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CHAPTER SIX

At the Border of Rights: Migration, Sex-Work and Trafficking ¹

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A global demand exists for labor whose core component consists of 'women's work.' By this I mean sex, childcare and housework. Demand exceeds supply of female citizens of affluent states willing to provide these services either as unpaid labor or for the wages and working conditions offered in the market. By and large, this has not led to a decline in the demand for commercial sex, a systemic redistribution of unpaid domestic labor between the sexes, or an increased market valorization of 'women's work.' Instead, migrant women from poor countries are recruited to top up the deficit at low cost.

Sex-trade workers supply sex, live-in caregivers perform childcare and housework, and so-called 'mail-order brides' furnish all three. Although sex-trade workers are frequently criminalized as prostitutes and 'mail-order brides' are not formally designated as workers (insofar as their labor is unpaid), these migrations occur within a context of commodification where the expectation of economic benefit (to the women and to relatives in the country of origin) structures the incentives for entering the process. Women's work constitutes a category not entirely subsumed under the label 'low-skill labor', though it remains accurate to posit a negative correlation between work traditionally performed by women and the skill level attributed to that work.

Immigration laws and policies articulate global supply with local demand by delimiting the terms of entry, duration and residence. In the case of sex-trade workers, the formal stance of most wealthy states tends toward exclusion of non-citizens and criminalization of prostitution. The result is that foreign women who engage enter and work without legal authorization (which necessarily encompasses illegal sex work) are doubly criminalized. Canada's policy distinguishes it from many other Western nations in that Canada actually proffers a temporary work permit to 'exotic dancers,' otherwise known as strippers. While this policy makes Canada somewhat anomalous among states, the practical consequences for many women are not unique. Examining the Canadian policy in light of international anti-trafficking campaign provides a useful vehicle for exposing the competing and contradictory discourses animating state policies regarding the entry of foreign women into the domestic market for sex.

The Temporary Work Permit

Membership in the nation-state is a public good, and it is distributed to migrants entering Canada by the state via permanent resident or 'landed immigrant' status. Permanent residence creates a qualified entitlement to enter and remain in Canada, and it is also the

¹ An earlier, longer version of this chapter appeared as "Dancing Across Borders: 'Exotic Dancers', Trafficking, and Canadian Immigration Policy," *International Migration Review*, Vol. 37, (2), 2003: 464-500.

precursor to legal citizenship, which in turn confers a virtually unqualified right to enter and remain in Canada. Immigrants and most refugees in Canada acquire permanent resident status and become eligible to apply for citizenship after three years of permanent residence. They are prospective members of the nation-state and are free to choose their abodes and their occupations. In contrast, migrant workers who seek temporary employment in Canada (as in most countries) must obtain a work permit, which allows them to remain in Canada for the duration of the permit and typically ties them to a particular employer. Depending on the province of residence, temporary workers usually have limited access to the public benefits available to most permanent residents and citizens, such as public health care and income support, although they do pay taxes and various employment-based deductions.

In political terms, immigrants are admitted to Canada as parties to an ongoing, open-ended and theoretically renegotiable social contract; temporary workers on work permits enter as mere parties to private employment contracts. The terms may vary, but the end of the work relationship signals the end of the worker's relationship with Canada. Temporary workers have a place in the economy, but not in the nation. This exclusion is not inherently problematic; its significance depends on the relative heft of the social citizenship entitlements available to the worker in her country of origin as well as the strength of her bargaining power in the global labor market. According to a recently revised Immigration Manual, "The policy on foreign workers permits the admission of foreign workers who meet Canada's needs while ensuring that Canadian citizens and permanent residents have adequate employment and training opportunities."² Temporary workers should not displace Canadian workers or depress wages, working conditions and benefits. They are also meant to fill only temporary needs.

That is the theory. In practice, foreign workers are admitted temporarily to do jobs that Canadians are either unable or unwilling to do under prevailing wages and working conditions. Despite the official claim that work permits are intended to meet temporary needs, they also have evolved into instruments for rapid recruitment to fill immediate but not necessarily temporary needs and as mechanisms to fill chronic gaps in certain undesirable, devalued and low wage sectors -- such as live-in domestic work, exotic dancing, the garment industry and seasonal agricultural work. All but the last of these happen to be predominantly female domains.

Foreign workers who take jobs Canadians will not (as opposed to cannot) do find themselves in a dramatically disadvantaged position in relation to the meaning and impact of temporary status. In these cases, work authorizations are temporary not because demand is temporary, or because the workers necessarily wish to remain in Canada temporarily, or even to circumvent the delays of the regular immigration process. Rather, employment authorizations are temporary because the insecurity created by linking permission to remain in the country with service to a particular employer or occupation ensures that workers tolerate wages and working conditions Canadians and permanent residents find unacceptable. This negative incentive created by temporary status obtains for migrant workers worldwide.

² Citizenship and Immigration Canada (CIC), "Temporary Foreign Worker Guidelines," 2001. Chapter FW-2: Policy and Special Considerations. Immigration Manual.
<<http://www.cic.gc.ca/manuals-guides/english/FWe/FWE02.pdf>>.

Various mechanisms developed over the years to suppress the contradiction between the theory and practice of temporary work permits in the "3D" (dirty, dangerous, difficult) sector. For example, in the 1970s and 1980s, most cross-border movement of exotic dancers could best be described as an informal stripper exchange program between Canada and the US. By virtue of a special exemption that persisted until the late 1990s, strippers with a job offer from a Canadian employer could arrive at a Canadian port of entry, apply for and receive a work permit on the spot without any state inquiry into the circumstances driving the demand for their services.

The Global Traffic in Women: East European Supply Meets Canadian Demand

In the early 1990s, the source region for foreign exotic dancers shifted from the United States to Asia and Eastern Europe. The reasons for the escalation in emigration of Eastern European women as exotic dancers are rooted in the gendered impact of the economic and political upheaval and the proliferation of organized crime in the region.

In most states of the former Soviet Bloc, the anticipated transition from communism to capitalist democracy actualized as a convulsive lurch to a dysfunctional market economy. In much of Central and Eastern Europe, the process stalled at a stage characterized by varying degrees of chaos, corruption, economic decline, massive unemployment and wrenching social dislocation. According to a 1997 report by the Global Survival Network on trafficking of women from Russia and the Newly Independent States, some experts estimate that women comprise up to 80 percent of those fired or laid-off in recent years due to downsizing and economic shifts. Women account for two thirds of the unemployed nationwide and up to 85-90 percent in some regions. Some 98 percent of women are literate, and many are university educated, but sexual harassment is endemic and employment discrimination condoned. About 70 percent of women graduates report that they cannot find gainful employment. Social services such as daycare, preschool, maternity leave and public health care have collapsed with the transition to a market economy, leaving even professional women with no work and no recourse to private or public support.³ As one Russian scholar commented bitterly, "Women in Russia have a choice now: they can be prostitutes on the street, or they can be prostitutes in the office." A growing number of women and girls conclude that "they might as well take their chances abroad."⁴

This macro-geographical shift in source countries for strippers in the 1990s coincided with a micro-geographical shift in the Canadian job site, which descended from the stage to the table-top to men's laps. The advent of 'lap dancing' exposed women to uninvited and unwanted physical contact with male customers. Lap dancing refers to the practice of a nude or near nude woman straddling a seated patron and more or less simulating sex. In principle, patrons are prohibited from touching the women. In practice, they do. Because bars that offer direct access to women's bodies draw more patrons than those that do not, market forces (as personified by bar owners) pressure women to 'consent' to physical contact.

