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**States of Contradiction:  
Twelve Ways to Do  
Nothing about Trafficking  
While Pretending To**

IN THE PAST DECADE, EFFORTS TO DECRIMINALIZE PROSTITUTION and approach it through human rights and labor frameworks have been increasingly entangled in and undermined by campaigns about “trafficking”—primarily the trafficking of women and girls into forced prostitution. This seems counterintuitive, since recent breakthroughs in US and international law recognize that people—men, women, and children—can be trafficked into many different forms of exploitative labor, making the moralistic focus on sexual trafficking a misdirection from the real difficulties in confronting labor exploitation and the abuse of immigrants.

Both international law (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 [hereinafter UN Protocol]) and US law (the Trafficking Victims Protection Act of 2000 and subsequent reauthorizations [hereinafter TVPRA]) make clear that any type of person (man, woman, or child) can be trafficked into any type of work (factory, farming, fishing, sexual services, or domestic labor, to name a few sectors).

The hyperfocus of many governments and advocacy groups on trafficking into forced prostitution, however, consistently subverts these gains. The flood of documentary, exposé, investigation, and made-for-TV drama about trafficking has been robust (Vance 2005, 2006) and

the distinction between the “exploitation of prostitution” and “prostitution” is often lost, along with the distinction between prostitution and trafficking (Butcher 2001).

In analyzing the state, one always muses whether the state is a lumbering beast or an efficient missile, swiftly implementing surveillance, securitization, and control, particularly of bodies? In thinking about trafficking, it is important to keep in mind various cautions and lessons from previous work on the state. First, the state is not a homogeneous or singular entity—its administrative units and bureaucracies have different and sometimes conflicting objectives. Its leadership and top personnel change, particularly through elections and appointments. The state is influenced by extra-state demands, including pressure groups and NGOs, and the media swarms generated by them. The process by which a law is drafted, implemented, and understood is multivalent, responding to different pressures and constituencies (Shore and Wright 1997; Shore, Wright, and Però 2011; Parnell 2003; Nader 2003).

One final caveat in trying to understand the contradictions in state and international action on the issue of trafficking: the actions of the state cannot be read entirely through text. People often assume that the text of the law is the same as its implementation and effect, and that the law is a full and transparent expression and record of the intent of the state. In text, intent often appears unambiguous and seamless (in which case intent and delivery appear seamless too), but through studying the state in action, one sees that the implementation of law and policy can present another reality altogether. Therefore, the research on state anti-trafficking interventions must go beyond text, to study the enactment of policy and law on the ground, which is more difficult and time-consuming (Yanow 1997; Shore and Wright 1997; Shore, Wright, and Però 2011; Peters 2010). As Schuck observes about these slippages, there is always a difference in state policy between “law on the books,” “law in their minds,” and “law in action” (Schuck 2000; Pound 1910).

Given these multilayered motives and histories, two profound paradoxes are embedded in all law and policy on trafficking, as they have developed in the past decade.

First, the advocates and groups propelling anti-trafficking law have at least two different, often contradictory, motivations and goals: one to stop female prostitution, and another to stop labor exploitation. These contradictory goals were evident in the legislative process behind the drafting and passage of the US law, the TVPRA, and the drafting process and ratification behind the UN Protocol (Chuang 2006; DeStefano 2006; Doezema 2005; Gallagher 2010). Both instruments contain compromises, contradictions, and incoherencies, marks of political and legislative struggle.

Second, when states enact law and policy or sign conventions to stop trafficking, they overwhelmingly opt to intensify border and immigration control. At first glance, these tactics might seem to interrupt trafficking across national borders, but harsher policing of cross-border migration causes would-be migrants to turn increasingly to smugglers for help (Busza 2004; Busza, Castle, and Diarra 2004; Global Alliance Against Traffic in Women 2007). In other words, the states' new restrictive policies and subsequently increased smuggling provide the conditions of vulnerability, desperation, and dependency under which trafficking flourishes.

Fundamental contradictions and inconsistencies in state strategies are hiding in plain sight. Here is a guide to deciphering them: an instructional manual entitled *How to Do Nothing about Trafficking While Pretending To*.

1. Circulate grossly exaggerated numbers of trafficked people to justify new laws, while obscuring the more accurate figures that eventually emerge. The result is to create a sense of panic and urgency that rebuffs all criticism. Originally the US Congress and many advocacy groups trumpeted that 50,000 "women and children" were trafficked into the United States for "sexual exploitation" annually (US Department of State 2002: 2).

