

**Human-trafficking for Sexual Exploitation in Australia:**

**The Deafening Silence on Demand**

by

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## **Abstract**

Significant resources have been directed at stemming sex-trafficking. Despite this, it continues to flourish. The harm that results from an illicit global industry that nourishes crime, corrupt officials, and opportunistic consumers, is immense. This thesis presents a conceptual framework to consider the complexity, power relationships and reality of sex-trafficking. The thesis describes the extent of, and harms caused by, sex-trafficking internationally and into Australia. It examines international efforts to fight the problem, noting that these encounter two fundamental barriers. The first is that poverty and sex discrimination in source countries generates an ongoing supply of trafficked women. The second – in the words of one senior United Nations official – is that ‘demand – at least for sexual exploitation – is largely the problem of the developed world ... Sexist attitudes, lifestyles that insult the dignity of women, and expensive media and advertising campaigns that exploit their bodies create a market for gender-based exploitation’ and trafficking (Luiz Carlos Da Costa ). Using an ethical-philosophical approach, the thesis explores fundamental concepts such as power, framing, choice, agency, exploitation, consent, adaptive preferences and the capabilities needed to lead a fully human life. Interviews on the ethical and policy issues with a number scholars, ethicists, criminologists, jurists, senior policy-makers and outstanding contributors to public-policy debates permits the thesis to test and extend its conceptual framework. This engagement, a virtual colloquium, reinforces that ethically robust policy development requires a demand focus that must take in the global political, economic, gender and cultural environment.

## **Doctor of Philosophy Declaration**

I, Lisa Connell, declare that the PhD thesis entitled 'Human-trafficking for sexual exploitation in Australia: The deafening silence on demand', is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except, where otherwise indicated, this thesis is my own work.

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## List of Publications and Awards

Connell, Lisa and Doughney, James 2010, 'Human-Trafficking: Responsibility for Demand and Moral Responsibility', *Journal of Globalization for the Common Good*, the 9th Common Good Conference proceedings, California Lutheran University, Thousand Oaks, USA (ISSN 1931-8138), [available at <http://lass.calumet.purdue.edu/cca/jcgg/2010/jcgg-2010-connell-doughney.htm>]

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## Acronyms

ACC	Australian Crime Commission
ACRATH	Australian Catholic Religious Against Trafficking in Humans
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
AIDS	Acquired Immunodeficiency Syndrome
ANAO	Australian National Audit Office
APTIDC	Ant-People Trafficking Interdepartmental Committee of the Commonwealth of Australia
ASEAN	Association of South East Asian Nations
ASEM	Asia-Europe Meeting
AusAID	Australian Agency for International Development
CSE	Commercial sexual exploitation
CATW	Coalition Against Trafficking in Women
CAV	Consumer Affairs Victoria
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSW	Commercial Sex Work
CTMD	Counter Trafficking Module Database
DEVAW	UN Declaration on the Elimination of Violence against Women 1993
DIAC	Department of Immigration and Citizenship
DPP	Department of Public Prosecutions
EC	European Commission
EEA	European Economic Area
EI	Education Index
EPCAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

EU	European Union
EUROPOL	European Police Office
FBI	Federal Bureau of Investigation
GAATW	Global Alliance Against Trafficking in Women
GDP	Gross Domestic Product
GDI	Gender Development Index
GDIR	Gender Development Index Rank
GEM	Gender Empowerment Measure
GEMR	Gender Empowerment Measure Rank
HDI	Human Development Index
HDIR	Human Development Index Rank
HDR	Human Development Report
HIV	Human Immunodeficiency Virus
HPI-1	Human Poverty Index Rank
HTWG	Human Trafficking Working Group, University of Queensland
ICMC	International Catholic Migration Commission
ICMPD	International Centre for Migration Policy Development
IHRLI	International Human Rights Law Institute
JRCTC	Joint Research Centre on Transnational Crime (Transcrime)
ILO	International Labour Organisation
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organisation
IOM	International Office for Migration
LASH	Law and Sex Worker Health
LIGCGW	Labour Institute of the General Confederation of Greek Workers
MWCW	Ministry of Women and Child Welfare, India
NATO	North Atlantic Treaty Organisation

