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UNIVERSITY OF CALIFORNIA,
IRVINE

An Analysis of the Development of Commercial Sex Trafficking Laws and the
Influence of Feminist Theory

THESIS

submitted in partial satisfaction of the requirements
for the degree of

MASTER OF ARTS

in Social Ecology

by

Elizabeth Ann Rodriguez

Thesis Committee:
Professor Cheryl Maxson, Chair
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2021

DEDICATION

To

my family and friends,
and especially my son,

in recognition of their worth and all they have done to help me succeed.

And, to John,

thank you for being you.

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ABSTRACT OF THE THESIS

An Analysis of the Development of Commercial Sex Trafficking Laws and the
Influence of Feminist Theory

by

Elizabeth Ann Rodriguez

Master of Arts in Social Ecology

University of California, Irvine, 2020

Professor Cheryl Maxson, Chair

Commercial sex trafficking has been a focus of legislation since the Federal Trafficking Victims Protection Act of 2000 was passed. Subsequent to the federal legislation, states across the country began adopting their own legislation to combat commercial sex trafficking. Interrogating commercial sex trafficking laws can lead to a better understanding of how opposing activist views have shaped their evolution. Within Feminist Theory, there are two opposing theoretical camps within which scholars of sexual exploitation or sex work fall. The first, radical feminists, view prostitution as the root cause of commercial sex trafficking and conflate the two (Leidholt, 2004). The second, sex positivists, differentiate between prostitution and commercial sex trafficking while supporting the decriminalization of prostitution. By tracing the two relevant feminist theories, each with different beliefs about how certain sexual behaviors should be defined and regulated, and looking at how they are articulated within two state laws, we can better understand the development of the law as well as the law's impact.

A review of the literature suggests that the anti-trafficking campaign became a government priority as a result of the activism of radical feminists. Despite there being two opposing feminist theoretical frameworks, it appears that sex positivism is not represented in the laws or policy. With the exception of Nevada, the United States has criminalized prostitution and society has stigmatized

it as immoral and intrinsically harmful (Weitzer, 2007). Also, the “moral crusade” of radical feminists has successfully conflated sex trafficking and prostitution, which has helped justify the attack on all commercial sex. The result is a shift in societal views and behaviors that are more in line with those of radical feminists.

INTRODUCTION

Despite being a global problem, domestic commercial sex trafficking¹ has only recently become the focus of legislation and research as society comes to terms with the reality that it is happening right here in the United States. Commercial sex trafficking has been a focus of legislation since the Federal Trafficking Victims Protection Act of 2000 was passed. Subsequent to the federal legislation, states across the country began passing laws to combat commercial sex trafficking. A review of the literature suggests that Feminist Theory, and the opposing activist views of radical feminists and sex positivists, shaped the evolution of commercial sex trafficking laws.

In this paper, I examine commercial sex trafficking laws to better understand how opposing feminist activist views have shaped their evolution. In particular, I trace the two relevant feminist theories and how they are articulated within the state laws of California and Nevada. These perspectives represent different beliefs about how certain sexual behaviors should be defined and regulated, and may help us to understand the development of the law as well as the law's impact. By providing a case study into the development of law in a contentious area, this work adds to scholarship that looks at the evolution of law. Furthermore, this work will contribute to the investigation of other areas of law. It will also contribute to a better understanding of the role activist groups can play in shaping the law.

Therefore, I will first set commercial sex trafficking within the framework of Feminist Theory by exploring the two opposing theoretical camps within which scholars of sexual

¹ For this paper, the terms “commercial sex trafficking,” “sex trafficking” and “trafficking” are used interchangeably to refer to sexual exploitation through the exchange of sex or sexual acts in return for something of value (Carpenter & Gates, 2016; Meshkovska et. al, 2015).

exploitation and sex work fall, neo-abolitionism/radical feminism and sex positivism. I will then discuss how one would expect to see the opposing theories articulated within the laws. Next, I will review current anti-trafficking laws to include federal law, California law, and Nevada law, which I will follow with a comparison of laws in California versus Nevada, the only state within the United States where prostitution is legal in certain parts of the state. I will also look at how the legal definitions actually fit into the Feminist theories and how law and societal views impact each other. Finally, I will conclude with suggestions for future research.

COMMERCIAL SEX TRAFFICKING IN THE UNITED STATES

The commercial sex trafficking of both adults and minors involves the recruitment, harboring, or obtaining of a minor for the purpose of commercial sex acts. It is the act of “manipulating a person into prostitution” (Williamson & Prior, 2009). Thus, prostitution is linked to sex trafficking and has become a dominant part of the commercial sex trafficking debate (Basil, 2015). The link between commercial sex trafficking and prostitution is also due to the fact that under the Trafficking Victim’s Protection Act, “sex trafficking” is defined as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” and the definition of a commercial sex act includes prostitution (Cole & Sprang, 2015).

Looking within the United States, research indicates that American youths are the most vulnerable targets (Kotrla, 2010), with traffickers using methods designed to force or manipulate victims in order to profit from the sex trade (Heiges, 2009; Gozdzia, 2010). A study by Dank et. al (2014) interviewed 142 offenders convicted of commercial sex trafficking and found that manipulation was a key method for recruiting and retaining minor victims. While sex traffickers target both minors and women, juvenile females are the primary victims (Smith & Vardaman, 2010). The problem is so prevalent that research estimates that the average age of entry into the commercial sex trade in the United States is as young as 12-14 years of age (Mir, 2013), and as many as 300,000 minors in the United States are at risk for becoming victims of commercial sexual exploitation (Miller-Perin & Wurtele, 2017). However, these estimates are likely low because the nature of sex trafficking makes it difficult to truly estimate the extent of the problem due to victims often being invisible to law enforcement (Miller-Perin & Wurtele, 2017; Greenbaum, 2014). For example, Farrell, McDevitt, and Fahy (2010) surveyed 1,515 municipal

law enforcement agencies and found that the agency leader's perception about the problem of sex trafficking and the steps taken to help officers identify and respond to sex trafficking were the most important factors to increasing trafficking identification by police. Their findings suggested that the low number of reported trafficking cases may be a result of a lack of training on identifying these cases. Another study by Wilson, Walsh and Kleuber (2006) surveyed 83 municipal and county police departments to assess the "nature and extent of local law enforcement responses to trafficking" in the United States (p. 149). The results indicated that local law enforcement was not prepared to recognize victims of trafficking and the majority of the participating law enforcement agencies did not have standard policies, procedures, or training on trafficking.

