based approach, would address many of the concerns raised thus far as to the treatment of citizens of the Global South in U.S. foreign policy. "[T]o have a right is to be in a position to make demands of others, and to be in such a position is, among other things, for one's situation to fall under general principles that are good reasons why one's demands ought to be granted" (Shue 1984: 13). Henry Shue goes on to clarify that claims to rights are not merely requests, pleas and petitions. One *should* insist on enjoying the substance of one's rights. If this is not recognized, then human dignity is undermined and in Joel Feinberg's words, people's role as "dignified objects of respect" is denied: "When it is duly given there is no reason for gratitude since it is only one's own or one's due that one received [...] No amount of love and compassion, or obedience to higher authority, or noblesse oblige [i.e. humanitarianism], can substitute for those values" (Joel Feinberg, qtd in Shue 15). A rights-based approach takes as its starting point recognition of human rights as enshrined in national and international law, understanding all people as rights-bearers, and an array of people and institutions as duty-bearers (individuals, families, corporations, government, etc—though primarily the state) (O'Neill 2003). The approach thus recognizes from the outset that targets of assistance are justified bearers of rights, which they *ought* to demand and that

duty-bearers owe them the substance of those rights.

In the following chapters, I will suggest that, despite operating within a nominally human rights framework, the paradigm of humanitarianism is still the dominant mode for policymakers (in part because of the dominant confusion between human rights and humanitarianism), especially within the international policy context, causing much international aid and development to take on a neo-colonial character. I analyze two pieces of U.S. foreign policy: the Trafficking Victims Protection Act and the President's Emergency Plan for AIDS Relief. A contradiction serving as the starting point of my analysis is that the stated goal of each policy: that of protecting victims of trafficking, and ending the spread of HIV/AIDS, is contradicted in its application. If this is the case, how can these policies be celebrated as they are—widely hailed as redounding to the United States' credit? As I hope to show, humanitarian intent is part of the explanation.

Chapter Two: "A Problem that Cries Out for a Solution"[12]

It is time to move beyond conferences and expressions of shock to a coordinated effort to criminalize the conduct of interlocking rings of businessmen, modern mafias, and corrupt government officials. We are the people who can help girls like Lydia to draw attention to their plight, to help nations strengthen their laws, and, ultimately, to find ways to prevent and protect young women and children from commercial sexual exploitation.
I can tell you that from where I sit, many countries are looking for leadership from the United States. U.S. leadership is important, not only because of our human rights role, but also because it serves the American national interest. One of the hallmarks of the 21st century will be the emancipation of women worldwide, and the issue of commercial sexual exploitation of women and children is one that is perhaps last but definitely not least to be examined and addressed by our society (Laura Lederer 1999a).

Francis noted his people were waiting for a strong people to free them. This is something we need to do (Senator Sam Brownback 2000a).

This chapter concerns the introduction of the Victims of Trafficking and Violence Protection Act of 2000, elucidating the broad themes addressed in the legislation and the debates and hearings surrounding it. I frame the emergence of this legislation as a product of specific large scale political-economic changes, new trends in development and foreign policy, and as a response to global humanitarian concerns of the moment. Ultimately I argue that the framing of the trafficking issue in this legislation creates a cast of characters in which the U.S. is positioned as a harbinger of freedom and equality, particularly to women and girls. Women and girls, on the other hand, particularly of the Global South, are depicted as helpless victims—of their male counterparts, of their cultures, and ultimately of traffickers. These two characterizations, that of the U.S. and of the women and girls at the center of the policy, are mutually reinforcing. I conclude with a description of the current state of the policy.

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[12] Chris Smith, October 6, 2000, statement to Congress regarding human trafficking.

In 1999 and 2000, the legislative process began by which an emerging concern about human trafficking amongst U.S. officials took form in a new law against human trafficking—the Victims of Trafficking and Violence Protection Act of 2000 [P.L. 106-386] (henceforward TVPA), signed into law on October 28th, 2000. A variety of congressional and senatorial subcommittees held hearings to solicit feedback on Chris Smith's [R-NJ] bill 3244[13] to combat trafficking in persons, the precursor to the TVPA. Witnesses throughout 1999-2000 hearings included representatives from civil society—NGOs such as the Christian International Justice Mission and academic interests, such as Laura Lederer from the "Protection Project" at Harvard University's School of Government. Other witnesses included women who had been trafficked, and not least, representatives from the Clinton Administration, most notably Theresa Loar from the President's Interagency Council on Women, Assistant Secretary of State Harold Koh and Undersecretary of State for Global Affairs, Frank Loy. The hearings that led to the first authorization of the TVPA reflect a number of contested grounds. First is the question of who can be credited for leadership in anti-trafficking policy in the U.S. As this question is debated, other contested grounds emerge, namely the best and most appropriate mechanism to combat trafficking in persons.

Smith's bill proposed to modify criminal law to severely punish those found guilty of trafficking; mandate annual reporting on trafficking to be conducted by the state

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[13] "[A] bill to combat trafficking of persons, especially into the sex trade, slavery and slavery-like conditions in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers and through protection and assistance to victims of trafficking."

department; create an interagency taskforce to combat trafficking; establish a state department office to monitor and combat trafficking; direct the President to fund preventive strategies to aid victims of trafficking and preventive programs, which provide alternative possibilities for potential victims of trafficking, along with awareness campaigns. It also proposed to establish standards for other countries that could be supplemented with aid if required in order to meet their goals, and if not met, would be reprimanded with sanctions (Committee on International Relations 1999). This last provision proved highly controversial for reasons that will be enumerated below, though curiously, the fact that it seems to violate the principle of state sovereignty was not one of them (though opposition to the provision did revolve around that issue in less explicit ways). The bill ran parallel to, and in competition with, "Senate 1842" or the "Wellstone bill," introduced by Senator Paul Wellstone [D-MN], which was far less prominent than the Smith bill, but also far less ambitious in terms of creating a new legislative framework with which to combat trafficking, favoring rather to work within existing departments and reporting mechanisms, with an increase of funding.

The Wellstone bill was favored by the Clinton Administration officials during the hearings on trafficking, often leading to an undercurrent of hostility from the interrogators—Smith and his co-sponsors, particularly Cynthia McKinney [D-GA] and Eni Faleomavaega [D-American Samoa], when questioning witnesses from the administration (Loar, Koh and Loy). The fact that the Administration's official position was to oppose what it interpreted as mandatory sanctions of countries which failed to adequately address their trafficking problems, led it to be criticized as preferring a "carrots only" approach, glossed as naïve, irresponsible and out of touch by the

proponents of 3244. Administration officials rejected this characterization, noting Secretary of State Madeleine Albright's global leadership on the issue, the oversight of the President's Interagency Council on Women, and most strikingly Clinton's directive of 11 March 1998, "Steps to Combat Violence Against Women and Trafficking in Women and Girls," apparently the advent of the U.S. anti-trafficking strategy, and the document in which the "3 P" (prevention, prosecution, protection) approach advocated even by Smith and company was first developed (Committee on Foreign Relations 2000: 8).

The hearings and debates reflect contestation over a narrative of progress with regards to concern for women that played out largely in a debate over sanctions. The first version of the anti-trafficking bill, the "Smith-Kaptur"[14] bill, contained sanctions as a means of registering disapproval with countries failing to meet minimum anti-trafficking standards, and of influencing them to take more assertive action. In response to the administration's alleged resistance to a bill containing such sanctions, this approach was modified to propose waiverable conditionality, namely that the president, at his/her discretion, withhold "nonhumanitarian assistance"[15] from recalcitrant countries. Nevertheless, in hearings on the subject, this approach continued to be referred to by administration officials as "sanctions" as part of their rationale for rejecting the bill. The bill's proponents, meanwhile, continued to reject the accuracy of that term, and to suggest

[14] This bipartisan co-sponsorship is not unusual in the anti-trafficking context, and Smith ultimately had thirty-seven bipartisan co-sponsors for bill H.R. 3244 (Stoecker and Shelley 2005: 130). While support for the *idea* of trafficking was bipartisan, the best manner of approaching the issue was a divisive one, which will become clear throughout this chapter.

[15] Governed by the Foreign Assistance Act of 1961—this does not include such things as food, monetization of food, assistance to refugees, antiterrorism, disaster relief, etc, which would be considered humanitarian.

that the reticence of the administration to go along with the carrot *and* stick approach was a clear sign of foot-dragging and lack of commitment.

Officials from the administration repeatedly rejected what they continued to cast as sanctions. The reasons for this were summarized most succinctly by Frank Loy, Undersecretary of State for Global Affairs in the Clinton Administration, during a hearing in early 2000; 1) trafficking is usually private criminal activity and official sanctions would not hurt the criminals; 2) most countries are in the early stages of combating the problem and if they perceived the possibility of punishment might conceal their trafficking problem; 3) sanctions would harm the victims of trafficking by further diminishing the economic opportunities available to them; 4) it would encourage states to persecute those who raise the status of the problem in their country, namely NGO staff (Loy 2000: 8-9). Administration officials preferred to cast their anti-trafficking efforts as aggressive but cooperative. This was achieved in at least two ways: highlighting bilateral and multilateral initiatives and emphasizing the leadership of women and women's organizations. As regards the former, state witnesses detailed the importance of official state visits to Russia, Ukraine, Italy, and various countries of South and Southeast Asia which had yielded positive results in terms of learning how to better combat trafficking and where the issue of trafficking was prioritized by the Secretary of State on the official agenda. Second, President Clinton's purported leadership on the subject of women served both as a subtext and is an overt theme as witnesses highlighted initiatives of his administration that took trafficking seriously. Clinton's appointment of Madeleine Albright as the first woman Secretary of State in the nation's history was notable, and her name was repeatedly invoked by witnesses who lauded her attention to this issue in

agenda-setting. The Interagency Council on Women was another of Clinton's innovations and as an agency dedicated to implementing the Beijing Platform within U.S. policy was tasked with coordinating official anti-trafficking efforts.

The TVPA reflects a response to historical circumstances. There are well known historical cases of agitation against trafficking in persons. Best known is the Christian-led anti-slavery movement, specifically abolitionism, from the mid-1700s to the abolition of the slave trade in 1807 (Brown 2006), to which I return later in this chapter. In the 1990s, a fresh wave of concern over "slavery" emerged. A vocal and committed transnational feminist movement agitated to place women's rights on the global political agenda, and the dominance of violence against women within this campaign meant increased attention to issues like sex trafficking. Political-economic trends flowing into this time period united to create conditions favorable to the rise of informal economies generally and trafficking in persons specifically. The TVPA was a response to historical shifts that created a rise in the numbers of trafficked people. Partly as a result of attention from states and international organizations, human trafficking had become perhaps the most fashionable humanitarian issue of the day. I will begin by discussing the political-economic factors informing the apparent rise in trafficking in persons.

Neoliberalism –in the form of structural adjustment programs (SAPs) – has had a tremendously disproportionate, usually negative, impact on women, most keenly in the global South and post-Soviet regions of Eastern Europe (Sparr 1994; Ault and Sandberg 1997; Peterson 2003). Neoliberal policy in the global South is rooted in the inability of many states to repay loans they had acquired in the aftermath of World War II and decolonization. In the early 1980s, interest rates rapidly increased following the

"Volcker shock," leading many states in Africa, Latin America and Asia to become insolvent **(**Harvey 2004**)**. International lending institutions (the IMF and World Bank) required states to adopt structural adjustment programs in order to access credit. SAPs were typically characterized by diminished state support for social programs such as education, health care, and support for vulnerable populations, cuts to subsidized industries such as agriculture; privatization of state-run companies, firms and utilities; and devaluation of currencies. These policies are widely recognized to have resulted in a lower quality of life for women, who usually take up the extra burden of caring labor when it is abandoned by the state (Desai 2002: 20); diminished access to health care (Lugalla 1995); and increasing hardships related to environmental degradation resulting from global economic policies (Mackenzie 1993; Davis 2004).

Following the adoption of SAPs, women in the global South have been increasingly employed in factories in export processing zones and export-oriented agriculture (Freeman 2000; Sachs and Alston 2010**)**. Yet, as more women have been incorporated in the global work force, there has been a deterioration of overall working conditions and standards, and the increased representation of women within part time, casual or informal categories of employment (Hawkesworth, 2006). Manisha Desai has noted that along with their increased representation in *low-paid* employment, women's overall *unemployment* has increased in the global South (2002: 16-18). Thus, women of the global South have both stepped into the gap, so to speak, created by the loss of social safety nets; and themselves suffer disproportionately from the neoliberal policies.

Similarly, the adoption of neoliberal policies in countries of the former Soviet Union resulted in economic privation and limited livelihood options in those states. The

collapse of the social welfare state which characterized the post-Soviet transition placed women in a particularly precarious position (Shelley 2011: 142-3). In one example of this trend from Eastern Europe, the Moscow Center for Gender Studies reported that in 1991 Russian women earned 75 percent of men's wages; by 1995 this had fallen to 40 percent (Rhein 1998: 355). In addition, the privatization of business and concomitant transfer of responsibility for employee benefits into the hands of private owners meant that women were hired less and fired first, due to unwillingness or inability to take over the state's responsibility with respect to maternity and children's benefits. "Thus, the reaction of business owners to the perceived threat of maternity has created a new group of young, highly educated unemployed women" (Rhein 1998: 355-6). Other means of forcing women out of the formal labor market have included transferring women to "phantom" departments of the organization where they have no duties and no salary; forcing women to take extended, unpaid leave; or keeping women on staff without wages or at wages that are below subsistence levels (aka "hidden unemployment") (Rhein 356-357). The feminization of poverty is one of the primary reasons for increases in women's migration and the over-representation of women among migrants, in vulnerable positions which are usually outside the purview and oversight of legal labor protections (ILO 2003: 9).

Saskia Sassen (2000) has argued that neoliberalism has led to conditions which encourage the growth of alternative circuits of survival. Trafficking, both sexual and otherwise, is an important part of this, as developing economies rely on remittances (formalized and happenstance). Women are drawn into these alternative circuits because the burden of unemployment and cuts to education and health care needs, and lack of

other resources that result from government cuts in the wake of structural adjustment fall disproportionately on their shoulders (Elson 1987; see also Iyun 1995 on declining maternal health in Nigeria in the wake of SAPs; Olukoshi and Olukoshi 1995 on retrenchment of the female workforce in Nigeria).

Tying the growth of international migration, legal and otherwise, to economic globalization and in particular structural adjustment, which pushes workers out of their countries in search of livelihood elsewhere, is but one explanation for the rise in trafficking in the 1990s. The growth of global tourism throughout the 1990s had a role to play as well. Attempts by developing economies to expand their tourism industries—a development strategy encouraged by IMF and World Bank funding—further heightened the demand for sex workers, an integral part of the entertainment industry.

"Women in the sex industry become—in certain kinds of economies—a crucial link supporting the expansion of the entertainment industry and thereby of tourism as a development strategy. This in turn becomes a source of government revenue. These tie-ins are structural, not a function of conspiracies. Their weight in an economy will be raised by the absence or limited nature of other sources for securing a livelihood, profits and revenues for workers, businesspeople and governments" (Sassen 2000: 518)

In addition, state attempts to counter undocumented migration through stricter border controls have only led those women who need to enter alternative circuits for survival to "go underground" and rely on networks of traffickers to gain them access to income through border crossing (Sassen 2000: 516-7; ILO 2003). Many women choose sex work voluntarily, albeit within a constrained set of options. Others are frequently directed into the sexual economy through trickery (i.e. the promise of employment in

childcare or domestic work, for example) or engage in sexual labor as a means of supplementing work in other sectors.

The feminization of poverty and the disproportionately negative impact of global neoliberal economic restructuring on women set the stage for trafficking in persons to increase. Since women constitute an increasing proportion of migrant peoples it follows then, that the global traffic in women would emerge as a growing issue of concern. However, by what channels did trafficking, and trafficking in women specifically, become a focus of international institutions (e.g. UN, EU) and states (particularly the U.S.)? As I will demonstrate below, on the fronts of both theory and praxis, feminist scholarship and transnational feminist activism brought a host of women's issues to global attention. As a result women, and subsequently gender, became categories of analysis in numerous fields, from international law (especially within the domain of rights) to development and beyond.

While neoliberalism provides important context for the emergence of the anti-trafficking movement, the issue must also be understood in terms of the increased attention to (perceived) women's issues dating back at least to the UN Decade on Women (1976-1985). There was a suggestion of the relative newness of "women's issues" and of trafficking during one congressional hearing with members of the Clinton administration: "Women's human rights were not always in the mainstream of U.S. foreign policy…it came out of a time when we did have leadership to take a look at this and did have leadership of Secretary Albright to figure out how it should be done. So it is not a long-standing issue at this level and growing at this pace, but it has come up at a time when we do have the leadership to address it" (Koh 1999: 8-12). However, the sudden appearance

of both leadership and capacity with relation to women's rights has a history that far predates the Clinton administration.

The Clinton administration's apparent willingness to take leadership with respect to Beijing Platform issues cannot be understood in a vacuum. Rather, it was a response to tremendous pressure, both international and domestic, from women's organizations dating back at least two decades. Since the First International Conference on Women occurred in Mexico in 1975, along with its parallel civil society conference, the International Women's Year Tribune, a number of official, or institutional global conferences have been preceded, paralleled, and followed by extra-institutional events run by NGOs and women's organizations who have worked to influence the agenda (Joachim 2003; Desai 2002) and challenge the so-called "democratic" agenda set by male-dominated states at institutional events (Hawkesworth 2006: 118).[16] 1975 marked International Women's Year—declared officially by the UN, and marked by the first Women's World Conference, in Mexico City. Mary Hawkesworth notes that even this apparently early state of transnational action was the result of "repeated demands by international women's rights advocates over a fifty year period" (2006: 117). The World Conference's parallel conference, the International Women's Year Tribune, was a space in which members of women's movements and NGOs gathered, shared (and contested)

[16] Examples of institutional events include the World Conferences on Women in Mexico City (1975), Copenhagen (1980) and Nairobi (1985); Expert Group Meetings on "Violence in the Family with Special Emphasis on Women (Vienna, 1986); UN Conference on Human Rights (1993). Extra-institutional events include parallel tribunals to the World Conferences; the International Tribunal on Crimes Against Women (Brussels, 1976); Global Feminist Workshop to Organize Against Traffic in Women (Rotterdam, 1983); the Third World Forum on Women, Law and Development (1986); and the Vienna Tribunal for Women's Rights (1993). For detailed accounts of these events see for example Joachim (2003), Bunch and Reilly (1994); Hawkesworth (2006).

solidarity, and developed agendas for concerted action. According to Manisha Desai, Mexico City's shadow conference was uniquely intense and transformative, with a "level of engagement [that] was possible because of the emergence of a second wave of women's movements in many countries of the North and South" (Desai 2002: 27). With subsequent Women's World Conferences in Copenhagen (1980), Nairobi (1985) and Beijing (1995) (and their follow up conferences), women's grassroots mobilizing only increased, informing the UN's program at each conference, with attendance at parallel conferences multiplying significantly, from 6,000 at the Mexico City Tribune to at least 30,000 in Beijing. Citing these facts, Desai characterizes the era since 1975 as one of women's agency in globalization (2002: 27-8). Jutta Joachim notes that it was disillusionment at the grassroots with the lack of consensus around important issues and geopolitical posturing at the Mexico City conference that compelled many women to continue organizing outside of official institutional structures in subsequent years, in ways that were helpful to activists working within the UN (2003: 256).[17]

Women's NGOs have been central to the process of agenda-setting, review, and holding states accountable to commitments they made in official settings (Joachim 2003: 248-250; Desai 2002: 31). Indeed, the history of transnational feminist activism since 1975 has been characterized by NGOs and women's grassroots organizations developing alternative agendas at the margins, and going to considerable efforts to have them

[17] The account I offer here charts transnational women's activism running parallel to United Nations events, which I refer to as "institutional" events. For a critique of periodizing women's rights according to UN institutional "turning points" as homogenizing and utopian, see Jennifer Suchland, forthcoming: *Economies of Violence: Beyond Sex Trafficking as Aberration* (95-128). I try here to demonstrate that the most visible turning points at the UN are made possible by highly contested grassroots mobilizing.

implemented at the center, within official channels of power. Often, women's organizations have drawn important issues to the spotlight when official channels have appeared either oblivious or resistant to acknowledging them. The most celebrated example of this transnational feminist activism is the activism behind the 'Women's Rights are Human Rights' movement in the years preceding the UN World Conference on Human Rights in Vienna, 1993. Women's organizations, led by the Center for Women's Global Leadership (CWGL) at Rutgers University, sought to draw attention to myriad forms of gender-based discrimination and abuse (e.g. female infanticide, malnutrition, battery) that women face around the world, which had hitherto been invisible or secondary to men's rights (Bunch and Reilly 1994: 3-4). By mobilizing the already existing human rights framework, this movement astutely tapped into already existing institutional resources (e.g. most obviously, utilizing the Human Rights Conference as a highly publicized vehicle for their campaign), framed their concerns in a language that already had broad global support, and won allies, speaking as it did to the dignity of the person (Joachim 2003: 259). Indeed, in response to pressure from women's groups, both Amnesty International and Human Rights Watch, highly respected rights organizations, added women's human rights programs and investigations in the early 1990s, adding testimony and support to the campaign (Joachim 2003: 259). In the years leading to the conference, the CWGL prepared its campaign by organizing working groups on women's rights, leadership institutes, developing an annual '16 Days Against Gender Violence' campaign (which continues to the present), and organizing a petition drive to insist that the conference address women's rights 'at every level of its proceedings' (Bunch and Reilly 1994). It also attempted to harness media coverage by

developing ‘media kits’ and selecting its own experts to give interviews (Joachim 2003: 251); organizing an 18-hour tribunal to run parallel to the Human Rights conference, presenting testimony about discrimination and abuse of women from around the world; and lobbying intensively to have its recommendations on women’s human rights used in preparatory meetings and at Vienna itself (Bunch and Reilly 1994: 5-6). “Women’s rights activists were the ones who camped in corridors, outside the drafting rooms, and offered delegates better paragraphs. They tried to catch state representatives during their tea and coffee breaks or even in the bathrooms’’ (Anne Walker, quoted in Joachim 2003: 259). As a result of this monumental organizing, the final statement from the Human Rights conference—the Vienna Declaration—“devotes several pages to treating the “equal status and human rights of women” as a priority for governments and the United Nations; further, it sounds an historic call to recognize the elimination of “violence against women in public and private life” as a human rights obligation” (Bunch and Reilly 1994: 2).

In 1993 the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women. In 1994, it appointed a Special Rapporteur on violence against women, its causes and consequences. It is in this context that the U.S. under the Clinton administration began to assume leadership on women’s rights. The international pressures enumerated above, coupled with longstanding pressure from women’s groups at home, and the impossibility of ignoring effects of global politics on women and the glaring issue of mass rape as a strategy of war emerging from conflicts in former Yugoslavia, Somalia, and Rwanda (Joachim 2003: 259-260) made women’s rights a timely and unavoidable issue, even if the Clinton administration appeared receptive to

embracing it to some degree.

Sex trafficking as a perceived women's issue[18] evolved alongside the concept of women's rights, and its apparent importance peaked at the same time as women's rights were achieving notable success in terms of institutional recognition. Jennifer Suchland notes that since the 1949 UN Convention on the Traffic in Persons and the Exploitation of the Prostitution of Others until the 1993 Vienna Conference on Human Rights, trafficking remained a discrete issue that did not find a place in the Decade on the Advancement of Women's threefold agenda of Equality, Development and Peace. In CEDAW, it was not linked to any other issue, nor as an outcome of any of the World Conferences on Women. However, she notes that the question of trafficking did emerge in the 1970s and 80s within the rubric of sexual slavery as a highly contentious issue amongst feminists, who debated whether prostitution / sex work was inherently exploitative, or a legitimate income-earning strategy. Anti-prostitution activists sought to frame all sex work as slavery, advocates of sex workers' rights carefully distinguished between forced and voluntary forms of the trade. The result of these debates was that by the time of the 1985 World Conference on Women in Nairobi, sex trafficking remained a discrete issue from the themes of the conference, however, for the first time, the Forward Looking Stategies emerging from the Nairobi conference acknowledged *forced* sex work as distinct from voluntary (Suchland 2014: 36-42), bringing it under the rubric of sexual slavery. However, because "sexual slavery was not the lingua franca of the United

[18] As I will repeatedly assert throughout this dissertation, sex trafficking is an issue that affects men and boys as well as women and girls. Nevertheless, it remains a dominant issue among women's organizations, and dominant legislation, such as the TVPA, treats it as an issue for women and girls.

Nations[…], [t]he issue of trafficking had not been taken-up outside of the feminist circles of the United Nations" (Suchland 2014: 42). Over time, however, trafficking came to be absorbed under the rubric of Violence Against Women (VAW).

Efforts to counter the dominant assumption that many aspects of the abuse of women were private or domestic matters (e.g. rape within marriage, domestic violence) provided significant impetus behind the movement to have women's rights acknowledged as human rights. Many issues of concern to women and women's groups involved violence in some form. Violence, therefore, became a unifying issue in transnational circuits. As Bunch explained it: "'Violence against women, in contrast to other issues, was one that brought women to their strongest point of common experience'' (quoted in Joachim 2003: 256). At the Nairobi Conference, governments emphasized violence against women (VAW) as a priority issue for the next decade, and as an obstacle to equality, development and peace (Joachim 2003: 256). Interestingly, UN expert groups (e.g. lawyers, criminologists, sociologists) who met as a result to discuss solutions to VAW, "called for the intervention of the criminal justice system and for making the system more accessible to victims" as a symbolic act. By making VAW primarily a crime, society signaled its disapproval and determination to hold perpetrators accountable (Joachim 2003: 257). This provides one insight into how trafficking came to be addressed as a criminal issue to the exclusion of political-economic or other forms of analysis. In any case, with the relentless mobilization of women's groups, globally, around the issue of VAW strengthening throughout the 1980s and 90s, Violence Against Women expanded "from discrete instances of rights violation to a composite category for women's human rights" (Suchland 2014: 44). Thus did the discrete issue of trafficking

become part of the powerful VAW agenda.[19] With the achievement of such enormous strides with respect to women's rights, and the emergence of trafficking as an integral component of VAW, the stage was set for Beijing as a venue where trafficking would emerge as an important international concern.

The Fourth World Conference on Women in Beijing in 1995 identified trafficking in women as a priority issue, the Platform for Action calling on states to develop preventive measures against trafficking, including the formulation and enforcement of laws and the provision of protection and assistance (Beijing Platform for Action sec. 107 (q), p.44). Anticipating the Beijing Conference, President Clinton created the 'President's Interagency Council on Women.' The agency, charged with developing initiatives and outreach to "further women's progress," was tasked primarily with coordinating and implementing the Beijing Platform for Action. The Platform for Action acknowledged trafficking a number of times, specifically strategic objective D.3, which called for the elimination of trafficking in women and assistance victims of violence due to prostitution and trafficking. On March 11 1998—International Women's Day—Clinton directed the Interagency Council on Women to coordinate the U.S. response to trafficking in women in collaboration with non-governmental groups; the Secretary of State to review existing U.S. laws, and to coordinate anti-trafficking efforts with other states; among other initiatives.[20]

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[19] Though I categorize anti-VAW activism as "powerful" here, Suchland persuasively demonstrates that by capturing trafficking under the VAW agenda, any possibility for economic explanation of the trafficking phenomenon was removed.

[20] Shortly after his inauguration, George W. Bush eliminated the President's Interagency Council on Women, along with most state attention to Beijing Platform issues (see Finlay 2006: 17).

By the time of the congressional debates on the TVPA, international efforts to address trafficking were already underway. The United Nations had passed three resolutions in the three years leading up to the passing of the TVPA, recognizing the international traffic in women and girls as a pressing international issue. The World Congress Against Sexual Exploitation of Children (1996) and the 1991 Moscow Document of the Organization for Security and Co-operation in Europe also acknowledged sex trafficking as a problem to be addressed (H.R. 3244 Sec. 2, articles 22-25). The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted the same year as the TVPA. The International Labor Organization (ILO) released a lengthy guidebook on Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers in 2003, and myriad reports, studies and surveys have since followed.

The U.S.' interpretation of the priority issues at Beijing rankled many, however, as it was not reflexive about its own domestic failures to achieve the ideals expressed at the conference and its own complicity in the problems it identified. For instance, Hillary Clinton's comments to the government forum in Beijing highlighted as prominent women's rights issues "female infanticide, dowry burning, rape, genital mutilation, and the denial of the right of women to plan their families, including being forced to have abortions or being sterilized against their will" (qtd. In Bulbeck 1996: 33). This focus diverted attention both from domestic women's issues in the U.S., and ways in which the U.S. has contributed to violations of women's rights globally. Contrasting Hillary Clinton's focus on women's rights abroad with the plight of women in the U.S., Chilla Bulbeck highlighted the American state's insistence that women carry pregnancies to

term and its subsequent abandonment of both mothers and children to potential starvation; or to the fact that, not dissimilar to female genital cutting, American women often feel compelled to undergo breast augmentation and other cosmetic surgeries in order to retain spouses and jobs (Bulbeck 1996: 33-35), to say nothing of the epidemic proportions of rape and gender violence domestically.

With respect to the issue of trafficking in particular, most Western states, not least the U.S., had (and continue to have) a tarnished record on the issue of sex trafficking. Accusations of participating in sex trafficking are not uncommonly leveled at UN peacekeepers and relief workers and NATO personnel, including patronizing child and involuntary sex industries; extorting sex from refugee children in exchange for food; and recruiting women into forced sexual service under false pretenses (for a list of examples, see Murray 2003: especially 492, notes 85 and 86). Noting that local sex industries boom with the presence of peacekeeping and relief workers, including the demand for child sex and trafficked women, Jennifer Murray notes: "local non-governmental organizations (NGOs) based in Bosnia estimate that as much as fifty percent of the [sex industry] clientele are international, including U.N. civilian police and NATO military troops" (Murray 2003: 502). The U.S. contingent of the International Police Task Force (IPTF), introduced as part of the Dayton Peace Agreement in post-conflict Bosnia (1995), for example, was found to have members who engaged in trafficking activities, such as the purchase of women and girls, and to have fired whistleblowers who disclosed such activities. These American IPTF officers were employees of DynCorp, a privatized military firm—subcontracted by the U.S. as a means through which the U.S. and other states who contribute peacekeepers could avoid confronting such egregious peacekeeper

conduct (Murray 2003: 505-6).

