



**DOMESTIC
MINOR SEX
TRAFFICKING**

**BEYOND VICTIMS
AND VILLAINS**

**ALEXANDRA
LUTNICK**

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For my parents, Carole and Carl Lutnick

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DOMESTIC MINOR SEX TRAFFICKING

1

INTRODUCTION

America is in the grip of a highly profitable, highly organized and highly sophisticated sex trafficking business that operates in towns large and small, raking in upwards of \$9.5 billion a year in the U.S. alone by abducting and selling young girls for sex.

—J. W. WHITEHEAD, "AMERICA'S DIRTY LITTLE SECRET"

In 2000, the United States Congress authorized the Victims of Trafficking and Violence Protection Act, more commonly referred to as the Trafficking Victims Protection Act (TVPA). Section 103.8 defines any U.S. citizen or lawful permanent resident younger than eighteen who is involved in commercial sex acts as a victim of a severe form of trafficking in persons.¹ Under the TVPA's definition of sex trafficking of domestic minors, there is no need to establish force, fraud, or coercion. The definition also does not require third-party involvement,² nor does it require any movement from one location to another.³ An increase in public awareness of and services for domestic minor victims of sex trafficking increased followed the passage of the TVPA.

The authorization and subsequent reauthorizations as the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005,⁴ 2008,⁵ and 2013,⁶ coupled with claims that human trafficking is the fastest-growing criminal enterprise (Californians Against Sexual Exploitation 2012; Walker-Rodriguez and Hill 2011), make the trafficking of minors appear to be a new social issue, but the only thing new about domestic minor victims of sex trafficking is the term. Young people's involvement in trading sex is a complex issue that has existed throughout history (Schwartz 2009). Dating back to the late nineteenth century, charitable organizations fought to bring attention to the trafficking of women and girls for sexual purposes and tried to create mechanisms for tackling the problem at a variety of levels (Cree 2008).⁷ Over the past one hundred years in the United States, this issue has been referred to as *white slavery*, *juvenile prostitution*, *survival sex*, *sex work*, *commercial*

sexual exploitation, modern-day slavery, and sex trafficking. Complicating discussions is the fact that these terms (save for *white slavery*, which is used for a specific historical context) are oftentimes used interchangeably to talk about this issue. Depending on the term used, the young people involved are viewed as victims or fully formed agents or both.

Throughout this book, I use the term *sex trades* to refer to the act of trading sex for some type of payment. When quoting sources who use different terms, I leave those terms unchanged. I have chosen to use *sex trades* as opposed to, say, *sex work, prostitution, commercial sexual exploitation, or trafficking* because it brings with it minimal assumptions about the young people in this population and their experiences. The reality is that most young people “never use the term *trafficking*” (E. Dalberg, personal communication, March 2, 2011). The same is true for the term *victim*. Therefore, I do not use the term *victim* to refer to these young people unless I am quoting or referring to material that uses it. Labeling them victims oversimplifies their lived experiences, is disempowering (Sherman 2012), and “functions as an implicit character assessment of the . . . individual instead of an assessment of the social circumstances” (Zimmerman 2013, 12).

Just as nothing is new about young people’s involvement in sex trades, nothing is new about their construction as victims. The discourse of young people’s victimhood dates back to the White Slave Traffic Act of 1910. More commonly referred to as the Mann Act, this legislation marks the first instance when a federal law was aimed at domestic prostitution involving young cisgender women⁸ and rendered their consent as immaterial (the term *cisgender* refers to those people whose gender identity matches their biological sex; the term *transgender* refers to those whose gender identity does not match their biological sex). The name “White Slave Traffic Act” was strategically used to evoke what “many believed was a serious and widespread practice: Commercial procurers taking innocent young girls and women by force and holding them captive with threats to their lives, a practice that resembled black servitude in its exploitative and barbarous nature” (Beckman 1984, 1112).

Introduced by Representative James R. Mann of Illinois, the White Slave Traffic Act provides that a person is guilty of violating the act if they “knowingly transport or cause to be transported,⁹ or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery, or for any other

immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice.”¹⁰ At this historical moment, a larger boundary crisis about women, sexuality, and the family appeared in response to industrialization and the move from rural to urban communities. This crisis reflected society’s discomfort with women who were “urbanized and sexualized” (Brown 2008, 478) and raised uncertainty about where the boundary of acceptable and unacceptable behavior for women should be now that they were unattended outside of the home (Cohen 1972). The inclusion of the phrase “any other immoral purpose” in the text of the Mann Act reflects how the act sought to control women and girls’ movement across state lines and to prohibit them from engaging in nonmarital sexual relations (Brown 2008). In his book *Panders and Their White Slaves* (1910), Clifford Roe defined white slavery as the “procuring, with or without their consent, girls and women for immoral houses and for lives of shame and detaining them against their wills until they have become so accustomed and hardened to lives of vice that they do not care to leave, become diseased, or too ashamed to face decent people again” (qtd. in Grittner 1990, 67). The removal of criteria of consent was critical to maintain the idea of white slavery. It would have been illogical to claim that someone who was a white slave had the capacity to give consent to her enslavement. In 1918, the Texas District Court offered the opinion that the purpose of the Mann Act was to “protect women who were weak from men who were bad” (qtd. in Grittner 1990, 155).