Researchers have also started documenting the numerous problems faced by both adult and minor victims of sex trafficking. These victims suffer from physical and mental abuse. This is further compounded by the failure of law enforcement to properly identify them as victims, leading to their continued abuse (Raymond, Hughes, & Gomez, 2001; Williamson & Prior, 2009). The trauma to victims of commercial sex trafficking is significant, with victims suffering from the same kinds of injuries as women who are battered, raped and sexually assaulted. In fact, a study by Raymond, Hughes, and Gomez (2001) found that victims of sex trafficking have reported that major bones, such as ribs and vertebrae, and smaller bones, such as fingers and toes were broken, with research showing that victims in the United States have higher reports of injury than victims internationally (Raymond, Hughes, & Gomez, 2001; Williamson & Prior, 2009). In addition to the physical injuries suffered, victims of sex commercial trafficking also suffer from psychological effects which include: mind/body separation and disassociated ego states, shame, grief, fear, distrust, self-hatred, suicide, PTSD, anxiety, depression and insomnia

(Miller-Perin & Wurtele, 2017; Mir, 2013). Similarly, research has shown that women in prostitution suffer the same health problems as victims of commercial sex trafficking such as exhaustion, frequent viral illness, STDs, vaginal infections, backaches, sleeplessness, depression, headaches, stomachaches, and eating disorders (Farley, 2004).

Three measures were enacted by the year 2000 to combat human trafficking. The first was a Presidential directive in 1998 that set out the administration's anti-trafficking strategy and provided that the United States would take the lead in developing and coordinating the domestic and international policies while also directing that other governmental departments take action. The second was at the global level with the United Nation's protocol against trafficking. Specifically, the "Palermo Protocol" was created to: 1) prevent and combat trafficking in persons, paying particular attention to women and girls; 2) protect and assist victims of such trafficking; and 3) promote cooperation among state parties to meet these objectives (Stolz, 2005). The Palermo Protocol was signed by 105 countries, including the United States, and was adopted by resolution in 2000. It is important to note that the Palermo Protocol does not distinguish between "free" and "forced" prostitution, nor does it draw a distinction between the voluntary migration of sex workers and women who are trafficked by force, fear, or duress (Sullivan, 2003). In fact, the protocol specifies that consent of a "victim" is irrelevant where any of the "means in the protocol have been used and in the case of a minor, any of the "means" laid out in the protocol need not be present to be considered trafficking (Stolz, 2005). The Federal Trafficking Victims Protection Act of 2000 (TVPA) was the third measure and was passed "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims" (22 U.S.C § 7101; Logan, Walker, & Hunt, 2009).

Following the passage of the TVPA in 2000, many states followed with laws of their own in an effort to combat commercial sex trafficking. In California the first ant-trafficking law was passed in 2005. Then, later in 2018, the fight against commercial sex trafficking also impacted prostitution laws when state legislation was passed to prevent minors from being charged with prostitution. Nevada, on the other hand, did not officially define sex trafficking until the passage of anti-trafficking legislation in 2013 (Berkheiser, 2016). These laws can be seen as a reflection of the feminist theories discussed in this paper.

LITERATURE REVIEW

Feminist Theories

A diverse body of theoretical explanations exists for the causation of sex work and sexual exploitation at the macro-level. The majority of these theoretical frameworks fall under Feminist Theory, which “strives to understand roles, experiences, and values of individuals on the basis of gender” (Gerassi, 2015 at p. 2). Within Feminist theory, there are two opposing theoretical camps within which scholars of sexual exploitation or sex work fall. The first, radical feminists, view prostitution as the root cause of commercial sex trafficking and conflate the two (Leidholt, 2004). The second, sex positivists, differentiate between prostitution and commercial sex trafficking while supporting the decriminalization of prostitution. The opposing views of these two theoretical camps have been described as largely defined by those that view prostitution as an institution of male domination versus activists who aim to distinguish prostitution as “voluntary” work and voluntary migration (Meshkovska et. al, 2015; Miriam, 2005). The sections below will describe each of these two theoretical camps using each group’s opposing views regarding prostitution as the “old feminist debates about prostitution have

reconfigured themselves along familiar theoretical lines” when it comes to the debate over commercial sex trafficking (Miriam, 2005,p. 1).

Radical feminism was born in 1968 when a group of feminists who believed in “women’s liberation” designated themselves “The Feminists” and started the Women’s Liberation Movement, which continued into the 1980’s (Crow, 2000). Radical feminist groups focused on women’s oppression, including the sexual exploitation of women (Shulman, 1980). The founding theorists include Anne Koedt, Ti-Grace Atkinson, Carol Hanisch, Kate Millet, Kathie Sarachild, Shulamith Firestone, and Jennifer Gardner, all of whom contributed to one of the canonical works, “Notes from the second year: Women’s liberation” (Shulman, 1980). “Notes from the second year: Women’s liberation” was an easily available collection of writings from radical feminists, which the editors felt presented important and influential radical feminist views (Hanisch, Firestone, & Koedt, 1970). It was preceded by “Notes from the first year” and followed by “Notes from the third year” (Crow, 2000). “Notes from the first year” was the first feminist journal put out by the Women’s Liberation Movement and outlined what makes radical feminists “radical” (Hanisch, Firestone, & Koedt, 1970; Crow, 2000). It was, however, nearly impossible to get a copy, which is why the following journals were made more widely available (Hanisch, Firestone, & Koedt, 1970). The journals also contained articles supporting the radical feminist view that sexual relations were an aspect of men’s power and resulted in the sexual exploitation of women (Shulman, 1980).

Radical feminism went on to lead a campaign against pornography, which was followed by the movement against prostitution (Ferguson, 1984). In the mid 1970’s, the first definitive connection between pornography and violence against women was articulated, with feminists Andrea Dworkin and Catherine MacKinnon defining it as “a systematic practice of exploitation

and subordination based on sex that differentially harms women” (Segal, 1990, p. 31). Dworkin, the author of the most influential anti-pornography feminist text, “Pornography: Men possessing women,” argued that “women can never be liberated unless all pornography is banned” (Segal, 1990, p. 32). MacKinnon (1985), author of subsequent influential anti-pornography feminist text “Pornography, civil rights, and speech,” described pornography as celebrating, promoting, authorizing and legitimizing rape, sexual harassment, prostitution and child sexual abuse.