Lap dancing and related practices occupy a grey zone in the Canadian legal landscape. Section 167 of the Canadian Criminal Code prohibits "indecent

³ Caldwell, G., S. Galster and N. Steinzor, *Crime & Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States*. Washington, DC: Global Survival Network, 1997: 17-21.

⁴ *Ibid.*, 20.

performances." Thus far, the Supreme Court of Canada has ruled that lap dancing involving "fondling and suckling of breasts" and genital contact between the dancer and patron, constitute an indecent performance, at least where it occurs in the context of a 'public' performance in front of other patrons. Aside from criminal regulation, some individual municipalities also attempt to restrict lap dancing and related activities through by-laws, which have been upheld by Canadian courts.⁵ On the other hand, the Quebec Court of Appeal subsequently ruled that substantially similar activity in a 'private' cubicle in a bar did not amount to an indecent performance under the Criminal Code. It requires little imagination to recognize that the risk of harm to performers in the form of non-consensual contact could only be exacerbated in circumstances where the patron and the performer are secluded from observation. The curtain shielding what happens on the other side of it from public and, therefore, judicial scrutiny is precisely what heightens the performer's vulnerability; The parallels between the regulation of private and public space in these cases and historic patterns of judicial treatment of domestic violence are patent. One might reasonably conclude from the foregoing that lap dancing violates some municipal by-laws and, depending on the circumstances, also constitutes an indecent performance contrary to the Criminal Code. However, a visit to any one of several clubs in the Toronto area would suggest that these laws frequently do not get past the front door. The availability of lap dancing and other sexual acts involving physical contact attracts more customers than other noncontact sexual performances, so club owners have little commercial incentive to monitor their patrons' behavior in jurisdictions where lap dancing is illegal. Official disinterest in enforcing the law renders lap dancing and other similar activities effectively available in 'no-lapdancing' municipalities.

It appears that this latest degeneration in working conditions furnishes the context for understanding the factors precipitating the decline in the supply of available Canadian and permanent resident exotic dancers. Feminists disagree about the extent to which prostitution constitutes a chosen occupation versus systematized violence against women; it is impossible to test this hypothesis by introducing prostitution into a world where it does not exist. Conversely, the advent of lap dancing is a relatively recent addition to the exotic dance repertoire. Based on anecdotal evidence, it appears that, all other things being equal, exotic dancers prefer noncontact forms of sexual performance over lap dancing and generally deplore the introduction of contact into their occupation. Their reasons include potential health hazards and threats to their physical safety, sexual integrity and personal dignity.⁶ Of course, all other things are not equal: lap dancing is more lucrative than noncontact alternatives because more men want it and will pay more for it.

In response to the redefinition of the tasks expected of exotic dancers, it appears that many exotic dancers balked. "Canadian women won't take the jobs," lawyer Mendel Green declared.⁷ The demand for strippers exceeds supply. Enter the East European (and Asian and Latino) women -- women from poorer countries, with fewer options and less information. Thus, the rise in the trafficking of women from Central and Eastern Europe

⁵ Ontario Adult Entertainment Bar Association v. Municipality of Metropolitan Toronto, 1997.

⁶ Exotic Dancers' Alliance, "The Naked Truth: An Information Resource for the Exotic Dancers," *Community*, 3:1. April 2000: 4-5.

⁷ Oziewicz, E. "Ottawa Eyes Curb on Entry of Strippers," *The Globe and Mail*, February 7, 1997, p. A1.

to Canada as advertent, unwitting or coerced sex-trade workers is attributable to the 'push' generated by the degraded citizenship status of women in the new regimes and the 'pull' of an apparently insatiable appetite in Canada for commercial sex.

This contemporary trade in women is facilitated by an extensive (if loosely organized) network of smugglers, traffickers, pimps and brokers based in Canada and in Eastern Europe. They work in conjunction with Canadian club owners to unite East European supply with Canadian demand. Canada's exotic dancer visa provided a legal circuit for making the connection.

Canadian club owners negotiate with brokers who guarantee delivery of exotic dancers. Using job offers issued by the clubs, women could obtain work permits at the port-of-entry. In a recent study of eighteen Eastern European women working in the Canadian sex trade, none claimed previous experience working in any aspect of the sex trade in their countries of origin.⁸ One woman interviewed by a journalist ruefully lamented her change of career from pediatric nurse in Romania to exotic dancer in Canada. The women's advance knowledge of the work they would be doing in Canada appears to vary, but even those who know they will be stripping report that are deceived about their working conditions, their personal security, the physical contact, and their remuneration.

Once in Canada, agents routinely and unlawfully seize the women's passports and visas, confine the women's movements and interactions, restrict their ability to interact with Canadians (other than customers), and intimidate them through physical and sexual violence, retaliation against family members in the home country or by warning the women that they can have them jailed and/or deported by Canadian authorities. The women do not speak English, do not know what Canadian law permits, and are multiply stigmatized as foreigners and as sex-trade workers. Indeed, a recent study suggests that strip club owners, agents and brokers intentionally isolate foreign sex-trade workers from their Canadian counterparts and warn the women not to talk to or trust anyone but them. Predictably, this encourages ethnic enclaves, resentment and economic competition between Canadian and foreign women. The tension is evident in the comment by one Canadian exotic dancer, "There's clubs I won't dance at because of what you're expected to do.... But there a lot of new women who've come in from Eastern Europe especially who don't care, they just want the money."⁹ Moreover, the foreign exotic dancers are segregated from the one group of women from whom they might acquire vital information and build productive coalitions. McDonald, Moore and Timoshkina summarize the dynamic as follows:

Foreign women were brought to the clubs where they received no training or preparation for their job. In addition, they were told little or were given the wrong information so they were deceived about nature of stripping. As a consequence, they ended up providing sexual services for the same price

⁸ McDonald, L, B. Moore and N. Timoshkina, "Migrant Sex Workers from Eastern Europe and the Former Soviet Union: The Canadian Case. Status of Women Canada," 1996: 13.

<http://www.cfc.gc.ca/pubs/062653351/index_e.html>.

⁹ Appelby, T. "Toronto Police Bust Prostitution Ring," *The Globe and Mail* July 21, 1999, p. A5.

Canadian women would charge for less intimate acts. Being cheaper, the Slavic women attracted all the customers and the Canadian workers were expected to redraw their own personal boundaries and provide more sexual acts for less money if they wanted to survive. The fact that they spoke little English and were told by their agent not to talk to anyone because they might be some kind of 'government person' just added to the problem. And, that so many "were just desperate to pay these fools off" ensures that the women would not be influenced by other workers.¹⁰

The financial arrangements with respect to women working in strip clubs involve paying daily fees to the club and the disc jockey, plus special fees for the "VIP rooms" (cubicles). These fees can exceed \$70.00 per day. Most women are not paid at all by clubs, but rather earn their income by charging individual patrons for lap dances, table dances or sexual acts. The women's earnings depend on how much they 'hustle' and what they are willing to do to make enough money over and above their 'fees.' The pressure to perform sexual acts ranging from masturbation to intercourse arises from their escalating debt load, backed up by threatened or actual physical/sexual coercion. In addition, agents demand hefty daily fees or may force the woman to hand over all her earnings for 'safekeeping' or with the [false] assurance that they will deposit the money in an account in the woman's home country. As one police detective put it, the fees women must pay give "new meaning to 'owing one's soul to the company store' and encourage if not compel, these women to prostitute themselves to meet expenses."¹¹

In some cases, women may believe they are working off a debt incurred for transporting them to Canada and arranging for jobs, yet the debt never diminishes. In other cases, women are trapped in conventional pimping relationships. Both scenarios constitute typical examples of indentured labour and/or forced labor. One Hungarian woman reported paying a Canadian agent \$140 per week and a Hungarian agent \$200 per day. Another described how her agents' rationale for extracting money alternated between debt repayment and a perpetual commission.¹² Some women are not paid at all and are held in real or virtual slavery.