Enforcement of the Mann Act was expanded beyond its initial intent to prevent interstate prostitution and to protect women. In *Caminetti v. United States*,¹¹ two couples voluntarily traveled together from California to Nevada for the weekend. Because of the inclusion of “any other immoral purpose” in the legislative text, the Supreme Court ruled that even when no commercial intention or profit was present, the Mann Act applied to voluntary immoral acts (Beckman 1984), which these couples’ weekend together was considered to be. In the 1915 case *United States v. Holte*,¹² Justice Holmes raised the need to “abandon the illusion that the woman always is the victim.” Under this ruling, women could not be liable as an accomplice, but they could be tried as a conspirator. A conspiracy charge was deemed appropriate when the woman was considered a willing participant. The U.S. Federal Bureau of Investigation (FBI) is also responsible for the overexpansion of the Mann Act.

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In a policy referendum it issued in 1949,¹³ agents were encouraged to present to attorneys cases “that alleged interstate transportation but failed to indicate the existence of prostitution” (Beckman 1984, 1124). In these cases, women were charged with conspiracy and held in custody in hopes of getting them to testify against the men who transported them.

The Mann Act was used to prosecute individuals beyond the scope of its original intent of curtailing commercial vice. In an examination of 87 percent of the case records ($n = 156$) of women convicted and incarcerated for violating the Mann Act between 1927 and 1937, Marlene D. Beckman (1984) found that 23 percent of the examined cases involved women who traveled with their boyfriends across state lines when one or both of them were married to someone else. In these cases, both the woman and man were arrested as co-conspirators after they were turned in by the man’s wife. In 16 percent of the cases, the women’s involvement in trading sex was secondary to their interstate travel with a boyfriend or husband. These women engaged in prostitution only to earn enough money to complete their travels. Fifteen percent of the women were regularly involved in trading sex to support themselves and were arrested when they solicited at a hotel across state lines. Most represented in the cases reviewed (46 percent) were women who identified as prostitutes and were arrested for aiding or securing transportation for another woman to cross state lines for prostitution. These cases present a very different image than the one of women and girls abducted and forced to trade sex, and they illustrate how the Mann Act became a mandate for prosecuting women who “were an affront to traditional American values” (Brown 2008, 478).

THE NUMBERS GAME

The number of young people who currently trade sex is unknown. A “woozle effect” (Gelles 1980) has taken place whereby the methodologically flawed guesstimate by Richard Estes and Neil Weiner (2005) that between 100,000 and 300,000 young people are at risk for involvement in sex trades has subsequently been cited by politicians, journalists, academics, and activists as the number of youth in the United States who trade sex (Stransky and Finkelhor 2008). Along the way, the descriptor *at risk* fell off, and for many this number has become the true prevalence of youth involved in sex trades in

the United States, despite the fact that not all young people who are considered “at risk” will go on to trade sex. A further complication with the number provided by Estes and Weiner is that it is based on fourteen speculative and nonexclusive categories of at-risk young people (i.e., gang members, run-aways, those living along the U.S.–Canada or U.S.–Mexico border). What this means is if someone fits into multiple categories, he or she will be counted multiple times. Academics and some mainstream media sources have refuted the Estes and Weiner number (see, e.g., Cizmar, Conklin, and Hinman 2011; Fedina 2014; Koyama 2011b; Pinto 2011; Stransky and Finkelhor 2008). David Finkelhor, director of the Crimes Against Children Research Center, explained additional problems with the Estes–Weiner number: “As far as I’m concerned, [Estes and Weiner’s study] has no scientific credibility. That figure was in a report that was never really subjected to any kind of peer review. It wasn’t published in any scientific journal” (qtd. in Cizmar, Conklin, and Hinman 2011).

Other numbers have been put forth to estimate the scope of this issue. In a nationally representative study of 13,294 young people in grades 8 through 12, 3.5 percent ($n = 465$) reported ever exchanging sex for drugs or money (Edwards, Iritani, and Hallfors 2006, 355). One limitation of this finding is the possibility that someone who paid for sex could also respond affirmatively to this item. In a subsequent wave of this study, the National Longitudinal Study of Adolescent Health, this limitation was addressed, and the question about involvement in trading sex was divided into one question about selling and another question about buying sex. Of the 12,240 young people ages eighteen through twenty-six surveyed in this study, 245 (2 percent) began buying and the same number began selling sex between Wave I and Wave III of the study (Kaestle 2012, 317). The data do not indicate how many reported both buying and selling. They also do not indicate at what age the person started trading sex; the individual may or may not have started before he or she turned eighteen. The findings are also limited to those who were in school when the survey was administered. However, if we can believe that 2 percent of school-age young people (thirteen to seventeen years old) in the United States have traded sex at least once, based on the 2010 U.S. census this percentage amounts to 423,536 young people (U.S. Census Bureau 2014).