MacKinnon (1985) further argued that in pornography, all of the abuses become acts of sexual equality. These founding radical feminist theorists also paved the way for radical feminists such as Kathleen Barry and Laura Lederer, who would later facilitate the enactment of human trafficking laws.

The neo-abolitionist perspective or radical feminism is “rooted in an understanding of social organization and structure as inherently patriarchal, as sexism exists to maintain male privilege and patriarchal social order. Thus, violence against women is a systemic form of men's domination and social control of women” (Gerassi, 2015 at p. 2). As it relates to prostitution, the main question under this perspective is not whether women choose prostitution, but instead why men have the right to demand that women supply their bodies as commodities. In other words, “men create the demand, women are the supply” (Miriam, 2005 at pg. 2).

Radical feminists largely believe that prostitution is the root cause of commercial sex trafficking, and tend to argue that they are essentially, one and the same as they “overlap in fundamental ways” (Leidholt, 2004, p. 178). They argue that trafficked and prostituted women are exploited interchangeably by customers within the sex industry (Leidholt, 2004). They define both prostitution and commercial sex trafficking as intrinsically violent, degrading and sexually abusive, while further arguing that victimization is a hallmark of both. They also make

no distinction between coercive trafficking and voluntary prostitution, arguing that “sex workers” do not actively make choices to enter or remain in the sex industry. Also, it is important to note that because of their denial of consensual prostitution, radical feminists have argued for legislation that does not allow consent of a “victim,” whether a minor or adult, to be used as a defense by commercial sex traffickers (Weitzer, 2007).

In the 1980’s sex positivism evolved and centered on the idea that sexual freedom is an essential part of a woman’s freedom. It largely evolved as a response to the anti-pornography movement based in radical feminism. Leading theorists include Ellen Willis, Gayle Rubin and Wendy McElroy. Ellen Willis was the author of one of the earliest and most influential articles of the movement, “Feminism, Moralism, and Pornography.” Willis’s article argued that by framing pornography as a reflection of patriarchal sexual relations based on male power backed by violence, the anti-pornography movement allowed women no basis for distinguishing between heterosexuality and rape (Willis, 2012). Rubin, in “Thinking sex: Notes for radical theory” (1984) encouraged sexual expression. She referred to the opposing views as “sex wars,” because of the conflict over sexuality and sexual values. She also argued that sex laws, which are government interventions in sexual behavior, are akin to legalized racism because they criminalize sexual behavior that is freely chosen.

Advocates of the sex positivist perspective, also known as liberal feminists, see patriarchy as a system that controls and conforms women’s sexuality and leads to their sexual repression. As a response, sex positivists encourage women to explore their sexuality to fight the “double-standard” (Comte, 2013). They believe women should reclaim control over their own bodies and female sexuality by demanding the right to engage in any sort of consensual activity that brings pleasure (Ferguson, 1984; Baker & Oberman, 2016). Thus, they hold the views that

paid forms of sex, such as prostitution, are consensual in many cases. As such, a woman should be free to engage in sex work if she so chooses (Gerassi, 2015). Also, they view opposition to sex work as a way to control a woman's sexuality (Kesler, 2002). Sex positivists tend to support the criminalization of commercial sex trafficking while lobbying for the decriminalization of sex work. They believe sex work, which involves free choice, is distinct from commercial sex trafficking, which involves force, fraud, coercion, or minors (Nichols, 2016).

Distinctions and Critiques of Feminist Theories

Much of the debate surrounding commercial sex trafficking within the Feminist Theory framework has roots grounded in the legal discourse surrounding prostitution. Anti-prostitution laws pre-date anti-trafficking laws, and it can be argued that they formed the basis for the legislation addressing commercial sex trafficking.

The long tradition of radical feminist's critique contests the sex positivist idea of an "unsituated freedom and autonomy" where the individual is free from historical and social conditions (Miriam, 2005 at pg. 2). For example, sex positivists suggest that the decriminalization of prostitution would remove the social stigma against prostitutes who are seen by society with contempt. In turn, prostitutes will also have improved health because once the stigma of arrest is removed, they will seek health care and will file complaints when they are physically or sexually assaulted (Farley, 2004). However, radical feminists argue that the shame of prostitution remains even after decriminalization, and while sex positivists assume decriminalization will remove the stigma of shame and contempt, health care workers and law enforcement often share the same contempt that society holds against prostitutes (Farley, 2004).

Radical feminists further argue the sex positivist definition of freedom is flawed in that it fails to acknowledge that prostitution is not simply an exchange of a woman's capacities for

some benefit, but it is an institution that allows the “buyer” to command over a woman’s “self,” which is a form of subordination and domination (Miriam, 2005). Carole Pateman (1988) helps explain this view when she states that “prostitution is part of the exercise of the law of male sex-right, one of the ways in which men are ensured access to women’s bodies” (pg. 194) in a manner where men have control over a woman’s “self” because “selves are inseparable from bodies” (pg. 206). MacKinnon (1985) makes parallel arguments when she describes pornography as institutionalizing the sexuality of male supremacy. She defines pornography as sex discrimination because it creates and maintains sex as a basis for discrimination while keeping women in an inferior status by defining their subordination as their sexuality.

Sex positivists also shift the model of person-centered services by focusing on providing services and rights to sex workers as opposed to abolitionist feminists who focus on rescuing and protecting victims from exploitation. Their position is that a radical feminist approach is problematic because it is unwilling to engage with the issues of freedom and consent (Sullivan, 2003). By presuming that men dominate, and all prostituted women are subordinated and oppressed, a woman’s right to choose and consent, her right to “freedom,” is compromised (Sullivan, 2003). Also, by criminalizing prostitution, sex workers are placed in a vulnerable situation where they are unable to organize themselves and are at greater risk for violence (Comte, 2013). In her argument against the radical feminist view, Sullivan (2003) argues that the anti-trafficking approach of abolishing prostitution compromises the “economic and survival strategies of many women who do not have viable alternatives” (p. 78). Besides the aforementioned economist perspective argued by sex positivists, some take an expressivist view. The expressivist model describes prostitution as a basic human activity involving sexual elements of the body (Kempadoo & Doezema, 1998). Sex work is a basic human activity, and

prostitute's rights should be recognized and addressed (Miriam, 2005).

The radical feminist critique to the expressivist model is that it requires a leap in logic. As explained by Miriam (2005), "The leap in logic comes with the conclusion that because (1) sex work involves sex and (2) sex is or rather ought to be a vital activity then therefore (3) sex work itself is or ought to be considered vital to the fulfillment of human needs" (pg. 7).