Canadian Immigration Policy and Trafficking

In order to relate Canada's exotic dancer visa to the experiences of the women described above, it is necessary to set out the elements of trafficking. Article 3 of the recent *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* provides the following definition:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of

¹⁰ McDonald et al, "Migrant Sex Workers from Eastern Europe and the Former Soviet Union," p. 57.

¹¹ Oziewicz, E., "Strip Club Raided, Owner Faces Prostitution-related Charges," *The Globe and Mail* February 25, 2000.

¹² McDonald et al, "Migrant Sex Workers from Eastern Europe and the Former Soviet Union," p. 49.

the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Neither "exploitation of the prostitution of others" nor "other forms of sexual exploitation" are defined in the Protocol. Nevertheless, even on the basis of this ambiguous legal definition, the exotic dancer visa implicates the Canadian state in the global trafficking in women in at least two ways. First, women entering on the exotic dancer visa may be deceived about the nature of the work required of them and forced to perform tasks they would otherwise refuse. A woman may expect to dance, but not strip; or strip, but not lap dance; or lap dance, but not masturbate, etc. When she objects, she may be intimidated into acquiescence by threats and/or violence. Deception, coercion and forced labor amount to one type of trafficking. Secondly, even if the job description matches the woman's expectations (be it stripping or prostitution), she may be subjected to debt bondage, forced labor or slavery (forced labor without compensation) in the performance of that job. It is important to acknowledge that the connection between the visa and trafficking subsists not only in the abuse of the work visa as a conduit to forced prostitution. Indeed, a woman who voluntarily and consensually engages in prostitution under working conditions that she considers acceptable is not trafficked. Moreover, women operating within the boundaries of the visa may also be trafficked insofar as they were deceived about the work or working conditions, subject to coercion, or held under conditions of forced labor, debt bondage, or slavery. The threat of deportation hangs over all these women.

In 1997, the media seized on the special work visa for exotic dancers as part of a wider story about trafficking in women. The state's facilitative role in importing women destined for the sex trade caused considerable embarrassment to the government. Nevertheless, the state did not respond by abolishing temporary work visas for exotic dancers. Instead, it retained the visa "on the books", but virtually ceased issuing any in practice.¹³

Discursive Strategies and Immigration Policy

The apparent incoherence of Canada's exotic dancer visa program can only be rendered intelligible if refracted through the discursive lenses that produce the female labor migrant in Canadian popular consciousness. At the highest level of generality, these are economic discourse, which posits the migrant as worker; morality discourse, which scrutinizes the migrant as potential agent of physical, cultural or legal corruption; and, more recently, human rights discourse, which posits the migrant as a bearer of rights derived from personhood rather than status. These discourses sometimes operate

¹³ Informal estimates by Canadian club owners indicate that about four hundred visas were issued annually to East European women until 1999. Caruso, B. J. "Why is There a Shortage of Dancers? Peeling Away at the Truth," *Immigration & Citizenship Bulletin*, 11 (10) 2000.

synergistically, sometimes in opposition (which helps account for garbled policy outcomes).

These discourses are expressed within a nation-building narrative characteristic of settler societies such as Canada. A salient feature of this narrative is that at any given historical moment, mainstream society recites to itself a story that celebrates past generations of newcomers (from whom present members descended) and disparages the current generation by invoking a more or less recurrent set of stereotypes of laziness, immorality, and criminality.

The Discourse of Economic Benefit

As noted earlier, the ostensible purpose of the temporary work permit is to fill temporary (short-term) labor gaps in the Canadian market. If demand is not temporary, the worker should be admitted as an immigrant. To the extent that strip-club owners were exempted from seeking job validations under the terms of the exotic dancer visa, the state abdicated responsibility for ensuring that foreign workers did not compete unfairly with local workers.

When controversy first erupted in 1997, the government indicated its intention to revoke the labor validation exemption, re-introduce the job validation requirement, and compel migrants to apply for work visas from Canadian embassies abroad instead of at the port of entry. Strip-club owners recognized that the practical consequence would be to constrict the issuance of exotic dancer visas. As a general rule, the further one moves the locus of decision-making away from Canada, the more latitude exercised by decision-makers to interpret permissive legal rules instrumentally to achieve specific policy objectives -- such as keeping exotic dancers out.

Mendel Green, legal counsel for strip-club owners, denounced the government's intention in conventional labor market terms: "Canadian women won't take the jobs" Green objected, adding that the proposal to change the law "is preposterous and will cost thousands of jobs of Canadian workers in those clubs." In an attempt to reassure critics concerned about mistreatment and exploitation of workers, Green further declared that "[t]hese women are kept like fine race horses. They earn \$1,000 a week and they all go home when they're supposed to go home."¹⁴

Several aspects of Green's comments warrant attention, apart from his patent misrepresentation regarding earnings. First, Green asserts without argument that the state owes a general duty to the private sector to provide labor inputs where market incentives have failed. Indeed, another immigration lawyer states the case even more categorically: "If the industry is considered commercially important and the statistics and evidence demonstrate a labor shortage, the Department has an obligation to assist the industry with its continued economic growth."¹⁵ The normative basis for this assertion is left undeveloped. Second, Green deploys the political threat that the state's failure to act will cause adverse economic consequences for Canadian citizens who, unlike the exotic dancers, can express their disgruntlement toward government policy at the ballot box. Recently, Toronto strip-club owners have complained that the restrictions on lawful entry for exotic dancers were costing them business and forcing some bars to close. Finally,

¹⁴ Oziewicz, E. "Ottawa Eyes Curb on Entry of Strippers," *The Globe and Mail*, February 7, 1997, p. A1.

¹⁵ Caruso, "Why is There a Shortage of Dancers?" p. 3.

Green's oafish attempt to paint a favorable picture of dancers' working conditions by comparing them to race horses contains its own negation.

For its part, Citizenship and Immigration Canada insists that "the entry of exotic dancers should not be facilitated in any way different from that for temporary workers in other occupations." The difficulty with the government's recourse to the language of formal equality is that, under the government's own rules, temporary workers are admitted to fill temporary needs but not to sustain occupations that Canadians reject. Obliging stripclub owners to offer wages and working conditions sufficient to attract qualified Canadians could only expose the latter objective as the real economic motive animating the issuance of work permits in the sex trade. The state attempts to obscure the temporary worker program's role in solving chronic labor shortages in the 3D sector (and here I would add a fourth D -- degrading) through various measures, including exempting employers from obtaining job validations.

Treating exotic dancers the same as any other temporary foreign worker would involve reintroducing the employment validation requirement. This would, in theory, compel the state to examine the nature of the exotic dancing industry and the impact of foreign workers on wages and working conditions. In fact, this never happened. Ultimately, the veneer of economic logic allegedly guiding the government's 1997 policy shift on exotic dancers cracked in less than a year. Instead of actually requiring employers to demonstrate that adequate efforts were made to recruit qualified Canadian women to strip or to prove that they were offering wages and working conditions adequate to attract women to the sex trade, Human Resources Development Canada papered over the cracks in the policy by issuing the following generic letter:

Please be advised that Human Resources Development Canada does not foresee employment opportunities for Canadian citizens and permanent residents being adversely affected by the current level of foreign exotic dancers entering the country on a temporary basis.