Even more pervasive than these accounts of U.S. and Western complicity in sexual exploitation and trafficking are the numerous sex-based local economies across the globe that have been established over the past seventy years specifically to service U.S. military bases. The U.S. military has ensured that countries playing host to their military bases overseas have prostitution policies that make sex easily accessible to soldiers (such as requiring that local governments undertake STI testing of local women). U.S. military bases and the "G.I. towns" that are erected around them are well known to be centers of thriving sex industries, and where local women are exposed to increased risk of sexual violence (Lutz 2002; Kirk and Okazawa-Rey 2001; Johnson 2000; Moon 1997; Enloe 1991). Between 1972 and 1995 in Okinawa, Japan, American soldiers committed almost a crime a day, many of these being the rape and murder of women (Keeley 2000: N.p.). Historically, the response among the higher echelons of the U.S. military has been a 'boys will be boys' attitude,[21] and light or no penalties for violent offenders.[22] It is no wonder, then, that the U.S. response as a leader and a model on the issue of sex trafficking (and other Beijing Platform issues), is received with unease in many quarters as hypocritical or as lacking true commitment.

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[21] Murray 2003: 505, characterizes the UN response to sexual exploitation perpetrated by its members in the same terms.

[22] Two notorious incidents in the 1990s, which galvanized women's activism, are the kidnap and rape of a twelve year-old Okinawan girl by three members of U.S. military personnel. In response to this atrocity, Admiral Mackey, the official responsible for American troops in the Pacific, merely stated: "I think it was absolutely stupid. I've said several times, for the price they paid for the car, they could have had a girl" (Schirmer 1997: 51). Likewise, in South Korea the murder and mutilation of a female bar worker by a U.S. soldier stirred up much anger among locals (Kirk and Okazawa-Rey 2001: 161).

In spite of the complex push and pull of political and economic factors discussed above, testimony and debate in Congress and Senate frequently advanced cultural explanations for sex trafficking more prominently than other interpretations. Most common was the assertion that certain cultures do not value daughters or the suggestion that they wrongly value material goods over human lives. While reading the dialogue, one often gets the sense that this is an entrenched issue with deep historical roots in "Asia," where prostitution is acceptable, women are not valued and daughters are sold. Senator Sam Brownback, for instance, noted a "common" practice in Southeast Asia for families to sell their daughters into debt bondage for small loans (e.g. $50) (Brownback 2000: S10166-7). One testimony before a Senate subcommittee invoked Hillary Clinton on this issue: "In some places, girls are considered to have less value than a household appliance. The First Lady, who cares deeply about this issue, observed one chilling manifestation of trafficking: There are girls that I've met in Northern Thailand, when I visited their village I could tell by looking at their parents' homes which ones had sold their daughters into prostitution. The homes were bigger, nicer, they sometimes even had an antenna or satellite on top" (Frank Loy, quoting Hillary Clinton 2000: 12). Within the parameters set by this selective narrative, U.S. lawmakers could portray the U.S. as the global force for freedom and equality.

Groundwork to the TVPA: Framing the Tale and *Dramatis Personae*

The framing of the trafficking problem dictated the often heavy-handed law and order response that TVPA adopted, revealed anxieties about immigrants, and positioned U.S. lawmakers as harbingers of freedom and security for women and children of the Global South. Each of these effects of the policy frame will be discussed in turn.

A problem of law and order

From the outset, legislators framed anti-trafficking as a problem of criminality, primarily rampant rape, requiring a law and order response. A 'hard' approach to influencing other nations, favoring sanctions, prevailed over a 'cooperative' approach that sought to treat other nations as partners. The predominant means of addressing trafficking was to find solutions centered on extending legal penalties for trafficking that would better suit the crime of rape. As Smith explicitly acknowledged, "our central core of this legislation is that we have got to throw the book at them," and "When we start putting these people away, I think we are going to put a real dent in these operations…."[23] Drawing parallels between rape as a weapon in war and rape in the

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[23] Although the crime of rape falls under state jurisdiction, the crime of rape within the context of trafficking was seen as particularly egregious and international, and therefore as coming appropriately under federal jurisdiction. The TVPA (2000) distinguished the crime of sex trafficking, defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act" (sec. 103(9)), from "severe forms of trafficking in persons." The latter involved "a "commercial sex act induced by force, fraud, or coercion" on a person under the age of 18, or "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery" (sec. 103 (8)). Importantly, only these latter, severe forms of trafficking were federal crimes to be criminally prosecuted. The other piece of federal legislation that addressed similar issues, the Mann Act, which was originally passed in 1910 to address "white slavery," requires that the victim be transported across state lines in order to warrant federal jurisdiction. The Mann Act did not require force, fraud or coercion as a threshold for prosecution. In 2008, the TPVA was reauthorized as the William Wilberforce Trafficking Victims Protection Reauthorization Act, and lowered the threshold for prosecution by increasing penalties for violations of the Mann Act and expanding various definitions, such as "coercion," "serious harm," as well as expanding the *mens rea* requirement to include reckless disregard of whether a victim is trafficked (Doyle: CRS Report, 2009). An earlier version of the Wilberforce TVPRA in 2007 (HR 3887), which proposed definitions that would bring "common prostitution-related offenses" (Walsh & Grossman 2008) under federal jurisdiction was criticized by conservative quarters such as the Heritage

context of trafficking, Smith suggested that rape as a means of statecraft was an atrocious abuse of power in Bosnia, and it was no less atrocious when undertaken for profit: "I mean, this is mass rape. It was a war crime in Bosnia. It is no less of a crime against humanity in New York City or Philadelphia or Washington, D.C. It is a crime against humanity and against individual women" (Smith 1999 A). The strategy of treating sex trafficking separately from other forms of trafficking and instead identifying it as rape, espoused by the sponsors of bill 3244 and the organizations which lobbied to support its passage was the subject of some controversy during hearings. The reasoning for this strategy was at least twofold: the crime of forced labor was seen as yielding insufficiently harsh penalties, the fear being that this element of the crime would take precedence over the aspect of rape, "if it is offered in lieu *of,* and we get a substitute with a 10-year ceiling in terms of punishment for perpetrators, that is a weaker substitute" and "…unless we punish sex traffickers more than just a labor law violation, we will not stop this…extraordinary crimes call for extraordinary responses" (Smith 1999a). Lederer took up the thread of this argument by rather contentiously claiming to speak for women in a way that may appear rather high-handed: "I think I can speak safely for many women's organizations when I say that they would believe that sex and labor aren't the same and can't be equated. They need to be separated, and if we deal with sexual

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Foundation for undermining states' rightful jurisdiction (see for eg. Walsh and Grossman 2008). This bill died in the Senate. Thus, although states have shown themselves willing to accept federal jurisdiction for the extreme crime of trafficking, more "ordinary" prostitution issues still fall squarely within state jurisdiction.

trafficking and deal with labor trafficking, I think that is the right approach" (Lederer 1999b).

In its guidebook on preventing the abuse of female migrants, the ILO warns forcefully against conflating trafficking with irregular migration, particularly sex work and prostitution, warning that it can lead to simplistic and unrealistic solutions. Confusing these issues can lead to anti-trafficking measures doubling as anti-prostitution measures (ILO 2003: 19), which only threaten to further disadvantage women. The legislation which was passed by the U.S. Congress dealt with sex trafficking *and* other forms of forced labor; however the language in the legislation and *about* the legislation tended to focus predominantly, if not overwhelmingly, on sex trafficking and its female and child victims.

Women and children appear as particularly evocative symbols of trafficked people. For example, in House and Senate considerations of H.R. 3244 during five sessions from May 9th to October 11th, 2000, the year the bill was passed, the phrase "women and children" was invoked seventy-two times, always referring to them as abused populations or the subjects of trafficking. Fifteen of these references invoked the controversial statistic that 50,000 women and children are trafficked into the U.S. each year. This is based on a contentious 1999 estimate provided by the Central Intelligence Agency, which I will discuss further, below. Several hearings solicited information exclusively on women and children, as indicated by their titles.[24] "Men," by contrast, are referred to six

[24] E.g. "International Trafficking in Women and Children" hearings before the Subcommittee on Near Eastern and South Asian Affairs, Committee on Foreign Relations. Senate, Feb. 22, April 22, 2000; "Trafficking of Women and Children in the

times in the same meetings: once as thugs forcing women into sexual service (typically, ostensibly gender-neutral words like "tormentor" are used instead, though they also clearly refer to men); once as the beneficiaries of women's unwilling sexual servitude; once linking men's abuse of women to their abuse of children; and three times as being victims, alongside women and children, as in "the global trade in men, women and children." Thus, "women and children" as a composite are mentioned twelve times as frequently as men, and are invoked as victims twenty-four times as frequently as are male victims. What are we to make of this emphasis on women and children? Perhaps they are used as particularly charismatic vehicles to "carry" the policy towards approval. Perhaps gendered assumptions about women's vulnerability create significant impediments among both lawmakers and the average citizen to understanding men as potential victims—especially victims of sexual violence. Or perhaps, decades of women's movement mobilization around VAW made it impossible to frame it any other way.

In addition to fears about insufficient penalties or deterrents if the trafficking problem was addressed more holistically as a problem of forced labor, the bill's sponsors proposed that a hard line approach was best taken not just toward individual traffickers as rapists, but toward other states as well. This belief was manifest in disagreements over adopting non-humanitarian sanctions towards states that failed to cooperate in efforts to eradicate human trafficking. The belief reflected in the advocacy of sanctions is best exemplified in the testimony of Gary Haugen of International Justice Mission,[25] whose

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International Sex Trade" hearings before the Subcommittee on International Operations and Human Rights, Committee on International Relations. House, Sept. 14, 1999.

[25] IJM is a Christian organization, self-described as "protecting the poor from violence throughout the developing world" (www.ijm.ca). They actively attempt to "rescue"

argument indicates an inevitability: men (in the Global South) are going to traffic women and children; their countries' corrupt law enforcement will fail to protect the women and children; the political will does not exist to change this state of affairs, and thus, "we cannot get the children out of the brothel without the man who brings the force of the State" (Haugen 1999: 92-97). This involves what he called the "tough" approach as opposed to the 'good idea' approach of cooperation and diplomacy. Recalcitrant states need to fear that "something bad is going to happen" if they do not take concrete steps to end trafficking—and the U.S. will provide the threat of that "bad thing." A softened version of the sanctions approach, developed in a conference report after the house and senate failed to agree on the bill. According to this softer approach, which was incorporated into the legislation that was adopted, states that do not meet and are not attempting to meet basic anti-trafficking requirements, as established within the TPVA, are subject to non-humanitarian and nontrade-related sanctions and blocked from loans from U.S.-led international financial institutions. However, the President retains discretion to waive such penalties for a number of reasons that include national interest; avoidance of harm to vulnerable populations; and already-existing reductions in aid to the country in question. On October 6, 2000, H.R. 3244 passed the House by a vote of 371 yeas (187 Republican; 182 Democratic in favor) to 1 nay (Mark Sanford [R-SC]).[26] It passed the Senate on October 11, 2000 by a vote of 95 yeas to 0 nays.[27] These results in both houses speak to considerable support for the initiative.

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trafficking victims, and represent a contingency of the anti-trafficking movement that believes ending sex trafficking depends upon eradicating sex work (i.e. abolitionism).

[26] Of the 62 abstaining, 34 were Republican and 28 Democrat.

[27] The five abstaining votes were Feinstein [D-CA]; Helms [R-NC]; Inhofe [R-OK]; Kerry [D-MA]; Lieberman [D-CT].

National Anxieties*:* "an extremely serious decent work deficit"[28] or "selling sex to obtain visas?"[29]

Not long before the TVPA was signed into law, a highly contested amendment was made to the draft legislation, placing a cap of 5000 on the number of trafficking victims eligible to receive permanent visas to remain in the U.S. The proposal was highly divisive along party lines in a process otherwise frequently lauded as a bipartisan effort to create a very popular law. Taking America's history with transatlantic slavery as a lesson learned, who would want to be recorded on the wrong side of history as having refused to support victims of "modern day slavery," after all? At every hearing and debate, the bill was touted as a means of rectifying the wrongs done to victims of trafficking, ushering in newer, more sensitive policies which did not blame the victims by giving them stiffer penalties than their traffickers at worst, and often deporting them without any victim assistance at best. Instead, rehabilitation, counseling, protection from retaliation by traffickers, and temporary residency with the potential to remain permanently were the hallmarks of a law that would set past wrongs to rights.

It would seem that the 5000 person cap on visas to trafficking victims was an initiative designed to mitigate against allowing too many migrants into the U.S. under fraudulent pretenses. Despite much talk about the TVPA as a work of compassion, the visa cap reveals deep anxieties about the state's inability to distinguish between what Ticktin has called "morally legitimate, worthy sufferers" (Ticktin 2011: 173), and

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[28] ILO 2003: 9.

[29] In "Selling Sex for Visas: Sex Tourism as a Stepping-stone to International Migration," Denise Brennan (2004) casts sex work undertaken for visas or residence in Western economies as a legitimate survival strategy but here it is meant to evoke a suspicious tone.

deceptive claimants who threaten to push open the floodgates for further waves of claimants (Berger 2009: 668). When the Senate disagreed with the amendment, which was proposed in the House of Representatives, moving instead to pass the bill without the numerical cap on visas, Chris Smith insisted that this was a necessary element ensuring bipartisan support for the bill.[30] Congressmen John Conyers (D-MI) and Melvin Watt (D-NC) noted the irony in the self-congratulation over the magnanimity—and usefulness—of the bill if the cap were to remain: "this is arbitrary and beneath our dignity as a Nation…and does frankly a good disservice to our international image as a country concerned with human rights" (Conyers 2000: H7630). "The primary incentive they have is to seek to be able to stay in the United States, and if they cannot do that, then we provide no protection to them as a Nation" (Watt 2000: H7630). Although Conyers points out the contradiction of professing to worry about the well-being of migrants while simultaneously fearing invasion by migrants, the late addition of the 5000 person cap on victims of trafficking suggest that a lingering mistrust of migrants, and an overriding concern that U.S. borders remain closed to all but the most abject victims of trafficking remained a pressing concern of many members of Congress.[31]

Anti-migrant anxieties coexist uncomfortably with, and cast further doubtful light on the foundational claim that 45,000-50,000 women and children were being trafficked into the U.S. each year. As noted above, this statistic justified, throughout congressional

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[30] The motion to remove the amendment capping visas at 5000 went to conference committee and remained in the bill, becoming part of the TVPA law, with the compromise that each year, the Secretary of State report a list of visa claimants who were not able to obtain visas due to the cap. Thus far the cap has not been reached. For some this reflects the failure of the anti-trafficking policy and the inability to identify and assist victims (see Potocky 2010).

[31] Or, on the other hand, to highly educated and wealthy, (primarily white?) migrants.

debate, an alarmed and urgent tone around securing the bill's passage. Why then, introduce a cap restricting entry to a mere 10% of that population? The 5000 person cap reflects ambivalence about "irregular migration," pitting those who support a sympathetic response to migration that results from "extremely serious work deficits" in home countries against those who are suspicious that migrants use sex work to gain permanent entry to the U.S.[32] In debates over the visa cap, the language of caring dangerously abuts the very reality of structural inequality that both liberal and conservative framings eschew. I will return to the question of how hapless victims are transformed into willful deceivers in chapter five.

Congressional debates over the TVPA reveal a preoccupation with violent sexual exploitation. Despite a definition of trafficking that acknowledges a broader range of trafficked labor, congressional discourse was highly selective, largely ignoring nonsexual forms of labor trafficking as well as the root causes of trafficking and exploited labor generally. In a decade in which the U.S. Congress passed legislation abolishing welfare entitlement and restricting legal migrants from any welfare provision, the selective focus on sex trafficking allowed the United States to adopt a humanitarian stance toward women and children victims without committing itself to provision of employment or

[32] Narrowing the scope of the problem to the most abject and exploited conditions of irregular migration (i.e. sex "slavery") emerges here. Exploited labor in Export Processing Zones (EPZ), for example, is not only left aside here, but is acceptable because it is not illegal. Individualized narratives of abasement and exploitation draw attention to individual physical rather than general, structural violence. Attending to the latter would force lawmakers to confront sex trafficking and forced labor as part of a broader problem in which the realities of global markets and neo-liberal policies create vast disparities of wealth, forcing some people into highly exploited positions, some legal, some not. As it is, focusing merely or even primarily on "sex slaves" removes official, "legal" exploitation from moral/ethical suspicion.

public services for significant numbers of trafficked women/workers. The narrow criminal justice focus also shielded the USA from any concern with the dearth of economic opportunities and exploitative, though legal, labor possibilities that await trafficking victims when they return home.

Positioning of the U.S.

Certain discursive trends shaped Congressional and Senatorial hearings and debates about trafficking in the late 1990s and early 2000s, limiting the terms in which to meaningfully think about the issue of trafficking. The first tactic, the use of highly scripted victim narratives, which had strong emotive force, was related to a second technique, emotional appeals to the Congress to serve as protector of innocent women and children. In addition, the language of slavery was used consistently as a means to signal one's commitment to anti-trafficking efforts, and to establish oneself as a 'player' in the newly emerging humanitarian field.

Laura Lederer of Harvard University's *Protection Project* appeared frequently as an expert witness on the issue of trafficking, in her capacity as a researcher compiling a database of national legislation on trafficking and child pornography, among other issues. Her testimony invariably began with the statement that trafficking is a global human rights problem, the victims of which are in the majority women and children. Lederer routinely invoked the statistic suggesting that 45,000-50,000 victims were trafficked each year to the USA alone. She then explained trafficking by telling "Lydia's Story," an amalgam of experiences from trafficked women—"and here you can fill in the name of any of the sender countries in Eastern Europe, the Ukraine, Russia, Romania, Lithuania,

the Czech Republic, Latvia…"[33] (Lederer 2000: 30). That this composite narrative can accurately tell the tale of any trafficked woman, as Lederer would have it, reveals that all trafficked women are subjected to the same forces. Within this composite script, trafficked women are constructed as passive, innocent, and naïve. Lydia's story was undeniably horrible: an innocent young woman was tricked or kidnapped into the world of trafficking, raped and beaten in order to break her spirit and force her cooperation, and compelled to sexually service multiple men per day in order to pay off a spurious debt owed to her traffickers. Living in confinement, Lydia had no hope of escape except that she came into police custody when her brothel was raided. This tale was made concrete by the appearance of victims 'in the flesh' at hearings, whose tales were not far from the one outlined above – women who, like Lydia, ended up diseased, as well as physically and spiritually broken. The appearance of these women, and the use of their stories to garner support for anti-trafficking legislation, had a number of noteworthy effects.

Most impressive is the clear emotive power of the testimonials; evidenced by the protective proclamations they drew from the primarily male state officials. Chris Smith, for example, manifested his protective impulse when complaining of Russia and Eastern Europe's malingering with respect to anti-trafficking efforts: "They were in denial that this is even happening in their own countries. I said, these are your daughters, these are people that you should be putting sandbags around, to protect them" (Smith 1999a). The reference to protecting women with sandbags invokes a militaristic metaphor, in which

[33] Despite being described as a global problem, the geographical origins of trafficking invoked here suggest white victims, perhaps revealing enhanced anxiety about white sexuality, and resurrecting colonial assumptions that women of color are highly sexualized and less likely to be sexually naïve.

trenches are shored up with sandbags. The violent implications of this protectionist imperative in the face of evil opponents only became more pronounced as more congress members added to this reaction. During the same hearing, Harold Koh, Assistant Secretary of State for Democracy, Human Rights, and Labor, expressed a similar feeling:

> Mr. Chairman, some of the young girls in that institute were no older than my daughter, who is only 13 years old. That experience reminded me that trafficking hits us so hard because it so often involves children like our own. That so many around the world would resort to the exploitation of innocence for personal and monetary gain must be regarded as one of the most brutal forms of evil that we confront today (Koh 1999).

And again during the same hearing Congressman Eni Faleomavaega made his own contributions:

> I submit I have a 13-year-old daughter, and I wish that every parent, every father, every brother could have a real sense of appreciation what women and children go through. We are talking about rape and forced prostitution. As far as I am concerned, they are the same thing (Faleomavaega 1999).

And again:

> I cannot for one, Mr. Chairman, use poverty as a valid excuse for allowing this to happen, I don't care how poor a country is. I would think that, as Ms. Bhattarai [another witness] testified in her eloquent testimony, it is just beyond me how strong the culture and the values that they place, and where I come-if I catch that guy, I would castrate him 10 times. I am sure that even here in our own country, Mr. Chairman, this should not and will not be tolerated" (Faleomavaega 1999).

This reference to violent castration, along with the militarized trench warfare invoked above, is an appeal to what V. Spike Peterson has called heterosexist masculinity. Heterosexist masculinity, which Peterson claims is pervasive in Western and all hierarchically ordered societies, casts women/the feminine as passive and denigrated, while casting the male role as one of agency and penetration (1999: 40-1). This logic is invoked to maintain gender hierarchy within groups (threat of violence against women /

the feminine) and to "enact masculinist violence *between* groups (e.g. castration of "Other" males …)" (1999: 41). Ironically, the phallocentric logic that allows these congressmen to cast themselves as women's protectors is the same one that casts them as their potentially violent abusers. Enemies are feminized and thus rendered powerless via castration.

The process of "culturalizing" certain forms of male violence makes invisible the violence enacted by Western, usually white, male protectors. Early analysis from witness Stephen Galster and representatives from the administration recommended that sex trafficking was best treated as forced labor and therefore considered part of a larger problem including other forms of forced migration, such as agricultural, which affects large numbers of men as well. In spite of this guidance, narratives such as Lydia's story narrowed the focus and the concern of anti-trafficking efforts to a subset of the trafficked population in almost all government proceedings: *women and children* who are trafficked for *sexual* purposes. The final draft of the TVPA acknowledged that trafficking in persons is not limited to the sex trade, yet it singles out the sex trade, and highlights "primarily women and children" as the primary victims of trafficking in persons generally (e.g. sec. 102).

The strong emotional response made clear in the congressmen's association of trafficked women with their daughters and their own roles as fathers and brothers demonstrates the high level of interest such an emotive issue and technique can garner. It also resonates uncomfortably with the imperial logic of masculinist protection deployed under colonial administrations, which justified their own violence against colonized men through appeals to protecting colonized women (Calhoun 2010). More recently, such

patriarchal logic has been used to justify imperialist invasions of non-Western states, such as Iraq and Afghanistan (Abu-Lughod 2002; Young 2003). This frame casts Western men in the role of saviors and benevolent father figures, while masking their role in sexual exploitation. Indeed, the resonance is all the more stark given the multiple violent and militaristic references above, from Haugen's admonition that justice will not be served without the 'man who brings the force of the state,' the metaphor of trench warfare invoked by placing sandbags around women, to the threat of castration. That protection should be framed in violent and militaristic terms belies the pervasive physical and sexual violence that women, children, and men have suffered in the face of military conflict, much of it Western-initiated in the past fifteen years. It reminds us that both women and children are all too often abused and exploited by the very figures who claim to be their protectors.

Let us return to the invocation of an evildoer who must be threatened, fought or castrated. Hannah Arendt, observing the trial of Adolf Eichmann, noted that all too often, evil is banal rather than monstrous, spreading unchecked because it manifests itself in the commonplace and is carried out by unremarkable practitioners. As we examine the trafficking issue this lesson is at risk of being lost, as the more provocative issue of trafficked women eclipses more productive avenues of analysis. Not only are men overlooked both in sex trafficking and in other sectors representing alternative circuits of survival, but less dramatically emotive aspects of the feminization of survival are overlooked. Women walking increasing distances each day to collect water; the perennial and hopeless search for meaningful, gainful employment; the daily challenge of providing adequate nutrition to one's family—these grinding scenes do not draw scrutiny.

Of course, the U.S. liberal language of freedom and democracy give the appearance that issues such as women's poverty and inequality are only foreign problems. Selective attention to particular victims of sexual trafficking positions the trafficker outside the boundaries of the USA.

The United States is not alone in imagining evil as always on the outside of its national borders. Miriam Ticktin (2011) has used the French asylum adjudication system to demonstrate that only the most exoticized forms of violence against women capture the compassion of French immigration judges because only with culturally exoticized ('exceptional') accounts of such violence is the French state able to cast itself as a civilized savior of foreign women. "[T]he struggle against violence against women also inherits the strategies and tensions of the colonial era, which used women as markers of civilizational status" (Ticktin 2011: 157-8). Likewise, neoliberal economic policies (e.g. privatization) and strategies (e.g. micro-credit) are cast as solutions to the debt and poverty that plague the global South. Scenes that belie its role as a Western tool of oppression in the global South are excised from victim narratives. Thus discourses of both U.S. liberalism and conservatism grant ideological immunity to forms of structural violence such as those enumerated above. Certainly, the ability to see a face of a real victim made the issue concrete (as several members of senate and house declared) and afforded a sense of satisfaction that something meaningful was being accomplished with TVPA. Criminalizing traffickers provided far more immediate satisfaction than dealing with the structural problems raised by trafficking.

Victim narratives, whether firsthand or relayed by elected officials or professional witnesses, must resonate with already existing stories and narratives of personal and

national identity in order to have such force. The cause of anti-trafficking resonates most clearly with the U.S. history of the abolition of slavery and with the U.S. self-understanding as a defender of freedom. These themes frequently appeared in debates. Laura Lederer, who appeared with great frequency, claimed repeatedly, "The numbers may soon be on par with the African slave trade of the 1700s" (1999 A: 22; 1999 B: 47). Taking up this challenge by situating bill 3244 squarely within an American anti-slavery tradition, Chris Smith added an amendment which explicitly linked the TVPA to the U.S. Declaration of Independence, which "recognizes the inherent dignity and worth of all people and talks about how the United States outlawed slavery and involuntary servitude in 1865, and recognized them as evil institutions that must be abolished" (Smith1999 B: 88).[34] The notorious fact that Thomas Jefferson, a slave owner, penned these words is an irony that was not broached. Congressman Henry Hyde [R-Ill] (2000) made a similar appeal by marking 3244 as the latest piece of legislation confronting slavery in the U.S.:

> While Lincoln may have freed the slaves in America, there are those today who engage in other forms of slavery on persons of many colors…This conference report will prevent and punish sex trafficking and other forms of trafficking in human beings. As such, it is another step forward in the full and complete enforcement of the anti-slavery amendments to our Constitution.

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[34] The text of the amendment reads: "One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that "all men are created equal" and "that they are endowed by their Creator with certain unalienable rights." The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which our country was founded."

Sam Gejdenson [D-CT] described it as an attempt to "put a stop to the heinous practices of modern-day slavery" (Gejdenson 2000).

Victim narratives, which invariably emphasized situations in which women have been either 'duped' or forcibly taken, also resonated with the image of the U.S. as a protector of women and children and an example to the world on such issues. Congresswoman Constance Morella [R-Md] lauded the power of the bill in this regard: "We can all celebrate the message being sent to women everywhere when we pass this legislation that women's minds and bodies are their own. By passing this conference report, we empower millions of women around the world to escape from pain and fear" (Morella 2000). Note the assumption that a decision by U.S. lawmakers that women are 'free' will make it so, and that the world is keeping tabs on U.S. legislation. Other accounts refer to the U.S.'s history for the past century of fighting for women's rights and the importance of passing the bill in order to assert U.S. leadership in "halting trafficking and gender-specific violence" (Millender-McDonald 2000).

If we read these progressive narratives of racial and sexual politics against other policy 'stories,' we see with greater clarity the narrative choices being made at the expense of these others. Occasionally, the possibility of other, more problematic narratives was introduced. For instance Congresswoman Lynn Woolsey [D-CA], noting the TVPA's role in furthering women's rights and deterring and addressing trafficking, nonetheless questioned what the U.S. was doing globally to promote women's rights when the Senate had not yet ratified the Convention on the Elimination of All Discrimination Against Women (CEDAW) (Woolsey 2000: H2685-H2686). The U.S. is the only democracy that has not ratified CEDAW. Noting that 165 countries, "including

Nepal," had ratified CEDAW, Woolsey's comments suggest that the U.S. is lagging behind, rather than showing leadership. Even so, she noted that it would be more in keeping with U.S. identity and would "lend muscle" to Nepal's fight against trafficking, if the U.S. were to lead by example and ratify the convention. Woolsey's comments on CEDAW were not acknowledged or subsequently taken up by any other members of the House of Representatives, and the debate moved on with much self-congratulation amongst the representatives over their leadership in protecting women.[35]

A discursive analysis of congressional legislation examines not only the surface meaning of texts, but probes what lies beneath and between the lines, what is omitted and what goes unacknowledged. A significant portion of U.S. official discourse around trafficking relates to a desire to protect innocent young women from the nefarious intentions of the men who traffic them. Yet, the way that the problem is framed allows policy makers and citizens alike to live as though blissfully unaware of their complicity in the "economies of excess constituted on the back of the poor and the powerless" (Sassen 2001: 100). As Janie Chuang (1998: 66) argues:

> The narrow portrayal of trafficking as necessarily involving forced recruitment for the purposes of forced prostitution thus belies the complexity of the current trafficking problem, and overlooks numerous victims whose experiences diverge from more traditionally recognized forms of trafficking. Moreover, because international anti-trafficking law reflects this narrow conception of trafficking, the exigencies of modern manifestations of trafficking in women have rendered these laws inadequate to prevent and redress the trafficking problem.