However, after a scathing report from the Government Accountability Office, these estimates were reduced several times, finally to between 14,500 and 17,500 persons trafficked annually

into all labor sectors (US Government Accountability Office 2006; Feingold 2010; Shafer 2004; Gozdziaik and Bump 2008). The larger figure is endlessly circulated, a numerical vampire that cannot be killed off. The implication of such continued exaggeration is that accurate information about the specifics of the problem is not necessary for crafting effective and appropriate interventions.

2. Depict trafficking victims as overwhelmingly females trafficked into forced prostitution, ignoring the significant numbers of women and men trafficked into other forms of exploitative labor. Despite these depictions, roughly half of US trafficking cases prosecuted in fiscal year 2009 involved nonsexual labor exploitation, despite the evident investigative bias toward trafficking into forced prostitution (United States Attorney General 2010: 48; Peters 2010).
3. Frame trafficking as a “human rights issue,” while attacking it through criminal law and conventions, not human rights conventions and protections. Both US and international laws against trafficking are criminal codes;<sup>1</sup> for example, the UN Protocol is part of the UN Convention against Transnational Organized Crime. Although it may be appropriate to criminally prosecute human traffickers, criminal law does not provide any mechanisms for trafficked persons to claim human rights protections or access services. The trafficked person, often an undocumented migrant, still has no protection against deportation. Prostitution continues to be criminalized in many states. The treatment of trafficked persons in detention facilities, shelters, or rescue homes is often highly coercive and abusive (Haynes 2004; Gallagher and Pearson 2010). The emphasis on criminal law makes it difficult for trafficked people to escape the vortex that deems them criminal offenders, even in texts that nod to their new (but in most countries optional) status as crime victims.

The ethos of criminality spills over to the trafficked persons, exacerbated by suspicion and resentment toward undocumented migrants and prostitutes. Finally, trafficking as defined in criminal codes is a difficult crime to prove. People tend to think of criminal law as the most powerful response, the “big gun,” but it is one that

is very hard to fire, since proving trafficking requires a tight chain of evidence and intent (Jordan 2002; Chuang 2006; Gallagher and Holmes 2008; Gallagher 2010; Haynes 2009). For example, only 52 human trafficking cases were charged by the Civil Rights Division and the US Attorneys' Offices in 2010, although this represents an *increase* from previous years (US Department of Justice, Civil Rights Division 2010: 6).<sup>2</sup>

4. Include human rights language and services in trafficking conventions, but make these provisions optional, not binding. The UN Protocol mandates increased criminal enforcement, data sharing, border control, and police training, while recommending but leaving optional the provision of "rights-based services" to trafficked people, and ending automatic deportation for undocumented people who were trafficked. Only criminal enforcement and cooperation between states' criminal agencies are required.
5. The two countries whose national anti-trafficking laws require victim services (the United States being one) set the bar for accessing services very high, including lengthy and multiple interrogations by police to weed out false claimants and requiring cooperation with any criminal prosecution of the traffickers (Peters 2010; Haynes 2004, 2007). Despite the seeming mobilization of concern for large numbers of allegedly trafficked, suffering, and traumatized people, all are subject to the universal suspicion that they are faking. The body of the abject victim, deserving compassion and care, quickly transforms into the body of a dangerous criminal (Demleitner 2001; Ticktin 2011).
6. Handle the tension between strong political hostility to undocumented migrants who "steal" services and compassion for the sympathetic victim of trafficking by imposing limits on the number of permissions to stay (T-visas), which the US Congress capped at 5,000 per year in 2000, despite the much ballyhooed figures of 50,000 trafficked persons annually. Moreover, make the visas difficult to obtain. To date, although 40,000 T-visas could have been granted in fiscal years 2002–2009, only 1,591 were granted over that time period (United States Attorney General's Annual Report 2010: 37–38).