As agreed, this letter will eliminate the need for case-by-case Employment Validations....¹⁶

The practical effect of this letter was to absolve the state from responsibility for scrutinizing whether and why a demand exists for exotic dancers who lap dance. While this might superficially look like a victory for employers, Citizenship and Immigration Canada simultaneously deployed other devices to ensure that virtually no applicants for exotic dancer visas actually succeeded. These tactics were exposed in a 1999 case judicially reviewed by the Federal Court. Mackay J. upheld the refusal by a Canadian visa officer in Bucharest to issue a visa and temporary work permit to a woman applying to work as an exotic dancer in a Toronto club (*Silion v. Canada*, 1999). The first reason for the visa officer's refusal was that the applicant only had experience in topless dancing and therefore lacked the qualifications to fill the position in Toronto, which required nude dancing. The second reason turned on the legal requirement that an applicant for a

¹⁶ Scott-Douglas, R., Correspondence to Joan Atkinson, Director General, Selection Branch, Citizenship and Immigration Canada, May 29, 1998.

temporary work visa must intend to only remain in Canada temporarily. The visa officer did not accept the applicant's assurance that she would return to Romania after her work visa expired. The visa officer reasoned that life in Romania was so harsh that the applicant would probably not want to return there.

Without wishing to disparage the skill set required for exotic dancing, one cannot but question the visa officer's exacting evaluation of the applicant's qualifications to dance nude. Regarding the applicant's intentions, it seems reasonable to suppose that only women whose life circumstances and prospects in Romania are very bleak would consider coming to Canada to work as strippers. According to the logic of the visa officer, however, they cannot come as temporary workers, because they may not want to return to Romania since life circumstances and prospects are so bleak there -- which is why they are willing to come to Canada as exotic dancers in the first place.

At present, the strict assessment of qualifications and the 'temporary intent' Catch-22 comprise the legal devices deployed to retain the exotic dancer visa de jure, in keeping with Canada's commitment to serve the economic interests of the private sector, while abolishing it de facto in the name of other competing interests. Between July 1997 and July 1998, immigration officers in Bucharest rejected 106 of 195 visa applications; another 27 were withdrawn. By March 1999, only eight applications were submitted, and none was approved.¹⁷

The Discourse of Crime and Morality

Contemporary rhetoric regarding trafficking in women inevitably draws on century-old representations of 'white slavery,' replete with images of innocent young women and girls, duped and robbed of their virtue by conniving, duplicitous 'slave traders.' The whiteness signified by white slavery at the turn of the twentieth century in Canada was both literal and metaphorical. Moral virtue was the property of bourgeois Anglo-European women and girls. In contrast, social reformers extended no sympathy to the Chinese women and girls trafficked into Canada and prostituted to Chinese 'bachelor husbands' (immigrants denied the right to bring their families). Indeed, these women functioned not as signs of feminine victimhood, but as agents of Chinese depravity. This moral inferiority of Asians justified exploiting Asians as objects serving the nation-building project rather than as subjects constituting it.

White slavery narratives projected not only the positive image of the victims, but also the negative image of their complement, the violators. Legal historian John McLaren describes a genre of popular tracts, film and drama of the era sensationalizing lurid accounts of innocent maidenly virtue, defiled by wily male exploiters, often with East European accents or Asian features.¹⁸ Once again, one need not reach far to grasp contemporary analogs. Today's trafficking villains remain ethnicized. They are the brokers and agents of Asian and East European origin who recruit the women, arrange for their transportation, and control their bodies and their money. In contrast, the Canadian-born bar owners who profit from the women retain the status of businessmen, albeit sleazy ones. In recent years, they have organized a lobby group, the Canadian Adult Entertainment Association, to press their concerns with the government.

¹⁷ Caruso, "Why is There a Shortage of Dancers?" p. 1.

¹⁸ McLaren, J. "Recalculating the Wages of Sin," *Manitoba Law Journal*, 23, 2000:524-555.

Today's trafficking victim, however, is no longer Anglo-European. She may be East European, Asian, Latin American or African. What remains operative just beneath the surface, however, is what was considered axiomatic a hundred years ago about young, white middle-class Anglo-Saxon women: the victim must be pure, innocent, and lured unwittingly into the sex trade. In this view, only 'good girls' can be trafficked; anyone who voluntarily enters the sex trade is a 'bad girl' and risks forfeiting entitlement to the concern, respect and protection from the state.

A 2004 article in the Sunday New York Times Magazine entitled "Sex Slaves on Main Street" typifies the contemporary 'white slavery' narrative. The article does not explicitly condemn women who knowingly enter the global sex market. Rather, they simply do not exist in any meaningful sense. The following passages evoke the tone and orientation of the article:

The police found a squalid, land-based equivalent of a 19th-century slave ship, with rancid, doorless bathrooms; bare, putrid mattresses; and a stash of penicillin, "morning after" pills and misoprostol, an antiulcer medication that can induce abortion. The girls were pale, exhausted and malnourished (p. 32).

The traffickers' harvest is innocence. Before young women and girls are taken to the United States, their captors want to obliterate their sexual inexperience while preserving its appearance. For the Eastern European girls, this "preparation" generally happens in Ensenada [Mexico]. ... The young women are typically kept in locked-down, gated villas in groups of 16 to 20. The girls are provided with all-American clothing – Levi's and baseball caps. They learn to say "US citizen." They are also sexually brutalized (p. 37).

But border agents and local policemen usually don't know trafficking when they see it. The operating assumption among American police departments is that women who sell their bodies do so by choice, and undocumented foreign women who sell their bodies are not only prostitutes (that is, voluntary sex workers) but also trespassers on US soil (p. 66).

The subjects of the article are adolescent girls and young women from Mexico and Eastern Europe. The alleged bright-line distinction between voluntary sex workers and innocent sex slaves remains unproblematized. The traffickers are all Mexican and East European. The ethnicity of trafficker and trafficked figure prominently, but not so with the US clients. Apparently, their ethnic identity is not relevant. Indeed, the journalist's analysis pays minimal attention to the role of American customers in sustaining the industry. Much like discussions of the drug trade, the focus is on supply, not demand. . One young woman does mention that the customers who bought sex with her included businessmen, a child psychologist, a social worker, and a police officer, which explained in part why she and others in her situation did not contemplate seeking protection from police or members of the "helping professions" (p. 75).

This good girl/bad girl paradigm also continues to organize current Canadian policy regarding exotic dancers. For instance, the state has formally – and without explanation -- withdrawn from the exercise of requiring club owners to demonstrate that they have genuinely sought out Canadian candidates and are offering wages and working conditions sufficient to attract Canadian exotic dancers. One can only surmise that the state does not wish to be perceived as indirectly encouraging women to enter the sex trade by obliging club owners to demonstrate diligent attempts to recruit Canadian candidates. Why? Because stripping is a stigmatized, 'deviant' occupation, and the women who do it are viewed as [very] thinly disguised prostitutes--pathetic at best, depraved at worst. They are bad girls. Applying the job validation process in this context would force government bureaucrats into the awkward position of indirectly promoting the sex trade.