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[35] Other policy stories that complicate the framing of U.S. leadership on women's and children's issues found in the legislative debate surrounding the TVPA are the failure of the Equal Rights Amendment (ERA) and even U.S. failure to ratify the Convention on the Rights of the Child, given the frequent invocation of "children" and "daughters."

Positioning of Women in Trafficking: Men Migrate, Women are Trafficked or Forced Labor (male) vs. Sex Slavery (female)

While the dynamics of fatherly/brotherly protection discussed above give more than ample suggestion of how trafficked women are positioned *vis a vis* the U.S. in anti-trafficking policy, it is worthwhile to note explicitly some features of how women in the Global South and the marketizing economies of postsocialist states were characterized. Women were frequently—in fact almost always—referred to alongside children. As in: "Men are also trafficked, particularly into forced labor, but we emphasize trafficking in women and children because they are basically the targets of the criminal activity" (Botti 1999). The ILO in its guide on preventing the abuse and exploitation of women migrants, on the other hand, is explicit in its insistence that women and children be treated separately, due to the increased vulnerability of children and the particular "physical, psychological, and psychosocial harm" suffered by trafficked children, requiring separate treatment (ILO 2003 book 6: 3).

Women were also cast as being in need of protection but never portrayed as able to protect themselves or to turn migration to their benefit. There was no acknowledgment that sex work is sometimes chosen work and not the result of trafficking. Therefore the only treatment of sex work is sex work as tragedy. The effect is a potential confusion of the two and the common misperception that "men migrate, women are trafficked," which leads to biases in migration policies to the detriment of both men and women (ILO 2003 book 1: 13). Not only can such an assumption lead to crack downs on prostitution and migration, respectively, it can lead to the idea that women need constant male attention and supervision (ILO 2003).

Perhaps the most notable trend of globalization's most recent wave is the mass mobility of people. From 1965 to 2000, the number of migrant people worldwide grew from 75 million to 175 million (ILO 2003: 9). Half of total migrants worldwide are women, with numbers increasing notably from1960 onwards, although women are likely to earn less pay and to work in informal economies (ILO 2003: 2, 9; Ehrenreich and Hochschild 2002: 5). From 1960 to 2000, the female proportion of migrant persons grew from 47 to 51 percent (ILO 2003: 9—quoting UN's International Migration Report from 2002 written by H. Zlotnik). And the number of these women migrating autonomously has increased as well. The experience of migration is often positive, allowing women to make important gains: improvement of their own lives and status and the lives of their families, economic and social gains, increased chances of employment back home upon return, and income to start a business of their own (ILO 2003 book 1: 2; White 1990; Kempadoo 2005; Brennan 2004). Acknowledging these facts does not prevent one's also acknowledging that women migrants are nonetheless more vulnerable to discrimination, exploitation and abuse, not only because they often work in unregulated sectors, but "because gender-based discrimination intersects with discrimination based on other forms of "otherness" – such as non-national/foreigner status, race, ethnicity, religion, economic status – placing women in situations of double, triple or even fourfold discrimination, disadvantage, marginalization and/or vulnerability" (ILO 2003 book 6: 2-3). These facts should not deter the creation of policy that recognizes the needs of men who are survivors of forced labor (sexual and otherwise), or that not all sex workers are trafficked.

In anti-trafficking discourse, women of the Global South are represented as sexual victims, needing to be rescued or liberated in the 'decade of deliverance.' They become

signs of cultural backwardness or even immorality. The celebrated intervention made by Chandra Talpade Mohanty in *Under Western Eyes: Feminist Scholarship and Colonial Discourses* (1988) sheds light on this dynamic. Taking as her starting point an understanding of colonialism as always implying relations of structural domination, she applies this concept to the construction of the third world woman as singular and monolithic by many western feminist texts. According to this 'discursive colonization,' scholarship on third world women takes the goals and interests of western feminists as its norm. Part of the composite identity of the third world woman created by much western discourse is that of a woman who is victimized, oppressed, and subject to male violence. Here, the third world woman becomes the 'other' to the western feminist, as women have historically been the 'other' to men (Spivak 1988, Abu-Lughod 1990, Hirschkind and Mahmood 2002, Narayan 1997).

Iris Young's (2003) notion of "masculinist protection," crafted in response to justifications given for the US invasion of Afghanistan, acknowledges the possibility that western women can also position themselves as masculinized protectors of third world women. The discourses of masculine protection, whether foregrounding western women or men, replicate visions of the third world composite woman that Mohanty warned against. Yet it is precisely that protector role that makes anti-trafficking a popular cause among both Western women and men. Incorporating a neocolonial epistemology grounded on the notion that white Western women and men know what is best for their counterparts in the Global South, anti-trafficking discourses reproduce hegemonic gender relations with a twist. The weaker, naturally vulnerable party (the third world woman) must unquestioningly place herself under masculinist protection whether afforded by

western men or women. Thus, the anti-trafficking discourse surrounding TVPA reproduces a form of missionary feminism that is far from new. Anti-imperialist and postcolonial feminist thinkers have long cautioned against "good intentions"--paternalist ideas central to certain versions of feminism since the 1870s (Newman 1999), noting that the 'saving' ideology entrenches racialized hierarchies in what purports to be an egalitarian movement (Narayan 1998; Razack 1994, 2004; Agustin 2004).

The TVPA tells a carefully scripted story, both in congressional debates and in the official legislation, framed as an issue of modern day *slavery*. This narrative allows Western policy makers and states to position themselves as saviors of oppressed peoples (gendered feminine); to frame women's oppression as forced prostitution, compelled by 'traffickers' (raced and gendered as black and brown men), thereby granting Western immunity from complicity in economic problems that constitute the "push" factors for documented and undocumented migration. The framing makes impossible any discussion of trafficked women's agency, which would further reveal Western complicity in structural violence and oppression in the global South. It is worth devoting some time to the emergence of slavery discourse around the issue of trafficking, as it also allows us to consider the "humanitarian reason" that drives the anti-trafficking response.

Human Rights or Humanitarianism?

The debate behind the TVPA makes explicit references to human rights, identifying it with multiple domestic and international laws and resolutions protecting a number of specific rights. Section 102 (23) identifies trafficking as a crime violating

rights protected in documents including the Universal Declaration of Rights;[36] the Abolition of Forced Labor Convention; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); and the Fourth World Conference on Women, to name but a few. Section 102 (22) invokes the American Declaration of Independence and specifies the right to be free from slavery and involuntary servitude as among the inalienable rights it celebrates. The policy is thus marked as one that will showcase U.S. global leadership on human rights: "This measure deserves our support, because it affirms our adherence to universally accepted norms of human rights and it gives concrete expression to our will to defend and extend those rights" (Abercrombie 2000: H2686). Policymakers also discussed the TVPA as a means of combating problems endemic to the global South, the 'sender' countries of the global trafficking problem: "Trafficking is global in scope, fed by poverty, lawlessness, dictatorship and indifference… Traffickers buy young girls from relatives, kidnap children from their homes or lure women with false promises of legitimate employment…Every American should be concerned and ashamed that many of these victims-perhaps numbering in the thousands-are trafficked into the United States each year" (Abercrombie 2000: H2686). As these examples make clear, the TVPA was seen by lawmakers as a human rights document.

[36] Together with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration forms the "International Bill of Rights." The U.S. has only ratified the ICCPR (in 1992).

Despite invoking human rights, and quoting documents that proclaim their universality, in terms of implementation, the TVPA's primary contribution is to institute a policy of criminal prosecution for individual actors who engage in trafficking (and to sanction countries that do not crack down on the issue). In other words, it would seem that, to the extent that they have been taken seriously and are not mere rhetorical flourishes, rights are treated in this context as negative (rights *from* slavery). The state has done its duty as long as it creates serious disincentives for individuals to limit other's freedom through trafficking. As far as rights go, this thinking is too limited to begin with—considering rights *to* liberty, economic security, physical security, etc. would involve much more fundamental social and economic restructuring. It would also involve actually consulting vulnerable populations as to their assessment of their needs. The strong tendency to associate the policy with the first wave of anti-slavery abolitionism, however, ties TVPA far more strongly to humanitarianism than to a human rights framework.

The language of slavery is widely used in contemporary Western society, not only by U.S. policymakers or conservative religious organizations committed to "freeing" the slaves. It is a discourse adopted in more liberal quarters as well, and incorporated rather unquestioningly even by critical and insightful voices.[37] "New abolitionists," as the loosely based movement calls itself, address themselves specifically to trafficking in persons, especially sex trafficking, and explicitly adopt the language of slavery to

[37] For example, Ticktin (2011) reveals that refugee claims in France since the late 1990s have had higher rates of success if applicants are portrayed as "slaves." Rather than critiquing the appropriateness of slavery discourse however, she merely asserts that many of the *sans papières* (undocumented) women who are refused residency in France are merely unacknowledged slaves.

describe trafficking. In the next chapter, examples of such new abolitionists will be discussed in greater depth. To briefly anticipate here what I will argue later in that chapter, slavery discourse in relation to trafficking has been largely influenced by Professor Kevin Bales, whose many books on "modern day slavery," especially the book *Disposable People* (1999) have been widely influential (Bales was not only a witness in congress but is also cited by critical scholars such as Ehrenreich and Hochschild 2003). While Bales focused his analysis of slavery in the 1990s on what might otherwise be called forced labor, and distinguished carefully between various forms of it with little emphasis on sex trafficking, his terminology has been taken up and applied in a much less nuanced manner. Although there is little critical focus on the problems of slave terminology, there are a number of reasons to be suspicious of it.

First of all, we must note the overlap between the use of the term "abolitionism" by the anti-trafficking movement, and its different, but related use by some feminists and conservatives beginning in the late 1970s to describe their opposition to all forms of prostitution. Belief in the necessity of criminalizing sex work and abolishing it typically stems from a theorization of sex work that emphasizes its inherent oppressiveness and the conflation of force and choice in the context of women's sexuality. This perspective is reflected in prevailing U.S. law (for example, "prostitute free" zoning ordinances, which are discussed in chapter five). The belief that prostitution is inherently oppressive is based on the view that sex work is slavery—indeed it is often referred to as "sexual servitude" or "sexual slavery." Some understand it as further entrenching patriarchal relations, and therefore women's subordination. Speaking of "prostituted women" (note the passive voice, which deliberately strips sex workers of subjectivity) as a sex-based

class, Catharine MacKinnon argues that prostitution reinforces damaging stereotypes about women, namely that sex is "what women are for," going on to claim that, "Treatment that is socially and legally damaging and stereotypical that overwhelmingly burdens one sex, but is not unique to one sex, is most radically seen as sex discrimination" and is not merely a job, but is unequal and constitutes slavery (1996: 228-9).

Articulating a position very similar to Mackinnon's, Carole Pateman (1988) draws a distinction between the athlete or the wage slave, whose bodies are contracted for, but not used directly and the prostitute, whose *self* is sold along with her body in a more profound sense. "The story of the sexual contract reveals that the patriarchal construction of the difference between masculinity and femininity is the political difference between freedom and subjection, and that sexual mastery is the major means through which men affirm their manhood" (Pateman 1988: 207). In other words, manhood and womanhood are confirmed in "the sex act," thereby reproducing an oppressive patriarchy and meaning that, because sex is inextricably bound with the self, women are truly selling themselves in the act of prostitution. Even sex work performed by males merely reproduces or mimics heterosexual domination, in which one party is feminized.

Thinkers like MacKinnon and Pateman call attention to the ways in which prostitution resembles slavery and reinforces patriarchy. Integrally related to this perspective is the denial that there can be a choice where sex work is concerned, given the structural constraints that inform women's lives. Focusing on the status of sex workers as victims, prostitution abolitionists tend to reject the distinction between forced

and voluntary participation in sex work, turning instead to the structural constraints that limit women's choices to the point where they are meaningless (for further accounts of these debates, see for e.g. Ticktin 2011: especially 187-188; and Suchland 2014, who focuses on Kathleen Barry's abolitionism as the founder of Coalition Against Trafficking in Women-CATW, in particular). The abolitionist perspective developed specifically in relation to prostitution has been taken up by the new abolitionists in their battle against trafficking, as they accept that all sex work is forced, and therefore constitutes enslavement. In order to eliminate trafficking, then, sex work must be eliminated. Toward that end, sex workers (and their clients) are subjected to increased scrutiny from law enforcement, thereby rendering their lives more precarious—an issue whose consequences are taken up in chapters four and five.

Beyond calling for increasing crackdowns on sex work, which actually further marginalize vulnerable populations; slavery discourse evokes the humanitarian ethic. By framing the anti-trafficking imperative as a revival of the movement to abolish the African slave trade, TVPA explicitly bypasses the human rights tools that have been developed in the past sixty-six years, and instead aligns itself with the highly personal, affective mechanisms of 17-18th century abolitionism—which was explicitly humanitarian. Drawing upon Chris Brown's cogent critique of 17th and 18th century abolitionism, I argue that if the new abolitionism claims to share common ground with its original namesake, we must consider its share in the frequently overlooked blemishes of that movement.

Brown notes that the poster boy for the original abolitionist movement—William Wilberforce, in whose honor the TVPA's 2008 reauthorization act was named—framed

the movement as the exclusive and uncomplicated product of pure Christian altruism (Brown 2006: 3). Brown, however, makes a compelling argument that abolitionism was primarily a vehicle for particular evangelical Protestant objectives, namely a campaign against vice (Brown 2006: 387). The evangelical originators of the abolitionist movement worried about the bad moral effects of slavery on British society of the day more than slavery itself—effects such as corruption, and the moral guilt incurred by individuals complicit in the slave trade (Brown 2006: 25). During the American Revolutionary era in the U.S., Britain's role as a promoter of liberty came into crisis as it was faced with such a stark challenge to its imperial authority (Brown 2006: 27). Within that context, abolitionism became a contested ground for demonstrating the relative collective vice, or collective virtue, of a people (Brown 2006: 153). Blame for the slave trade was leveled by American revolutionaries at Britain, and the British-led abolitionist movement was an answer to such charges. Suspicions were also rife that the slave trade, focusing internationally, was an attempt to distract from deep inequalities at home, especially with respect to the working poor who, though nominally free, were said to be worse off than some enslaved peoples (Brown 2006: 370).

At times, the British humanitarians encouraged the expansion of the slave trade *outside* of the British Empire when it was expedient (Brown 2006: 14). Relatedly, the 'decline thesis' held that the British abolition movement did not gain any purchase until British sugar colonies had already declined (Brown 2006: 14). These observations about the original abolitionist movement raise interesting questions concerning inconsistencies, self-interest, and hypocrisies in contemporary movements that claim the abolitionist mantle, replete with its appeal to pure and uncomplicated altruism. The facts around

British abolition were made to fit with a national myth that antislavery was inevitable, rooted in character of the British people, the principles of British Protestantism, the rule of law, etc. This tied in with British patriotism and 'imperial trusteeship' thinking, not the least of which was pride about all the work being done with 'barbaric peoples' abroad (Brown 2006: 5-9). The first generation of abolitionists adopted the movement as a strategy to bring Evangelical Protestant values into mainstream society, without making themselves into pariahs by focusing on an issue that already had a hold on moral opinion, and was socially acceptable (Brown 2006: 370). Given appeals to the American character in promoting the policy and the professed paternal feelings towards foreign women, coupled with the failure to address structural issues behind it, and to address women's inequality at home, there seems to be good reason to suspect that the new abolitionism shares some of the Machiavellian calculation of the first wave.

Quite apart from questions of motive, new abolitionism immediately conjures images of saving shackled slaves, yet this is an anachronistic and misleading image. Bales makes clear that the bulk of modern slavery is coercive, however the labor force is not owned (nor is it typically sexual); workers are capable of entering and leaving coercive labor; and indeed, some workers chose to indenture themselves. The context of "modern slavery" is far more typically lack of viable alternatives than physical shackles, kidnapping, and brute force. The new abolitionists have lost this nuance, preferring to harness the emotive power of "slavery" to build a large movement behind their sex-focused campaign.

State of the Policy

Because of the strong bipartisan support for the TVPA, it was reauthorized in 2003, 2005, and 2008.[38] Independent sources have, however, critiqued the policy as ineffective. When looking at the "3P" approach of prevention, protection and prosecution, U.S. anti-trafficking has been accused of failing to adequately assess the progress of prevention efforts, a problem exacerbated by the absence of a baseline count of the number of trafficking victims with which to compare subsequent years. Numbers used or generated by the U.S. government have fluctuated greatly (Potocky 2010: 374), making it impossible to judge if the number of trafficked people has decreased. As indicated above, much of the congressional debate around the desperate need for anti-trafficking legislation revolved around the statistic that 50,000 women and children were being trafficked into the U.S. each year. This figure was first publicized in a CIA report,[39] which cited a CIA briefing as the source of the information, but provided no information (then or subsequently) about how that figure was generated. Miriam Potocky notes that an anonymous source later revealed that the number was generated based on foreign news clippings, and that subsequent official estimates dropped drastically—to 18,000-20,000 in 2003; and to 14,500-17,500 in 2004, before estimates were finally abandoned. The actual number of people trafficked annually is unknown, which makes it impossible to calculate the portion of sex trafficking victims. Because of this lack of

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[38] Named the "William Wilberforce Trafficking Victims Protection Act of 2008," Wilberforce being the celebrated 18th-19th c British abolitionist. The name is suggestive of the anti-trafficking legislation's role in putting the U.S. on the right side of history.

[39] Amy O'Neill Richard, "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime" <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>

information about the number of people who are trafficked, many feminists have dubbed the issue of sex trafficking as a 'moral panic' (Chapkis 2003; Kempadoo 2005; Weitzer 2007), driven more by anxieties about irregular migration and extramarital sex.

Shifting from unreliable estimates of trafficked persons to protection and prosecution, Potocky notes that from 2001 to 2007, only 1,379 immigrants were officially certified as trafficked, which is miniscule compared to the mythic 50,000 people supposedly trafficked into the country annually. In the same time span, there were 342 convictions of human traffickers (2010: 374). Critics have also noted that only victims who assist law enforcement as witnesses are eligible for protection and benefits (e.g. visas), which creates serious disadvantage for those who for any reason are unable to speak, and for children in particular (Heinrich & Brané 2007). According to critics, the conflation of anti-trafficking efforts with anti-prostitution efforts has thrown the policy goals off-balance. Moreover, the current anti-immigrant sentiment in the U.S., compounded by tighter border security in response to national security concerns that have emerged in tandem with anti-trafficking policy, have contributed to tighter migration control. As a consequence, irregular migrants face highly precarious and dangerous migration scenarios, quite apart from treatment by traffickers (Heinrich & Brané 2007: 1-2).

The TVPA was expected to be reauthorized again in 2011 without much fanfare, but this failed to occur the end of 2012, when appropriations for anti-trafficking initiatives were due to run out. Reauthorization bills had been introduced in both the House and Senate, when in fall 2011, the Department of Health and Human Services (HHS) declined to fund an anti-trafficking project by the United States Conference of

Catholic Bishops (USCCB), causing significant consternation amongst conservative policymakers and undermining the TVPA's apparently bipartisan credentials. The HHS, which in the past had funded successful USCCB programs to assist trafficking victims, declared before its last round of grants that organizations providing a full range of health and family planning services would be given funding preference. Because the USCCB was unwilling to refer clients for what is considered to be the full range of services, including birth control or abortion, they were not awarded a grant. This decision sparked a congressional hearing on the "politicization of grants," charging that HHS was adopting an 'ABC: Anything But Catholics'[40] approach to funding, and alleging bid-rigging and an "unconscionable abuse of power" by the Obama administration (Smith 2011). These complaints made no reference to the larger context in which 'health and family planning services' have been a bone of contention in U.S.-funded projects for the past thirty years. According to the Mexico City Policy (also known as the Global Gag Rule), conservative administrations since the Reagan administration had refused to allow organizations receiving U.S.-federal funds from including abortion in the range of services they promote abroad, even those services *not* supported by government funds. This ban was in effect throughout President George W. Bush's administration, thus stacking funding decisions in favor of conservative groups for the duration of his term. The Global Gag Rule was reversed by President Obama in 2009, during his first week in office.

The aftermath of this political firestorm was the introduction by Smith of a new version of the reauthorization bill (H.R. 3589), which proposed to shift funding authority from HHS to the Justice Department, and added a 'conscience clause' prohibiting the

[40] For e.g.: "The ABC Factor at HHS—Anybody But Catholics" (UCCSB 2011).

withholding of funding from organizations that refuse to perform services to which they morally object.[41] Lacking democratic support, this bill died in congress. The TVPA was later reauthorized without a conscience clause as title XII of the Violence Against Women Reauthorization Act of 2013 (a reversal of roles from the year 2000, when VAWA had been reauthorized under the original TVPA).

Conclusion

The TVPA emerged at a time when the combined forces of political upheaval, economic shock therapy, the growth of tourism industries, contributed to growth in numbers of migrant people. During the same period, successful efforts to raise the international status of women's rights, particularly in areas of development and foreign policy perceived to be related to women's issues, led to an increased focus, both internationally and in the U.S., on human trafficking, particularly of women and girls. The United States' approach to this issue was to distinguish sex trafficking from other forms of forced labor; to treat it and punish it primarily as rape, thus requiring a "law and order" emphasis, particularly appropriate for a construction of human trafficking as "modern day slavery." Invoking a long history of anti-slavery abolitionism in the United States, the framing of TVPA positioned the U.S. government as a protector and harbinger of freedom and equality for trafficking victims from the global South and developing economies.

In the following chapter, I illustrate how depictions of trafficking in popular culture both produce similar discourses (and concomitant typecasting of actors from global North

[41] A critique of Smith's successful use of the same conscience clause with regards to international HIV/AIDS funding can be found in chapter four.

and global South), and intersect with official state discourses around trafficking. This discussion is anchored in the enormously popular text-cum-documentary-cum Facebook game, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide*.

Chapter Three: Saving the World One Woman at a Time: Abolitionism in Pop Culture

We're not arguing that Westerners should take up this cause because it's the fault of the West; Western men do not play a central role in prostitution in most countries. True, American and European sex tourists are part of the problem…but they are still only a small percentage of the johns. The vast majority are local men. Moreover, Western men usually go with girls who are more or less voluntary prostitutes, because they want to take the girls back to their hotel rooms…. So this is not a case where we in the West have a responsibility to lead because we're the source of the problem. Rather, we single out the West because, even though we're peripheral to the slavery, our action is necessary to overcome a horrific evil. (Kristof and WuDunn 2009: 24-25).

The West has its own gender problems. But discrimination in wealthy countries is often a matter of unequal pay or underfunded sports teams or unwanted touching from a boss. In contrast, in much of the world discrimination is lethal (Kristof and WuDunn 2009: xv).

The day I read these comments by Nicholas Kristof and Sheryl WuDunn in their best-selling book *Half the Sky*, the morning's radio news reported several unremarkable stories. A hammer-wielding husband had beaten a local woman to death in front of their children. A local man was facing life imprisonment for shooting his wife in a grocery store parking lot. All of this in one small region of Canada, the "best country for women" among all G20 countries in 2012.

Half the Sky is perhaps the best example of a piece of popular culture that rallies people around "the new abolitionism," and as such, merits analysis. Much like the policies in question—and indeed featuring some of the very same individuals who served as congressional experts and witnesses for the TVPA—the book purports to help and support women of the global South. Socially-concerned undergraduate students in the United States manifested keen interest in, and for some, fervent commitment to this

text.[42] Even when confronted with a critical analysis of the book, many students clung to the stereotypes and prescriptions forwarded by its authors, even hosting a "viewing party" when PBS featured a *Half the Sky* documentary in 2012. Students often professed their plans to "save" trafficked women. As a powerful galvanizing force in popular culture, the book has expanded into "Half the Sky Movement."

The language marshaled by the book, however, bears scrutiny as it reinforces an overly optimistic self-image in the West and weaves a tragic and disgusting tapestry of atrocities that not only blankets but also determines women of the global South. Detailing women's struggles with very real problems of trafficking, poverty, lack of education, maternal morbidity and mortality, hunger, and more, Kristof and WuDunn portray the majority of the world's women as victims who must be helped by Westerners. Amidst their stories from the global South, raw and jaw-clenching accounts of rape leap painfully and vividly off the pages. These accounts coalesce into one large, searing blur of rape that seems to tell the only story worth knowing about women from the global South.

Culture and the Poor Women Problem

Half the Sky is unmistakably written for a western audience. The authors frequently identify familiarly with this audience through references to "we in the West." But if westerners are the intended audience, the subject is entirely non-western women and what "we" can do about them. They are front-and-center in the sense that the most intimate details of their lives are laid bare as case studies, used to support Kristof and

[42] My observations of student responses to *Half the Sky* stem in part from my work as instructor and coordinator of a human rights learning community at Rutgers University from 2009 – 2013 and from guest lecturing on the subject in other classrooms.

WuDunn's proposals for 'turning oppression into opportunity for women worldwide,' to quote from their subtitle. While references are made to many of these women as 'social entrepreneurs' for starting organizations like Women for Women International (founded by Zainab Salbi), their own voices barely, if ever, come through except to tell of their troubled pasts. Overall, women are objectified. This is most obvious in the fact that the book features the most shocking accounts of brutality against women one might imagine, for the consumption of western audiences. Making the "object" metaphor overt however, the authors describe women as various types of tools and goods throughout the book. In political-economic terms, they are characterized as investments, economic assets (215), weapons (87), resources (238), and "seams of human gold" (239). In physical terms, they are "chocolate" (59, 93). In social terms, they are "beasts of burden and sexual playthings" only in the *process* of transitioning to "full-fledged human beings" (250). We do not encounter an analysis that understands women as ends in themselves. Their ill-used bodies are rhetorically piled together like so much cargo: "the equivalent of five jumbo jets' worth of women die in labor each day" (98).

Half the Sky's cover is adorned with close-up snap-shots of some of the women whose stories feature inside the book. The only white woman on the cover is a missionary rather than a beneficiary. The women's stories, like their photos, provide a truncated and formulaic account of their lives. As one astute student noted when asked to analyze the cover images, each woman's face is cut off below the eyes, so that her mouth is not part of the image—a symbolic silencing that is largely sustained in the text (see figure 1). The authors follow a format of introducing each woman with a physical description, which usually signals that she is both physically attractive and vulnerable.

They are, for example, tiny, diminutive, short, and usually 'pretty.' One Cambodian woman, for instance, is 'very pretty,' short, light skinned, thin and fragile (35). Her compatriot is "a frail girl with oversized eyes" (37). Their mannerisms betray their traumatic histories. One Rwandan woman is "quiet, demure, soft-spoken; her lip quavers occasionally" (214). Their beauty is represented as endearing and seems intended to evoke protective instincts in readers. Indeed, their beauty and good nature seem to be reasons for the abuse they have survived, so even these apparent assets are turned into misfortune and are not to be celebrated. One woman's attractiveness and pleasing personality are described as a "perilous bounty" (xi); while another young woman "has the misfortune of being strikingly attractive" (139).



Image 1: Cover Image from *Half the Sky*[43]

When conspicuously powerful women (typically white) feature in this volume, their force is undermined through Kristof and WuDunn's use of characterizations that serve as diminutives, making them appear cute or holy. For example, Dr. Catherine Hamlin, an expert on obstetric fistula, is arguably the most overtly powerful woman featured in *Half the Sky* (it is probably not a coincidence that she is a white Australian).

[43] Image from Circle of Sisterhood Foundation: <http://www.circleofsisterhood.org/half-the-sky-reaction-continues> Accessed 29 May, 2014.

They begin by introducing her as "a gynecologist who is truly a saint." In the next sentence, they proceed, "Catherine is athletic, welcoming, and wonderfully gentle—except when people suggest she is a saint" (95). In these sentences, the authors acknowledge Hamlin's desire to eschew the characterization of saint, and yet insist on using it. Hamlin's own self-definition as someone who loves her work and is not trying to be noble (95) is overruled by the authors from the first sentence, as the audience is conditioned from that point onwards to perceive her as a saint. Zainab Salbi, founder of Women for Women International, is introduced via comparison to the stereotype of a "free-spirited Middle-Eastern princess" (216). Jordana Confino, a New Jersey teen who started an organization raising money for girls' education abroad, "could have just alighted from a prom queen's throne" (230). Although they are clearly intended as compliments, these appeals to virtually compulsory gender roles make of women 'cute things' and detract from a serious image of women as change-makers. Whether described as objects or portrayed in diminutive terms, these women are conveyed as general impressions—we consume them like colonial postcards.

Kristof and WuDunn also portray women of the global South as victims of culture. Despite referring to the global South as 'poor countries' and the global North (or West, in their framing) as 'wealthy countries,' they seem insensible to the links between women's quality of life (and quality of life generally) and the global economic disparities that make some countries rich and others poor, favoring culture as a better explanation for a range of socio-economic problems. In a chapter on legal rape, for instance, they begin a paragraph by claiming that "In many poor countries the problem is not so much with individual thugs and rapists but an entire culture of sexual predation" (62) and

proceed to refer to the Ethiopian countryside as a place where "raping girls is a time-honored tradition." According to Kristof and WuDunn, "These attitudes are embedded in culture and will change only with education and local leadership. But outsiders have their supporting role to play, too, in part by "shining a spotlight on these regressive attitudes" (67). In the Ethiopian context, they are careful to note that nothing changed until indignant American women got involved and pressured for legal reforms regarding rape, which were then forthcoming (65).