However, as Miriam goes on to argue, this view fails to address the fact that the human needs that are fulfilled are those of the johns, pimps, or traffickers who are appropriating the "sexual energy" of women.

How should these theories be articulated in the law?

With views on the opposite sides of the spectrum, radical feminists and sex positivists inform laws in different ways. As such, the resulting legislation could be starkly different depending on which theoretical camp helped formulate the laws. The radical feminist views all forms of sex work as violence against women (Gerassi, 2015). They view commercial sex trafficking as indistinguishable from prostitution and any notion of consent is irrelevant because it is merely a "submissive acceptance of the traditional exploitation of women" (Comte, 2013, p. 6). Entry into prostitution is not a choice, nor is the decision to remain in prostitution (Weitzer, 2007). Furthermore, radical feminists believe that the decriminalization of prostitution would only lead to the continued sexual and economic exploitation of women. Women and children within the sex trade are sexually exploited as they are subjected to violence and must submit their bodies to the demands of their pimp/trafficker and/or the demands of the "john" (Comte 2013). Thus, under the radical feminist view, all prostitution or any form of sex work would be prohibited.

Contrarily, the sex positivist views sex work as reclaiming control over one's sexuality.

They believe women should have the freedom to choose whether to engage in prostitution or any type of sex work, and distinguish commercial sex trafficking (“forced prostitution”) from prostitution (“voluntary work”). Sex positivists believe that by legitimizing sex work, dignity will be restored to prostitution, which will enable women to survive in the current economy.

They further argue that the decriminalization or legitimization of prostitution will help secure health and safety standards, create “industry” regulations, and minimize vulnerability to violence. It would also provide women with the economic means to support themselves and their families (Miriam, 2005). If sex positivists informed the laws, one would expect to see legalized prostitution as well as services and rights for women involved in this type of “employment.” Commercial sex trafficking would still be punishable, but the definitions of trafficking would distinguish between voluntary work and forced prostitution, as well as between voluntary migration and trafficking (Miriam, 2005; Weitzer, 2007).

COMMERCIAL SEX TRAFFICKING LAWS

Federal Laws

As stated above, the Federal Trafficking Victims Protection Act of 2000 (TVPA) was passed “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims” (22 U.S.C § 7101; Logan, Walker, & Hunt, 2009). In its original form in the year 2000, the TVPA distinguished “sex trafficking” from “severe trafficking.” “Sex trafficking” could be voluntarily entered into while “severe trafficking” involved “force, fraud, or coercion” or minors. The protections and sanctions of the TVPA only applied to “severe

trafficking” (Weitzer, 2007). Radical feminists, and those that aligned with their views, wanted to remove the distinction between sex trafficking and severe trafficking, and wanted protections and sanctions to apply to all forms of trafficking (McDonald, 2004; Weitzer, 2007). They became successful when, in 2002, President Bush signed a “presidential directive on trafficking that defined prostitution as ‘inherently harmful and dehumanizing’” (Weitzer, 2007, p. 461).

Then in 2003, the TVPA was first reauthorized with leading radical feminists, such as Laura Lederer, playing a key role in drafting the legislation (Lederer, 2010). The legislation defined victims of trafficking as either 1) victims of severe forms of trafficking which includes commercial sex trafficking of a minor or by force, fraud, or coercion; or 2) victims of sex trafficking which is defined as “the recruitment, harboring, transportation provision, or obtaining of a person for the purpose of a commercial sex act” (Stolz, 2005 at pg. 410). The key elements of the TVPA criminalize the use of force, fraud, or coercion to exploit a person for profit or personal services. The coercion can be direct and/or physically violent, and/or psychological (Logan, Walker, & Hunt, 2009). Also, although “trafficking” implies movement, transportation is not a required element of the crime.

The TVPA was reauthorized in 2003, 2005, 2008, 2013, and 2015, which expanded the resources of law enforcement to identify and investigate cases of human trafficking, and also included provisions to increase services for victims and promote awareness (Farrell, McDevitt, & Fahy, 2010). Prosecution under the TVPA has punishments that range from a minimum of 10 to 15 years to a maximum of life in prison (Crocker, 2016).

California’s Laws

In California, prostitution was criminalized with the passage of California Penal Code section 647(b) in 1961. This statute criminalized the act of “soliciting or engaging in acts of

prostitution.” Later, in 1986, the statute was amended to include “agreeing to engage in prostitution.” (CA Penal Code § 647). Under California law, this crime is a misdemeanor, with a penalty of up to 6 months in county jail and a fine of up to \$1000. There are also increased penalties for subsequent convictions. For example, a second conviction carries a penalty of a minimum of 45 days in county jail, and a third conviction carries a penalty of a minimum of 90 days in county jail.

As it relates to commercial sex trafficking, it is important to note that prior to an amendment to this law in January 2017, minors were arrested and prosecuted for violating Penal Code § 647(b) regardless of whether they may have been victims of the commercial sex trade. It appeared that while federal law prioritized protecting victims of commercial sex trafficking, state law indiscriminately targeted victims involved in prostitution by prosecuting these minors who “engage in, legitimize, and finance the sex trade” (Heiges, 2009). The overriding view of state law enforcement was that child prostitutes were delinquents as opposed to victims. For example, according to the Department of Justice, police are more likely to “categorize juveniles involved in prostitution as offenders than as crime victims” (Finkelhor & Ormrod, 2004). In response to this growing awareness regarding commercial sex trafficking and the recruitment of minors into the sex trade, California amended its penal code to reflect the emerging view that these minors are victims, and not perpetrators (SB 1322). On January 1, 2017, the amendment to Penal Code § 647(b) became effective. This amendment added Penal Code section 647(b)(5) which adds:

Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.

(Cal. Penal Code §647).

With the amendment to the statute, minors (who are legally not able to consent to sex in the first place), are precluded from being charged with violating CA Penal Code § 647(b).

However, as it relates to adults, all prostitution is still illegal in the state of California as well as in every state within the United States with the exception of certain parts of Nevada.