Economic discourse about supply, demand and commercial benefit to Canadians leaves no space to question whether market norms alone can justify supplying labor shortages in any and all sectors of the economy. The Immigration Manual states that the objectives of the temporary worker policy "primarily focus on the economic benefits accruing to Canada by fulfilling a legitimate need of the Canadian labor market." The fact that there exists a dearth of Canadian and permanent resident women willing to enter and/or remain in the occupation as currently defined could provide a useful marker of where constrained choice shades into exploitation and where the concurrence of legality and legitimacy begins to diverge.

Having said that, the state has never responded to complaints about stripper shortages by suggesting that if employers did not require women to lap dance, perhaps there would not be a shortage of Canadian workers. Instead, the dominant anxiety expressed has been that the exotic dancer visa was both a conduit to the unlawful side of the sex trade for the women involved, as well as a chink in Canada's border armor, a legal crevice permitting other forms of international organized crime to infiltrate. In either case, the women entered as proto-criminals, or as vectors of criminality.

The potency of economic discourse about labor supply and demand masks but does not eliminate the countervailing force of the moral stigma attached to the sex trade. After all, the state has tacitly closed the door to legal entry for exotic dancers, signifying the political triumph of morality/crime control over commerce. Nevertheless, the residual influence of economic discourse casts some light on anomalous aspects of the current regime. First, it explains why the visa category for exotic dancers has been retained in name, instead of being explicitly abolished. Second, rejecting applicants as unqualified or duplicitous in their temporary intent focuses the inquiry on the women as unskilled and deceitful, while leaving their employers' motives and actions unscrutinized.

Another locus for the operation of a moralizing subtext is in the temporary nature of the work permits. At no point in the evolution of policy responses did the government or employers contemplate that the solution to the allegedly chronic shortage of Canadian strippers would be to facilitate the permanent immigration of qualified and experienced strippers. Here, economic objectives operate in tandem with morality to reinforce the exclusion of sex-trade workers from permanent residence: club owners' interest is in retaining a pool of women who have no legal option but to work for them, which would be defeated if the women were granted permanent resident status (permanent residents are entitled to work in the occupation of their choice). In the sphere of morality, the

silence of government officials and club owners alike also expresses the shared but unarticulated consensus that these women are not suitable candidates for membership in the Canadian nation-state. After all, Canadian sex-trade workers live on the margins of social citizenship. This reality furnishes little basis for optimism that Canada would welcome foreign sex-trade workers as future citizens.

Finally, the convergence of precarious immigration status and cultural disorientation operate to conjure an image of migrant women as intrinsically immoral: that Eastern European exotic dancers will perform sex acts that Canadian women will not do can be packaged and marketed as a cultural predilection for sexual voraciousness. The apparent willingness of migrant exotic dancers to 'go further' than their Canadian cohorts is not understood as the result of ignorance of existing laws, isolation from sources of information and support, or even a prudent strategy of servicing debt and self-preservation. Rather, it is rationalized through a racialized, ethnicized intragender hierarchy wherein migrant East European, Latin American and Asian women are differentially exoticized and hyperfeminized in contradistinction to Canadian women and to one another. Any casual perusal of websites or magazines advertising mail-order marriages or sex work by East European and Asian women will graphically illustrate the ways in which Asian women are marketed as exotic, docile, sexually servile and childlike. East European women are not presented as docile, but they are promoted as domestic, sexually available -- and white.

This decontextualized construction of foreign exotic dancers validates a criminal response by projecting the women as naturally prone to overstepping the boundaries of lawful sexual performance. Similarly, rejecting applicants because they would allegedly "prefer to remain in Canada (even without an employment authorization extension [sic]) to avoid the less desirable conditions in their home countries" simply elevates the Catch-22 reasoning employed by the visa officer and validated by the Federal Court in *Silion* to departmental policy.¹⁹ The implicit message is that female migrants from poor countries should be scrutinized as incipient outlaws. They are transgressive bodies, careening across political borders in space and sexual boundaries in law. The label 'illegal' affixes to their actions and their intentions. This reasoning is not applied to software professionals from India or to seasonal agricultural workers from Mexico. Only applicants for exotic dancer visas are rejected as intrinsically suspect for wanting to improve their life circumstances through temporary labor migration.

Human Rights Discourse

When the link between the exotic dancer visa and the global traffic in women first captured media attention, interdepartmental government correspondence revealed a concern that the entry of foreign strippers was "incompatible with Canada's highly publicized opposition to the trafficking in women for the purposes of sexual exploitation."²⁰ Later, when the visa for strippers was de facto eliminated, a government spokesperson insisted, "The logic behind that is really to protect the women," presumably from abuse and exploitation.²¹

¹⁹ Pascoe, B., Correspondence to Mendel Green. January 31, 2000.

²⁰ Oziewicz, E. "Ottawa Eyes Curb on Entry of Strippers," *The Globe and Mail*, February 7, 1997, p. A1.

²¹ "Strippers Chilled by Immigration Rules," *The Globe and Mail*, July 31, 1998.

If the discourse of immorality conjures up the spectacle of transgressive bodies that must be policed, the discourse of human rights protection begins from the premise that trafficking constitutes a human rights violation, or at least that certain elements of trafficking violate fundamental human rights. Persons trafficked across borders and/or engaged in unlawful activity (such as prostitution-related activities) are still entitled to the various human rights and civil liberties guaranteed by domestic and international law. In short, trafficked women are victims of human rights violations and deserve protection, support and possibly compensation. Stigmatization, criminalization and punishment should be meted out to the traffickers, not the trafficked.

Discussions within the international and feminist community about transnational trafficking in women often bifurcate along an unresolved political fault line -- the normative conception of the sex trade within twenty-first century human rights and feminist campaigns. According to organizations such as the Coalition Against Trafficking in Women (CATW), the sex trade in all its manifestations constitutes exploitation and violence against women. Other groups, including the Global Alliance Against Trafficking in Women (GAATW), distinguish between voluntary and coerced sex work, expand the scope of trafficking to include domestic workers and mail order marriages, and "link [sex trafficking] to larger issues of labor migration and lack of informal-sector labor regulation."²²

These competing perspectives generate divergent remedial goals. One aspires to the eradication of the commercial sex trade, while the other strives for its reclamation as a legitimate form of labor, subject to all the rights and protections accorded to workers.²³ Despite these political differences, however, there appears to be consensus that the elements of deception, coercion and violence associated with trafficking are matters of human rights concern, regardless of how one ultimately views the sale of sexual services.

If Canada were capable of policing its borders with the vigilance an uninformed public expects of it, the elimination of the exotic dancer visa might actually prevent the trafficking of foreign women into Canada. If law enforcement officials (both criminal and immigration) could devote the necessary resources and concern to the fate of trafficked women (both Canadian and foreign), they might supervise the practices of strip clubs more closely. However, Canada's borders are porous, just like the borders of every other Western democracy. Contrary to recent public perception, Canada receives comparatively few undocumented migrants in both absolute numbers and relative to other wealthy nations, but the traffic in women for the sex trade reminds one that immigration law only partly controls who will come in and who will stay out. To some extent, it merely determines which entrants will be labeled legal and which will be labeled illegal. Women destined for the sex trade continue to enter clandestinely or as visitors, as refugee claimants, or as domestic workers. Both government officials and club owners acknowledge this.

By prohibiting the lawful entry of foreign women employed in the sex trade, the state can avoid the embarrassment of propping up the exotic dancer market and play into

²² Doezema, J., "Loose Women or Lost Women? The Re-emergence of the Myth of 'White Slavery' in Contemporary Discourses of 'Trafficking in Women,'" <http://www.walner.org/csis/papers/doezema-loose.html>.