Problems in the global South are portrayed as particularly challenging, even when laws change, since "in poor countries laws rarely matter much outside the capital [sic]" (66). In addition to undercutting the heroic work of Western women mentioned above, the suggestion is that the best Westerners can hope for these cultures is to embarrass and shame them into adopting progressive policies. This cultural framing of the problems facing the global South is what Sherene Razack has termed 'culture talk'—the tendency to explain violence (particularly against women) in non-western populations as "a cultural attribute rather than a problem of male domination" (1994: 895). This 'culturalized racism' allows whites to idealize themselves as a group and celebrate their pluralism, while continuing to make claims about their superiority. It also allows dominant groups to avoid acknowledging the role that race plays in white privilege (Razack 1994: 897-898). In the context of Aboriginal struggles for justice in Canada, Razack asserts that focusing on Aboriginal men as dysfunctional rather than oppressed has served to confirm the superiority of white men (1994: 900). To supplant culturized racism, Razack suggests that what is required is "an understanding of how white

domination of Aboriginal communities has contributed to the causes and extent of male violence" (910).

Mahmoud Mamdani, in another context, has termed 'culture talk': "the tendency to think of culture in political—and therefore territorial—terms" (2002: 767). Culture talk ignores the fact that any given culture is dispersed and global. Culture talk's first effect is, avoiding history, to equate "political tendencies with entire communities defined in nonhistorical terms,…encourag[ing] collective discipline and punishment—a practice characteristic of colonial encounters." Its second effect is to dehistoricize political identities by assuming that certain cultures are unchanging (Mamdani 2002: 767), thus ignoring the effects of cultural encounter, especially the effects of colonialism. Images from the *Half the* Sky Facebook game[44] are useful in conveying this message, depicting women in traditional garb, rooted in dwelling places that mark their place as geographically separate and distinct, clearly non-Western (and clearly marking the Western woman in her separate geographical environment (see image 2). In another image, a South Asian woman pleads with her husband to obtain medicine for their sick child (image 3), marking male recalcitrance, poverty, inability to access needed healthcare, and the feminization of caring labor as South Asian problems. According to the same logic, Kristof and WuDunn depict rape as an example of cultural backwardness that plagues the global South (arising as a veritable epidemic in every region they discuss). Historians of gender and colonialism have established that the colonial

[44] *Half the Sky* Facebook game images from Amanda Holpuch, "Half the Sky Facebook Game Launches with Women's Empowerment at Core." <http://www.theguardian.com/technology/2013/mar/04/facebook-game-half-the-sky> Accessed 29 May, 2014.

encounter did not "free" women, but rather reconfigured gender relations in contradictory ways and often to women's disadvantage (Schmidt 1992; McClintock 1995; Hodgson 1999; Cornwall 2005).





Images 2-3: from *Half the Sky* Facebook game. In image 3, a wife pleads with her husband "It's been two weeks already. Our daughter is getting sicker. She needs medicine!"

Half the Sky also treads a well-worn path of colonial scholarship by placing culture on a historical timeline, and the western world is firmly in the lead. The Congolese countryside, for instance, is "a century or two behind Goma" (90). The west is a result of those who created culture and history and 'broke out' from millennia of stagnation and 'soared past' the rest of the world (Bill Drayton, quoted on 55). However the degraded cultures in question are in an impossible bind, since Kristof and WuDunn elsewhere suggest that even the introduction of modern technology will be misused in contexts of cultural backwardness, citing the use of ultrasound machines in China to selectively abort female fetuses (xvi). Kristof and WuDunn's evolutionary assumptions

about the global South as a place *in transition* are clear. Women of the global South will *one day* hold up half the sky (as they assert in their concluding sentence)—as if they do not already hold up at least that much. By figuring rural spaces of the global South as being temporally "behind," the authors position industrialization and manufacturing jobs as "advances." Within this neocolonial temporality, some of the most brutal and repressive working conditions imaginable are converted into an important step toward greater equality, a conversion that emerges much more explicitly at the end of the book, and reflects high modern assumptions prevalent in early development thinking. This thinking mapped nation-states onto a global hierarchy in which lower status reflected simply an earlier phase of teleological progression towards later stages of development and equality, exemplified best by the highest status (i.e. wealthiest and most democratic) states. In this context, faced with poverty and lack of access, there is always the promise of "some day" achieving parity with higher status (read: more developed) states (Ferguson 2006).

Although Kristof and WuDunn adhere to a certain version of modernization theory, that version has been widely displaced among academics and development practitioners by the idea of post-development or the "end of development." By 'decomposing' the former development ideal into its constituent parts, history and hierarchy, James Ferguson has demonstrated that post-development has yielded two streams of interpretation on modernity. In the development paradigm, time and hierarchy formed a compound. When that compound is separated, we have the two axes along which the post-development analysis of modernity proceeds: history/time and hierarchy. According to the first axis, most embraced by academics (at least anthropologists, as

Ferguson claims) *telos* is removed from history and difference signals merely a different, and celebrated, negotiation of modernity (Ferguson 2006: 188). Turning to the axis of hierarchy, on the other hand, we encounter the more sobering fact that once the notion of development has been removed, we are left only with "non-serialized statuses that are separated from each other by exclusionary walls, not developmental stairways" (Ferguson 2006: 189). Ferguson's own work attempts to push discussion in the direction of this second take on modernity—a more critical direction that raises critical questions concerning Kristof and WuDunn's analysis.

As Leon Trotsky ([1906] 1969) correctly noted at the turn of the twentieth century, development occurs *unevenly* by necessity, and different societies develop differently. His thesis that only rudimentary technologies will be transferred from more to less developed states was quite prescient and has been born out in numerous vivid popular accounts such as Naomi Klein's *No Logo* (1999). The sweatshops, advocated by Kristof and WuDunn in *Half the Sky* as a solution to poverty, represent willful ignorance about the different pathways out of poverty required in different communities; they also hold out an anachronistic development promise that has already proven hollow—in reality a 'non-serialized' and unequal holding pattern, to return to Ferguson's terminology.

Uneven humanitarianism runs parallel to and complements the trends of uneven development, the peaks of one corresponding to the troughs of the other, and vice versa. The disdainful picture of the global South as a place without high culture or history is merely an inverse image of a morally pure, physically healthy and culturally advanced global North. This is further manifested when Kristof and WuDunn make a point of

laying blame in the global South even when finding blame is entirely unnecessary and inappropriate, such as their attribution of blame for HIV/AIDS epidemic to central Africa. The science behind the claim that AIDS originated in Africa (or Haiti) is contentious and extremely unhelpful (see for e.g. Farmer 2006).[45] And yet, Kristof and WuDunn offhandedly claim (without providing references) that genetic evidence suggests AIDS jumped to humans in Cameroon in the 1920s (109). Encapsulating a long-established European trope that disease always originates elsewhere (Sontag 1978), Kristof and WuDunn imply not only that the West is not responsible for struggles in the global South, but that the South is the source of problems that require the expertise of the West to remedy. Beyond blaming the global South for a world epidemic, Kristof and WuDunn again position, 'we in the west' as magnanimous in coming to the aid of those who cannot solve problems of their own making.

Although several heroes in the book are white Westerners (Harper McConnell the missionary; Zach Hunter the student; Matt and Jessica Flannery, founders of Kiva.org), the villains are exclusively from the global South. Ainul Bibi is the tyrannical family matriarch in India, who beats the young girls her family holds captive for sexual labor. In Pakistan, Sharifa Bibi, another family matriarch, is described by the authors as a 'crone'[46]

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[45] Although some researchers have suggested that HIV/AIDS was a result of SIV (simian immunodeficiency virus) transmission to humans via the butchering of bush meat from primates in Africa, none have seriously suggested that it resulted from human sexual contact with non-human primates (and "monkeys" are certainly too small for such encounters). Epidemiologist Jacques Pépin (2011) claims that AIDS originated in central Africa (likely in Kinshasa, DRC, not Cameroon), though he frames his claim more sensitively, indicating that western-initiated public health schemes and medical practices caused the virus to take on epidemic proportions.

[46] The use of the term "crone" is particularly striking in this context, as it is an image closely associated with that of the witch—a woman who historically has been subject to

(185), who bullies her daughter-in-law when she fails to bear a son. In India—a country singled out for a large number of offenses throughout the book and described as 'disgracing itself' (99), the gangster and serial rapist Akku Yadav engages in excesses that create a regime of terror in his neighborhood, but encounters a rough 'street justice' when the terrorized local women finally murder him.

Dr. Pascal Pipi in Cameroon receives the most ethically suspect treatment of any other character in *Half the Sky*. In an account that certainly would not have passed ethics clearance from any research institution, the authors detail the excruciating death of a laboring mother (whose suffering image they have preserved alongside the text as a sort of death mask) under Dr. Pipi's (lack of) care. Describing Dr. Pipi as supremely uncaring, extortionist and negligent (and his nurse as having anti-freeze in her veins), the authors demonstrate convincingly that he is to blame for the likely preventable death of his patient, Prudence. Dr. Pipi's identity has apparently not been concealed by pseudonym (nowhere is the use of pseudonyms indicated). The authors do not stay at the Cameroon hospital long enough to acquire a nuanced understanding of Dr. Pipi's context such as long-term ethnographic work would likely yield. They are, by their own admission, passing through (at least Kristof is, WuDunn does not appear to have participated in most of the on-the-ground research). Given these facts, and the heavy burden of guilt placed on this African doctor by accusing him publicly of murder, this simplistic villainizing is highly irresponsible. The authors make no link between

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intense violence, torture, and death, based primarily on her failure to conform to hegemonic gender norms. Here the authors tap into this imagery to mark Ainul Bibi as unsympathetic, but at the same time implicitly evoke an image that has justified violence against women, which the authors intend to combat. Witches and crones are not pretty, naïve, vulnerable, and often passive, like the female victims of *Half the Sky*.

Prudence's inadequate care and the privatized health care in the global South that has emerged in response to Western-led structural adjustment. For example Desai notes that, "In Africa, NGOs provide between 25 and 94 percent of health services," (2002: 22) because privatization has reduced government-funded care, resulting in sub-standard health care access for women, who often sacrifice their own care to pay for care for family members (e.g. Turshen 1994; Hodgson 2011: 147-8**).** Nor do the authors acknowledge the devastating effects that the recruitment of medical personnel from the South to the North has wreaked on health care in the South. Instead, Kristof and his American colleague play the role of the heartbroken witnesses who donate blood and large sums of money while acting as advocates for Prudence and her family, all to no avail in the face of Dr. Pipi's recalcitrance. Again, Western complicity goes uninterrogated.

Kristof and WuDunn identify both trafficking and HIV/AIDS as women's issues that require the attention of western audiences. Their book is intended as a rallying cry, and indeed ends with a prescriptive chapter, synthesizing solutions that are found throughout the book. These solutions consist of a neoliberal program of individualism, self-help, and market-based incorporation of formerly marginalized women, all under the heading of "abolitionism." The book is dedicated, in part, to those on the 'front lines' who are saving the world "one woman at a time." This choice of words is important, as the system-level political-economic factors that contribute to the feminization of poverty, migration, AIDS, and the other pressing issues they identify are ignored in favor of individualized solutions to match the individual stories they tell. The road to recovery begins with self-help. Ultimately, to improve their conditions, women need to stop

"accepting" abuse: "as long as they allow themselves to be prostituted and beaten, the abuse will continue" (47). In addition to finally standing up for themselves, women need to become "more productive" (239). Tapping women as a "human resource" involves incorporating them into the formal economy, and in this regard Kristof and WuDunn make a rather conservative recommendation: "sweatshops have given women a boost" (210). Although acknowledging the low pay, dangerous conditions, and sexual harassment prevalent in sweatshops, the authors suggest that sweatshops mark a step in the right direction. They mark the rise of manufacturing, which enhances opportunities for women (i.e., employment in the formal sector) and increases their status. The sweatshop solution ignores the phenomenon of 'surplus populations' and reflects the naïve and impossible dream that capital can (and will) incorporate all the peoples that it makes surplus to its needs (see Li 2009: 68).

Tania Li's research, for instance, analyzes the increasing dispossession of people in rural Asia through state seizure of land or land seizure by state-supported corporations; because their products are unable to compete in the global market with goods produced abroad under state-subsidies; and due to environmental conservation efforts. She rejects the 'dangerously complacent' assumption that those who are dispossessed by capital will be reabsorbed by it elsewhere (e.g. manufacturing, plantation agriculture) in spaces where a new labor force is needed (2009: 70). Instead, she illustrates the haphazard nature of dispossession, which seldom connects dispossessed people in need of work with capitalists in need of labor. New industries rarely employ the same people who have been dispossessed to build the factory (2009: 71). New manufacturing, extractive and agricultural schemes that emerge alongside land dispossession often fail to create large

numbers of jobs (2009: 74). In addition, those jobs often go to migrants from afar, either because of the 'lazy native' narrative, or because they are more vulnerable (lacking formal protections) and less likely to make sophisticated rights-related demands as workers (2009: 71). So the assumption that dispossessed and impoverished people in any given country will be those channeled into new economic schemes has proven incorrect. Rather, dispossession, coupled with lack of labor absorption leads to "catastrophic misconnects" for marginalized populations (2009: 78)—a strong incentive to doubt Kristof and WuDunn's call for sweatshop labor as a road to women's empowerment. Li's analysis proposes a more systemic, and localized (as opposed to universal) solution, proposing first an end to processes behind rural dispossession and then identifying 'make live' projects (in the Foucaultian sense) that make sense in local contexts.

Yet another of Kristof and WuDunn's solutions is the creation of more "businesswomen," largely through microfinance. The authors heavily endorse the Grameen Bank and Kiva.org, a micro-lending organization that allows westerners to make relatively direct loans to known recipients in the global South. Kristof and WuDunn appear to be unfamiliar with studies that have shown that microcredit lending "exacerbates women's social vulnerability" (Moodie 2013: 282); shifting responsibility for household income from men to women; and reinforcing competition and hierarchies among women's NGOs and funding organizations (Poster and Salime 2002). Ignoring the poverty and precarity created by neo-liberal policies adopted under compulsion by western-run International Financial Institutions (IFIs) in the global South, the authors also assume that 'home' communities are economically stable enough to accommodate and solicit new businesses. Thus, when Kristof purchases a woman named Neth from a

brothel and returns her to her rural village, outfitting her with a small business, the authors are only puzzled at the irrationality of it all when her family appropriates her wares, free of charge. To quell their puzzlement, the authors return to culture for an explanation.

The economic inequality arising from economic globalization and neo-liberalism is the glaring subtext of *Half the Sky*, but Kristof and WuDunn ignore it. Instead, they favor voluntary, individual, and highly personalized giving (person to person) as solutions, the strategy embedded in Kiva.org. In other words, Kristof and WuDunn endorse charity, capitalism's mode of redistribution—as the primary remedy, which is really no solution at all. The authors do not reckon with problems of scale. Consider, for example, the "34 Million Friends" campaign that Kristof and WuDunn hold up as exemplary. The goal of this campaign is to recruit 34 million Americans who would donate one dollar each to the UN Population Fund in order to compensate for cuts to funding in the same amount. Although the prescription appeals to the generosity of affluent people in the North, it does not engage the fact that funding for UN Population Fund was inadequate to address global poverty before the cuts. So restoring the status quo ante will in no way remedy the problem of poverty on a global scale. Kristof and WuDunn also endorse tithing a portion of one's salary to a charitable organization and provide a list of suggested organizations at the end of the book.[47] They suggest that such personalized giving, in addition to micro-credit, should target women's health and

[47] They also do not suggest challenging the fact that a portion of every formal worker's salary is already appropriated, via taxes, for foreign ventures, yet most of the funds are spent on war and other militarized activities that significantly and negatively affect women.

education. Other work on trafficking, however, has shown us that education is not a panacea, as many trafficked women are formally educated (Ehrenreich and Hochschild 2003: 10). By focusing on health and education, Kristof and WuDunn reinscribe the wrong-headed notion that women in the global South are not "skilled" or "productive" to begin with.

The treatment of men in this book is crucial to understanding Kristof and WuDunn's vision. Men are depicted as recalcitrant on subjects such as domestic abuse, rape and dissolute spending of family resources, which means that women are the only viable actors who can foster meaningful change. Within this gendered allocation of responsibility, women are assigned paid labor, microloan repayment, and programs of social change in addition to their already heavy burden of (usually unpaid) reproductive labor. Men are free to spend their time as they will (except when they can be criminally prosecuted). Kristof and WuDunn note that it is a well-known fact among those working in the 'third world' that women are the greatest underutilized resource. Men, by contrast, they claim are "often untrainable" (Bunker Roy, quoted on 238). If men are untrainable, then women must simply accept that men will often rape and beat them, spend frivolously, and attempt to oppress and marginalize them. The message to women then becomes: deal with it. Micro-lending and sweatshops are two concrete ways of doing so. On the surface, this comment about men's untrainability seems like a bit of mischievous good fun—a comment accompanied by the wink of an eye. Jokes about men's laziness and incompetence are legion. Versions of Margaret Thatcher's pithy one liner: "if you want something said, ask a man. If you want something done, ask a woman," abound.

These remarks take on the status of aphorism, but the reality it bespeaks is a tragic one, and laughing about it mystifies the problem.

Men of the global South do, however, fall under one (and only one) project in Kristof and WuDunn's vision, which is circumcision. "Helping women doesn't mean ignoring men…it may help women just as much if boys and men are circumcised," because it will help reduce HIV/AIDS infection rates among women (244). Again, the authors cite no evidence for this claim. Although in the last decade some medical researchers have indeed suggested that male circumcision will lower rates of HIV transmission, others have raised concerns that not enough information is yet available to make this claim reliable. The ethical and human rights questions raised by this permanent surgical procedure performed on *children* suggests that more research and a high degree of caution are required before recommending it as a prevention technology and the center of a public health program (Dowsett and Couch 2007). The unequivocal call for male circumcision should be surprising in the context of this book, as Kristof and WuDunn heartily denounce the practice they call "female genital mutilation," declaring that "[w]ell meaning Westerners and Africans alike have worked for decades to end this practice" (221). The contradiction in the book of advocating that 'well-meaning Westerners' rail against female circumcision, while endorsing male circumcision goes unnoticed.

To summarize, *Half the Sky* distinguishes between "poor" countries where "bad things" such as rape, human slavery, high rates of maternal mortality and morbidity, are happening, and "wealthy" countries without these significant problems. The authors attribute problematic gender inequalities within poor countries to deeply embedded

cultural beliefs and practices (e.g. rape as a "time honored tradition"), ignoring widespread impoverishment and dispossession resulting from Western-led economic restructuring. They advocate a "big stick" approach to cracking down on these problems, imprisoning the individual men who rape or traffic or beat women. The book adopts a terminology that marks the intended targets of their interventions as helpless and pathetic. They refer to "mental *retardation*" (apparently common in women of the global South, who are malnourished), "*prostituted* women," "*poor* countries" (as opposed to people with disabilities, sex workers, and global South). Thus Kristof and WuDunn craft a disempowering narrative that does not identify sustainable pathways out of poverty. And yet, *Half the Sky* constitutes the popular wisdom about both HIV/AIDS and human trafficking that circulates widely among those in North America who care enough to think about the global South.

Half the Sky appears to be modeled on *Disposable People,* a book published a decade earlier by Kevin Bales, professor of Contemporary Slavery at the University of Hull and, according to his brief biography in that book, "the world's leading expert on contemporary slavery." As co-founder of the Washington D.C.-based NGO, Free the Slaves, Bales was an expert witness before Congress in the hearings on the TVPA and is widely cited by respected academics (e.g. Ehrenreich and Hochschild 2003). Indeed, *Half the Sky* may be a re-interpretation of Bales' work, geared toward a popular audience. The similarities between *Disposable People* and *Half the Sky* are pronounced. The elements of *Half the Sky* that make it easier to read and more exciting pander to western notions of superiority and moral clarity.

In terms of layout, *Half the Sky*'s format of focusing on the stories of women, one or two per chapter, follows *Disposable People*'s model, which details case studies from five different countries, one per chapter. Bales' book concludes with a chapter entitled "What Can Be Done?" followed by a coda, entitled "Five Things You Can Do to Stop Slavery." With striking similarity, Kristof and WuDunn conclude with a chapter entitled "What You Can Do," followed by a section called "Four Steps You Can Take in the Next Ten Minutes." Beyond the organizational logic of the book, Bales uses particular strategies to establish his argument that are replicated by Kristof and WuDunn. For example, Bales proceeds by offering his own 'best estimate' for the number of slaves worldwide (27 million—strangely, the number now largely accepted, fourteen years later**)**, which he claims is conservative (1999: 8). Kristof and WuDunn also offer their 'best estimate' as to the number of women and girls enslaved in the sex trade (3 million) and claim that it too is conservative (2009: 10-11). While Bales disaggregates types of slavery and attempts to justify his numbers, Kristof and WuDunn do not attempt to explain or justify their estimate. Bales also makes a point of demonstrating that the number of people currently enslaved far surpasses the numbers of people involved in the transatlantic slave trade (1999: 9). Kristof and WuDunn do the same (2009: 11). Bales notes that all of the royalties from his book will go to fight slavery (1999: 264); Kristof and WuDunn note that "a portion" of the income from their book will go to supporting organizations targeting the needs of women abroad (2009: 250).

Bales' work is informed by two important warnings, which have been excised in Kristof and WuDunn's work. The first is to avoid simplistic analysis: "It would be so much easier to understand and combat slavery if there were very clear god guys and bad

guys, if all slaveholders were cruel and all slaves yearned for freedom, if the solution to all slavery were simply to set slaves free" (1999: 253). Secondly, Bales identifies layers of culpability for what he calls contemporary "slavery," and inhabitants of the global North are inescapably complicit: "it is not a 'third world' issue but a global reality—a reality in which we are already involved and implicated" (1999: 260). Compared to Kristof and WuDunn's comments, which serve as epigrams at the beginning of this chapter, the differences between the two texts come into stark relief.

Bales mobilizes the language of slavery as a powerful galvanizing tool, but for him it is more than that; he urges readers to acknowledge that slavery did not end in the nineteenth century but has merely transformed and adapted (e.g. 1999: 259). To that end, he provides a helpful table comparing old and new slavery, identifying slavery's contemporary adjustments (e.g. lack ownership over slaves, temporary enslavement. For a full list see Bales 1999: 15). He also differentiates between the forms of forced labor that constitute the three different types of current slavery (chattel, debt bondage, and contract 1999: 19-20). The remainder of his book consists of in-depth case studies in five different countries (Thailand, Mauritania, Brazil, Pakistan, India), which illustrate each of the three forms of slavery. These case studies draw on interviews with individual 'slaves,' but these interviews are presented within a broader historical and socio-economic analysis. This includes attentiveness to the loss of social safety nets and community support systems that have been dismantled as a result of integrating with the global economy, and the dispossession of rural peoples which makes them desperate and vulnerable to trafficking, bonded labor, and other forms of exploitation. He also traces the circuitous routes by which western consumers benefit from and encourage the

continued existence of slave labor through low prices at the cash register, something that might change if those consumers were willing to pay slightly more for everything from cars to chocolate bars, or refuse to consume those products that are not ethically sourced. Bales also positions 'slaves' within historical contexts that highlight their agency. For example, in explaining the revolutionary kiln workers strike of 1988 in Pakistan (1999: 186) or the promising programs that "rehabilitate" bonded laborers in India (1999: 228-230), he makes it clear that widespread, uncoerced and grassroots change is possible and even probable in the global South.

Four out of five pillars in Bales' strategy to combat slavery ("What You can Do") involve consciousness-raising and pressuring politicians and charities to take a more active stance on the issue. The fifth consists of insisting on ethical investments and pension funds (1999: 163-4). All of the above involve reflexivity about how one's personal affiliations can be harnessed to avoid aggravating or contributing to the problem. By contrast, of Kristof and WuDunn's four "first steps," the first two involve charitable giving or micro-lending to women in the global South. The third is to sign up for email updates, and the fourth is to join CARE Action Network to get involved in citizen advocacy (2009: 250). The differences between their solutions (charity and micro-lending for Kristof and WuDunn, versus recognizing one's own potential complicity and responsibility for Bales), remind us that *Half the Sky*, with its simplistic blaming of 'third world' bad guys, backwards cultures, and denial of the west's role in contributing to sex trafficking and other major problems affecting women, is much more palatable, or 'easier' than Bales' book (to invoke Bales' quote above).

Bales' book focuses on forced labor as the problem of slavery. Sex work is identified more or less in passing, as one among many forms of slavery. The tone of *Disposable People* often veers into dry academic writing, identifying layers of complexity, avoiding any clear-cut and definitive solutions. Each case study is based on longer-term research, always conducted in partnership with a local expert, and explained and justified in a methods section, which also indicates that pseudonyms have been used to protect informants. By contrast, *Half the Sky*'*s* treatment of slavery focuses exclusively on sex work, and the solutions to all the problems identified are bright and clear-cut: charity, micro-lending, manufacturing jobs, and entrepreneurship. Nowhere in this narrative need westerners feel any assault on their conscience. This easier analysis became a best seller.

The fact that Bales does not single out sex work in any special way nor feminize the issue of slavery is important. It may be a reason why his more nuanced approach has not made it into mainstream discussion the way *Half the Sky* has done. *Half the Sky* mobilizes what Uma Narayan has called the 'politics of rescue,' according to which western nations construct narratives that facilitate flattering portraits of themselves while simultaneously enabling a "politics of forgetting." Forgotten are past and present histories of colonization, global unequal division of labor, barriers to women's economic security, anti-immigrant policies, etc. (Narayan 2005). While Bales could certainly delve more deeply into these structural factors, Kristof and WuDunn ignore them entirely and call repeatedly for westerners to be helpers and leaders in the global South, despite their assertion that "we" are not responsible for "their" problems. The stand-in for the west's structural complicity is the sex worker, who also serves as the whipping boy for

the AIDS pandemic. The politics of rescue, for both HIV/AIDS, and sex trafficking, has been contingent upon the elimination of sex work rather than empowering sex workers. In *Half the Sky,* possibilities like eliminating pimps, unionizing sex workers, and strengthening sex worker outreach groups are never considered. All discussion of sex workers involves states of violence, deceit and coercion, which are amenable to law enforcement mechanisms. Indeed, Kristof and WuDunn are clear that a "big stick" approach, including making all sex work illegal, is necessary to end trafficking, because legalization leaves open the door to a parallel, illegal industry.

Congress Goes to Hollywood and Main Street

The victimization rhetoric and dominant narratives of anti-trafficking found in mainstream film and news media[48], and in popular culture generally, have penetrated the policymaking process. I will use three examples to demonstrate the extent of this penetration: the testimony of actress Jada Pinkett-Smith as a witness before the Senate Foreign Relations Committee; the use of a New York Times article as evidence about trafficking; and the appearance of S.T.O.P. (Slavery that Oppresses People)—a group of grammar school children—as congressional witnesses on trafficking.

In July 2012, the Senate Foreign Relations Committee held a hearing to gather insights about "The Next Ten Years in the Fight Against Human Trafficking" as part of the process seeking reauthorization of the TVPA. To this end, they heard testimony from three witnesses: Holly Burkhalter of International Justice Mission; David Abramovitz of

[48] Kristof and WuDunn are both reporters for the New York Times, and many of the vignettes from *Half the Sky* first appeared there as columns by Kristof.

Humanity United[49], and American actress Jada Pinkett-Smith. Burkhalter will become more familiar later, as I will discuss her activism related to the question of HIV/AIDS and PEPFAR in the following chapter. Suffice it to say for the moment that Burkhalter's testimony reveals a much more law-enforcement centered approach than that of Abramovitz. However, in this chapter we will focus on Pinkettt-Smith. Pinkett-Smith is the surprising witness in this list, because she is the only one whose career is not focused primarily on anti-trafficking. She indicates in her testimony that her experience with the issue of trafficking has been limited until recently, and that her daughter Willow, also in attendance, introduced her to the cause. Shortly before appearing as witness, Pinkett-Smith starred in a music video for her new anti-trafficking organization 'Don't Sell Bodies,' the content of which is useful background to her appearance as a witness. Her fellow actress, Salma Hayak, directed the video. Singing and dramatizing the Spanish-language song *nada se compara* ('nothing compares') by her band 'Wicked Evolution,' ostensibly geared at Latin American women, Pinkett-Smith acts out the character of a trafficked Latina to raise awareness among Latinas about the possibility of being trafficked. In the video Pinkett-Smith, warning women about the dangers of sexual exploitation and consumption, simultaneously sexualizes the experience of trafficking. Portraying a sexy image of the consumed woman, Pinkett-Smith's character appears nude throughout, variously glistening with sweat, lying in flowing water, pressed up against a wall with back sharply arched, and in nude silhouette, whipping her hair around (see images, below).

[49] A mainstream, U.S.-based organization that counts ending "modern-day slavery" as among its priority projects.

These images of Pinkett-Smith are interspersed two additional sets of images. The second follows the story of a young woman who conducts a secret liaison with a handsome young man. They are pictured frolicking outdoors, as well as kissing and caressing one another. Eventually, they run away together—only it is a ruse, and she becomes the victim of a trafficking scheme. These images become particularly poignant in light of the written postscript that follows the video, a quote from U.S. Ambassador Luis CdeBaca: "The most common way to recruit trafficking victims is not kidnapping, but love." The third series of images features younger women (possibly girls) in filthy raiment, being physically, violently coerced by tattoo-clad, middle-aged men (read: gangsters). Together, these sets of images produce a confused message. The forlorn and yet beautiful and sexualized, forty-something Pinkett-Smith coupled with the terrorized young women/girls pairs a sickly glamorized representation of trafficking with a terrifying one. The scenario of a love affair-turned kidnapping calls up anxieties about women's sexual independence. The unsupervised relationship, culminating in the young woman leaving the family home in the man's car, suggests the dangers posed by women's freedom, echoing 19th century fears of white slavery as single women migrated increasingly on their own for employment. Given the range of issues that inform contemporary trafficking, it seems tragic to issue a warning against love, of all things. The last image in the video is Pinkett–Smith donning a white t-shirt with the word 'STOP' emblazoned on the front. The use of the English word 'stop,' as an alternative to the Spanish *alto* is puzzling given the language of the song and the intended audience. Also puzzling is the use of Pinkett-Smith, an American Anglophone as the star of the video, instead of a Latin American woman whose native language is Spanish. These

inconsistencies speak not only to a confused message, but also to confusion regarding the intended audience. The video is highly emotive, a fact which can account for viewers' appreciation of it. Viewer comments below the video suggest that its value lies in the emotional content. One commenter, for instance, notes her reaction: "Wow just speechless tese [sic] video is amazing and it really makes u feel the pain of which thousand of humans go thru all over the world is sad." Another states simply "This is a POWERFUL video. I love it. This truly touched deep within my heart." The fact that one viewer notes that "it gave me chills watching this"[50] suggests the powerful entertainment value of such material—like a horror movie or a tragedy, its power is in its ability to make the audience *feel* something.