7. Depict the traffickers as part of international criminal conspiracies, mafias, and rings. This is easily done, since the UN Protocol defines an “organized criminal group” as three or more people acting together (UN Protocol, Article 4, following the definition provided by the Convention against Transnational Organized Crime, Article 2). Although in some cases transnational criminal enterprises of some size and ruthlessness are involved, in many cases the network is composed of relatives, neighbors, and friends. (As Fickenauer notes, smuggling networks can be organized without constituting “organized crime” [2001]). This is not to say that family and friends may not be exploitative and abusive sometimes (that is, meet the definition of “trafficking”), but these actors may also be supportive of migrants’ economic betterment and naïve about final outcomes. The prospect of effectively applying criminal law and sanctions to these multitudes of small scale networks deeply embedded in communities is unpromising.
8. Deemphasize the structural factors that encourage trafficking, subsuming them under a framework of the personal motivations of evil traffickers (greed, power, callousness, and contempt for women). Identifiable actions (and failure to act) by states, as well as global institutions and networks, create and sustain the political economy of trafficking through financial and tax policies; differential regulation of crossborder flows of people, goods, and money; and sanctions (or impunity) for labor exploitation (Feingold 2000; Kyle and Dale 2001; Friman and Andreas 1999; Koslowski 2001). Stirring statements claim that anti-trafficking programs will address the underlying causes of trafficking (usually described as an amorphous “poverty”), but the amount of money devoted to even these efforts is laughably small compared to policing and border control.
9. Hyperfocus on the young, female victim of trafficking forced into prostitution and depict her as innocent and gullible, ignoring the fact that most women attempting to be smuggled into the sex sector are not inexperienced or entirely ignorant (Doezema 2000). The message that only the innocent deserve protection and rights violates the

fundamental principle that all are entitled to the protection of the law. Furthermore, if some victims are “innocent,” then it follows that other victims must be “guilty.”

10. Depict trafficking into forced prostitution as the central and most alarming type of trafficking. This emphasizes that the most damaging harm to women is through sex (Miller and Vance 2004; Miller 2004). In addition, this narrow focus downplays the very serious exploitation, harm, and injury done to trafficked people in all other types of labor. Made invisible, too, is the fact that sexual abuse is common as a method of control in these sectors as well.
11. Represent the state and its actors as rescuers and heroes, despite the centrality of the state’s immigration policy in fostering smuggling and forms of migration and entry that render migrants vulnerable. States impose stringent immigration controls such that people cannot safely and legally migrate, or hope to do so in the future, after submission of immigration applications. Corrupt border officials and immigration police themselves work with smugglers and traffickers, as well as abuse and extort undocumented migrants. While ritually decrying trafficking, many states wink at undocumented migrants, exploiting their cheap labor (Miller 2001; Chacón 2006) such that their enforcement of labor regulations as well as anti-trafficking law is ultimately unserious.
12. When the effort to find and rescue transnational trafficking victims yields a disappointing result, restart and redirect the campaign, using the same techniques (exaggerated numbers, media sensation, the melodrama of evil and rescue) but shift the focus to “domestic trafficking,” involving minors, usually girls in prostitution, and their boyfriends and associates. Their boyfriend and associates are then uniformly called “pimps” (Herbert 2006; Kristof 2009; NOW on PBS 2009; Priebe and Suhr 2005; Reid 2008). In resuscitating the specter of evildoers (who certainly exist in the prostitution of minors), the narrative ignores the immense failure of states to provide social services or safe accommodation for runaway and homeless young people.

These last few strategies to distract from fundamental contradictions and failures of state anti-trafficking efforts are most effectively delivered through the dramatic form of melodrama, which offers the value of “add sex and stir” (Vance 1995: 330). The melodrama is a brilliant and familiar technique for misdirecting the eye from complexity and contradiction, offering a simplified and emotionally gripping substitute.

Melodrama’s value in telling the trafficking story is virtually unchanged from its nineteenth-century versions (Brooks 1985; Redmond 1992; Stead 1885; Walkowitz 1992). The modern melodrama of trafficking performs various reductions that erode the innovations of international law: trafficking again means prostitution (forced or voluntary); the trafficked person is a woman or female minor; the danger and injury are sexual; and the nature of the crime is an offense against society and morality (for evangelical activists) or against women’s equality (for anti-prostitution feminists). With its compelling narrative of sexual danger, drama, sensation, furious action, wild applause, and most important, clearly identifiable victims, villains, and heroes, the anti-trafficking melodrama remains highly fascinating and effective in mobilizing public opinion (Vance 2011).

I offer three of what could be hundreds of examples.