NCID	National Crime Investigation Department
NGO	Non-government organisation
OfW	Office for Women
OH and S	Occupational Health and Safety
OMCG's	Organised Motorcycle Gangs
OSCE	Organisation for Security and Cooperation in Europe
OHCHR	Office of the High Commissioner for Human Rights
PCA	Prostitution Control Act Victoria
PRA	Prostitution Reform Act Victoria
PRWA	Protocol on the Rights of Women in Africa (Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women) 2000
SAARC	South Asian Association for Regional Cooperation
SWA	Sex Work Act
SOU	Swedish Government Official Reports
TIP	Trafficking in Persons Reports of the US Department of State (USDS)
TSETT	Transnational Sexual Exploitation Trafficking Team
TVPA	US Federal Trafficking Victims Protection Act of 2000
UN	United Nations
UNAIDS	United Nations Acquired Immunodeficiency Syndrome
UNDP	United Nations' Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Fund for Women
UN.GIFT	United Global Initiative to Fight Trafficking
UNGAAT	The United Nations Global Alliance Against Trafficking
UNODC	United Nations Office on Drugs and Crime

USDS United States Department of State

USGAO United States Government Accountability Office

# Chapter 1

## Introduction

### 1.1 Introduction

Sex-trafficking is not a marginal phenomenon, restricted to developing countries or at the extreme margins of societies like our own. Sex-trafficking is an international and, most definitely, an Australian problem. The harm it engenders and the criminal networks it nourishes function within a complex system of power relationships that have the demand for sexual services, both illegal and legal, at their root. To mitigate the harms caused to victims of sex-trafficking requires that we both understand this demand and take multidimensional action to counter it. It also requires a sound foundation in ethical argument to provide the reasons society needs to understand the role of demand and the necessity of action.

This thesis aims to contribute to an increasing number of interdisciplinary efforts designed to clarify the conceptual problems associated with sex-trafficking. In order to do this it will focus on the role of demand for the services of sex-trafficked women. It will do so practically by focusing on Australia's role in the global sex-trafficking 'industry'. The thesis will endeavour to:

1. show why counter-trafficking policies need to be informed by an ethical and value-based framework and an examination of the wider political, economic, social and gender environmental factors affecting the demand for sexual services;

2. explore how political, economic, gender and social factors within Australia influence the behaviour of actors complicit in the demand for sexual services;
3. contribute to efforts to reframe the sex-trafficking discourse holistically by clarifying conceptual issues that often sit behind debates over the most effective counter-trafficking policies and strategies to adopt.

Early in my research, I had thought that a practical discussion of effective counter-trafficking policies and strategies would comprise a major part of this thesis. However, it became clear that such a discussion would have to be informed by a common or, at least, largely shared understanding of the problem that effective policies and strategies would counteract. The more the problem of demand loomed large, the more apparent were the differences of opinion within the broader sex-trafficking discourse. The more apparent the differences of approach, the more my emphasis needed to shift towards trying to clarify the conceptual issues behind debates over the most effective counter-trafficking policies and strategies. As Marisa Silenzi Cianciarulo concludes in her comprehensive discussion of the law regarding sex-trafficking, slavery, rape and prostitution (2008, p. 76):

Given the cultural and legal complexities involved with international human trafficking, the issue of who is a true ‘trafficking victim’ and how far the law should go to protect her is unlikely to be resolved in the near future. Issues of consent, choice and personal autonomy are still in a state of flux, even among individuals with common goals, such as feminists, human rights advocates and anti-trafficking advocates. Until there is consensus about the nature of consent in an often unjust and unequal world, the struggle against human trafficking will

not reach its full potential.