[50] Images from <http://www.youtube.com/watch?v=G_SdBiTIocA> Accessed 5 December, 2013.



Images 4-6: Stills from *Nada se compara*

Nevertheless, Congress saw fit to invite Pinkett-Smith as a witness to provide suggestions about the approach to anti-trafficking the U.S. should take in the next ten years. Like the video for *nada se compara,* her testimony produces confusion about trafficking. After quoting Frederick Douglass to the effect that slavery has merely adopted a new name, she devotes the bulk of her testimony to telling the stories of three survivors (Minh, Monica and Jamm) who are present in the room as she speaks. Two of the children (all of whom are now grown) were abused within a family context, and their supposed caregivers also profited from pimping them out to pedophiles. Aside from recounting these tales, there is little substance to Pinkett-Smith's testimony. Although the harboring of a child via force or coercion for the purposes of sexual exploitation meets the definition of human trafficking, it does not represent the vast majority of what has come to be called 'modern day slavery,' nor can such cases be considered the ideal types that prompted the creation of the TVPA. They may indeed be more efficiently addressed through existing child welfare legislation. In addition, the fact of having Pinkett-Smith testify on behalf of these women, as it were, although they were physically present, marginalizes the victims. Indeed, two of them have developed professional

expertise in child abuse and trauma, and would appear to be more equipped to address the question of trafficking or sexual abuse in substantive ways. It should be a matter of concern that in considerations as serious as the sexual exploitation of children and forced labor, Congress would blur the lines between entertainment and expertise by consulting a Hollywood star, however sincere and well-intentioned, when a myriad of experts are available (including witnesses such as Jyoti Sanghera, from Global Alliance Against Trafficking in Women, an organization which combats trafficking but advocates sex worker rights, would have created a more balanced list).

Congress' choice of non-expert witnesses is not limited to Pinkett-Smith. At a hearing before the Senate Committee on Foreign Relations in September of 2000, during the development of the first TVPA, Congress heard witnesses from the rather feebly named campaign, S.T.O.P.: "Slavery that Oppresses People." Colorado schoolteacher Barbara Vogel and her fourth through sixth grade students spearheaded this group, which focused on slavery in Sudan (now South Sudan), and were the witnesses before the committee. As might be expected of the children, their testimony made frequent reference to the way their anti-slavery activism affected them on an emotional level: the campaign "gave birth to my larger and more noble heart;" "I have never felt so bad…I have put my heart into these people." Barbara Vogel, their teacher, hinted at highly personal struggles that her students faced in their own lives, exposing their private worlds while making them more sympathetic to the suffering of others: "Kristin has herself been a victim of hurt in her life, beyond what any of you would like to know." While making important appeals to solidarity with those who are suffering beyond U.S. borders, Vogel also made her appeal for Congress to address human slavery by framing it in reference to

the salvation at hand for those who came to the rescue of enslaved women and children in Sudan: "I believe the enslaved women and children of Sudan can be the key to our hope and to our own redemption." To Senator Jesse Helms (R-NC), she suggested the blessings in store for his interest in human slavery: "May God add…another star to your crown." Vogel's testimony was highly emotional, she broke down in tears and was offered a tissue as she demanded to know how she could continue to teach her students that America stands for "fight and freedom" and is the home of the brave, when 'women and children' continue to be enslaved in Sudan. In both this case and the case of Pinkett-Smith, above, there are other, more credible witnesses who could provide more than emotional data. However, even in the case of witnesses who have expert knowledge, such as academics (Dr. Kevin Bales), or high-ranked employees of charitable organizations (Dr. Charles Jacobs of American Anti-Slavery Group), most are white, western men. Sometimes, western witnesses speak for survivors who are present in the room, as did Pinkett-Smith. When witnesses do speak on their own behalf, they are male witnesses, such as Sudanese slavery survivor and activist Francis Bok and former Haitian *restavec* (essentially a child sent by family to indentured service in other homes) Jean Robert Cadet. These witnesses present the sort of cut-and-dry cases of slavery that Bales indicates in his book *Disposable People* largely no longer exists, and which is not the primary focus of policymakers. That it is not the primary intended focus becomes clearer when we remember that there was initially a strong push to focus the TVPA exclusively on sex trafficking by distinguishing it from other forms of forced labor. Given that the push for anti-trafficking legislation has been focused in large part on the sexual exploitation of women and children, the lack of witnesses able to speak for themselves

appears as a critical lacuna—particularly juxtaposed with the inclusion of Hollywood celebrities and mid-western grammar school children as witnesses. Another source of data was mainstream media.

In October 2011, Senator Sam Brownback (R-KS) introduced for inclusion in a conference report on the TVPA a New York Times article by Michael Specter: "Contraband Women: A Special Report: Trafficker's New Cargo: Naïve Slavic Women." This article argues that "Slavic" women are replacing 'Asians' as the new hot commodity among sex traffickers. The article reproduces the same tropes as Pinkett-Smith's video, sexualizing and eroticizing women as it simultaneously depicts them as victims. After detailing brutal rapes, kidnappings and murders, Specter cannot seem to avoid reflecting on the women's attractive pull: "She has classic Slavic features, with long blond hair and deep green eyes." Another woman speaks softly as "slow tears [fill] her enormous green eyes." Despite taking a position that is critical of the objectification of women through the sex trade, Specter himself objectifies them by describing them as cargo, and by using subtitles such as "Russia and Ukraine supply the flesh." His references to soft voices and large eyes also bear striking resemblance to Kristof and WuDunn's descriptions of 'oversized eyes' and other similar markers of innocence and frailty. He also describes women being placed on auction blocks and sold to the highest bidder, a highly emotive image that also calls up Laura Lederer's version of "Irina's Story"—focused on light-skinned Eastern European women. Despite relying on tropes that we might more readily, from a critical perspective, associate with a moral panic, this article now forms part of the Congressional Record. Hertzke also notes (2004) that Specter's article was highly influential in mobilizing anti-trafficking sentiment in many quarters. Specter's images

bear striking resemblance to images produced in the hit movie about trafficking, entitled *Taken.*

Taken is a 2008 film written by French screenwriter Luc Besson, who also wrote the more fantastical film, *Fifth Element*. The plot can be briefly summarized. Kim, a headstrong seventeen year-old, lies to Bryan, her ex-CIA agent father, to obtain his permission to allow her to spend the summer traveling Europe with a girlfriend by playing him off against his ex-wife. Despite his warnings, Kim and her friend are kidnapped into the world of sex trafficking within an hour of their arrival in France, due to their ill-advised flirtations with a dark and handsome young European man at the airport. On the phone with Kim at the time of her kidnapping, and able therefore to hear the voices and language of her abductors and obtain a hastily screamed description of them from her, Bryan establishes in short order that her dark skinned attackers are Albanian (in reality many Albanians are fair-skinned), flies to Paris, and spends the next ninety-six sleepless hours uncovering the underworld of trafficking in Paris as he beats and kills Albanian traffickers in attempts to reclaim Kim.[51] Before his goal is attained, Kim, owing to her highly prized virginity, has been passed through many middlemen to an auction lot where she is purchased by a dark-skinned man who appears to be speaking Arabic. The former brings her and a cohort of other, presumably virgin, young women, to his Sheikh-like employer, another dark skinned man, clad in rich purple fabrics, reclining on a luxurious bed in his large yacht, clearly ready to deflower them all. In a last standoff with Bryan, this Orientalized sensualist demonstrates his cowardice by using

[51] Unsurprisingly, the very behavior that male policymakers invoked when they imagined themselves as the fathers of these women.

Kim as a human shield, and, adding to the middle-eastern imagery, holds a curved blade (reminiscent of a small scimitar) to her throat. It is all to no avail, and soon Kim and Bryan are reunited in L.A. with his erstwhile frigid ex-wife, who seems to now realize what she had in Bryan—at the very least she is very grateful and suddenly very friendly. They laugh and are happy, seeming to have forgotten not only Kim's friend Amanda, who, not being a virgin, and therefore not valuable, has been murdered by her traffickers only hours before, but the multitude of trafficked women that they have both encountered in the last three days.

The subject and center of the image—the film in this case—is Bryan, the mature, highly competent, focused, intelligent, moral, and *white American man*. Our knowledge of every character type (Albanian traffickers; trafficked women; ex-wife and daughter) in the film is produced as a result of the characters' relationships to him. At every point in the film, he knows more about the Albanian men than they know about him; he remembers things they do not; and he is able to watch them constantly, whereas they seem to have no idea where he is or how he keeps appearing in their underworld. He continually outsmarts them and his killing of several of them appears warranted, necessary, and one suspects satisfying to most audience members. The women he encounters are youthful, pale and sweaty, drugged, either oblivious or frightened, and incapable of acting. They are often incapable of speaking English, which redounds to their own disadvantage because they cannot answer his questions and are consequently of no use to him. At the outset of the film his daughter and ex-wife defy his patriarchal authority, and the rest of the plot revolves around the heavy price they, especially Kim, pay for doing so, and reveals their utter reliance on him for both knowledge (ex-wife) and

survival (daughter). Bryan is positioned as a noble, long-suffering character, who is more than willing to shoulder the burdens involved in being the white, masculine protector. He is single-handedly able to set the world to rights—at least for himself and his family, but that's all that seems to matter. In other words, we the audience encounter every other character through Bryan's gaze, and assess their abilities and intentions relative to his. *Taken* illuminates crucial moments of knowledge production. Specifically, the film produces and naturalizes brown men as gangsters, mobsters and criminals; the classic orientalist trope of the hypersexual and threatening Slavic or Middle Eastern man; the dangerous price of female autonomy; the contradictory portrayal of the young woman as both virginal/sympathetic and yet flirtatious/asking for it (the Madonna-whore dualism); the ex-wife as frigid and "gold-digging" (she left him for a rich man) and the ability of the white man to rise above it all and impose some sense of order onto the chaotic mess that these others get themselves into. It is a piece of popular culture that makes a very clear statement about relations of power.[52]

Conclusion

While I am sitting in a university café, preoccupied with grading student essays, a young undergraduate man, a stranger, sits next to me and begins to chat. He directs the conversation toward the subject of sex-trafficking and invites me to an event by the on-campus anti-trafficking coalition. I arrange a class trip to the United Nations for the

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[52] In developing this analysis, I have relied in part upon the following questions, posed by Stuart Hall (1997: 54):

- Who commands the center of the picture?
- Can you tell that knowledge is being produced here? How?
- What do you notice about relations of power in the picture?
- Describe the gaze of the people in the image.

Commission on the Status of Women. When we attend parallel events related to women's activism in the buildings surrounding the U.N., most students choose to attend an anti-trafficking workshop. When I ask my students why they chose to participate in a learning community focused on human rights, most reply that they want to address the problem of sex trafficking. A teenage friend of the family speaks to a stranger online and meets him for coffee, and her horrified parents arrange a screening of *Taken* to educate her and her friends. People frequently ask me the question dreaded by many graduate students: what I "do." When my reply draws upon women and politics, or foreign policy, or feminism, people often ask me if I know about sex trafficking. They nod knowingly when I reply that, yes, I do. And if the conversation continues, it usually becomes clear that I am assumed to share the views espoused by Kristof, or Specter, or Barbara Vogel. Trafficking, especially the trafficking of women and children for sexual purposes, is truly one of the most treasured contemporary humanitarian movements. Anchored in this issue, parallel and mutually reinforcing narratives are crafted – proud nationalist narratives about the role of Western-led abolitionism both at home and abroad; and neo-colonial narratives that continue to cast the global South as backward, un-free, and unequal.

These narratives are propagated in some particularly powerful popular media, such as *Half the Sky*, which is a celebrated bestseller that has spawned a "Half the Sky Movement," including video games, and Pinkett-Smith's *Don't Sell Bodies* campaign. Lest we fail to take them seriously, this chapter draws attention to the bleed between understandings of trafficking in popular culture and the policymaking process. Lawmakers are as susceptible as any other citizen to the simplistic analysis and 'feel

good' approach of helping and saving promoted by journalists like Kristof and WuDunn, and artists like Pinkett-Smith. They are ready to imagine the black and white framing of trafficking seen in films like *Taken*, prepared to accept that men of color, men of the global South, are tied to a culture that devalues women in ways that the West is not. Legislators are eager to adopt the role of protectors, saviors, or in Kristof and WuDunn's terminology, "social entrepreneurs." This explains the otherwise incongruous presence, on invitation, of Pinkett-Smith in Congress, alongside slavery expert Kevin Bales.

In adopting concepts such as the politics of forgetting, culture talk, and the culturalization of racism, I have attempted to foreground an alternative interpretation of the anti-trafficking movement. challenging its self-understanding as a manifestation of Western leadership, generosity, and civilization. Certainly, my alternative interpretation does not preclude an abundance of goodwill on the part of anti-traffickers ("new-abolitionists"). However when we prod the silences on issues such as the complicity of Western-led IFIs in the global South's poverty; the benefits accruing to the residents of the global core when members of the periphery are exploited; legacies of colonization that live on as inherited disadvantage; and anti-immigrant policies in the West, the selective, piecemeal approach to anti-trafficking seems naïve at best, self-serving at worst. In the next chapter, I temporarily leave trafficking aside in order to consider the issue of HIV/AIDS as a global crisis, and how the U.S. response to it replicates many of the same themes as the issue of trafficking.

Chapter Four: Exporting Abstinence: The President's Emergency Plan for AIDS Relief

"Unbidden, to be sure, but undeniably, the globalizing economy brings into relief the self-serving relativism of the public health realpolitik *that creates a double standard of therapy"* (Paul Farmer 2005: 195).

In the 1990s, the AIDS pandemic emerged on a global scale, claiming the lives of 32 million people, devastating families and communities, and adding additional stress to health care and social welfare systems, especially in Africa and India and within communities of color in industrialized market economies. In response to this global pandemic, President George W. Bush took bold action, securing passage of with the 'President's Emergency Plan For AIDS Relief" (PEPFAR; H.R. 1298). Passed in 2003, PEPFAR allocated $15 billion to AIDS relief, the largest sum of money ever dedicated by one country to the eradication of a single disease. Targeting nations particularly hard-struck by and ill-equipped to remedy the pandemic, President Bush promised the bulk of the funds to fifteen nations−Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam, and Zambia. In marked contrast to his policies on the "War on Terror," and homeland security, the President's Emergency Plan for AIDS Relief seems an unqualified humanitarian intervention.

President Bush has been praised from many quarters for instituting PEPFAR. To mark World AIDS day on December 1, 2008, for example, evangelical Pastor Rick Warren presented President George W. Bush with the "International Medal of PEACE"

from the Global Peace Coalition[53] in recognition of his fight against AIDS. Few, if any, observers would deny the importance of PEPFAR as a strategy for eradicating HIV/AIDS. Indeed, operating in conjunction with the Global Fund, PEPFAR is credited with providing treatment for roughly half of all AIDS cases worldwide. Yet despite its apparent magnanimity, PEPFAR has been highly controversial, criticized for its spending earmarks, eligibility limits, and implementation methods. In this chapter, I raise a different concern, drawing attention to PEPFAR as a mode of sexual regulation. At the same time that it disbursed historic amounts of public funds to address the AIDS pandemic as a key component of U.S. foreign policy, PEPFAR also promulgated abstinence as the fundamental means of HIV/AIDS prevention.

In the first section of the chapter, I highlight the role of two amendments to H.R. 1298 in cementing the policy as a tool for promoting abstinence as the primary means of HIV prevention. Following this I trace the methods adopted under the auspices of PEPFAR to combat HIV/AIDS, linking them to a tradition of conservative Christian activism. I demonstrate how humanitarian impulses in policies related to sexuality become a tool for moral uplift that bear a stark relation to a long history of U.S. imperialism. Even litigation designed to challenge the constitutionality of PEPFAR contributes to a colonizing logic that shores up the rights of those who live within the boundaries of the metropole while constraining the freedoms of those in the periphery. The chapter concludes with an examination of the current state of this policy and a brief

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[53] A coalition of churches and like-minded organizations employing the acronym P.E.A.C.E. (Planting churches that promote reconciliation; Equipping servant leaders; Assisting the poor, Caring for the sick, and Educating the next generation) in order to combat "the world's five giant problems" of spiritual emptiness, self-centered leadership; poverty; disease; and illiteracy (see: <thepeaceplan.com>).

consideration of the ambiguous justifications for PEPFAR proffered by policymakers.

A Closed Fist and an Open Hand

At the heart of PEPFAR are two amendments, both introduced by Representative Chris Smith (R-NJ), which are notable because together they provide evidence of the overriding ideological commitments of the policy. Smith proposed the first of these amendments in the Committee on International Relations on April 7, 2003, indicating an "abolitionist" perspective towards sex work in a clause that came to be known as the "anti-prostitution pledge" or "anti-prostitution loyalty oath" (henceforth APP). The amendment passed by 24-22 and stipulated that "No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking," and "No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking" (H.R. 1298 at 23-4). Grantees must sign a declaration that the activities of their organization are in accord with the provisions above, hence the reference to a loyalty "oath."

The second amendment of note was made in Congress less than one month later, on May 1, 2003 and is striking when juxtaposed with the former. Also rather striking and facilitating such juxtaposition is that these two amendments appear back to back in the text of HR 1298. Smith carefully delimits eligibility for funding, moving beyond preexisting language which protects organizations from having to use all three prongs of

the government's "ABC" (abstain, be faithful, use condoms) approach to combating HIV/AIDS:

> An organization that is otherwise eligible to receive assistance
>
> […] to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse or utilize a multisectoral approach to combatting HIV/AIDS, *or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.* (HR 1298 at 23—italics are mine and indicate text added by Smith amendment)

This amendment protects the *eligibility* of (primarily religious) groups who advocate the ABC approach. The anti-prostitution pledge, on the other hand, denotes and indeed is listed as a *limitation,* which prevents groups whose positions are at odds with a now protected ideological stance from attaining funding. Taken together, it is hard to describe these two clauses as anything other than giving with one hand and taking with the other based on an arbitrary sense of the moral superiority of one position.

Abstinence and Fidelity as Key Methods of HIV/AIDS Prevention

The methods adopted under PEPFAR to stop the spread of HIV/AIDS are of interest here because they reveal an ideological frame founded on sexual regulation embedded within the conscience clause and the anti-prostitution pledge. Officially, PEPFAR adopted as its modus operandi the model widely hailed as the key to turning around the AIDS epidemic in Uganda in the 1980s and 90s: the ABC approach. This approach to HIV/AIDS prevention, considered 'multisectoral' if all three lines of approach are used, consists of abstaining from and delaying sexual debut (**A**bstain); being faithful to one's sexual partner (**B**e Faithful), and using condoms (**C**ondoms). Like Uganda, however, the aim of PEPFAR was to privilege abstinence. In the words of Congressman Joe Pitts [R-PA]: "H.R. 1298 endorses Uganda's ABC model that focuses

on abstinence....Abstinence works. In Uganda, which has been cited as the ABC model, ``A" for abstinence first[…] and this focus on abstinence first lowered HIV infection rates from 21 percent in 1991 to 6 percent in 2000" (Pitts 2003: H3612) Subject to much controversy and in accord with the Pitts amendment of May 1, 2003, 33% of the 20% of initial PEPFAR funds exclusively devoted to prevention were earmarked for abstinence-only programming. This amounted to 6.6% of funds—not the scandalous third of overall spending which was frequently reported and criticized (Copson 2007: 57). As Raymond Copson rightly notes, actual spending on abstinence was not particularly odious—what was more deserving of scandal was that only 20% of PEPFAR funds were earmarked for prevention efforts. Nevertheless, an emphasis on abstinence pervaded the legislative process and was at the heart of attempts to protect organizations treating HIV/AIDS patients, but reluctant or entirely unwilling to use condoms in their prevention outreach. Representative Henry Hyde [R-IL], for instance, discussed the three pronged effort to eradicate HIV/AIDS as an "army in opposition" to AIDS, but his emphasis was clearly on protecting an approach that privileged abstinence: "This is a 3-part attack: …We can certainly do some good teaching abstinence, teaching fidelity in the family, and many other creature comforts that can be administered by Muslim groups that do not support condoms. Why exclude people from this force that is going to attack AIDS?" (Hyde 2003: H3612). Hyde and others in favor of the conscience clause emphasized that organizations wanting merely to promote abstinence should be able to do so and leave the rest to others.

An independent evaluation of PEPFAR by the Institute of Medicine (IOM) two years into its programming indicated that programs that successfully integrated

prevention, treatment and care responses had the best prognosis for averting infections and AIDS deaths over a 15 year projection (IOM 2007: 135). It suggested, however, that PEPFAR continued to struggle with this integration, treating counseling and testing "primarily as a means of identifying HIV/AIDS cases eligible for treatment and care," rather than an opportunity to provide HIV education and prevention to HIV negative individuals (IOM 2007: 135-6). The framing of the conscience clause, however, took the segregation of tasks as a starting point: "It is meant to make sure that we do not arbitrarily disqualify any organization from one part of our strategy because they do not participate in another. We should have the best organizations working within our overall plan on parts of the plan that they do best" (Pitts 2003: H3612).

Although it is clear that abstinence is a legitimate and important element of disease prevention, there are reasons why disproportionate reliance on abstinence should be, and were, met with skepticism. Claims about the power of abstinence in combating HIV/AIDS, though widespread, are not without controversy. It has been noted that surveys of populations targeted by the ABC approach revealed important confusion surrounding the very meaning of the ABC precepts; A for being *absent* (a surefire strategy for avoiding infection) and B for being faithful to God or having faith in/trusting one's partner (the precise opposite of the safer sex message) (Horizons 2006: 17-18). Conservative groups and members of congress emphasized that it was the A of the equation that saved Uganda. Representative Joe Pitts (R-PA), for example, claimed that it was the focus on abstinence, specifically, that lowered the infection rate between 1991 and 2000, and "actually changed the behavior in women and men" (Pitts 2003: H3612). This discounts the importance of other facets of the multisectoral approach, leading at

least one expert to claim that "there is no evidence that abstinence-only educational programs were even a significant factor in Uganda between 1988 and 1995" (Cohen 2003: 2). Some have gone even further, claiming that data about Uganda's anti-HIV/AIDS progress were manipulated in order to attribute the successes to abstinence-only programming (Correa, Petchesky and Parker 2008: 40-1).[54] It is also worth noting that even the 'multisectoral' approach encompassing A, B and C on equal terms is not adequate, and has been criticized for ignoring the important links between violence against women and risk of infection. The links between HIV/AIDS and gender violence, though now known for over two decades, are still not part of mainstream knowledge about the disease. Heise has noted that the failure of the global health community to acknowledge gender-based abuse has led practitioners to train women to insist on condom use without recognizing that violence and other serious threats can result from such insistence (Heise 1995: 275). Another outcome of this ignorance is that programs addressing violence against women do not fall under the ABC rubric, and therefore do not qualify for funding, nor does alcohol abuse prevention, which also places people at higher risk of infection (IOM 2007: 100).

The antagonism between an abstinence-only (or even primarily) approach and condom use has also raised concerns about the spreading of misinformation about

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[54] The fact that the Ugandan government has an unabashedly anti-gay stance cannot be ignored. In addition to being a serious human rights concern, this has negative outcomes for HIV/AIDS prevention. The penalty for homosexual activity in Uganda is life in prison. A current anti-homosexuality bill proposes requiring citizens to report those engaging in consensual homosexual sex. A reported rise in HIV infection rates in Uganda as recently as August 2012 has been linked to this marginalization, which makes same sex relationships extremely illicit and therefore their practitioners are unlikely to seek condoms or medical assistance (see for e.g. Kron 2012; Amnesty International 2012).

condom use. Copson argues that the U.S. policy is encouraging elements hostile to condoms, noting that First Lady of Uganda, Janet Museveni, whose National Youth Forum received PEPFAR funds, suggested that condoms lead to promiscuity and cause genital warts (2007: 61). This very concern was at the heart of debate over Smith's conscience clause, as is clear in this exchange between Representatives Barbara Lee (D-CA) and Chris Smith:

> Lee: "Now, it seems to me, quite frankly, that social conservatives are looking at a way to carve out a specific exemption. All of us support faith-based organizations, but it looks like one group of individuals in this country wants to carve out for religious organizations a specific exemption…It appears now that this amendment would give an organization the ability to affirmatively tell those suffering and dying of AIDS not to use one method over another. This could be deadly."
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> Smith: "I wish the gentlewoman had not gone the route of saying there is another motive here…[W]e can fund condoms till the cows come home in this bill; but we are saying there are providers among the best an [sic] earth—the CRS [Catholic Relief Services]—who are deeply respected in the community, with access to the at risk populations, yet who would not get funding without real conscience clause protection. Catholic and Muslim groups are the ones we are mostly talking about, and it seems to me that it is counterproductive in the extreme to everything we are trying to do here—to prevent their full participation" (Smith 2003; Lee 2003: H3611).

Perhaps the obvious question here is how Smith's anti-prostitution amendment, which prevents the full participation of a range of effective groups, from states to NGOs, can be defended from the same charge of being counterproductive in the extreme. In 2004, Brazil turned down U.S. $40 million of PEPFAR money "in order to preserve its autonomy on issues related to HIV/AIDS as well as ethical and human rights principles," according to Brazil's HIV/AIDS program (quoted in Pimenta et al 2009: 17). Programs in Brazil targeting sex workers had "tangible effects regarding knowledge about HIV risks, condom use and, indirectly, the need for systematic sexual healthcare and

HIV/AIDS treatment (Pimenta et al 2009: 50).

Although the two amendments were cast in inclusive language, they had exclusionary effects. Let us briefly return to Congressman Pitts' comment above, in which he suggests, "We should have the best organizations working within our overall plan on parts of the plan that they do best." And again, "It is meant to make sure that we do not arbitrarily disqualify any organization from one part of our strategy because they do not participate in another" (Pitts 2003: H3612). The outcome of Smith's two amendments, however, is to protect the agenda of socially conservative organizations and their ability to obtain funding for their mission of abstinence education and care for the infected while limiting aid to effective programs that are "sex positive" and do a large part of the work of prevention (i.e. advocate on behalf of sex workers and promote condom use).[55]

The conscience clause amendment buttressed already existing language in the bill that protected the funding eligibility of groups that did not endorse a multisectoral approach. Representative Tom Lantos (D-CA) challenged Smith on the inclusion of what he considered unnecessarily airtight protections, fearing−like Barbara Lee−that it would be used to undermine condom promotion and discourage referral to other organizations providing other types of AIDS prevention. For this reason, Lantos requested that Smith add the following provision to his conscience clause: ``Except that such organization may

[55] In 2010 Pope Benedict XVI made a statement signaling a potential shift in Catholic policy on condom use, indicating that a sex worker's use of condoms where there is risk of HIV transmission is a positive thing in that it represents taking responsibility for the well-being of another (Hooper 2010). It is not yet clear what the effects of this potential shift, if any, will be on conservative Catholic policymakers like Smith, or conservative groups such as Catholic Relief Services.

not undermine interventions that it does not endorse, utilize or participate in.'' Smith's reply yielded no ground, "The problem is the word "undermine." If a group opposes a certain type of prevention such as condom use that could be construed in the eyes of someone who is making a grant or letting a grant, that organization should not get funded. The proposed Lantos language nullifies any conscience clause so I must reject it" (Smith 2003: H3610). Here again it is necessary to contrast the conscience clause amendment with the anti-prostitution amendment.

While Smith was intent on clarity in order to protect moral and religious sensibilities, the anti-prostitution oath was vague on its face, and implementation was, and continues to be, plagued by lack of clarity. As recently as December 2010, Assistant U.S. Attorney Ben Torrance was asked by judges in the U.S. Court of Appeals "whether supporting the unionization of prostitutes or advocating to ease government restrictions targeting prostitutes were allowed under the pledge. Torrance replied, "It depends. There are shades of grey. This is a judgment for Congress, not for the agency receiving the funds" (Doyle 2011). Some organizations have refused funding due to lack of certainty as to whether funding would compromise their missions or much worse, require them to abandon programs targeting sex workers for fear of losing funding (Diller 2011; Doyle 2011). In sum, though proponents of the conscience clause defend it in terms of giving all organizations a "fair shake," when observed in relation to the anti-prostitution oath and considered in the context of its practical application, the conscience clause serves as a tool for bending policy to the religious and socially conservative purposes of sexual regulation while sealing it off hermetically from the influence of alternate views.

The one-sided emphasis on abstinence and its attendant hostility to condom

promotion reflects the influence of conservative, religious groups on the legislative process leading to PEPFAR. Some groups notable for their vocal support of the anti-prostitution oath include religious groups Focus on the Family, Family Research Council, The Salvation Army, and the National Association of Evangelicals. The conservative organization Concerned Women for America also supported it, along with individual feminist academics who have championed U.S. anti-trafficking efforts, Donna Hughes, Phyllis Chesler and Diana E.H. Russell.

How did the Christian Right Influence Outcomes?