²³ Pickup, F., "Deconstructing Trafficking in Women: The Example of Russia," *Millennium*, 27 (4) 1998:995-1021.

an anti-prostitution, law and order agenda, but only at the cost of consigning trafficked women to the most unregulated market of all: the underground market. Here the role of the state shifts from regulation to restriction, and the women are no longer victims but now are doubly criminalized as illegal immigrants and as prostitutes. According to media reports, raids of strip clubs in September 1998 and May 1999 led to charges against almost a hundred women, mostly from Eastern Europe. Deportation is the likely consequence for these women.

Undocumented workers (and those who traffic in them) know that the attention of state authorities is precisely what they must evade at all costs. The spectre of imprisonment as a criminal or deportation as an illegal worker simply constitute further reasons to endure abuse rather than seek assistance. The denial of legal access to Canada does not actually prevent entry, and it is virtually impossible to know whether it even reduces it. One certain outcome is that it exacerbates the vulnerability of the women to intimidation, violence and exploitation by ruthless agents, pimps and brokers. As one agent predicted about the 1997 changes to the administration of the exotic dancer visa program, "The changes Immigration is trying to put in are not going to help the workers. The/re going to help the agents, [because unscrupulous brokers are] going to be able to put the squeeze on these [strippers] even more. It is not evident how the human rights of the trafficked women are protected or enhanced by eliminating the exotic dancer visa, thereby criminalizing their presence. After all, if there is one group who is more vulnerable to exploitation in Canada than workers on temporary work visas, it is undocumented workers.

Policy Options

Current government policy toward exotic dancers is disingenuous, if not hypocritical. Although the stated objective is to "provide applicants and their prospective employers with fair, transparent and consistent processing," it seems clear that the real objective is to preclude the lawful entry of women as exotic dancers for reasons related to morality and crime control, while retaining the category on paper as a gesture of fidelity to the norms of the private market.

Canada exercises no direct control over the push factors propelling women into the international sex trade, and this fact obviously constrains the potential efficacy of any policy prescription. What I hope to do here is launch a conversation about what a normatively acceptable policy might look like. By normatively acceptable, I mean a policy that gives primacy to ameliorating the circumstances of trafficked women with a view to vindicating their human rights, whether or not other objectives of morality/crime control or economic benefit are also served. At the institutional level, I also proceed from the position that it is a principle of the rule of law that legal rules should communicate a coherent message; exercising discretion in such a way as to systematically render a permissive rule nugatory subverts this principle.

I begin by eliminating two policy options that may seem theoretically attractive but, at present, are politically and practically remote. First, a policy of open borders could obviate the problem of trafficking across borders. Closed borders is what keeps smugglers and transnational traffickers in business. Absent those barriers, migrants would not need to rely on smugglers, agents and brokers to facilitate their travel and

employment. At the other extreme, elimination of the exotic dancer visa, coupled with perfect border control, would presumably prevent the actual entry of trafficked women.

I organize the more modest options that remain in accordance with the discursive themes I utilized in previous sections, with the recognition that actual policy prescriptions tend toward overlap and heterogeneity.

Strippers as Workers

Can the government accede to club owners' demand for foreign labor in a manner that respects and protects the human rights of the women?

The alleged shortage of Canadian strippers arose in large measure because the job of stripping was redefined to include direct physical contact and sex acts with customers that insufficient numbers of Canadian women were willing to perform. If this is accurate, it is difficult to see how or why the state should make an exception to its rationale for temporary work permits and cooperate with club owners by supplying women who will operate under working conditions Canadian and permanent residents reject. Any justificatory claim that trades on the foreign women's freedom to contract for whatever wages and working conditions they deem superior to options available to them elsewhere is no more persuasive than arguments that minimum wage legislation impermissibly contravenes individual citizen workers' freedom of contract. To the extent that the latter claim has been rejected by most contemporary welfare state democracies, the former should also be dismissed. Alternatively, we might assume that a chronic shortage of exotic dancers would persist even if bar owners and municipalities enforced 'no physical contact' by-laws. In light of persistent demand, foreign strippers could be admitted via the economic immigrant stream and enter as permanent residents.

The quick legal rejoinder to this is that the women would not qualify under Canada's point system for economic immigrants because the skill level attributed to their occupation is too low, which would virtually preclude attainment of sufficient points. Yet the fundamental premise of the economic immigration stream is to select those who will make productive contributions to the Canadian economy. While policymakers and politicians insist that only high-skill workers meet this criterion, the insistence by club owners that Canada suffers from a stripper shortage of crisis proportions, one that threatens the livelihood of thousands of Canadians, suggests otherwise. Moreover, it appears that many of the women trafficked into Canada form part of the 'brain waste' -- migrants who bring with them significant educational and post-secondary vocational qualifications that go unrecognized in Canada. In McDonald Moore and Timoshkina's study involving eighteen East European migrant sex workers, three had university degrees, six were graduates of vocational colleges, one was a professional athlete and four were vocational students. In any event, the *Immigration and Refugee Protection Act* contains ample discretion to facilitate the entry of an immigrant who does not acquire the requisite number of points.

Another route to the same destination involves facilitating the permanent immigration of workers admitted on temporary work permits. Indeed, this is the clear objective of current federal policy toward information technology professionals who enter on temporary work visas. Canada's Live-in Caregiver policy achieves the same end, albeit only after confining caregivers to live-in domestic work for two years. Michael Walzer and Joseph Carens advance compelling arguments that a polity cannot relegate

foreign workers to perpetual 'temporary' status without committing a basic injustice.²⁴ A conventional contractarian approach to the relationship between the state and the individual migrant fails to accord due weight to the fact that migrants are more than embodied labor. They live. Contrary to public perception, not all temporary migrants intend from the outset to settle in the host country, and a number do return. However, as many become economically, socially, culturally and politically enmeshed in the host society, de facto settlement becomes inevitable. Max Frisch famously remarked about the Swiss guestworker program "We asked for workers. We got people instead." An analysis which inquires only into the economic benefits conferred by temporary immigration regimes on citizens of the host country will not attend to the processes that ultimately call into question the normative viability of the formal 'member' vs. 'nonmember' distinction upon which the analysis is premised. Yet it seems reasonable to contend that states cannot extract labor from temporary workers indefinitely without conceding that migrants legitimately earn an entitlement to membership by virtue of the benefits their labor confers on the host society. The claim is particularly compelling in settler societies, where the tradition of earning membership by contributing to the nation building enterprise is embedded in national mythology.

On a practical level, temporary immigration status is, for many migrant workers, an instrument of exploitation, whereby workers 'work hard and work scared' for wages and working conditions that violate domestic employment standards. The longer a state permits the manipulation of temporary status for oppressive purposes, the greater the injustice. Indeed, I contend that the claim to permanent resident status assumes a compensatory function where temporary migration status is implicated in maintaining workers at wages and working conditions that would not obtain in a labor market confined to citizens and permanent residents. Arguably, the more exploitative the consequences of temporary status, the greater the marginal value extracted from the worker, and the greater the entitlement to permanent membership as a measure of recognition and compensation.

The Live-In Caregiver Program, with its option of permanent resident status after two years of live-in domestic work, operationalizes the principle described above. A compelling case might be made for offering permanent resident status to all temporary workers (including exotic dancers) who fulfill the requirements of temporary work permits for a specified period of time. Given that most exotic dancers are young, and many already have post-secondary education, they possess the potential that Canada claims to seek in prospective immigrants.