Crime data are another source that can be used to assess the scope of young people’s involvement in sex trades. One source of crime data is the

Uniform Crime Reports (UCR) published by the FBI. Because not all young people who trade sex are arrested and/or charged for prostitution offenses, these data are limited. Likewise, the data do not indicate how many of the total arrests are one-time occurrences and how many represent multiple arrests of the same individual. With those limitations acknowledged, the data indicate that 550 young people were arrested in 2013 for prostitution-related offenses (U.S. FBI 2014a). The other source of crime data is the National Incident-Based Reporting System (NIBRS), which is part of the UCR. Section 237 of the 2008 TVPRA mandated that the FBI classify human trafficking as a Part I crime in the UCR and a Group A offense in the NIBRS. As a consequence, in 2013 the FBI started collecting data about two categories of human trafficking for the UCR: (1) commercial sex acts, where force, fraud, or coercion is used or where the person performing the acts has not attained eighteen years of age; and (2) involuntary servitude, which does not include commercial sex acts. A review of the data from 2013 shows that six human-trafficking incidents were reported. All of the crime victims were identified as female, and all but one were younger than eighteen.¹⁴ The data did not differentiate between the two categories of trafficking.

It is clear that it is not possible to know the exact number of young people who are involved in sex trades. Lists of all youth in the United States who trade sex do not exist, which prevents any type of random sampling. An additional complication is that young people have many good reasons for not acknowledging their involvement, such as concerns about being judged, stigmatized, or arrested. Based on the previous examination of some of the more commonly cited prevalence data, we see how the numbers range wildly from 5 to 423,536. In a systematic review of forty-two published books about human trafficking, Lisa Fedina (2014) found that 78 percent of the books cited prevalence data from at least one flawed source. This misuse of data is, of course, not limited to books. It can also easily be found in newspaper articles, news shows, documentaries, journal articles, activist claims, organizational literature, political speeches, and governmental hearings. Despite awareness about the flawed nature of these data, “current literature, media sources, and anti-trafficking campaigns and organizations continuously cite these problematic estimates and go as far as to claim that the reality of the problem is much greater than what the estimates project” (Fedina 2014, 2). To rely on unsupported estimates is a disservice to knowledge building and

shifts the attention away from the social factors that create vulnerabilities among youth.

Just as the numbers vary about how many young people in the United States are involved in sex trades, so to do estimates about the age of first entry. Arriving at a consistent estimate of the age of first entry is complicated in that studies use different age eligibility criteria. Some studies use the U.S. Centers for Disease Control definition that specifies youth as between the ages of fourteen and twenty-four (Shannon et al. 2010); others define the period as ages fourteen to twenty-three (Haley et al. 2004; Tyler, Hoyt, and Whitbeck 2000); and still others extend it to age twenty-five or twenty-six (Chettiar et al. 2010; Marshall et al. 2010; Weber et al. 2002, 2004). Research about youth in the juvenile justice system focuses primarily on twelve- to seventeen-year-olds (Brown, Rodriguez, and Smith 2010; Halter 2010; Mitchell, Finkelhor, and Wolak 2010). Some studies focus on a particular period, such as from age fifteen to seventeen (Nadon, Koverola, and Schludermann 1998), whereas others rely on the federal definition of a child as anyone younger than eighteen (Curtis et al. 2008). Among these studies, the average age of entry typically falls between fifteen and seventeen.

Because the average age of entry ultimately depends on the age of the sample, studies that include older individuals have found the average age of entry into sex trades to be around twenty to twenty-two (Kramer and Berg 2003; Lutnick and Cohan 2008; Martin, Hearst, and Widome 2010; McClanahan et al. 1999). One study among adult women calculated the average age of entry for those who started before they were eighteen (average age at start = fifteen) and those who started after that (average age at start = twenty) (Martin, Hearst, and Widome 2010). If studies sample only young people, the average age will reflect that focus and will never be higher than eighteen. By including both sets of numbers, the set gathered from samples of young people and the set gathered from samples of their older counterparts, it is clear that not all people who trade sex start when they are young and that not all youth continue to trade sex past the age of eighteen (Edwards, Iritani, and Hallfors 2006; Martin, Hearst, and Widome 2010).

Despite the challenges of assessing the average age of entry, some work has suggested that age at entry does matter. A study of adult cisgender women in Chicago found that those who reported that they were younger than fifteen when they first traded sex had worse outcomes than those who were at least

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