California was one of the first states to enact human trafficking legislation (Farrell, McDevitt, & Fahy, 2010). In California, the first human trafficking law (CA Penal Code § 236.1) was enacted in 2005 with the passage of Assembly Bill 22 (Carpenter & Gates, 2016). California Penal Code section 236.1 criminalizes the “trafficking of any person for the purpose of labor or commercial sexual exploitation.” This statute defines human trafficking as “Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266, 266h (pimping), 266i (pandering), 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking.” The statute also states that the: “Unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out” (Carpenter & Gates, 2016 at pgs. 30-31). When first passed into law, the punishment for a conviction under this statute was 3 to 5 years or 4 to 8 years in state prison if the victim was a minor. In 2012, however, California voters passed Proposition 35, the “Californians Against Sexual Exploitation Act,” which raised the punishment for commercial sex trafficking to 8, 14, or 20 years in state prison. If the conviction was for persuading a minor to engage in a commercial sex act, the

punishment is 5 to 12 years, or 15 years to life if force, fear, violence, or threat of injury was used.

Nevada's Laws

Currently, Nevada is the only state where prostitution is legal in certain counties. In Nevada, there are two statute sections related to the regulation of prostitution. The first is Nevada Revised Statutes section 244.245 (NRS 224.245) that indirectly legalizes prostitution in counties with a population under 400,000. NRS 224.245 doesn't specifically mention legalizing prostitution, but actually addresses how counties "may license persons or corporations wishing to engage in the business of conducting a dancing hall, escort service, entertainment by referral service or gambling game or device permitted by law" (Brents & Hausbeck, 2001). Prostitution is only mentioned in a short paragraph that states that it is not allowed in counties whose population is over 400,000. It is also important to note that prior to the 1971 law that resulted in the legalization of prostitution in counties with a population under 400,000, Nevada did not have any state prostitution laws. After the 1971 law, it was not until 1978 that the Nevada Supreme court ruled that because of the paragraph found in NRS 224.245 regarding the population, houses of prostitution couldn't be considered nuisances. This court subsequently ruled that counties with a population under 400,000 could regulate and license brothels in 1980, and it was not until 1987 that the Nevada Revised Statutes made it illegal for any person to engage in prostitution outside of a licensed brothel (Brents & Hausbeck, 2001). Currently, Nevada Revised Statute 201.354 allows counties with a population under 700,000 to operate legal brothels and they exist in 10 out of the 17 counties in Nevada (Macfarlane, Fuller, Wakefield, & Brents, 2017).

The second section of the Nevada Revised Statutes related to prostitution are those

that include the laws that regulate pimping, pandering, zoning, advertising and sexually transmitted diseases (Brents & Hausbeck, 2005). These laws prohibit pandering, prohibit forcing women into marriage, prohibit anyone from living off the earning of a prostitute (this law is not enforced as it would prevent legal sex workers from supporting their families), impose zoning restrictions to keep brothels away from certain places such as schools and churches, and impose stringent health/ sexually transmitted disease testing requirements for working prostitutes (Brents & Hausbeck, 2001).

In Nevada, the first human trafficking legislation was enacted in 2013 with the passage of Assembly Bill 67. Assembly Bill 67 established the crime of sex trafficking of children and adults, provided eligibility to victims of sex trafficking for state assistance, and gave victims the right to sue their traffickers. The law came as an amendment to the state's existing pandering statute and used the federal definition of sex trafficking. It also increased the penalty. Trafficking a minor under 14 years of age carried a penalty of a life sentence with the possibility of parole after 15 years, trafficking a minor between the ages of 14-16 carried a penalty of a life sentence with the possibility of parole after 10 years, and trafficking a minor between the ages of 16-18 carried a penalty of a life sentence with the possibility of parole after 5 years (Berkheiser, 2016).

In 2015, Nevada passed Assembly Bill 153 (AB 153) to address protecting minor victims of commercial sex trafficking as opposed to targeting them as delinquents. AB 153 contained language stating that when the district attorney filed a petition charging a minor with engaging in prostitution, the court was required to, “[p]lace the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency’ for the offenses of prostitution and/or solicitation of prostitution”

(Berkheiser, 2016, p. 347). While this law did not preclude minor commercial sex trafficking victims from being prosecuted, it did preclude them from being adjudicated delinquent.

How do the laws in California and Nevada differ from each other?

In California, prostitution has been illegal since the passage of penal code section 647(b) in 1961 whereas in Nevada, it was not until 1971 that prostitution was first addressed in NRS 224.245 by regulating a license to operate a brothel (Brents & Hausbeck, 2001). This allowed legal prostitution in areas of Nevada is still legal today.

When looking at the legislative history of California and Nevada as it relates to commercial sex trafficking, there are significant differences not only in the timing of legislation but also in the content. California was one of the first states to pass anti-human trafficking legislation after the passage of the TVPA. In 2005, California enacted an entirely new code section in the penal code, section 236.1. This statute specifically criminalized both labor trafficking and commercial sexual exploitation. Then, in 2012, California voters passed Proposition 35 to substantially enhance the punishment for human trafficking. On the other hand, it wasn't until 2013 that Nevada passed its first anti-trafficking law. Unlike in California, Nevada's law amended the state's existing pandering law to include sex trafficking. Nevada, however, included substantial punishments for offenders at the outset of the passage of the law and excluded consent as a defense.

Another difference between California and Nevada is each state's approach to the prosecution of minor victims engaged in prostitution. In 2011, the American Bar Association House of Delegates passed a resolution to push for states to provide services instead of charging child trafficking victims with prostitution. In response to the resolution, in 2013, the Uniform Act on Prevention of and Remedies for Human Trafficking (Uniform Act) was released as a

guide for state legislators to establish legislation that provides minor victims of human trafficking with immunity from prosecution (Hall, 2014; Kauffman, 2014). After the passage of the Uniform Act, and recognizing that trafficked children need to be treated as victims and not criminals, states started passing “Safe Harbor Laws” which prevent minors from being prosecuted for prostitution and direct victims to specialized services (Williams, 2017). On January 1, 2017, California became a “safe harbor” state when Penal Code section 647(b)(5) went into effect and precluded minors from being prosecuted for prostitution. The new code section also added language to allow the juvenile court to adjudge the minor a dependent of the court if necessary. Nevada, however, is still not a “safe harbor” state. In 2015, advocates for minor victims of commercial sex trafficking worked on “safe harbor” legislation, Assembly Bill 153 (AB 153), which would classify minor victims as “Children in Need of Supervision” (Berkheiser, 2016). However, the Federal Juvenile Justice and Delinquency Prevention Act prohibited the detention of minors classified as “Children in Need of Supervision,” and there did not exist a separate placement in Clark County, which was considered the state’s hub for commercial sex trafficking of minors. This required these minors to be detained in juvenile detention facilities, so the proposed legislation could not pass (Berkheiser, 2016). The result was the passage of an amended AB 153, which still required that the minor victim be charged with prostitution but without a formal adjudication. After being charged, the minor victim is placed under the supervision of the juvenile court “pursuant to a supervision and consent decree” and provided services, without the case ever being adjudicated (Berkheiser, 2016, p. 347).