- ▶ Nicholas Kristof’s continuing columns on “trafficking” (which usually means trafficking into forced prostitution, with no further qualification) in the *New York Times*. An early and typical example is “Girls For Sale” (2004), the “tale of Srey Mom and Srey Neth, the two young Cambodian prostitutes Nick purchased and returned to their villages,” chronicled in his video report, “Heartbreak and Hope” (2006). Many other columns followed: “Loss of Innocence” (2004); “Sex Slaves: Lock Up the Pimps” (2005); “The Good Daughter, In a Brothel” (2006); “Striking the Brothels’ Bottom Line” (2009); “A Woman, A Prostitute, A Slave” (2010), and “Seduction, Slavery, and Sex” (2010). These titles give a flavor of his sensibility. Immune to any critique, Kristof’s melodramatic columns have reproduced essentially the same motif for almost a decade.

- ▶ *Human Trafficking*, a 2005 movie broadcast on the Lifetime network, starring Mira Sorvino (now dubbed a “human trafficking expert”) and Donald Sutherland, in which “hundreds of thousands of young women have vanished from their everyday lives—forced by violence into a hellish existence of brutality and prostitution” (*Human Trafficking* 2005).
- ▶ Mostly recently, Demi Moore and Ashton Kutcher launched the *DNA Foundation* (Demi & Ashton) to “combat the organized sexual exploitation of girls around the globe” (<http://demiandashton.org/>; Stetler 2011). The “victim stories” on their website make clear they do not include the sexual abuse of girls in their families (the dramas of everyday heterosexuality), but only the involvement of girls in prostitution, the form of sexual exploitation now capturing disproportionate media attention (nonfamilial, exotic stranger heterosexuality). “There are more slaves in the world today than ever before in world history. [It is happening] behind the closed doors of the Internet. Behind those closed doors you can make a purchase on the Internet and feel completely anonymous” (“Demi Moore” 2010).

Classic melodrama’s anticipation of and satisfaction with rescue as the plot’s denouement is most compatible with the state’s rescue of women through criminal law and increased state power. The ubiquitous anti-trafficking melodrama displaces modern concepts of extreme labor exploitation and rights violations, replacing them with scripts of male lust endangering innocent women. It also replaces the trafficked person’s claim to multiple rights with a single remedy, the right to be rescued (Vance 2011).

Melodrama is a very flexible narrative form, and the anti-trafficking melodrama can be and is set in any global location—Nepal, Moldova, Nigeria—with small changes in costumes, background scenery, and names, which nevertheless lend local color and “authenticity.” Although the anti-trafficking melodrama invokes contemporary issues like globalization, poverty, and gender inequality, these modernizing gestures are feeble at best. Anti-trafficking melodramas offer minimal

exploration of current political and social factors in specific locations. Remedies are generalized across all places: one size fits all. Melodrama is about people, not states, institutions, or structural conditions. The focus on individual actors guarantees that structural factors cannot be portrayed (since they are not persons and do not have emotions). The emphasis on individuals and nefarious motivations is echoed by new anti-trafficking tools and conventions, given their predilection for criminal law and prosecution of individuals.

The state is both a lumbering beast and an efficient missile with regard to trafficking: lumbering, unwilling, and unable to change the conditions *it* creates and that favor transnational trafficking, and surprisingly efficient in employing melodrama and high-profile but bogus human rights rhetoric to make most victims invisible. Ultimately, melodrama obscures the state's responsibility for creating the conditions favorable to trafficking. By making nonstate actors the chief villains and sex the motive, the state ultimately promulgates laws and policies that are both ineffective and reactionary.

#### **ACKNOWLEDGMENTS**

Thanks to the organizers of the conference *The Body and the State*, held at the New School on February 10–12, 2011. Thanks to Arien Mack, Editor, and Cara Schlesinger, Managing Editor, of *Social Research*, for their help and patience. Warm thanks to Ann Snitow for support in many registers. Thanks to Alice Miller and Alicia Peters for helpful references.

#### **NOTES**

1. The TVPRA (US) amends criminal code to facilitate the prosecution of traffickers and mandates many law enforcement efforts. In addition, it requires the provision of social services to victims of trafficking deemed to be genuine and offers the possibility of remaining in the United States through “continued presence” and the mechanism of the T-visa. It also provides a mechanism for the victims of trafficking to bring civil actions against traffickers.

2. This figure does not include child sex-trafficking cases or cases of state-level prosecutions for trafficking.

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