The Christian Right in the U.S. has long exerted a strong influence over the content of sexual education domestically, insisting on abstinence-only programs as preferable to comprehensive sex education from both moral and health perspectives. Susan Rose argues that since the early 1980s the family values movement has been responsible for pushing abstinence only education in schools, with programs such as "Sex Respect" and "Abstinence Works," in which "sex is often equated with death, disease, and danger" (2005: 1208).[56] Janice Irvine traces the influence back even further, arguing that the Christian Right has been lobbying on sex education domestically since the late 1960s to oppose comprehensive sex education using "rhetorical strategies [that] play to historical anxieties about sex and exploit sexual danger and shame" (Irvine 2000: 60).

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[56] For instance, Rose notes the following exchange between an abstinence-only educator and an American school boy: "Every time you have sex, it's like pulling the trigger — the only difference is, in Russian Roulette, you only have one in six chances of getting killed." When one boy asks, "what if I have sex before marriage?" he is told, "Well, I guess you'll just have to be prepared to die. And you'll probably take with you your spouse and one or more of your children" (2005: 1208-1209).

Domestically, she argues, the Christian Right's influence on sex education has been attained through the deployment of sexual speech in order to "agitate parental concern, recruit constituents, raise money, and, ultimately, consolidate power through election to school boards and other political offices" (Irvine 2000: 59).

Internationally, the U.S. has clashed with European Union and Latin American countries over the issue of abstinence, sex education and reproductive health. At the U.N. Children's Summit in 2002, for instance, the U.S. stirred controversy by aligning itself with Iran, Iraq and Sudan through its insistence on a final declaration favoring abstinence. Again, in 2002 at the Asian and Pacific Population Conference in Bangkok, the U.S. insisted that even the term "reproductive health" be banned from the conference's proposed policy (Rose 2005: 1211). The fate of abstinence programming and policy related to HIV/AIDS eradication collided when the same conservative Christians adopted HIV/AIDS as an issue in the early 2000s.

The late 1990s saw rising global awareness about the devastating consequences of HIV/AIDS in the Global South, along with the scandalous fact that despite new medications that would mitigate the effects of the disease, they were financially out of reach for 90 per cent of people who needed them (Global Fund). By its own account, the Global Fund to Fight AIDS, Tuberculosis and Malaria, (henceforth Global Fund) emerged at this time as a result of this global awareness. G8 leaders acknowledged a need for funding for these diseases at their 2008 meeting in Okinawa while African leaders did the same in Abuja in 2001, where then U.N. Secretary General Kofi Annan proposed the creation of a Global Fund to channel resources appropriately. This call was endorsed by the U.N. and partially financed by the G8, leading to the creation of the

Global Fund in 2002 (Global Fund). Copson identifies a "rising tide" of public pressure at this time to address HIV/AIDS in response to rising infection rates in a number of African countries (eg. 35.8% in Botswana), led by organizations such as ACT UP (AIDS Coalition to Unleash Power) and Global AIDS Alliance (207: 44). He also credits pressure from economist Jeffrey Sachs, who met with Secretary of State Condoleeza Rice in his role as head of the World Health Organization (WHO) Commission on Macroeconomics and Health; and the musician Bono, who forged a friendship with Senator Jesse Helms around this same problem (Copson 2007: 44). President George W. Bush gave the founding pledge to the Global Fund, of $200 million, however U.S. support for the Global Fund subsequently dropped sharply, as conservative Christian groups such as James Dobson's Focus on the Family lobbied Congress about its support for the Fund, noting that it did not support enough abstinence education and supported "legalized prostitution and all kinds of wickedness" (Copson 2007: 54). In the face of this pressure, the U.S. distanced itself from the Global Fund and strengthened its unilateral HIV/AIDS programming.

The Global Fund has been praised for its role in providing treatment to over half of AIDS patients worldwide, however the Fund has been plagued by financial shortfall. In February 2012, physician and anthropologist Paul Farmer lamented the fact that a severe funding deficit was causing the Global Fund to suspend its current round of grant making, which it would not renew at least until 2014. This was particularly tragic, he pointed out, coming just as the end of HIV had become plausible with evidence in 2011 that putting patients on treatment earlier can significantly reduce the spread of HIV (Farmer 2012). In part, the Fund's funding challenges over the past ten years have been

attributed to loss of support from the U.S. due to the diversion of its AIDS funds into PEPFAR (Copson 2007). It is through their influence on PEPFAR that conservative Christian ideas about sex and sex education, already hotly contested in educational policy, came to fuse with health policy and foreign aid in the form of PEPFAR.

Holly Burkhalter, Vice President for Government Relations at International Justice Mission (IJM), a U.S.-based NGO very much part of mainstream anti-trafficking efforts to "free the slaves," is sympathetic to conservative Christian engagement on both AIDS and trafficking. She identifies a positive "turning point" in global HIV/AIDS prevention when conservative Christians adopted the issue as their own in 2002. She claims the definitive moment was the first "International Christian Conference on HIV/AIDS" in Washington, D.C., entitled "Prescription for Hope." Attended by 800 evangelical Protestant and Catholic leaders, "state-of-the-art visuals, gospel choruses, and heartbreaking testimony from African ministers and health workers," the event was a clarion call to this community to adopt HIV/AIDS eradication—particularly treatment—for "innocent victims," the sick and the dying as a moral imperative (Burkhalter 2004). Burkhalter notes that Senator Jesse Helms, who was at the conference and confessed his shame at having done little to helps AIDS sufferers, led the charge, focusing on heterosexual and mother-to-child transmission, and "innocent" victims and publishing an op-ed promising to secure $500 million for mother-to-child transmission. It was in the wake of this new surge of interest, in Burkhalter's account, that George W. Bush announced PEPFAR in his 2003 State of the Union address: "a work of mercy beyond all current international efforts to help the people of Africa" (Bush 2003). As we have seen, the commitment of the conservative Christian community to the issue at this time is one

that is overtly discernible, not merely a suggestion "between the lines" of the U.S. foreign policy on HIV/AIDS.

"Your Faith Has Made You Well":[57] AIDS Prevention and Treatment as Moral Uplift

While it is clear that there are strong currents of sexual regulation underpinning U.S. efforts at addressing the AIDS epidemic in Africa, policymakers often framed the issue in terms of charity and a contemporary civilizing mission. This language usually made reference to family values and moral improvement, echoing the mission of nineteenth century social reformers, who took the bourgeois family and mother's role at its center as the norm to be imposed on the working class. Social evolutionary discourse about the raising up of "unfortunates" was at the center of visits to the poor to promote marriage and separate sleeping arrangements for parents and children; lessons in domesticity, and incorporation of "deviants" into family arrangements or else institutions (Agustin 2004: 71-73). Contrasting the bourgeois housewife with "working" women, the respectability of the former came to be associated with virtue, making them experts on what was best for other women (Agustin 2004: 74).

Although decisions about how best to address the complex relationship between sex work and HIV/AIDS are made in this case by elected representatives, the symbol of the chaste housewife is present as an unspoken ideal. She is invoked indirectly by virtue of appeals to the family and family values, of which the wife and mother is the heart. Representative Rick Renzi (R-AZ), arguing in favor of the conscience clause, located its value precisely in its civilizing role: "This amendment makes necessary distinctions

[57] English Standard Version Bible, Luke 18:42

which ensure that faith-based organizations can continue to educate and change people's hearts, minds, and souls towards a more moral way of life" (Renzi 2003: H3611). That is to say, religious groups which continue to seek to incorporate "deviants" and unmarried sexual partners into a traditional family format by insisting on reserving sexual activity (and most AIDS funding) to married or otherwise "innocent" individuals should be supported for working to better and enlighten recipients of U.S. funding. In this framing, explanation for the prevalence of HIV/AIDS in certain communities looms dangerously close to claims that AIDS is a disease of the morally defective, representing God's punishment for immorality. Therefore, attempts to improve the morals of foreign peoples by bringing them into line with an American family ideal is intimately linked with ending the spread of disease.

In opposing Pitt's amendment, Representative Nita Lowey (D-NY) complicated the issue by arguing that even lifestyles that are morally acceptable on conservative, Christian terms can leave their practitioners vulnerable to infection:

> Many women in Africa infected with HIV were abstinent before marriage, and monogamous in it, and yet still they are wasting away from AIDS….Again, she's married, she's faithful . . . she's dying. We can have it all--we can have monogamy and condoms, we can have abstinence before marriage and access to condoms too. It's just a matter of deciding that saving lives matters more than how it's done" (Lowey 2003: H3614).

Lowey's comments bring into sharp relief the important distinction, and indeed, disjuncture between goals of "civilizing" or encouraging the putative moral and social evolution of a people, and the aim of eradicating a devastating disease.

If the work of fighting AIDS is the work of the morally upright, those working on the "frontline" in aid and development organizations acquire a great deal of moral capital.

Anti-HIV/AIDS work is a "saintmaker" of sorts. Lawmakers often pointed to the mercy and selflessness of individuals and organizations working to treat or stem the spread of the disease. Usually the organizations in question were the very organizations insisting on privileging abstinence. Despite the dubious results of this approach already listed, questioning their methods or commitment was often treated as tantamount to questioning a mother's love. A chief virtue of some of these organizations appears to be that they work in obscurity, with little notice or praise. In defending the conscience clause, Smith highlighted the importance of Catholic Relief Services (CRS):

> They do it without a brass band or self-promoting press releases and are very much underheralded. These saints who care for the afflicted are on the ground, village after village, heavily embedded in Africa, helping people with this horrible scourge and helping the people who are trying to cope with it and prevent it. Catholic Relief Services is made up of the most caring and compassionate people on earth. Let's hope they apply for more funding" (Smith 2003: H3611).

Likewise, Representative Mike Pence (R-IN) places a premium on the supposedly unnoticed nature of much HIV/AIDS work performed by religious organizations:

> Only by passing the Smith amendment will we make certain that not only those who would be willing to come to the aid of people, but the overwhelming majority of those who are thanklessly, and without the klieg lights of publicity or public support, are coming to their aid at this very hour (2003: H3611-H3612).

The irony here, of course, is that by being highlighted in Congress, these organizations attain a higher level of notoriety than other organizations. More liberal organizations receive no mention at all. More intriguing is that Representatives Renzi, Smith and Pence appear to be defending the worthiness of religious groups like CRS based on their ideology, personal motives, and general saintliness, rather than their effectiveness at contributing to the project of eradicating HIV/AIDS. Somehow, being unheralded and not putting oneself forward for praise or thanks are important qualities for combating

AIDS in this framing. This is important because it highlights a central claim of this project: that although the objectifying Western gaze is foundational to humanitarian policies such as this one, the point of intervention is as much, if not more, about raising the status of humanitarianism's practitioners in the Global North. *Who* does the saving is every bit as important as *whether* people are saved from the scourge of AIDS.

The enhanced status of interveners can be this-worldly and otherworldly. One influence on George W. Bush's decision to institute an AIDS policy was an evangelical staffer who warned him "history will judge us severely if we don't do this." Shortly thereafter, Bush announced the initiative in Uganda in the following terms: "God has called us into action" (Copson 2007: 45-46). These two comments indicate a simultaneous concern for the U.S.'s, or at least the administration's global reputation *and* God's designs for human beings, which if ignored, can have eternal consequences for individual souls.

Constitutional Challenges to the Anti-Prostitution Pledge

The anti-prostitution oath was initially applied to bilateral organizations, but not multilateral organizations, and there were exceptions altogether, such as foreign governments, UN agencies, and the World Health Organization (Global Health Council 2006; Center for Health and Gender Equity 2008). More notable is the very controversial application of the pledge to organizations' activities which were privately funded (Masenior and Beyrer 2007: 1158). That is to say, an organization supporting sex workers using privately donated funds while using PEPFAR funds for separate projects was still not eligible for funding. Initially the anti-prostitution oath was not applied to domestic organizations due to fear that it would violate First Amendment guarantees of

freedom of speech. In 2005, however, the restriction was applied to U.S. organizations as well (Copson 2007: 63). In the wake of this extension, two lawsuits were filed against U.S.AID. On September 23rd, 2005, the Alliance for Open Society International (AOSI) and its affiliate, the Open Society Institute (OSI), filed a lawsuit against USAID, claiming that the anti-prostitution oath requirement was unconstitutional: it violated the First Amendment by requiring that private organizations adopt the government's point of view; the language of the APP was unconstitutionally vague, and USAID refused to clarify its meaning (Global Health Council 2006). Likewise, DKT International filed a lawsuit against U.S.AID, also claiming that the anti-prostitution oath violated the first amendment by "compelling speech" from organizations and preventing NGOs from using non-government funds to speak freely (Global Health Council 2006). In both cases, judges' rulings favored the plaintiffs, claiming that the anti-prostitution oath constituted a violation of First Amendment rights, and in both cases, injunctions were issued against enforcement of the policy where the plaintiffs were concerned (Global Health Council 2006). Despite hope in some quarters that this restriction would be lifted under the Obama Administration, the government continued to defend the anti-prostitution oath through appeals until July 6, 2011, when the U.S. Court of Appeals upheld the injunction against the anti-prostitution oath for U.S.-based groups on the grounds that it violated First Amendment rights (Doyle 2011).

While this may be viewed as a victory, the outcome of these constitutional challenges may from another perspective make the anti-prostitution oath more odious. Within the patron-client relationship created by humanitarianism, the court ruling creates a situation in which the United States blatantly applies standards to 'clients' in the

developing world that do not apply at home. The patron—in this case the wealthiest western state, remains insulated from the negative consequences that its policies create overseas. The crass inequality between donors and recipients is unapologetically upheld in a way reminiscent of more explicitly colonial endeavors in which foreign governments have dictated policy in within the jurisdiction of other nations. Take for example the regulation of people in the Global South, particularly women, surrounding U.S. military bases. Women sex workers working near bases have been forced to undergo mandatory Sexually Transmitted Disease (STI) testing in order to help ensure the health of U.S. workers on the base. In 1970s Korea, for instance, U.S. Forces were alarmed at the high rates of STI among soldiers. Rather than addressing the military personnel's role in the problems, the Acting Surgeon General of the Department of the U.S. Army recommended that the Korean government "make an extensive effort to reduce the large number of unregistered prostitutes or to register and place them under control," leading the Korean government to bring Korean and migrant women under systems of medical surveillance in order to protect the health of foreign male soldiers (Moon 1997: 78-9). What does it mean for a state to recognize rights and extend freedoms to one's own citizens but not to those foreign people it has committed to "helping?" This question was still unresolved when, on June 20, 2013, the Supreme Court ruled by a vote of 6-2 (Scalia and Thomas dissenting)[58] that the government may not compel organizations to adopt its stance on social issues as a condition of receiving funding. This meant that organizations could no longer be denied PEPFAR funds on the basis that other, non-PEPFAR funds

[58] Agency for International Development v. Alliance for Open Society International, Inc. <http://www.supremecourt.gov/opinions/12pdf/12-10_21p3.pdf> U.S. Supreme Court, decided 20 June, 2013.

were being used to promote or assist sex workers. In this decision, the Supreme Court struck down the anti-prostitution pledge.

Current State of PEPFAR

PEPFAR was reauthorized in 2008 through the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act (H.R. 5501). The act authorized a total of $48 billion in spending for fiscal years 2009 to 2013,[59] primarily devoted to HIV/AIDS. The PEPFAR reauthorization made some tentative steps towards a more holistic approach to combating AIDS. Most notably, it incorporated food and nutrition as essential components to eradicating AIDS, and allowed funding for programs addressing these concerns, although it did not incorporate other programs dealing with factors important to the transmission of HIV, such as domestic violence, alcohol abuse or sex worker outreach. The scope of PEPFAR funding was also extended beyond the original fifteen focus countries,[60] primarily in sub-Saharan Africa, to explicitly include the Caribbean, Central Asia, Eastern Europe and Latin America. Legislators also attempted to highlight a change of course away from ideology, frequently alluding to the value of the *scientific* or evidence-based, as opposed to ideological, basis of the approach advocated in the reauthorization.[61]

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[59] Compare to $15 billion for FY 2004- FY 2008 in original PEPFAR bill.

[60] Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam, Zambia

[61] For example: "The bill supports culturally competent prevention and treatment measures that are based on empirical evidence rather than ideology" (Alcee Hastings, (D-FL)); "This legislation makes important strides forward by removing elements of the original authorization that speak more to ideology than actual conditions in the field" (Howard Berman, (D-CA)).

One of the most controversial aspects of the original PEPFAR bill—the abstinence earmark, was also done away with. In its place, however, there remains a requirement that if less than 50% of an organization's funding is devoted to programs promoting sexual abstinence, monogamy and faithfulness, they must submit a report to Congress. A final notable change in PEPFAR's reauthorization is its amendment of the *Immigration and Nationality Act* to remove the clause banning HIV-positive visitors and immigrants from entering the U.S.

Perhaps surprisingly, given its notorious unpopularity, the anti-prostitution pledge was retained in PEPFAR's 2008 reauthorization. Rebekah Diller, deputy director of the Justice Program at the Brennan Center for Justice at the New York University School of Law, commented in 2011 that not much had changed with respect to implementation of the anti-prostitution oath: "they've tinkered with the implementation a bit but failed to address the constitutional problems. They've also failed to give groups in the field any basic guidance about what the pledge forbids. As a result, groups are retreating from doing outreach to sex workers because they fear they will be accused of violating the law" (quoted in Mazzotta 2011). However as noted above, the oath was struck down in 2013. In addition, the conscience clause was retained and indeed strengthened in 2008. The original text provided that in order to receive funding, organizations were not required to endorse or utilize a multisectoral approach or to endorse or participate in programs to which they had moral or religious objections. The new language added that they need not make referrals to nor become integrated with any programs to which they have moral and religious objections, and stated explicitly that they may not be

discriminated against in the allocation of funding.[62] One might conclude from all of this that PEPFAR's current incarnation is an ambivalent one. In December 2013, President Obama signed the PEPFAR Oversight and Stewardship Act of 2013, which extended the provisions of the 2008 reauthorization through 2018. Other than calling for more extensive and thorough reporting, there were no considerable changes to the 2008 provisions, which is why the 2013 act was merely an extension.

Political Expedience or Moral Obligation?

From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked.[63]

In the debates surrounding H.R. 5501, an ambiguous mix of motives helps explain U.S. intervention in the global AIDS pandemic. Although the policy was and remains highly celebrated, support for its reauthorization lacked unanimity. Representative Dana Rorhabacher's (R-CA) opposition was particularly vociferous, claiming that any funds sent to combat HIV/AIDS elsewhere was money effectively stolen from the American people at a time of economic hardship. He characterized the proposed appropriations as "humanitarianism gone wild" and "irrational benevolence" (Rorhabacher 2008: H7113) In the face of such charges, and as a general commentary on the laudable nature of

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[62] Organizations: ''(1) shall not be required, as a condition of receiving such Assistance — ''(A) to endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or ''(B) to endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection; and "(2) shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements under such provisions of law for refusing to meet any requirement described in paragraph (1)." (H.R. 5501 at 40).

[63] New International Version Bible, Luke 12:48; invoked by Rick Renzi in supporting the conscience clause amendment.

PEPFAR, lawmakers claimed that addressing AIDS was in the interest of national security; served U.S. financial interests; and above all else, highlighted the humanitarianism of the U.S. people.

A number of representatives enumerated the benefits of PEPFAR to U.S. national security. Representative Steny Hoyer (D-MD) claimed that "this health care crisis ruins families, communities, and indeed, whole nations, fueling violence and bloodshed across borders" (Hoyer 2008: H1912). Congresswoman Ileana Ros-Lehtinen (R-FL) quoted U.S. Ambassador to Tanzania, Mark Green, to the same effect: "In tearing apart the social fabric and leaving a generation of orphans, the scourge of HIV/AIDS could create a long-term breeding ground for radicalism" (Ros-Lehtinen 2008: H7111). Representative Mike Pence (R-IN) added an economic dimension, commenting that "If not addressed, this plague will continue to undermine the stability of nations throughout the third world, leaving behind collapsing economies, tragedy, and desperation, which we all know is a breeding ground for extremist violence and terrorism" (Pence 2008 B: H7114).

Representative Alcee Hastings (D-Fla) made the economic interconnectedness of U.S. and developing economies more explicit: "Investing in global health ultimately leads to communities and countries that are more economically, socially and politically stable. In this globally connected era, it is imperative that we address health and development in foreign countries" (Hastings 2008: H7065). In and of themselves, these motives are not necessarily incompatible with the simultaneous dispatching of a moral obligation towards distant others. However, additional claims by the same group of lawmakers (and often the very same individuals) sought to undermine the idea that there is any self-interested rationale behind PEPFAR.

Congressman Donald Payne (D-NJ) emphasized that PEPFAR's importance lay in its power to undermine the impression that all the U.S. is doing is counterterrorism. We did in fact see that in 2003, the announcement of the original PEPFAR appeared to be timed to offset the martial image of the U.S. as it embarked on an invasion of Iraq and continued engagement in Afghanistan. However claims by several other lawmakers, exemplified above, suggest that half of PEPFAR's value lies in undermining radicalism, which frames PEPFAR itself as part of the project of counter-terror, albeit a 'soft' approach to it. Indeed Mike Pence, whose comment above appealed to the need to promote stability and friendly relations abroad, made a second and quite different statement about the motives of PEPFAR. "The history of the world is filled with telling moments regarding the character of a people. Sometimes we are witness to mankind's great inhumanities. Other times we marvel at the beauty of mankind's selfless acts of compassion, when we rise above politics and raise up those in dire need. Let this be such a day" (Pence 2008 B: H7115).

There appears to be an ambivalence at the center of PEPFAR's justification. It is construed as either humanitarian assistance or as part of a larger project of U.S. national security, but not both. The reason for the reluctance to frame it as both may point to the exigencies of bipartisan lawmaking—tailoring comments to suit particular demographics at different times. On the other hand, it may indicate a belief that politics somehow taints moral or humanitarian interests. Perhaps the U.S. cannot legitimately be on the 'right side of history," as Representative Barbara Lee hopes it will, if its intentions are not 'pure,' or purely humanitarian.

Rights Talk in PEPFAR

The discourse among policymakers to explain and justify the PEPFAR bill employs a weak rights language, mixed with very strong appeals to duty, obligation, compassion, and humanitarian sentiment as distinctive characteristics of the American nation. References to the rights of citizens of the global South as *entitlements* are vague and appear to be rhetorical flourishes, rather than substantive engagements with the concept of global South as rights claimant and the U.S. as addressee.

Rights language performs two roles in the legislative process behind PEPFAR. First, rights are invoked as a vague concept, seemingly denoting a link between assisting AIDS-ravaged communities and the founding ideals of the American Nation. In this sense they do not have a clear political resonance. Instead, they appear to be rhetorical flourishes, rather than substantive engagements with the concept of global South as claimant and the U.S. as addressee. For example, Michael Enzi (R-WY) soliloquizes:

> Our Founding Fathers were never more inspirational than when they wrote that our Creator has endowed us with certain unalienable rights--and among these are life, liberty and the pursuit of happiness. Swift passage of this bill will again show the world that these aren't just words on a piece of paper. Swift passage will again show that these words apply to every citizen of every country--not just our own (Enzi 2003: S6492).

Similarly, Pence states that "The greatest of all human rights is the right to live. America is a Nation of great wealth, wealth of resources, but more importantly, a wealth of compassion" (Pence 2008 A: H1912). Here the "right" to life is ill-defined. Linked to the goodwill of the American people through reference to "compassion," rather than to particular legal entitlements to life-saving treatment the reference calls up pre-political natural rights far more than the politicized rights of the person / human rights. The point

of both references to rights is not human rights itself, but rather a statement about what it means to be American (compassionate, freedom-loving, life-affirming).

Rights are also mobilized for a quite different purpose in the PEPFAR debate. More specific references to rights provisions are often references to women's rights but sometimes refer to other marginal groups. Representatives who raise particular rights issues tend to be advocating a progressive approach to PEPFAR in terms of recognizing global inequality, taking a broad, multisectoral approach, and questioning the value of the anti-prostitution pledge. For example, Alcee Hastings in the reauthorization debate, reminds everyone that the global HIV/AIDS situation mirrors the American situation in that black communities within the U.S. have less access to treatment, and are disproportionately represented among the number of AIDS sufferers: "As a leader in global health and human rights, Madam Speaker, this country, all of us, must not allow ignorance, stigmatization, and unequal access to medication to continue in this country or abroad" (Hastings 2008: H7066). Linking PEPFAR firmly to the work of African American medical doctor, Dr. Charles Drew, and to the human rights work of Dr. Martin Luther King, Jr., Hastings also attempts to expand the scope of PEPFAR by offering an amendment that allows African and American post-secondary institutions to collaborate in the training of African healthcare workers. Juanita Millender-McDonald (D-Ca) tried to identify the fight against AIDS as a more broad human rights issue when she framed the issue as a lack of women's access to resources, and suggested including a provision that would attempt to broaden women's inheritance rights in recipient communities. "The relationship of the denial of inheritance rights for women, increased HIV/AIDS infection in women and the resulting exponential growth in the numbers of young widows,

orphaned girls, and grandmothers becoming heads of households needs to be further studied and documented" (Millender-McDonald 2003: H3604). Marking a similar concern for the rights of women which are often "nonexistant," James Moran (D-Va) pointed to the problem of the anti-prostitution pledge in particular: "Even the restrictive provision on prostitution limits our effectiveness. We have got to get access to women who are endangered, whatever it takes to save their lives" (Moran 2003: H4378). Here, Moran, Millender-McDonald and Hastings mobilize what appears to be genuine concern for the well-being of HIV/AIDS sufferers, rather than with building or maintaining America's reputation.

The two different mobilizations of rights should encourage us to consider the competing worldviews that went into developing the policy. The policy debate contains some encouragingly holistic interpretations of the AIDS crisis, which include special attention to empowering women and minorities. However, the rights-related *content* of the policy is hijacked by its *form*, because social reformers inserted clauses that limit distribution of the funds to groups with a particularly Christian-conservative value set, and in doing so managed to withhold preventative outreach from sex workers. The contradictory (and sometimes complimentary) projects of biopolitics and necropolitics also overlie this contradiction between form and content, to be further discussed in chapter five.

Conclusion

PEPFAR is hailed from virtually all quarters as a crucial component in the global eradication of HIV/AIDS, operating alongside the Global Fund and responsible for roughly half of the cases of AIDS treatment worldwide. Even those who lament its more

controversial facets call for improvements that will strengthen it and enhance its efficacy. In the previous pages I have drawn attention to these more problematic aspects of the policy by tracing how the mutually reinforcing anti-prostitution pledge and conscience clause amendments protect and promote Christian family values in implementation, while excluding competing approaches, particularly those concerned with prevention efforts among sex workers. In addition, policy implementation has been weighted toward prevention efforts grounded on abstinence and fidelity rather than condom use and more holistic programs that address contributing factors such as alcohol abuse and sexual violence. PEPFAR's endorsement of the ABC framework with a primary emphasis on A and B reflects decades of conservative Christian activism, which has migrated from issues of sex education and reproductive health to HIV/AIDS prevention both domestically and globally.

Beyond explicit concern with health, hygiene and the eradication of disease, a discursive analysis of congressional debates makes it clear that PEPFAR is intricately involved in projects of moral uplift and civilizing missions. Policymakers provided multiple grounds to justify PEPFAR, sometimes conceiving the policy as a means to promote national security or economic stability, sometimes as a manifestation of American altruism. But the most common trope treated the policy as a benign humanitarian gesture. I turn next to considering the other side of humanitarianism—the exclusions enacted on particular bodies in order to foster the inclusion of others. Examining the TVPA and PEPFAR in concert, it is possible to see how the inherent *unevenness* of humanitarianism results in the politics of sexual regulation.

Chapter Five: Patrolling Boundaries: The Convergence of Biopower and Necropower

During the summer of 2012, protesters sporting the green crown of the Statue of Liberty and brandishing red umbrellas interrupted the opening press conference of the XIX International AIDS Conference. The panel of speakers sat looking on as a vuvuzela burst out a low, steady rhythm, and chanting demonstrators circled the room with signs proclaiming: "No sex workers? No drug users? No international AIDS conference." The conference was held in Washington, D.C.—the first International AIDS Conference hosted in the United States. For twenty-two years, a U.S. ban prohibiting HIV-positive travelers from entering the country had fueled an international boycott.

The international boycott grew in response to an episode in 1989. A Dutch citizen, Hans Paul Verhoef, was detained by U.S. Customs and Immigration on his way to the 7th Annual AIDS Conference, and the National Lesbian and Gay Health Conference in San Francisco. Officials found anti-retroviral medication and sex paraphernalia in Verhoef's luggage (Fairchild and Tynan 1994)—suggesting that he was both HIV-positive, and that he intended to engage in sexual activity during his stay in the U.S. Instead of returning home to the Netherlands, Verhoef remained in custody and challenged the policy, eventually obtaining a waiver for himself. Verhoef's detention and brush with deportation alerted HIV/AIDS activists across the world that they faced the same potential peril in traveling to the U.S., sparking significant opposition to the U.S. policy. As a result, a subsequent International AIDS Conference scheduled for Boston in 1992 was moved to Amsterdam, as —"conference organizers felt they could not guarantee the safety and confidentiality of infected conference attendees as they entered

the United States" (Fairchild and Tynan 1994: 2017). The boycott organized by the international anti-AIDS community ensured that the U.S. did not host the conference again between 1990 and 2012.

Within the U.S., Representative Barbara Lee, (D-CA), who had been committed to HIV/AIDS advocacy since the mid-1980s and had attended every International AIDS Conference since she was elected to Congress in 1998 (Black and Needle 2012), proposed legislation to lift the ban. Lee succeeded in repealing the ban by amending the reauthorization of the Immigration and Nationality Act (INA) of 1952. The reauthorization was signed into law by President Bush in 2008; and President Obama lifted the ban in 2010.[64] The removal of this discriminatory practice contributed to a celebratory mood among AIDS activists in preparations for the 2012 conference. The celebration was short-lived, however. As activists began applying for visas to attend the meeting, different forms of exclusion cast a pall over the gathering. The INA (1952) also banned visas for aliens (immigrants and travelers) who entered the U.S. for the purpose of engaging in prostitution, or who had engaged in prostitution within ten years of applying for a visa.[65] This provision officially precluded sex workers' participation in the conference. The long-standing "war on drugs" in combination with other INA criteria for exclusion provided grounds to bar avowed drug users from securing visas to enter the U.S. The vibrant protest at the opening of the conference called attention to the official exclusion of two key constituencies from the AIDS Conference.