California has been at the forefront of the fight against human trafficking following the passage of the TVPA. Nevada, on the other hand, did not pass its first anti-trafficking law until 2013, 8 years after California, and 13 years after the TVPA. Also, California recognizes a

relationship between prostitution and commercial sex trafficking and continues to criminalize both while Nevada still remains the only state in the country where prostitution is legal in certain counties. Finally, California has recognized that victims of commercial sex trafficking should be treated as victims as opposed to criminals, resulting in the decriminalization of prostitution for minor victims. Nevada, however, remains a state that still allows a minor to be charged with prostitution, but not adjudicated.

How do the legal definitions fit into the theories?

The radical feminist believes that all prostitution, sex work, and pornography are forms of violence against women (Gerassi, 2015). It appears from a review of the laws, that it is the radical feminist view that has largely prevailed when it comes to informing legislation, both globally and nationally. As stated above, the Palermo Protocol, which was created to prevent, suppress and punish trafficking in persons, especially women and children, does not distinguish between voluntary prostitution and forced prostitution. Instead, it simply classifies prostitution as a primary part of commercial sex trafficking (Miriam, 2005). The same holds true for the Victims of Trafficking and Violence Prevention Act after it was reauthorized in 2003. This is likely due to the successful activism of radical feminists who lobbied for the eradication of the sex industry because of its objectification of women. It started in the 1980's with a campaign to ban pornography, which resulted in a large number of prosecutions for obscenity, and then moved on to a "moral crusade" against prostitution and sex trafficking (Weitzer, 2007).

Also, we further see the influence of radical feminism because, in the United States, prostitution is illegal in all states except for certain parts of Nevada. Below I will discuss how each of the laws above fit into the two opposing theoretical camps within feminist theory.

When the Federal Trafficking Victims Protection Act of 2000 (TVPA) was passed, the

statute distinguished forced prostitution from voluntary prostitution and did not make a connection between prostitution and commercial sex trafficking (Weitzer, 2007). From a theoretical perspective, there is more of an influence of sex positivism than radical feminism in this first version of the statute. Sex positivists support the criminalization of commercial sex trafficking while also supporting the decriminalization of prostitution. They distinguish between forced prostitution and voluntary prostitution. Thus, although the TVPA of 2000 did not decriminalize or legitimize prostitution, it did distinguish between “sex trafficking” and “severe trafficking” with sanctions applying only to “severe trafficking.” This is more in line with the views of sex positivists than radical feminists who sought to punish all trafficking. Because they were unhappy with this version of the TVPA, radical feminists lobbied for a model that did not distinguish between forced and voluntary prostitution and that sanctioned all forms of trafficking. They were successful when, in 2002, President Bush defined prostitution as “inherently harmful and dehumanizing” and then reauthorized the TVPA without a distinction between forced and voluntary prostitution (Weitzer, 2007).

They remain successful, as currently, the TVPA does not distinguish between forced and voluntary prostitution, and provides sanctions and criminalization for a broad scope of conduct relating to or benefitting from domestic sex trafficking (Crocker, 2017). Thus, we see that the federal anti-trafficking law remains set within the radical feminist theoretical framework.

The radical feminist theoretical framework is also salient within the laws of California. Starting with prostitution, California criminalized prostitution in 1961 and then expanded the definition of prostitution to include “agreeing to engage in prostitution.” This is in line with the view of radical feminists who believe that prostitution is a form of violence against women and should be criminalized. In 2017, California amended its prostitution statute and decriminalized

prostitution for minors. While this would appear to be in line with the views of sex-positivists, who support the decriminalization of prostitution, the amendment is actually more in line with the views of radical feminists. The decriminalization of prostitution for minors was a response to the Uniform Act and the awareness that minors engaged in prostitution are victims of the commercial sex trade, who as minors are unable to consent to engaging in sexual acts (SB 1322; Finkelhor & Ormrod, 2004; Kauffman, 2014). California legislators recognized that prostituted minors were victims of commercial sexual exploitation and needed to be protected, not prosecuted. This mindset mirrors that of radical feminists who do not distinguish between voluntary prostitution and coercive trafficking, and view all prostitutes as victims.

California's anti-trafficking statute is also set within the radical feminists framework. The state's anti human trafficking legislation criminalizes commercial sex trafficking, which it defines as "depriving or violating the personal liberty of another" with the intent to effect a violation of crimes including "pimping" and "pandering" (Carpenter & Gates, 2016 at pgs. 30-31). Also, the statute does not allow "consent" as a defense to commercial sex trafficking when the victim is a minor. The definitions of the statute fit within the views of radical feminist theory which views prostitution and sex trafficking equally as forms of violence against women and supports the criminalization and punishment of both. Furthermore, radical feminists have long argued for legislation that does not allow the consent of a "victim" to be used as a defense by commercial sex traffickers (Weitzer, 2007), which is consistent with California's statute.

Unlike the Federal laws and those of California, Nevada's laws are set within both theoretical frameworks. With legalized prostitution and human trafficking legislation that wasn't passed until 15 years after the TVPA, Nevada's laws are arguably set more within the theoretical framework of sex positivism than radical feminism. However, the radical feminist framework is

still evident in the human trafficking laws.

The prostitution laws of Nevada are salient within the views of sex positivists because prostitution is legal in certain parts of the state (Macfarlane, Fuller, Wakefield, & Brents, 2017). Sex positivists theorize that it is a violation of a woman's civil rights to deny her the right to engage in prostitution. This group of feminists argue that legalized prostitution will lead to improved health as a result of better access to healthcare, less violence against prostitutes who will be able to report the crimes of violence, and reduced exploitation because prostitutes will have rights as workers (Farley, 2004; Zatz, 1997). Looking at the Nevada prostitution laws, these views are seen within the regulations provided by the statutes. Women are free to work as prostitutes in legal brothels where they are "independent contractors, negotiating contracts with management for length of time working and shifts" (Macfarlane, Fuller, Wakefield, & Brents, 2017) and they are able to negotiate prices and choose which clients they want to serve (Seals, 2015). Researchers have also found that the brothels in Nevada not only provide work and health protections, but also provide safety precautions such as alarms in the rooms and surveillance (Seals, 2015).