Attractive as this proposal may seem, certain practical and political obstacles remain. At the political level, live-in caregivers are widely understood to perform the socially necessary (if devalued) task of childcare. Their employers are typically middle- or upper-class professionals, a powerful political constituency. In contrast, the labor performed by exotic dancers is alternately viewed as demeaning to women and/or immoral; their employers and customers lack the respectability and the clout of affluent professional parents. Second, I have residual concerns that conditioning permanent resident status to performance of an occupation that is either inherently exploitative or

²⁴ Walzer, M., *Spheres of Justice*. New York: Basic Books, 1983; Carens, J. "Membership and Morality: Admission to Citizenship in Liberal Democratic States." In *Immigration and Politics of Citizenship in Europe and North America*, ed. W. R. Brubaker, Lanham, MD: University of America Press 1992.

potentiates exploitation remains deeply problematic. One might imagine that the state could reduce the risk of exploitation through vigorous enforcement of employment standards and the provision of information and support to women in the country of origin and in Canada. Relevant information would include the immigration conditions attached to their visa and work permit, the illegality of passport seizure, applicable criminal laws and municipal by-laws, and resources for assistance. However, it should be noted that individual live-in caregivers, despite their extensive advocacy network and superior language skills, still experience abusive working conditions. Although Citizenship and Immigration Canada deserves praise for improving its communication with workers about their rights and obligations under the program, caregivers' real source of support remains self-help advocacy organizations. Exotic dancers have no such support network; the surveillance under which they work and live are designed to preclude the emergence of any collective alliance to secure their interests.

Ironically, in a recent bid to soften the government's resistance, the Adult Entertainment Association of Canada (a coalition of club owners and agents) actually proposed more active state monitoring of the industry; allegedly in the interests of protecting workers and cleaning up the industry's reputation. Close examination of the proposals, however, reveals that most were designed to enable club owners to exercise greater control over the workers through heightened Immigration surveillance, while leaving employers and agents virtually unregulated. There is certainly reason to be skeptical about club owners' motives and even more reason to doubt the ability of any measures to overcome the vulnerability of temporary worker status and the predation of agents. Nevertheless, the fact that club owners would advocate increased government regulation of their industry in exchange for eased migration rules is a telling (if tactical) admission of market failure.

I alluded earlier to the fact that permanent residents can choose their occupations, meaning that once women admitted as strippers obtain permanent resident status, they may well seek other employment. This does not constitute a normative objection, though it does present a pragmatic obstacle to acceptance by policymakers. At this stage, however, I want to consider another concern about permanent resident status as a policy solution. Anecdotal evidence indicates that the overwhelming majority of women who enter Canada as exotic dancers are indebted to recruiters, brokers and agents who arranged for their transportation and employment. It is the servicing of this debt that becomes the basis for forced labor, debt bondage and servitude. While admission as a permanent resident may remove the powerful threat of deportation, it may not suffice to relieve women's vulnerability to control, abuse and exploitation by the pimps/agents/brokers who delivered them to the Canadian market. In other words, they will be in a position similar to many Canadian and permanent resident women who are pimped within Canadian borders.

At this point, it is instructive to compare the recruitment and transportation of exotic dancers with two other categories of temporary workers: software professionals and seasonal agricultural workers. Both groups are overwhelmingly male, though they are positioned at opposite ends of the skill spectrum. Canadian companies keen to recruit software professionals offer candidates a number of incentives, including free airfare and moving costs to Canada. Under the government-regulated terms of the Seasonal Agricultural Workers Program, employers pay for workers' transportation and

accommodation. Employers may deduct the cost of the former from employees' wages, but not the latter. Employers of IT professionals and agricultural workers pay the recruiters to locate the workers, and there appears to be little opportunity for these intermediaries (whether labeled as brokers, agents or pimps) to siphon off the workers' salaries.

Could these models be adapted to the exotic dancer labor market? Answering this question raises other queries that warrant further research. How do club owners establish contact with recruiters? What are the financial arrangements between club owners and recruiters? Why do club owners not finance exotic dancers' travel expenses, if this is common practice among other employers whose industry viability depends on foreign workers? I suspect the answer to this latter question is that club owners have no incentive to pay the women's expenses if they know that recruiters can pay the costs and extract the money from the women without costing employers money.

Strippers as Outlaws

Within the discourse of morality and criminality, strippers engage in deviant but not illegal conduct. As such, they neither deserve protection nor warrant prosecution. The state can ignore them or perhaps regulate them at the margins. If they cross into the unlawful side of the sex trade qua prostitutes, the women become criminals, inhabiting the same moral register as those who profit from them.

The policy implications of this framework in respect of migrant sextrade workers tend toward increased border control, detection, detention and deportation. Insofar as the exotic dancer visa is seen as a conduit to prostitution, the state is justified in refusing to issue any visas. Of course, policing borders in the name of preventing the entry of sex-trade workers can easily lead to the selective targeting of all women from source regions, thereby erecting yet another barrier to the global mobility of all women. As noted earlier, women who cannot enter Canada legally will be smuggled into the country. At this point, although employers and agents who employ and exploit them are also breaking the law, it is the women who are at greatest risk because it is simpler to deport illegal migrants than to successfully prosecute club owners or agents under criminal or immigration legislation. To a great extent, this scenario describes the present policy and its consequences.

Strippers as Humans with Rights

An immigration policy informed by a human rights approach would attend to preventing and suppressing trafficking and protecting the human rights of trafficked persons. Regardless of whether the trafficked persons operate within or outside the legal boundaries of sex work, their status as trafficked persons would render them victims of a human rights violation and militate against criminalizing them under domestic immigration or criminal law. As such, it is the experience of being trafficked, not the nature of the work performed qua trafficked person, that is salient.

The actual content of such a policy would depend in part on one's stance toward sex work. If one adopts the view that sex work is inherently exploitative, there is no justification for supplying Canadian club owners with foreign exotic dancers. This would require the state to formally renounce any generalized duty to supply the private sector with foreign labor, to declare that it is contrary to Canada's commitment to women's

human right to equality to cooperate in sustaining the stripping/lap dancing industry, and to support vigorous publicity campaigns in source countries to warn women against the risk of becoming trafficked. In effect, this stance yields a policy that combines criminalization of trafficking with secondary attention to the human rights of the trafficked women. The objectives of immigration policy would be to prevent the entry of women destined for the sex trade. However, a human rights response would direct law enforcement efforts at prosecuting those who transport, employ and trade in women while protecting and providing support services to the trafficked women themselves.

The recent *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (2000) also embodies this amalgam of criminalization and human rights. The Protocol's status as an annex to a convention about transnational organized crime evinces the primacy of the state as victim of organized criminals' assault on state sovereignty and security. Smuggled and trafficked persons figure as the contraband moved across borders by those criminal elements. Although trafficked persons (unlike smuggled persons) are formally labeled as victims, their victim status is subordinate to the victimization of the state by organized criminals. This hierarchy is best revealed by the fact that states are obliged to do very little on behalf of trafficked persons on their territory, and the Protocol confers no entitlements on trafficking victims. The Protocol advises States Party to "consider" adopting measures permitting trafficked victims to remain in the territory of the receiving state temporarily or permanently " in appropriate cases," taking into account humanitarian and compassionate factors (Article 7). Elsewhere, it counsels that repatriation "shall preferably be voluntary" (Article 8). Ultimately, the sanctity of borders within a regime of state sovereignty remains untainted.