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[64] Prior to the legislation mandating the ban, Health and Human Services (HHS) instituted the ban at its own discretion. After President Bush lifted the travel ban legislation, President Obama instructed HHS to lift their remaining discretionary ban.
[65] Each application is reviewed individually, and there is a waiver process available.

The United States government found itself embroiled in a series of contradictions. Having allocated billions of dollars to eradicate AIDS, it sought to position itself as a world leader in the anti-AIDS struggle. Hosting the International AIDS Conference was a crucial component of that positioning. Yet by banning important leaders of AIDS prevention efforts from attending the conference, the U.S. lost the benefit of their experience and expert knowledge, while also provoking anti-AIDS activists' resounding criticism of another unacceptable form of discrimination. As one protester explained the rationale of the protest: "The solution to HIV and AIDS is based around not just medicalizing the issue, but social justice as well. And the most affected populations which are recognized by UNAIDS and WHO [World Health Organization] are sex workers and drug users, men who have sex with men, trans folks and prisoners, and how do you hold the most prestigious AIDS conference on the planet where you know you cannot involve some of those most affected populations? …So the conference doesn't have the legitimacy that it should."[66]

In addition to the protests staged in Washington, an alternative conference was held in Kolkata, India the same week. Dubbed the "Sex Workers Freedom Festival," the counter-conference positioned India, the world's largest democracy as a site of freedom, medical innovation, and non-discrimination in marked contrast to the oppressive policies of the U.S.A. Although the number of sex workers who applied for conference visas but were denied is unknown due to lack of systematic reporting, it is clear (via personal correspondence with official Conference Partnerships Manager) that a large number of

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[66] Allan Clear of Harm Reduction Coalition, <http://www.youtube.com/watch?v=jwZd3aj0K74> Accessed 5 April, 2013.

sex workers—five hundred—*reported* being deterred by the policy. Instead of applying for U.S. visas, they opted to attend the Kolkata conference. U.S. immigration restrictions had a chilling effect on full conference participation by multiple affected groups. An additional 180 international delegates—mostly African—*reported* being turned away based on U.S. immigration officials' fear that they would not return to their home country following the conference.[67]

The controversy over the international AIDS conference brings into focus contradictions between explicit humanitarian policy objectives and policy instruments that marginalize, subordinate, and reproduce oppressive hierarchies of power. Rational actor models of policy making can shed no light on such profound contradictions. Organizational politics and bureaucratic politics models would ascribe the problem to standard operating procedures of competing agencies with overlapping jurisdictions or the political machinations of particular politicians. In this chapter, I offer an alternative account. Using the 2012 International AIDS Conference as a "double mirror," I demonstrate how neo-colonial policies abroad reflect strains within the nation that marginalize particular citizens despite formal guarantees of equal protection of the law. Both U.S. visa denials and the conference protests illuminate two groups that are the primary targets of the TVPA (sex workers) and PEPFAR (AIDS-sufferers and activists).

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[67] "Most of the denials were from Africa. The hardest hit countries were Nigeria (29), Nepal (18), Ghana (14), Kenya (14), Ethiopia (11), Uganda (11)" (Helen von Dadelszen, Conference Partnerships Manager, International AIDS Society, email correspondence, July 18, 2013). It was clear from corresponding with von Dadelszen and from the conference website, that the conference itself made extensive efforts, including liaising with U.S. Customs and Immigration, to assist potential delegates in their efforts to attend the conference.

The controversy surrounding the conference makes clear that these two groups overlap. It reveals the exclusions enacted on particular bodies that are required to sustain a coherent idea of the nation (and couched in humanitarian terms). Two mirrors facing each other produce multiple, symmetrical images receding into eternity. By referring to the International AIDS Conference as a double mirror, I suggest that it produces the effect of holding foreign and domestic policy, and the interior and exterior frontiers they police, face to face, thus revealing symmetrical exclusions within and outside the nation-state.

Constructing the Boundaries of Belonging

As a settler society in the new world, the United States proclaimed itself a nation of immigrants, but only some immigrants were deemed eligible for citizenship.[68] Naturalization is the process by which immigrants become citizens. The terms of naturalization are established by law. The Nationality Act of 1790, one of the first laws enacted by the newly created United States Congress, unequivocally articulated the founding vision of a white race-nation,[69] restricting the right of naturalized citizenship to "free white persons" of good moral character. From the earliest era of the new republic moral character was tied to practices of policing. Those who managed to live in the

[68] I am particularly indebted to Mary Hawkesworth for helping me to make these links between immigration as a process of constructing the boundaries of belonging, and Fichte's "interior frontiers."

[69] Jacqueline Stevens (2010) analyzes the racial dimensions of nationhood and suggests that the term race-nation be used to foreground those constitutive relations. For discussion of the racist dimensions of the first Nationality Act, see Haney Lopez (2006: 14-15); and Yanow (2003).

country for five years without incurring any criminal record were deemed to be of good moral character and as such eligible for naturalization.

The Nationality Act introduced legal status distinctions between citizens and aliens, clearing new ground for the construction of racial and ethnic hierarchies. Over the course of the 19th and 20th centuries, increasingly restrictive immigration laws and naturalization policies produced new categories of racial difference by distinguishing between "assimilable" (European) aliens deemed eligible for citizenship after fulfilling the residency requirement and "unassimilable" aliens deemed permanently ineligible for citizenship. As Mae Ngai has powerfully documented, the legal designation "alien ineligible for citizenship" created a new subject population, resident within the borders of the nation but barred forever from the possibility of citizenship. Without rights, aliens deemed ineligible for citizenship were condemned to a "condition of racial otherness, a badge of foreignness that cannot be shed" (2004: 8).

Immigration law has changed many times since Congress passed the first Nationality Act in 1790, yet the regulation of gender, race, and sexuality in accordance with a particular conception of the American moral character has been a consistent feature of these changing laws. The Page Act of 1875 banned the immigration of Asian women for "lewd and immoral purposes" (Luibhéid 2002: 61). To avoid any question about their moral character, in the early twentieth century Japanese "picture brides" were required to wed on the docks as they disembarked at U.S. ports (Luibhéid 2002: 61). The Immigration Act of 1903 barred the admission of pregnant women "if they were likely to become public charges." The 1917 Immigration Act excluded polygamists or anyone who "believe[d] in or advocate[d] the practice of polygamy." Gay men and lesbians were

excluded first under the 1917 Immigration Act as "mental defectives." Beginning in 1952, new grounds were introduced for the exclusion of homosexuals: they were banned because "afflicted with psychopathic personalities." The Immigration Act of 1965 explicitly excluded gays and lesbians as "sexual deviants" (Berger 2009).

Immigration policies framed as public health measures and as economic measures have been entangled since their inception with ideological measures to shore up the nation. The Immigration Act of March 3 (1891), for example, provided for the exclusion of migrants with "loathsome," dangerous, and contagious diseases. The Immigration Act of 1882, provided for screening out "convicts, lunatics, idiots, paupers, and those likely to become a public charge" (Fairchild and Tynan 1994: 2011). These policies have been used instrumentally to screen out "undesirable" groups, with medical personnel working for the U.S. Public Health Service pressured to become the "agents of exclusion" at the border (Fairchild and Tynan 1994: 2019, footnote 12). The desire to contain threats to public health geographically, i.e., at the border, were intimately tied to eugenic notions associated with claims about the inferiority of other 'races' and the dilution of American genetic stock with foreign "germ plasm." Exams to identify "feebleminded" or insane immigrants resulted in "the disproportionate exclusion of Jews, Hungarians, Italians, and Russians at Ellis Island during the second decade of the 20th century" (Fairchild and Tynan 1994: 2019, footnote 9).

The AIDS ban grew out of this much longer tradition of restricting impure or contaminated stock from entry to the United States. Created in the mid-1980s, the AIDS

travel ban was a result of successful legislation proposed by Senator Jesse Helms[70] to add AIDS to the list of "loathsome" diseases used as grounds for refusing entry to migrants. Instead of focusing on those who engaged in behaviors that posed health risks, implementation of this "health" measure focused on migrants from Sub-Saharan Africa and Haiti, and homosexuals. Only certain groups were subject to a policy of 'blood containment,' groups that had long been racialized, associated with stereotypes about their voracious sexuality, and envisioned as a source of collective contagion (Fairchild and Tynan 1994). The ethnic, racial, religious, and sexuality biases embedded in U.S. immigration policy suggest that far more is at issue than preserving the health of the U.S. population. Various restrictions upon entry to the country provide clues to the constitutive exclusions that define the "American" national community. The grounds for policing the exterior frontiers also illuminate the "interior" frontiers of the political community.

A conception of the nation as a "community bound by common interest" is thoroughly compatible with Johann Gottlieb Fichte's theorization of "interior frontiers" as the essence of the nation (Stoler 1997). Coexisting with formal equality before the law, the notion of interior frontiers subtly shifts the meaning of citizenship from legal

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[70] In 2002, Helms proposed increased U.S. funding for HIV/AIDS sufferers abroad (it is not insignificant that mother-to-child transmission was the focus of the proposed funding). He reflected in a Washington Post op-ed that this apparent change of heart with respect to AIDS sufferers was related to his advanced age, nearness to death, and desire to do God's will, as it appeared to him as a result of the Christian AIDS conference described in chapter four: "Perhaps in my 81st year, I am too mindful of soon meeting Him, but I know that, like the Samaritan traveling from Jerusalem to Jericho, we cannot turn away when we see our fellow man in need" (Helms 2002). His comments never addressed his central role in turning away HIV-positive migrants—only his prior hesitation in providing funds for the eradication of the disease abroad.

equality to possession of a certain sensibility, a set of shared moral values, cultural orientations, and refined perceptions, which unite the people. Traditional criteria of citizenship, such as place of birth (*jus sol*) or lines of descent (*jus sanguinis*) are augmented by a notion of national identity as an ineffable set of invisible bonds. Equating the "essence of community" with an intangible moral attitude, particular righteous sentiments, and an enhanced sensibility, the state primes its citizenry to recognize and act upon a panoply of internal distinctions within the nation. Indeed those who embrace this heightened moral sensibility often feel compelled to act in defense of the nation, carrying out policies to preserve and protect what they hold dear. As the Minute Man movement of the late 20th century made clear, patrolling the borders to prevent the entry of "alien" elements was deemed the performance of a citizen's duty.

Fichte's conception of interior frontiers opens the possibility that the purity of the community is prone to penetration on its *interior* as well as its exterior borders (Stoler 1997). Harnessing this insight, law-makers define their task as purification of the nation. They act to purge the body politic of contaminants, construed as those who lack or threaten the morality associated with national character. Imagining the U.S. as a disciplined, morally-upright, and self-controlled citizenry, legislators assume the task of border patrol, identifying contaminants that must be stopped from encroachment on the nation or purged should they be found within.

As evidenced in laws pertaining to prostitution, notions of interior frontiers link issues of border patrol designed to avoid contamination to domestic arrangements associated with public order. A particular white heteronormative family formation is posited as the foundation of the state, while other forms of sexuality are conceived as

subversive or threatening. Both immigration law and domestic policy assume shared responsibilities to preserve and protect respectable citizens from those who might endanger the well-ordered polity.

Making Live or Letting Die

The operation of police powers to control threats and purge possible contaminants by managing migration and health in distinct communities might be interpreted as a manifestation of biopower/biopolitics. As conceived by Michel Foucault, biopolitics is a form of governmentality involved in regulating life and death carried out at the level of populations. Dependent upon the development of a form of statistical knowledge, biopolitics first "define[d] its power's field of intervention in terms of, the birth rate, the mortality rate, various biological disabilities, and the effects of the environment" (Foucault 2003: 245). As a result of shifting practices of sovereignty in the 18th century, reliance on physical punishment, torture, and imposition of the death penalty was displaced by processes of normalization, which produced self-regulating subjects whose desires and interests helped sustain the political order. Foucault was careful to note that biopolitics never totally *replaces* the previous paradigm of sovereignty, which preserved the power to "make die." Nonetheless, through the proliferation of medico-juridical knowledge operating in and through schools, hospitals, clinics, therapeutic practices, court proceedings, military training, public health measures, prisons, and every day surveillance, biopower generated "an explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations" (Foucault 1978, 139).

Anti-trafficking and anti-AIDS policies could be interpreted through a biopolitics frame, as examples of biopower. They are, after all, interventions ostensibly aimed at

public health and hygiene (abstinence, condom use), reducing morbidity (care for AIDS patients, access to anti-retrovirals); creating healthy, safe, and morally appropriate employment within the formal economy (training rescued, trafficked women to work in the service sector) and regularizing migration (prosecuting traffickers, closing borders). In their operation, however, these policies have marginalizing effects on distinct populations who are deliberately and often explicitly *not* targeted by the policies. In other words, the marginalized are subject to power's destructive potentials.

With his theorization of "necropolitics," Achille Mbembe takes issue with the interpretation of power as primarily productive as well as with any idea that current manifestations of sovereignty are concerned primarily with liberal projects of community self-creation through discourse. Mbembe defines necropolitics as those endeavors that revolve around the "subjugation of life to the power of death" (Mbembe 2003: 39). Reclaiming a notion of politics as primarily violent and warlike, Mbembe draws attention to the creation of 'death-worlds.' He contests historical narratives that characterize early and late modern politics as moving from, as Foucault frames it, the power to make die to the power to make live (Foucault 2003). Mbembe holds that critiques of modernity such as Foucault's have denied that modern politics consists of the work of destroying one's Other, "the warlike condition par excellence" (Mbembe 2003:18) in order to secure one's own life. Even Agamben, who follows Schmitt in asserting that the sovereign is determined by the capacity to decree the exception (and therefore the reduction of some elements to bare life), is in a position of arguing that the normal functioning of politics is to uphold life (Mbembe 2003: 14). According to Mbembe, this erroneous denial of politics as violence is rooted in Enlightenment assumptions about reason, truth and error,

and the sense that violence and reason are not compatible. He points out, however, that it is in modernity that death came to be mechanized, democratized and civilized through innovations such as the guillotine, which killed the high and the low with the same fell stroke, and did so efficiently, making large numbers of public executions possible. Terror, the bloody legacy of the French Revolution, is a *product* of reason. For Mbembe, particular modes of rationality provide "a way of marking aberration in the body politic, and politics is read both as the mobile force of reason and as the errant attempt to create space where 'error' would be reduced, truth enhanced, and the enemy disposed of" (Mbembe 2003: 19). Politics is, furthermore, a project of overcoming plurality (Mbembe 2003: 19-21). In contrast to governmentality's focus on managing life, Mbembe calls attention to "those figures of sovereignty whose central project is not the struggle for autonomy but the *generalized instrumentalization of human existence and the material destruction of human bodies and populations*. Such figures of sovereignty are far from a piece of prodigious insanity or an expression of a rupture between the impulses and interests of the body and those of the mind. Indeed, they, like the death camps, are what constitute the *nomos* of the political space in which we still live" (2003: 14).

Beginning with Mbembe himself, necropolitics has largely been studied in its warlike, violent, and brazenly exclusionary manifestations. His own illustrative examples are slavery, apartheid, and the Israeli occupation of Gaza—contexts chosen for the use of terror as part of the project of reason, as in the terror of the French Revolution—bodies are slain, wounded, and actively harassed and terrorized. Expanding on Mbembe's concept, necropolitics has been used to describe media-manipulated public animosity towards terrorists (Rose 2009); the excesses of neo-colonialism and neoliberal economics

('necroeconomics') - "a daily practice of amputation and slaughtering that steals our breath to resuscitate itself" (Agathangelou 2011: 242); and capitalist contributions to the subjection of life ('necrocapitalism') (Banerjee 2006). In each of these examples, the object of terror, dispossession or exclusion is relatively unconcealed—necropower is more or less undisguised. Terrorists, for example, are not only subject to assassination without due process of law but are also explicitly excluded from public mourning (Rose 2009); austerity measures that impoverish and dispossess are celebrated as 'shock therapy.' None of these practices are savory on their surfaces.

By contrast, humanitarian policies such as PEPFAR and the TVPA, appear on the surface to be benign and commendable; they are glossed as the politics of assistance, or indeed, of rescue. When the marginalizing effects of U.S. AIDS prevention and anti-trafficking policies are taken as the focus of analysis, however, the boundaries of biopower and necropower begin to blur. On the one hand, these policies manifest global attempts to uphold and improve life for some, while at the same time making life impossible—or at least conditional—for others. Foreign policy initiatives that afford life-saving funds for anti-HIV initiatives are tied to increased policing and harassment of sex workers. Immigration rules that bar sex workers from attending conferences where life-saving information is shared draw clear boundaries between those deemed worthy of life and those marked for exclusion, regulation, and death.

The 2012 AIDS conference can be used as a double mirror to trace parallel boundaries of inclusion and exclusion among U.S. citizens. Interior frontiers exclude sex workers in the U.S. from the boundaries of community with life-threatening consequences. As in foreign policy contexts, the worst excesses of necropolitics within

U.S. domestic spaces are linked to a politics of humanitarianism. Biopolitics provides justificatory narratives that sustain policies, which operate according to a necropolitics that is not only raced (as Foucault and Mbembe note) but gendered and classed.

The 2012 AIDS conference was devoted to continuing dialogue about productive solutions for treating and eradicating HIV/AIDS, and addressing the social justice issues posed by the epidemic. The conference brought the media spotlight to practices of exclusion that blocked former and current sex workers from crossing the border and gaining entry to the United States. Far less attention has been paid, however, to the exclusion of sex workers from outreach and prevention efforts within the United States itself. At all levels of government, the United States has undermined efforts to curb the spread of HIV/AIDS by sending mixed messages where sex workers are involved. This was documented most disturbingly in Human Rights Watch's 2012 report "Sex Workers at Risk," which revealed systematic discrimination by police against sex workers in four U.S. cities: New York, Washington, D.C., Los Angeles, and San Francisco. The report calls attention to the police practice of using condom possession as "evidence" of prostitution, and making arrests on the basis of condom possession alone. It details police intimidation of sex workers (and outreach workers) by confiscating condoms. The report also documents racial and sexual profiling of transgender people, blacks and Latinas in particular, and the phenomenon of publicly 'defacing' transgender women by removing wigs, breasts, and other markers of gender identity—a practice troublingly similar to the act of 'sex verification' via forced genital exposure, which has often preceded violence against and even murder of trans people (Bettcher 2007). In addition, the report indicates that sexual blackmail, requiring sex workers to sexually service

police officers in order to avoid arrest or detention, remains a common practice. Members of particularly marginalized communities can face extremely serious and frightening consequences if they are arrested (even if they are not charged). Informal migrants may face fingerprinting and screening for migration violations. Transgender women face the possibility of incarceration alongside men. HIV-positive individuals face a felony rather than a misdemeanor charge if they are found to be engaged in a second offense for sex work. In this law-enforcement climate, the consequences of carrying condoms are prohibitive, even for non-sex workers and former sex workers who are merely members of profiled communities. Human Rights Watch reports a widespread belief amongst sex workers that there is a legal limit of two or three condoms per person, and that as a result of this, and police harassment, sex workers often do not carry the number of condoms required to safely perform their work.

Policing of condom possession clearly demarcates some citizens from others—on the basis of class, sexuality, gender and race. What middle or upper class person would ever be required to disclose, much less justify, their use of condoms? Undoubtedly, some of the very police officers who confiscate condoms from sex workers would advocate condom use by their own teen-aged children. So in actively discouraging condom use in sex worker and other marginalized communities, there is something very sinister at play—more akin to necropolitics than biopolitics. By confiscating condoms, an officer of the law places sex workers and marginalized populations on notice that they are subjects of surveillance (which may lead to sex workers' fear that they are subject to arrest whenever they move about the city, go to the store for groceries or visit girl/boyfriends, for example). In confiscating condoms, law enforcement officials convey another

message that the health of sex workers is of no concern to the state, that they are disposable and perhaps even that they *should* get sick. At the very least, they are treated as if it does not matter if they do.

The act of letting die is not as simple as it seems, however. The confiscation of condoms and intimidation of people with condoms takes place within a context of mixed messages, as many of the condoms that are confiscated or disposed of by police are condoms distributed by publicly funded organizations. Indeed, Human Rights Watch points out that while Health Departments in cities like Los Angeles have prioritized HIV prevention among transgender women, city governments send a mixed message about condom use. They point out the irony that if a sex worker were incarcerated in any of the cities in their report, s/he could obtain condoms in jail, where they are distributed for the purposes of disease prevention. One sex worker summarized the contradiction quite succinctly: "Why is the city giving me condoms when I can't carry them without going to jail?" (HRW 2011: 3).

Patrolling interior and exterior borders raises additional contradictions in relation to victims of trafficking. As mentioned in chapter three, a special, "T-visa" is available to victims of trafficking through the TVPA. The T-visa "protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking."[71] Victims are eligible for a T-visa, which accords non-immigrant status to the victim and qualified family members, allowing them to

[71] U.S. Citizenship and Immigration Services <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=02ed3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=02ed3e4d77d73210VgnVCM100000082ca60aRCRD> Accessed 13 March 2013.

remain in the U.S. *if* they provide information about their traffickers and assist in their prosecution**.** They also must meet other criteria, including general admissibility to the U.S., and ability to prove that they "would suffer extreme hardship involving severe and unusual harm if [they] were removed from the United States." They may apply for permanent residence after three years.[72] In a piece of legislation in which the word 'protection' looms so large and appears with such frequency, there is a serious lack of concern about the coercive dimensions of this constrained option for migration or the consequences for trafficked persons who return home. Protection under the terms set by the T-visa only lasts while the victims assist in prosecution of their traffickers. Victims who are sent home, due to lack of information to share with law enforcement, or fear of sharing information, are left to their own devices. Returning home after testifying against their traffickers or otherwise assisting in the case against them (or even being suspected of doing so) is a dangerous prospect for many trafficked people. Those who have experienced sexual violence need continued protection, legal and medical assistance, which may not be available in their communities of origin. Many who have been coerced into sex work face the prospect of shunning in their home communities due to taboos surrounding sexual labor (Pearson 2002: 56). Other trafficked people return home to be threatened or actually harmed by traffickers, or to be re-trafficked, because they continue to face the same economic 'push factors' that led them to migrate in the first place (Goodey 2004: 38**)**. Insofar as the anti-trafficking legislation aims to stop human trafficking worldwide by deterring traffickers through the threat of criminal prosecution,

[72] Remember also that T-visas are capped at 5000, any additional applicants are placed on a waiting list—though the 5000 limit has never been reached.

according priority to punishing traffickers is a consistent move. However, the failure to offer a guarantee of immigrant status **(**or in more contemporary terms, a "pathway to citizenship") to trafficked people, to coerce them into potentially dangerous collaboration with law enforcement, to wash hands of them after prosecution occurs, and more broadly, failure to relax the controls on migration that lead people into risky patterns of migration in the first place seems like a far cry from Rep. Chris Smith's injunction to put 'sandbags' around trafficked women to protect them.

The contradictions apparent in the 2012 International AIDS conference mirror problematic contradictions in the U.S. commitment both to HIV/AIDS reduction and to anti-trafficking (and indeed to women). The contradictions in both cases are enacted on the bodies of people (mostly women, given anti-trafficking's focus on women) who engage in sex work**.** The result is a form of "uneven humanitarianism" in foreign and domestic policies that support life for some while jeopardizing the lives and livelihoods of others. In the cases of HIV/AIDS and anti-trafficking, both policies require the inclusion of sex workers for the success of their initiatives. Yet notions associated with preserving the moral well-being of the community press the state toward policing practices that marginalize and place at risk a group whose inclusion is required for the success of its policies.

Lisa E. Sanchez's work on the sex worker as "excluded exclusion" helps to illuminate the power dynamics in the state's self-defeating marginalization of "prostitutes." Comparing the prostitute to Agamben's *homo sacer,* Sanchez (2004) notes that *homo sacer* is the figure of the male outlaw, an included exclusion who is displaced, but who has the possibility of return. He can be redeemed, and move from outside to

inside, reclaiming his place in the community. The prostitute by contrast, is the excluded exclusion, for whom there is no possibility of reintegration, and whose eternal externality marks the space outside the community—that space to which *homo sacer* may be exiled, but from where he may return. To illustrate her point, Sanchez discusses the "prostitute-free zone," a policy of reverse-zoning adopted in many U.S. cities, according to which sex workers are banned from entering a particular area of the city. In accordance with this policy, any sex worker caught within the zone is charged with criminal trespassing, even while conducting lawful activities. The prostitute-free zone rests on the assumption that sex workers do not *live* in the space protected from the contamination of their presence. Creation of prostitution-free zones suspends the citizen's right to free movement and choice of domicile. It also inhibits sex workers' ability to perform other, legal tasks unrelated to sex work, tasks that are not denied to other citizens. For example, Sanchez documents the case of one woman who was jailed for trying to pick up her child from a sitter, which involved entering the prostitute-free zone. Another sex worker was picked up in a prostitute-free zone and taken by a client to the outskirts of the city (since the client did not want to be caught in the zone). She was subsequently raped and dumped, nude, in the woods. Thus the prostitute-free zone makes clear the increasingly blurred boundary of biopolitics and necropolitics in a policy that protects the moral integrity of some members of the community at the cost of the utter exclusion, erasure and banishment enacted on the bodies of sex workers, even at moments when they are acting wholly within the bounds of law.

That a sex worker can be arrested while engaged in lawful activities signifies the impossibility of her return to community membership. Her being is reduced to sex work.

The only aspect of her identity that is recognized is that of prostitute. All other roles are preempted (shopping, caring for children, owning or renting a home, etc). Quite tellingly, the prostitute-free zone is called a "quality of life" measure even as it renders impossible the sex worker's re-entry into legal activities and the normal life of a citizen when off work (Sanchez 2004: 869-870).

The denial of visas to sex workers who wished to attend the AIDS conference in July 2012 also marked the permanent outsider status accorded sex workers. The United States imposed restrictions on their travel even knowing that conference attendance—not the performance of sex work—was the reason for their effort to enter the country. The United States denied visas to those who no longer engaged in sex work, insisting that the fact of past sex work was sufficient grounds for permanent exclusion, suggesting an assumption that future sexual behavior is determined by one's sexual history. Similarly, the Human Rights Watch Report on the police targeting of sex workers revealed that former sex workers engaged in legal activities such as grocery shopping or visiting friends and lovers were harassed by police. Under such circumstances, normal life, and therefore belonging, becomes impossible for sex workers. Whether they are U.S. citizens or migrants from abroad, interior and exterior borders bar them from participation in community life. As Pei-Chia Lan (2008: 835) has pointed out in another context, locals are excluded via technologies of citizenship (e.g., in this context reverse zoning) while foreigners are excluded via technologies of anti-citizenship (e.g., in this context border control).

Deployed against groups that are perceived as other or alien, necropolitics creates that very otherness in the process of excluding, subordinating, or subjecting to violent

intrusion. Whether the exclusions are overt and systematic or operate according to an ironic logic of de facto exclusion through formal incorporation, such as equality laws, ideals of neutrality and *laïcité*, necropolicies produce, sustain, and enforce boundaries. A chasm must exist in terms of membership and belonging to justify deserting and exposing to death some while saving others. Mbembe calls attention to early forms of colonialism to demonstrate the construction of these boundaries. He notes that indigenous modes of organization and governance were not understood by colonizers as subject to *jus publicum*, the foundation of reciprocity and peace among European states. Not being "organized in a state form" or having created "a human world," the colonies were seen as inhabited by "savages," with whom it was impossible to conclude peace (2003: 24). In the case of the occupation of Palestine, the two peoples who compete for the divine right to occupy the same space are too similar and connected to rely on racism as justification for violence. Otherness in this scenario is rooted in the sacred: "Violence and sovereignty, in this case, claim a divine foundation: peoplehood itself is forged by the worship of one deity, and national identity is imagined as an identity against the Other, other deities…As a consequence, colonial violence and occupation are profoundly underwritten by the sacred terror of truth and exclusivity" (2003: 27). In both cases violence or necropower, as a "terror formation," is applied to groups who are constructed as outsiders, and insiders are discouraged from identifying with them. Biopolitics also is deeply invested in the production of otherness. As Foucault notes in his discussion of racism, for example, the creation and implementation of racial categories is the condition that allows biopower to reconcile its imperative to make live with its ability to make or let die. Racism, but also classism, (hetero)sexism, patriarchy, allow the state to construct

and patrol interior frontiers. “What in fact is racism? It is primarily a way of introducing a break into the domain of life that is under power’s control: the break between what must live and what must die” (Foucault 2003: 254-55).

U.S. anti-AIDS and anti-trafficking policies provide vivid examples of the construction of interior and exterior borders along intersectional axes: race, gender, sexuality, class, and transactional sex become boundaries subject to intensive policing practices. To protect the well-being of the community, sex working others must be contained—denied entry if they are foreigners, subject to surveillance, coercion, and constraint if they are citizens. The rhetoric of assistance figures prominently as the boundaries of biopolitics and necropolitics converge; but the “objects of the assistance” are still cast as others and ultimately marginalized. Otherness in this sense is what brings them under the lens of ‘improving’ projects.