It is important to note that, while the sex positivist theoretical framework shapes the prostitution laws in Nevada, the laws are not completely in line with the theory. If the laws were completely defined within the sex positivist framework, prostitution would be completely decriminalized, and prostitutes would have the option of working as employees with sick leave, vacation, retirement benefits and overtime, as opposed to independent contractors. Furthermore, all health screenings would be covered by employer provided health insurance (Seals, 2015). Thus, while the current prostitution laws fit more so within the sex positivist theoretical framework, they do not fully embody its views.

Nevada's human trafficking laws, unlike the state's prostitution laws, fit within the radical feminist theoretical framework. When Nevada passed the state's first human trafficking legislation, it provided for substantial punishments to persons convicted of the crime and also added a provision that excluded consent of the victim as a defense (Berkheimer, 2016). This falls in line with radical feminists who were at the forefront of lobbying for anti-trafficking legislation (Lederer, 2010; Baker, 2015), and also urged legislators to preclude traffickers from using a victim's consent as a criminal defense (Weitzer, 2007).

THE RELATIONSHIP BETWEEN LAW AND SOCIETAL VIEWS

The views of society have been successful in impacting laws and reshaping policy (Weitzer, 2010). "Law is typically categorized according to a legal/illegal dichotomy" (Scouler & Sanders, 2010 at p. 4). The opposing theoretical feminist perspectives follow this pattern, with radical feminists seeking to use the government to punish all forms of sex work, including commercial sex trafficking, and sex positivists seeking recognition of sex work as a legitimate form of employment. However, it was the radical feminists who successfully lobbied for their views to be adopted in law and policy. The fight against commercial sex trafficking started as a social problem, framed as violence against women and children, but then evolved into a criminal problem, which warranted a criminal justice response (Farrell & Fahy, 2009). The strategy of framing social problems as criminal has a history of success in garnering public support and governmental response (Jenness & Grattet, 2004; Farrell & Fahy, 2009). For example, a study by Farrell and Fahy (2009) looked at how media attention and portrayal of an issue affects public perception and government response by using newspaper accounts to examine the public framing of human trafficking over a sixteen-year period. They found that the changes in public

framing of human trafficking correspond with the adoption of policy. In their study, the researchers used data from 2,462 newspaper articles that primarily discussed human trafficking during three stages of framing: (1) the period before legislation was passed (1990- 1999), (2) the period between the TVPA of 2000 and the first reauthorization (2000-2002), and

(3) the period including the first reauthorization of the TVPA and the peak of the post-September 11th response (2003-2006). For the first stage, they found that fewer than one hundred news articles discussed human trafficking between 1990 and 1995. However, by the mid-1990's the number of articles steadily increased as the anti-commercial sex trafficking movement caught the media's attention; and by the late 1990's the increase was even greater as Hilary Clinton took an active role in the movement. For the second stage, the researchers found that media attention increased over 160%, and for the third stage, the findings showed that media attention sharply increased (Farrell & Fahy, 2009).

Much of the debate surrounding commercial sex trafficking within the Feminist theory framework, has roots grounded in the legal discourse surrounding prostitution. Anti-prostitution laws pre-date anti-trafficking laws, and it can be argued that they formed the basis for the legislation addressing commercial sex trafficking. Prostitution laws and policy were relatively settled before radical feminists organized what Weitzer (2010) referred to as a "moral crusade" against commercialized sex and the sex industry. A moral crusade is a "social movement that sees its mission as a righteous enterprise to combat a particular condition or activity that is defined as an unqualified evil" (Weitzer, 2010, p. 63). The crusade initially targeted commercial sex trafficking, but then broadened to include all forms of commercial sex, including prostitution (Weitzer, 2010). Eventually, radical feminists successfully conflated prostitution and commercial sex trafficking (Weitzer, 2010). The conflation between commercial sex trafficking

and prostitution (Cole & Sprang, 2015; Mitchell, Jones, Finkelhor, & Wolak, 2011) came from the radical feminist perspective that those who are “trafficked” are essentially forced into prostitution (Sullivan, 2003; Weitzer, 2010). The overlap is further strengthened by the Trafficking Victim’s Protection Act, which does not distinguish between voluntary prostitution and coerced prostitution (Cole & Sprang, 2015).

As a result of the “moral crusade,” society has seen an increase in governmental regulation of commercial sex in the form of harsher criminal penalties and expanded administrative control (Scoular & Sanders, 2010). For example, Weitzer (2007) conducted analyses of “activists’ pronouncements, movement documents, publications of government agencies and relevant legislation” (p. 448) and found that radical feminists and religious groups successfully incorporated the ideologies of their anti-prostitution/trafficking campaign into government policies and societal views.

Radical feminist Kathleen Barry, as director of the Coalition Against Trafficking Women, in 1991, assembled a group to discuss global sexual exploitation. The meeting resulted in the development of an international human rights instrument and a proposal that the United Nations enact a new Convention against Sexual Exploitation (Barry, 1995). Once they developed an international human rights instrument, the group “turned to grassroots women's movements for consultation, input, recommendations, and revisions” in an effort to re-define sexual exploitation (Barry, 1995, p. 304). Although they were not immediately successful, they continued lobbying until the Palermo Protocol was adopted in 2000 (Leidholt, 2004). Similarly, in the United States, lobbying by leading feminists such as Laura Lederer, resulted in defining commercial sex trafficking in a manner consistent with radical feminist views (Baker, 2015). Lederer played a seminal role in bringing together the feminist and religious groups who

successfully lobbied for anti-trafficking legislation, which resulted in the TVPA (Baker, 2015). Lederer also founded a leading research institute on combating human trafficking, The Protection Project (Baker, 2015) and held several high-ranking positions within the federal government dedicated to human trafficking (Lederer, 2010).

Just as views impact laws, laws impact the views of society. In some cases, as society becomes more accepting of certain social views, laws and policy reflect these changing views. For example, the 2015 decision in *Obergefell v. Hodges*, which held that same-sex couples have a constitutional right to get married, came at a time when the ruling was consistent with societal views on the issue (Morini, 2017). By 2015, a majority of Americans were in favor of same-sex marriage (Morini, 2017). Contrarily, due to the activism of radical feminists, during the period of increased societal acceptance of sex work, laws actually became more stringent. Despite a growing normalization of the sex market and the mass market of sexual services, prostitution and sex work were increasingly “demonized, marginalized, and criminalized” (Weitzer, 2010 at p. 62). Weitzer (2010) argues that this was a reaction to the perceived normalization of the sex market. He states that the expansion of the sex industry, the loosening of traditional values, and the wide availability of sexual services resulted in the “moral crusade” that seeks to banish commercial sex work. The coalition of radical feminists and the religious right, through their “moral crusade,” has been successful in impacting the views of society. They have shaped societal views by inflating the severity of the problem, demonizing perpetrators, dramatizing the victimization while focusing on child victims, and refusing to acknowledge any grey areas. Sex positivist Gayle Rubin (1993) stated that “no tactic for stirring up erotic hysteria has been as reliable as the appeal to protect children” (p. 102), when discussing how radical feminists use a concern with “child pornography” to help push their campaign against all pornography.