No serious discussion took place about the viability of addressing trafficking as an annex to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), which might have signaled the recognition of trafficking (including for purposes of the sex trade) as a phenomenon associated with the conditions of labor migration under globalization. Nor did the option of addressing trafficking as the discrete subject of a human rights instrument attract widespread support. Based on the singular lack of support for the Migrant Workers' Convention from labor importing states, it is very likely that states would not have signed onto a trafficking instrument located in a labor or human rights instrument.

Part II of the Protocol requires States Party to adopt various measures to protect the privacy, identity and security of trafficked persons and commends provision of legal, social and psychological assistance to trafficked persons (Article 6). Most measures are directed at persuading victims to cooperate with law enforcement actions against traffickers. Recent U.S. legislation goes somewhat further than the Protocol and provides, inter alia, for the provision of social benefits and assistance to victims regardless of immigration status (*Victims of Trafficking and Violence Protection Act* 2000). In addition, trafficked persons who are minors and/or cooperate with law enforcement officials in trafficking prosecutions may be eligible for temporary residence permits and even permanent resident status. Canadian immigration law creates the possibility for favorable humanitarian and compassionate consideration for trafficked women, although no provision specific to trafficking currently exists (*Immigration and Refugee Protection Act*, s. 25). There is also Canadian precedent for successful asylum claims made by

women trafficked into Canada who feared persecution in their countries of nationality for attempting to escape conditions of debt bondage, slavery and/or violence.

While one should welcome any measure that relieves conditions of vulnerability and exploitation, it must be noted that the refugee regime is hardly the optimal vehicle for accomplishing this objective: Refugee status is conferred on persons because they have a well-founded fear of persecution in their country of nationality. The persecution that a trafficked person fears may have begun in the country of nationality, and may resume there if the claimant is returned, but its primary locus – by design – is the very state from which the person is seeking asylum. And yet the fact that the asylum seeker lacks legal status in that state is at the root of her vulnerability to persecution. Put simply, the refugee regime cannot contend with persecution of the asylum seeker in the country of refuge. So, in order to offer asylum to a person trafficked into Canada, the refugee determination system must suppress that glaring fact and focus exclusively on prospective treatment in the country of origin.

If one endorses a conception of the sex trade as a labor market sector, the resulting policy would preserve access to the Canadian labor market for foreign exotic dancers, subject to full protection by applicable domestic and international legal standards relating to labor and human rights. To the extent that this approach assumes that women may choose to voluntarily engage in the full spectrum of sex work, it leads almost inexorably to a claim for the legalization of all elements of the sex trade, including prostitution. Regardless of which perspective one adopts toward the sex trade, the decriminalization of sex workers remains a shared goal.

Conclusion

The foregoing discussion has attempted to explore the implications of various policy options available to the state. While debates about how to conceptualize exotic dancers in particular and the sex trade in general are crucially important, one variable remains constant regardless of where one's normative commitments lie. As long as the state resists dedicating the resources necessary to protect trafficked women, the human cost of trafficking will continue to be paid by the women themselves.

One feature of the options explored thus far is the secondary position occupied by human rights concerns in relation to the primary objective of the policy, whether it is servicing the market or moral regulation. What would a policy that gives primacy to human rights look like? In my view, if one takes seriously the idea that trafficking is a human rights violation, then the next question should be, who is/are the perpetrators? Traffickers would not exist absent the citizen clientele in the host country or without the web of restrictive immigration and, in this case, sex trade laws that entangle those who would attempt lawful entry. In other words, host countries and their citizenry are actively and directly implicated in the human rights violations encompassed under the rubric of trafficking. One need not renounce the concept of borders to acknowledge their role in structuring a regime that leads to the violation of human rights. Indeed, while I confine attention here to persons designated as trafficked persons, a similar analysis might apply to a wider array of migrant worker subject to severe and flagrant exploitation precisely because the lack legal status in the host country.

Pursuing this line of inquiry leads to deeper questions about the interface between human rights, migration and globalization. One feature associated with globalization is the interconnectedness of apparently local phenomena with transnational networks of finance, communication, transportation, etc. Actions emanating from the local and from the individual come to be seen as embedded in a polycentric matrix, signified by the global and the systemic. So too with human rights. The individual agent/pimp/trafficker, isolated and identified as the villain in the trafficking narrative under-girding the Trafficking Protocol, avails himself of opportunities created by systems of gender, of borders, and the uneven impact of economic globalization. Precisely because trafficking as human rights violation transcends national borders, it evades the impulse to containment within the territorial frame of a single state and the conduct of a particular individual (namely, the trafficker). While not stateless in the technical legal sense, the trafficked person realistically has little prospect of protection from the state she left or from the state into which she was trafficked. And what is the virtue of national citizenship if not protection against violation of fundamental human rights? It is in this sense that one might describe the trafficked person as metaphorically stateless.

Two points emerge from this sketch. First, host countries are not [only] targets/victims of trafficking. Their citizens exploit and consume the services of trafficked persons, with varying degrees of advertence. It is no secret that national economies profit from the cheap labor of trafficked persons who live and work in fear of detection and expulsion. In other words, receiving states are implicated in enabling and benefiting from the various forms of exploitation that constitute trafficking, even as they proclaim their indignation at the entry of undocumented migrants and devote resources to restricting legal entry. This is not to deny the culpability of the persons who actually recruit, transport, deceive and abuse the trafficked person, but rather to widen the lens to capture the structural sources of the violation. Second, the corollary of international law's attribution of human rights based on personhood rather than status is that states might breach human rights obligations owed to noncitizens within their territory. In the circumstances of trafficked persons, it is simply not feasible to expect the country of nationality to take the initiative in vindicating those rights.

This brings me to a tentative proposal. Article 6(6) of the Trafficking Protocol provides that States shall “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.” I expect that the drafters had traffickers in mind as the defendants in any legal claim for compensation, but I wish to take this provision in a different direction. If we take trafficking seriously as a human rights violation, and we admit the contributory role played by receiving countries, perhaps we should conceive of the host country owing the trafficked person a remedy arising from its complicity in the violation of her human rights. From this perspective, the option of secure immigration status could be viewed as human rights remedy and not merely as munificence on the part of the host country, or as a contingent benefit conditional upon cooperation with legal authorities in the prosecution of traffickers. Some trafficked women may prefer monetary compensation and repatriation to their home states, and this should be facilitated in accordance with their wishes. However, as Nandita Sharma comments about several undocumented women she interviewed, “[b]eing labelled a ‘trafficked’ woman and ‘reintegrated’ back

'home' . . . was amongst the last things these women wanted. Indeed, it appears that the greater coercion faced by these women in their migration journey was being *returned*."²⁵

Secure immigration status would mitigate a significant cause of the vulnerability of the trafficked sex worker. It would not resolve it completely considering the multiple sources of the disempowerment that generate the migrant woman's vulnerability, including sex, nationality, class and race/ethnicity. It would, however, begin to take migrant sex workers seriously -- not as criminals, nor as commodities, nor even as abject victims, but as humans with rights.

²⁵ Sharma, N., "Travel Agency: A Critique of Anti-Trafficking Campaigns", 12(3), 2003: *Refuge* 53-63. Sharma's interview subjects were twenty-four Chinese women who were smuggled by boat to the west coast of Canada in the summer of 1999. They were detained upon arrival and ultimately repatriated to China.