Measures to keep out the sick, the “deviant” and the poor have been studied in the context of asylum appeals and immigration screening in Western states, and sexual offence laws globally. These studies reveal noteworthy patterns. Most prominently, would-be immigrants, and to a lesser extent travelers, are subject to suspicion. Underlying that suspicion is the naïve notion that everyone in the world can be placed within a dichotomous classification that pits innocence against guilt, the ingénue against the malevolent perpetrator of fraud. In the terms of border patrol, every applicant for entry is either a legitimate victim who is the worthy recipient of mercy and sanctuary or a fraud attempting to pass as a victim (e.g., a refugee or a sex slave), a potential sponge on state resources who deserves exclusion from the political community. Much like the naïve sex trafficking victim who is invoked in congressional debates in chapter two, and

in popular media discourses discussed in chapter three, and like the innocent mother passively infected by AIDS who constitutes Jesse Helms' ideal victim in chapter four, immigrants must carefully navigate the shifting demarcations between the two categories.

In her study of immigration policies in France, Miriam Ticktin (2011) discovered that female asylum applicants had a much better chance of success if they framed themselves as 'slaves' or victims of exoticized and culturalized forms of violence (e.g., forced marriage; confinement) against which France compares favorably. An immigration judge, who confided to Ticktin that the distinction between truth-tellers and liars could be based on personal intuition, also noted that judges tire of, and become suspicious of the 'same old stories' (137). Thus the threshold of judges' sympathy is unstable and subject to precarious shifts. In the absence of any information about a particular judge, applicants must be savvy enough to gauge how to frame their stories at any given moment, to tap into what 'feels' real to their judges. Many of the *sans papières* (undocumented) women whom Ticktin studied failed to obtain papers, yet they had lived the same experiences as their (usually younger) contemporaries who had successfully framed themselves as "slaves" and obtained papers.

Similarly, Susan Berger's (2009) investigation of asylum requests in the U.S. concluded that women who were able to frame a victim narrative in terms that condemned their countries of origin as patriarchal places where women were not protected, tapping into the stereotypical depiction of the "third world woman," were more likely to be successful (671). In both France and the United States, "[i]mmigration acts like a border around national identity" (Berger 2009: 659). France and the U.S. avoid

granting asylum in cases that are "too close to home"—cases that would force them to confront the reality that the same or similar abuses (e.g. spousal abuse) occur within their borders. By reserving entry for those whose narratives culturalize oppression, both France and the USA preserve their neocolonial notions about the global South as backward and uncivilized, and position themselves as saviors who can provide rescue to worthy victims. In this way, immigration is a site where national identity is shored up around the perceived truths or lies, sincerity or insincerity of the migrant.

To acknowledge that immigration is a mechanism for 'bordering' national identity is also to recognize that immigration visas are subject to shifting and largely discretionary (i.e. arbitrary) standards, as revealed by the judge's admission to Ticktin. At times, immigration standards shift when public anxieties about deception fix on the reproductive powers of women migrants. Anticipating recent U.S. discourses concerning "anchor babies," Ireland revoked birthright citizenship[73] in 2004. As Eithne Luibhéid pointed out, this dramatic shift in policy was occasioned by widespread anxieties about migrant women using their sexual organs to bypass migration controls by giving birth in Ireland and then obtaining citizenship through their Irish children. "In these instances, non-national women's sexualities occasioned the re-bounding of the nation-state and the tightening of exclusionary immigration laws" (Luibhéid 2006: 75). Economic migrants are often deemed to be hoaxes, pretenders and deceivers, who pose a threat to the financial stability of the receiving state. In contrast to those who flee their own oppressive cultures, those fleeing economic devastation or brutal impoverishment are

[73] Birthright citizenship refers to the practice of granting citizenship to any person born on national soil.

intuited to be thoroughly unsympathetic, distasteful, and contaminating. HIV/AIDS-infected migrants from Haiti have faced charges of 'economic migration' since the 1987 AIDS travel ban, even sometimes being detained/contained for years with their families at Guantanamo Bay (Fairchild and Tynan 1994: 2015). The assumption in U.S. discourse about AIDS sufferers seeking asylum is that they will, inevitably, be unable to support themselves or pay for any of their medical care—a claim that has not been empirically supported (Fairchild and Tynan 1994: 2017). Nevertheless, the 1882 immigration law allowing the state to force back those likely to become a public charge becomes entangled in complicated ways with the 1891 law rebuking those foreigners with loathsome or contagious disease. The imperative of giving refuge to worthy claimants easily gives way to fears about opening "floodgates" to dependents on the state. Potential concern for pregnant women seeking adequate medical care in the West (Luibhéid 2006: 72) or to victims of domestic violence (Berger 2009: 668) quickly yield to the reality that all women in the same position would be able to make the same claim if even one were allowed to enter. In the context of the rhetoric of migration 'flows' and 'floodgates,' Representative Chris Smith's reference to "surrounding vulnerable women with sandbags" takes on far more cynical tone. Too many of "them" must not be allowed to flow in. Thus, the 5000 person cap on visas for trafficked women and children appears to have far less to do with the problem of inaccurate estimates of trafficking victims and and far more to do with moral policing of borders. The only way to circumvent immigration rules mandated by Congress, is to tap into the individual discretion and compassion of immigration officials—a perilous and uncertain affair.

Here I would like to once again compare the fate of potentially contaminating

foreign outsiders to that of "outsiders within" (Lan 2008: 834). Talia Mae Bettcher (2007) has helpfully discussed the perils faced by trans people in the U.S. as they are confronted as either "evil deceivers" or "make believers." Those trans people who do not explicitly flag the discrepancy between their gender presentation and their genital status are cast as evil deceivers, who victimize those around them – those who have an implied right to know their genital status, interpreted as their true identity. Trans people who are raped, beaten, tortured or murdered are often framed as the wrongdoer, who victimized their abusers and killers through their "deception." This apparent deception is used to excuse the violence against trans people—such as the successful use of the "trans panic" defense to lessen sentences of murderers, who purported were not fully responsible for their violence because they were deceived (Bettcher 2007: 44). In a similar way, migrants are streamed into innocent ingénue or "evil deceiver" categories. Those who fail to correctly frame their narratives are deemed deceitful and are thus "fairly" subject to the violence of deportation, which may include returning to domestic violence, state violence, the clutches of traffickers; or structural violence such as lack of opportunity, lack of medical care, and poverty.[74]

To conclude, the sick, the "deviant," the poor, and the more vaguely defined "unassimilable" are policed by drawing both interior and exterior frontiers, designed to

[74] In a particularly troubling, yet illuminating example, the residents of Lawrenceville, VA, recently (June 2014) held a town hall meeting in order to overwhelmingly reject plans to house unaccompanied immigrant children in an abandoned local college. In a three and a half hour session of xenophobic vociferation, residents accused these homeless immigrant children of harboring communicable diseases and drug habits, and of being secret gang members, and non-minors disguised as minors. Those who did not go as far as to claim "we don't want you here" suggested instead housing the children in an abandoned local prison (see Eric Byler, <http://www.storyofamerica.org/lawenceville> Accessed 27 June 2014).

shore up, or "re-border" the nation. The dialectical force of labeling particular people as "sick," "deviant," "unnatural" or "deceitful" lies in its ability to designate other bodies and sexualities as natural – bodies and sexualities that are "productive" for the nation (heterosexual, patriarchal, monogamous, nuclear, etc.) (Alexander 1994). Just as Ireland has promoted policies to prevent pregnant women from traveling abroad in order to prevent abortions as part of its avowed "pro-life" national status (and the moral high ground that accompanies it) (Luibhéid 2006), the U.S. has promoted policies that exclude sex workers and those who willingly engage in "non-reproductive" sex—from trafficking and HIV/AIDS assistance—as part of its attempts to promote itself as a new abolitionist state and as a Christian state.

Ironically, perhaps, both biopolitics and necropolitics rely on mechanisms of identification to generate policies that produce otherness. At a very basic level, identification *with* suffering bodies may be the most powerful device for gaining widespread support. Vivid descriptions of physical suffering invite policymakers and members of the public alike to imagine the pain suffered by victims of injustice, and by being able to imagine a small part of that suffering, to care about it. One witness before a congressional subcommittee provided heart-rending descriptions of trafficked boys as depicted in Ruchira Gupta's documentary film "The Selling of Innocents": "The suffering of boys was evident from their mangled bodies, their growth stunted, spines bent almost in half from the oppressive weights they were forced to carry in the

construction industry until they were rescued."[75] As the quotes in chapter two demonstrated, some congressmen linked their own fatherhood to their concern for trafficked women and children, demonstrating the powerful pull of identification to motivate policies that assist those who are suffering. The TVPA and PEPFAR are both projects that rely heavily on identification with the suffering of others. Both envision themselves as exorcizes of biopower—productive, positive enterprises aimed at improving life and health of target populations. Yet it is precisely this identification with sufferers in the context of population management that sets necropolitics in motion—the instrumentalization of human life and the creation of death-worlds.

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[75] "Slavery Throughout the World—Hearing Before the Committee on Foreign Relations" 106th Congress, second session (2000) <http://www.gpo.gov/fdsys/pkg/CHRG-106shrg69751/html/CHRG-106shrg69751.htm> Accessed 15/5/2012.

Conclusion

Taking the contradictions within the TVPA and PEPFAR as a starting point, this dissertation explores how we might account for the disparities between the stated goals of apparently humanitarian policy, and their markedly uneven effects. By providing detailed background on their emergence, I have demonstrated in chapters two and four that both the TVPA and PEPFAR were framed by U.S. lawmakers as a celebratory account of the American nation (necessarily at the expense of marginalized populations); that in important ways the agenda was set or captured by conservative interests; and that their outcomes were either ambivalent or downright harmful to some communities, while targeting others for assistance. In short, both policies engage in projects of sexual regulation that shore up or "re-border" the nation along lines that privilege people of particular races, classes, genders, and sexual orientations. Chapter three made use of textual and visual materials from popular culture to illustrate that mainstream sources are complicit with, and indeed share in, the production of knowledge about these issues, framed along humanitarian lines. Chapter five examines how domestic policies mirror the exclusions of foreign policy (TVPA and PEPFAR), policing interior frontiers. This discussion reinforces how "letting die" is the usually invisible but important dialectical foil to the "make live" humanitarian projects.

The main argument of this dissertation is that the TVPA and PEPFAR, as examples of U.S. international aid and development projects, are uneven and contradictory by design. Despite their triumphal celebration of U.S. good will toward the world's less fortunate, their humanitarian logic masks exclusionary practices embedded in the legislative language and manifested in their implementation. My discussion of

humanitarian logic, or uneven humanitarianism, suggests that if policymakers (and anti-trafficking or anti-AIDS campaigners) understood the issue as one of human *rights*, a good deal of unevenness would be leveled. Humanitarian logic encourages Western actors to think of themselves in terms of saviors, gift-givers, compassionate and generous people—and perhaps they are. However, such a framework reproduces the colonial civility-barbarity divide, which shields Westerners from their own complicity in the global injustices that inform the very crises they try to mitigate. It focuses on their *duties* as compassionate people, making the global South recipients of their largesse beholden to them. It thus enacts a double marginalization on residents of the global South, first by constructing self-congratulatory Western narratives at their expense (without shining the light of cultural criticism at the West); and secondly by framing aid as something one-sided for which they should be grateful (i.e. as a true gift).

Policymakers and activists often refer to their work in terms of "human rights," assuming an equivalence between human rights and humanitarian interventions. Through careful exegesis of competing discourses surrounding the French Revolution, I have shown that there are important differences in these theoretical frameworks. Human rights frame basic needs as entitlements, which impose an obligation on governments to provide and protect and for which none need be grateful or beholden to others. If trafficking and AIDS policies foregrounded the concept of rights, there would be little space for the *noblesse oblige* that currently informs TVPA and PEPFAR. A human rights approach would also necessitate a close look at the structural factors that impede the fulfillment of basic needs, creating levels of desperation that lead people into the behaviors that place them at risk for being trafficking or contracting HIV.

My appeal for a rights-based approach to anti-trafficking and anti-AIDS efforts, however, does not mean to suggest that human rights have been implemented unproblematically across the globe over the past several centuries. Rights can be and often are, taken on their own, problematic. Numerous critics have analyzed bias in the conceptualization of human rights tracing their bourgeois origins and characterizing them as Western impositions. Others have investigated how human rights discourses have been a foil in Cold War politics that afford few benefits to those in the shatter zones constructed by superpower rivalry. To address these important considerations, I discuss Makau Mutua's book, *Human Rights: A Political and Cultural Critique,* one of the most recent and eloquent critiques of human rights. I conclude this discussion by insisting that rights do not have to be "Western" or "liberal" and that they are too powerful as tools of change in the contemporary context to discard.

Mutua devotes a significant portion of his book to the identification of various problems with human rights as currently conceived, most notably their inseparability from liberal democracy, and their deployment as political tools against the global South. He traces the hidden Eurocentric bias of human rights, highlighting key texts from the most pivotal human rights documents that are merely modified versions of U.S. legal documents. He demonstrates that international nongovernmental organizations (INGOs) dealing with rights are modeled on and staffed by former members of U.S. civil rights organizations. This does not, in and of itself, provide convincing evidence that rights as currently conceived are destined to remain morally unconvincing in the global South. More powerful is his charge that most liberal proponents of rights in the West have ignored non-liberal democratic orientations around the concept of human rights that have

emerged from the global South, and instead use the concept of rights merely as a tool to criticize what is lacking in the global South (by contrast with the presumed firmly-entrenched status of rights in the West).

But Mutua also turns his attention to the African contribution to human rights. In the most provocative argument of his book, Mutua reconstructs a set of "shared basic values [which form] the index of the African cultural fingerprint" (77). He draws particular examples from precolonial societies such as the Akamba of East Africa and the Akan of West Africa as discussed by African philosophers (Kwasi Wiredu), ethnographers (Joseph Muthiani), and politicians (Julius Nyerere). Mutua claims that precolonial African cultures recognized and valued the rights of the individual, yet framed protections for the individual within the family as a greater sociopolitical unit (75-77). In addition to the protection of the individual within the family, he summarizes the index of African values as follows: "deference to age[…]; commitment and responsibility to other individuals, family and community; solidarity with fellow human beings, especially in times of need; tolerance for difference in political views and personal ability; reciprocity in labor issues; generosity; and consultation in matters of governance" (77-78). According to Mutua, pre-colonial African cultures developed complex systems of human rights "including the rights to life, personal freedom, welfare, limited government, free speech, conscience, and association" (78). These rights were embedded in everyday practices of community life. Free speech and limited government, for example, are evident in the practices of the Akan who were entitled to publicly criticize the decisions of their governing councils, and who held the power to dismiss an oppressive chief (76).

Within these African values and practices, the group prefigures the individual, offering an alternative model to Western notions of rights which privilege the individual. Mutua believes this group-based model should supersede the current model of human rights, which focuses on individual rights held against the state. Precisely such a group-based commitment emerges in the 1986 African Charter on Human and People's Rights. According to Mutua, it was the group-based "duties/rights conception" of the African Charter that made it controversial in the West. The African Charter identifies specific rights of nations and of the African community to be held against individual members. As an example of direct duty on the individual, Mutua identifies article 29 (4), which calls on the individual to "preserve and strengthen social and national solidarity, particularly when the latter is threatened" (qtd on 87). An indirect individual duty is exemplified in article 27 (2): "The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest" (qtd on 88). Mutua identifies this right as an explicit limitation on the enjoyment of individual rights, and an insistence that they are not absolute (88).

Mutua suggests that the subordination of individual freedom to collective ends diverges fundamentally from a Western rights framework, which is puzzling because even classical thinkers on rights such as Locke and J.S. Mill acknowledge that the sphere of individual rights extends only so far as the rights of other individuals. Mill's harm principle, that people are only free within the realm of self-regarding action (action that does not affect others), is perhaps the clearest example of this. Mill's very argument for freedom in thought, expression, belief, action, etc. in *On Liberty* was, furthermore, not necessarily a theory that was obsessed with the individual. He is clear that the rationale

for such freedom is that society as a *group* will improve and advance through the innovation and discovery that can only emerge within the context of openness to difference. This concern for the well-being of society and community is also clear in *The Subjection of Women*, which justifies women's paid employment based on the argument that society will only be held back if its most talented members, women included, are kept unnecessarily in the home. At the same time, it is his concern with oversupply of workers and its consequent wage deflation as a problem for the population as a whole that causes him to complicate his argument by ultimately asserting that most women should remain at home, after all (see Hirschmann 2008). It is difficult to agree, therefore, that the African Charter proposes something new when it proposes to limit individual rights. This has long been part of the Western conception of rights. Only the worst straw man argument could purport to depict rights as unbridled individualism.

Mutua's more important and persuasive argument, however, is that the African Charter is different in an important way in that it places the community explicitly before the individual by setting forth clear responsibilities for individuals and making them guarantors of rights, as in article 29 (4). Let us turn, then, to a consideration of the merits of the kind of "duties/rights conception" that privileges the community over the individual. Contrary to a typical Western understanding, Mutua insists that rights are not *inherently* universal. In order to be applicable universally, rights must be a fair reflection of culture. He observes that rights are usually coupled with liberal democracy, which he loosely associates with elections and a state's commitment to formal equality and individual autonomy best exemplified by civil and political rights (45-46). But, Mutua takes exception to the claim that rights are usually (or always) exported as part of a

package in which they are inseparable from liberal democracy. He challenges the assumption that the political *form* necessary for the realization of human rights must be a predominantly Western political form. The *content* of rights has also been typically "exported." That is to say, Western states, or Western-led institutions often decide in advance what the precise *content* of rights should be, the world over. Female genital cutting (FGC) provides an affecting contemporary example. Western observers often assume from the outset that the practice runs counter to human dignity, however an approach that respects pluralism over universalism "would first excavate the social meaning and purposes of the practice as well as its effects, and then investigate the conflicting positions over the practice in that society" (Mutua 8). Rights, he correctly insists, must be fundamentally concerned with a commitment to human dignity, which must be culturally determined if it is to respect cultural pluralism. To frame it in James Scott's terminology (1998), the commitment to human dignity must be made culturally "legible:" "[human rights] norms and structures must be grown at home, and must utilize the cultural tools familiar to the people at the grassroots. Even if they turn out to resemble the ideas and institutions of political democracy, or to borrow from it, they will belong to the people" (Mutua 5). This acknowledgment would relax the Wests' grip on the content of rights and go a long way to addressing the deployment of rights as a tool of cultural imperialism.

Mutua acknowledges that not all cultures will understand the rights of the individual as being of prime importance. For that reason, rights practitioners should be open to the idea that liberal presumptions about individual autonomy will not necessarily

prevail in all places. Burke himself expressed a fear that the human rights forwarded in his own time would yield a selfishness damaging to the public good:

> The worst of these politics of revolution is this; they temper and harden the breast, in order to prepare it for the desperate strokes which are sometimes used in extreme occasions. But as these occasions may never arrive, the mind receives a gratuitous taint; and the moral sentiments suffer not a little, when no political purpose is served by the deprivation. This sort of people are so taken up with their theories about the rights of man, that they have totally forgot his nature (Burke 1793).

The point here—that communal well-being must not be discarded for individual liberties—is well taken. However, here we must distinguish between desirable values, such as values of care for others, and how best to ensure that rights, whatever their content, are realized.

Mutua and several other proponents of a cultural pluralism in rights have appropriately highlighted Western or at least liberal Western tendencies in global rights frameworks. The alternatives, certainly as they appear in the African Charter, however, should also give us pause. Some of the most pressing worries about group rights should address conflicts between individual and group rights; conflicts between the rights of the nation and other types of group; and concerns about the nation as a rights-bearing unit. To begin with, it is all too clear that when rights are accorded to a group, the rights of some of its members are subordinated to, or lost within the interests of the whole. It may be that certain rights violations become invisible within groups because particular experiences of oppression are naturalized, or assumed to be private, such as the physical abuse of women or enforced heterosexuality (Bunch 1990: 491; Bunch 1995: 14-15), which communities do not recognize as rights issues. It may be that individual rights are subordinated within groups in more concrete and sinister ways, such as the case of gender

violence within the context of multicultural accommodation. Sherene Razack has pointed out that judicial attempts at group accommodation for Aboriginals within the Canadian courts, for example, has tried to address the problem of high incarceration rates of Aboriginal men. This has been poorly conceived, and has resulted in light or no sentences for men who rape and beat women, leaving many Aboriginal women with the choice between continuing to live with abusers, or voluntary exile from their communities (1994). The existence of these complications should lead us to tread carefully when it comes to privileging the group above the individual.

Group rights also must address the inevitable problem of conflicts with other forms of group rights. In this case, the rights of a nation or a political community can and often do run counter to other types of group rights, such as religious rights, ethnic minority rights, women's rights, or the rights of the child. For example, a nation's perceived right to existence and social cohesion can encroach upon women's right to bodily integrity—as when women are put upon to be both physical and moral reproducers of the nation (Yuval-Davis 1997; Alexander 1994; Luibhéid 2006);[76] or prevailed upon to

[76] Eithne Luibhéid (2006) gives the example of the Free State of Ireland which, in the 1920s and 1930s, sought to establish "Irish" identity in contrast to English identity, and mobilized women's reproductive sexuality to do so. Thus, "Article 41.2.1 of the [1937] Constitution says that 'the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.' Consequently, according to Article 41.2.2, 'The State shall endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home'" (Luibhéid 2006: 84). This not only made some (white) women responsible for maintaining "Irishness" (by mandating reproduction) but also excluded a number of other groups (e.g. immigrants, Jews, Muslims) (Luibhéid 2006: 63). In 1992 the Irish Supreme Court also ruled that a pregnant woman's right to travel was subordinate to the state's duty to protect her fetus (Luibhéid 2006: 66)—part of sustaining Ireland's moral (pro-life) identity.

keep quiet about their needs, lest they encourage poor perceptions of their nation or threaten the privilege of elite members of their group (see for eg. Shachar 1998). In the case of the African Charter, which Mutua chooses as exemplary of African values in that it puts the group before the individual, the idea of holding individuals accountable as guarantors of rights should concern us as well. It seems undeniable that colloquial usage of rights language in the West encourages people to think in terms of what entitlements they can claim, rather than what responsibilities they have to their community. A strong sense of community is sorely lacking in most of the Western world. However, this must be balanced with the interest of avoiding the sacrifice of the individual for the group. A too-firm duty (such as a legal one) to one's state or nation removes an exit option for those who feel it necessary to leave their group, whether for lack of opportunity, the reality of indignities and abuse, concerns over personal security, or other equally compelling reasons. Should an academic be forced to remain underemployed at home, when she could leave her community for meaningful and gainful employment and better life opportunities elsewhere? The nationalist perspective further assumes, wrongly, that the nation is a safe and benign place for all of its members.[77] Mutua's endorsement of individual duty in the context of a supposed African fingerprint suggests a timeless culture, unscathed by colonialism, and yet the meanings and options that such cultures and communities, as all cultures and communities, hold for their members have been

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[77] Mutua's argument is a critique of the liberal assumptions that dominate human rights discourse as it emerges from the West. Yet it is interesting to note that some of his assumptions about the nation mirror or replicate problematic assumptions about the family in the very liberalism he critiques. For example, we could easily transpose feminist critiques (e.g. Okin 1989; Nussbaum 2000) of Rawls' assumption that the family is a safe place onto Mutua's endorsement of the nation.

undeniably altered, sometimes scathed or distorted, as a result. Further, the appeal to a theory of rights that holds individuals responsible for the community may only be relevant to types of communities that no longer exist. In replying to the defense of "non-Western rights," Jack Donnelly finds duties on the individual both desirable and morally defensible. Nonetheless, he argues that the enforcement of communally-oriented duties appeals to a type of community that does not exist anymore, either in the Global South or in the West. "Westernization, modernization, development, and underdevelopment-the dominant contemporary social and economic forces-have in fact severed the individual from the small, supportive community....From this perspective, then, the individualism of human rights appears as a response to objective conditions" (1982: 312-313). Finally, we ought to ask whether nationalism has on the whole, been a positive force either in Africa or elsewhere, or if it is more unpredictable. Who interprets the concept of "threat" when individuals are called upon to "preserve and strengthen social and national solidarity, particularly when the latter is threatened," as in article 29 (4) of the African Charter? Could individuals be forced into armed conflict as a duty to their political community? These concerns should all be kept in mind when considering the necessity of incorporating individual duty explicitly into legal rights frameworks.

Perhaps the most compelling reason that the state, and not the individual, is traditionally held responsible as the guarantor of rights pertains to implementability, or the problem of what rights theorists more often call practicability. The sheer logistics of making billions of individuals deliver on rights guarantees seems like an impossible promise. The state is, by comparison, far more tractable. As Burke quipped, "what is the use of discussing a man's abstract right to food or to medicine? The question is upon the

method of procuring and administering them. In that deliberation I shall always advise to call in the aid of the farmer and the physician, rather than the professor of metaphysics." (Burke 1793). Rights guarantees in the West have emerged in reaction to such critiques regarding their abstract and unrealizable nature. As such, a right is generally understood to be something that one can realistically guarantee (e.g. Neier 2012), as opposed to being an abstract ideal, however laudable and desirable. All this is to say that, of course, Mutua and other critics of the Western rights paradigm are correct when they insist that, in terms set out by Jean Jacques Rousseau, all people should see themselves as the authors of the laws to which they are subject. The Western rights project thus far has failed to make good on that promise, if we are to judge by good faith critiques of the rights project from the global South. Mutua and others try to unmoor Western rights from their unquestionable, mythical status, and to acknowledge both their political and ideological content, attaching them to the worldly and the concrete, where they are subject to critique. In this he has succeeded. Critique is the product of trying to imagine a different way—and sometimes only by committing to finding that way does a new path begin to seem possible, implementable, practicable.

From this discussion, two things should become clear. First, the critique of rights is one that I acknowledge as legitimate and important. Second and more substantively, what should emerge from these critiques of rights is not a change to the form of rights (i.e. as legal claims tenable primarily against the state). Rights will not become in important ways less "Western" if they become claims against the individual, however they may become less effective. As Nussbaum (2000: 36-38) has argued, immense regional and cultural diversity in any given location (including the West) means that we

cannot hold one perspective as representative of one society (liberal individualism in the West; communitarianism in Africa). Societies have frequently appropriated ideas that originated elsewhere and made those ideas integral to their persona – such as the adoption of Marxism by colonized and oppressed peoples (Nussbaum 2000: 36). The form of rights, claimable against the state, can become meaningful in non-Western liberal contexts by becoming less rigid in content; acknowledging the social and relational context in which rights are realized, and focusing on local capacity to enjoy rights. In terms of content, as I have indicated above, Western states and organizations may push female genital cutting as the dominant concern addressed by a right to bodily integrity. However, non-Western women might privilege other concerns that they interpret as issues of bodily integrity. For example, the right to bodily integrity may be more meaningfully interpreted as "*not to be alienated from her sexual and reproductive capacity* (e.g. through coerced sex or marriage)…" (Correa and Petchesky 1994: 113, italics in original). Dorothy Hodgson has demonstrated that, since Tanzania made FGC illegal in 1998, and since FGC (or female genital modification, to use her preferred term), has subsequently been framed as a human rights issue instead of a health issue, Maasai women's groups have come under increasing external pressure to address this practice as a priority. And yet, the consensus from within the Maasai community appears to be that issues such as "hunger, poverty, lack of clean accessible water, and, for many, lack of functioning, affordable health facilities" (2011: 150) are more pressing considerations.

Rights, in other words, must leave space for agendas to be set locally. Contrary to liberalism's assumption of abstract autonomy—that all people stand in the same relationship to rights (interpretation of them, knowledge of them, ability to enjoy them,

ability to claim them when threatened), we must see rights as social and relational, to use terms set by Sonia Correa and Rosalind Petchesky (1994). In other words, rights often require collective mobilizing in order to make them a reality (Correa and Petchesky 1994: 109-110), and individuals often decide *how* to exercise their rights in consultation with a network of family, friends, and community members (Correa and Petchesky 1994: 115). Because people realize rights in this social and relational context, society as a whole must work on rights' "enabling conditions" (Correa and Petchesky 1994: 112). For example, reproductive decisions cannot be free without infrastructural factors such as "reliable transportation, child care, financial subsidies, or income supports, as well as comprehensive health services that are accessible, humane, and well staffed. The absence of adequate transportation alone can be a significant contributor to higher maternal mortality and failure to use contraceptives" (Correa and Petchesky 1994: 112). Similar to Correa and Petchesky's concept of "enabling conditions" is Martha Nussbaum's concept of "capabilities." Nussbaum believes that all people should have access to particular *opportunities* that ensure human flourishing—for example life, bodily health, and bodily integrity (2000: 78), to name the first three. What different cultures do with those opportunities, how they fill up the content, is up to them. She believes this circumvents the charge of Western tyranny in dictating a particular rights agenda. Endorsing rights will likely be least problematic if we promote them as enabling conditions, opportunities, or capabilities, which leaves open the space for acknowledging the social and relational reality of rights globally, and unanticipated local priorities. That is to say, a community must organize the realization of rights around its own particular needs. After all, it is a commonplace in rights scholarship that they are only meaningfully asserted in the breach.

There is no sense in setting up infrastructure for a "right" that is meaningless in the local context. Without acknowledging this latter fact, rights could be used to shine a one-way light on what is missing or defective in the global South, just as easily as humanitarianism has done.

I have tried in this project to reveal the self-serving effects of framing aid and development projects according to a humanitarian logic. By suggesting instead a rights-based approach to addressing trafficking and HIV/AIDS, I have attempted to circumvent the contradictory logic of humanitarianism, and its uneven consequences. Rights, ironically, are a much more contested idea than humanitarianism, owing largely to the fact that humanitarianism has always been understood as "apolitical" while rights have not. However, rights have also been hailed by a host of practitioners and theorists (e.g., Bunch 1990, 1994; Correa & Petchesky 1994, Nussbaum 2003), and even Mutua himself as a powerful galvanizing tool with global appeal. Rights are therefore too important to discard. The same argument has not been made in favor of humanitarianism. While it is beyond the scope of this project to propose particular instantiations of a rights-based framework, this remains a productive avenue for the future.

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