Also, in their efforts to combat commercial sex trafficking and to criminalize all forms of sex work, they have successfully conflated the two while arguing that “most” sex workers have been trafficked (Weitzer, 2010). It is through these tactics that radical feminists create public concern, which in turn leads to the societal justification of targeting all commercial sex, increasing criminal penalties, and expanding law enforcement. Thus, the views of society are impacted by laws and policy established to target commercial sex.

SUMMARY AND CONCLUSIONS

Commercial sex trafficking has been a focus of legislation since the Federal Trafficking Victims Protection Act of 2000 was passed. Subsequent to the federal legislation states across the country began adopting their own legislation to combat commercial sex trafficking. A review of the literature suggests that the anti-trafficking campaign became a government priority as a result of the activism of radical feminists. Despite there being two opposing feminist theoretical frameworks, it appears that sex positivism is not represented in the laws or policy. With the exception of Nevada, the United States has criminalized prostitution and society has stigmatized it as immoral and intrinsically harmful (Weitzer, 2007). Also, the “moral crusade” of radical feminists has successfully conflated sex trafficking and prostitution, which has helped justify the attack on all commercial sex. The result is a shift in societal views and behaviors that are more in line with those of radical feminists. This is consistent with a study by Soule and King (2006), which looked at how social movements impacted different stages of policy development surrounding state ratification of the Equal Rights Amendment (ERA). The researchers found that social movement organizations had a more significant effect on legislation surrounding the introduction and first passage of an ERA bill, but public opinion had a more significant effect in

the later stages of the public policy process.

This research gives insight into how the views of a group of people can inform the development of laws and policy. Radical feminists started by lobbying for the TVPA of 2000 which distinguished “sex trafficking” from “severe trafficking,” and which only applied protections and sanctions to “severe trafficking” which involved “force, fraud, or coercion” or minors (Weitzer, 2007). Unhappy with the distinction between “sex trafficking” and “severe trafficking,” radical feminists again successfully lobbied for the reauthorized TVPA which did not, and currently does not, distinguish between sex trafficking and prostitution. Furthermore, by institutionalizing their views in legislation and policy, they have also given credibility to their social movement. This has led to the widespread dissemination of information on the horrors of commercial sex, which serves to alarm the public. Some of the information being circulated, however, has been contradicted by academic research. For example, Weitzer (2010) noted that the number of identified trafficking victims was only a small fraction of the number of persons the State Department claimed were trafficked during the same time period, and the General Accountability Office (GAO) disputed the *Trafficking In Persons* estimates as being unreliable for having methodological weaknesses, gaps in data, and numerical discrepancies (p. 66). Future research should look at whether a person’s views of commercial sex trafficking change when presented with information and statistics that reduce the magnitude of the problem.

Here we see how the theories are articulated in the laws and how the laws change the views of society. Future research should explore how these laws are understood, specifically, by the persons they are meant to serve and protect. It is important to look at how survivors and potential victims of commercial sex trafficking understand the laws. It would also be beneficial to look at how service providers understand the laws. Previous research has found that some

terminology for commercial sex trafficking used by lawmakers is complicated and unfamiliar to both youths and adults and can discourage participation in discussions about the commercial sex trade (Murphy, Bennett, & Kottke, 2016). Looking at how laws and definitions are understood could also lead to more accurate results for studies where researchers use terms taken from the laws.

Another area for future research is to investigate and compare how similar dynamics have informed the development of other laws. For example, hate crime laws were a response to the perceived escalation of “hate-motivated violence” (Jennes & Grattet, 1996), which was created by a social movement and then used to create legislation (Jenness, 1999). In the late 1970’s, the civil rights, women’s, gay and lesbian, and victim’s rights movements joined to produce an anti- hate crime social movement (Jenness, 1999). The organizations within the movement mobilized at the state level to pass hate crime laws by attracting media attention and presenting examples of bias-motivated crimes. The first hate crime law was passed by California in 1978, and by 1987 18 states had hate crime laws (Grattet, Jenness, and Curry, 1998). One of the organizations that became a central part of the anti-hate crime social movement was the Anti-Defamation League (ADL). The ADL was responsible for the early definition of “hate crime” used in legislation and for drafting a model hate crime bill that was introduced in state legislatures (Jenness, 1999). Following their success at the state level, anti-hate crime organizations turned their focus to federal legislation. The first federal hate crime legislation was the Hate Crimes Prevention Act of 1998 (HCPA) which was followed by Violence Against Women Act and Hate Crime Sentencing Enhancement Act in 1994. A study by Jenness (1999) found that hate crime laws were largely a result of activism and media attention. Comparing the role activism in shaping different legislation can help to further inform the evolution of laws.

Future research can also explore the diffusion of commercial sex trafficking laws and whether it resembles the diffusion patterns of other crime policy. For example, a study by Grattet, Jenness, and Curry (1998) looked at how innovation and diffusion affected the criminalization process of hate crimes within the United States. The researchers looked at the timing of the adoption of the laws by measuring temporalization, regionalization, and structural/cultural similarity. They also looked at the content of the laws through homogenization, exclusivity, and domain expansion. The researchers identified, documented, and coded all state-level hate crime legislation for every state in the United States. Their findings indicated that the pressure to adopt hate crime laws increased as more states enacted hate crime laws, and the content of a state's law depends on when it "enters the ongoing institutionalization process" (p. 303). Another of the study's findings suggests that civil rights policy innovativeness, which was defined as a state's timing of civil rights legislation on housing public accommodations, and housing, significantly influenced the adoption of hate crime legislation. In other words, states that had early civil rights policy reforms were more likely to enact hate crime laws. Looking at whether commercial sex trafficking follows similar diffusion patterns would help to further inform the criminalization process. It would also be interesting to compare the diffusion patterns of hate crime laws, which started with state legislation and were followed by federal legislation to commercial sex trafficking laws which started as federal legislation and was followed by state legislation.

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