To explain the importance of sex-trafficking, section 1.2 of this chapter will provide the reader with a summary of evidence drawn from background research. Section 1.3 will set out how the thesis contributes originally and significantly to our knowledge of sex-trafficking, the centrality of addressing demand and the ethical considerations that should guide our actions. It will set out the objectives, focus and stand point of the thesis. Section 1.4 will explain methodological issues in the study of sex-trafficking and, in particular, one approach that I have used to consider the problem (the ‘virtual colloquium’). The key propositions to be explored throughout this thesis, as well as the phased approach to the exploration of sex-trafficking, will also be introduced in this section. Section 1.5 will identify the sources of data, literature and insight drawn upon for this thesis and the process of engaging scholars, practitioners and activists for phase 3, the ‘virtual colloquium’. Section 1.6 will discuss important conceptual frameworks that I will use throughout the thesis. Finally, the chapter will summarise the central arguments of this thesis in terms of how these develop chapter by chapter.

## **1.2 The importance of sex-trafficking research**

Sex-trafficking, reported to be the most prevalent form of human-trafficking, is an important social, moral and legal problem (United States Government Accountability Office (USGAO) 2006, United States Department of State (USDS) 2007). Sex-trafficking is situated within the larger problem of human-trafficking, which is stated to be the fastest growing and the second or third largest illegal industry in the world (Thachuk 2007, United States Department of Health and Human Services 2008, USDS

2006). The consequences of this expanding trade in human beings include significant human rights abuses and wide-ranging social, political and economic distortions (Yea 2004).

The Asia-Pacific region contains more than 75 per cent of the world's forced labour victims (Belser et al. 2005). The region is identified as a major trafficking hub, particularly for the purposes of sex-trafficking (Piper 2005). The Australian Institute of Criminology (AIC) suggests that the potential exists for trafficking to increase in coming years between and within Australia, New Zealand and the Pacific Islands (Putt 2009). Trafficking of women into debt-bonded prostitution is the major reported form of human-trafficking into Australia (Parliament of Victoria 2010). While Ann Jordan and Lynn Burke argue that extreme care must be taken in quoting statistics and assertions from sources that may be unreliable or unable to substantiate their claims (2011), the consensus remains that both sex-trafficking and human-trafficking are growing (United Nations Office of Drugs and Crime (UNODC) 2006, Shelley 2010, Finckenauer and Schrock 2007, Seelke 2010, Rizer and Glaser 2011). Organised crime has been firmly implicated in the global sex-trafficking phenomenon (Finckenauer and Chin 2010), with Europol (2007) and Interpol (2009) listing human-trafficking as a priority crime area to address.

Despite the acknowledged priority given to trafficking, dominant policy and counter-trafficking initiatives have been criticised for their lack of effectiveness (Iselin 2004, La Dolce 2008, Shelley 2010, Woodiwiss 1999). Criminal justice scholars and practitioners emphasise the inadequacy of traditional law enforcement paradigms to address transnational organised crime, including human-trafficking, and have called for greater understanding of the dynamics of this crime and for broader preventative

responses (author's notes from the 'International and Serious Organised Crime' conference, Australia 2010). The need to disrupt the market forces and environment in which transnational organised crime operates has been emphasised by UNODC in its 'Transnational Organised Crime Threat Assessment' (2010). However, Anne Gallagher and Paul Holmes argue that human-trafficking is 'the predictable outcome of certain global political and economic realities' and that criminal justice bodies 'should not be tricked into believing that they alone have the power to curb or even substantially disrupt this trade' (2008, p. 321).

To enhance the understanding of trafficking, UNODC argues that demand factors need further analysis within the economic, political and social environment of each destination country (2008a). The 2008 United Nations Global Initiative to Fight Trafficking (UN.GIFT) conference in Vienna reiterated this view (UNODC 2008b). An extensive trafficking project conducted by the International Human Rights Law Institute (IHRLI 2003) underlined the lack of research into relationships between national policies, enforcement failures, legal prostitution and trafficking for sexual exploitation. The Joint Research Centre on Transnational Crime (JRCTC) has examined the effects of prostitution legislation on trafficking in 25 European states. Its report identified the 'need to improve knowledge on the role of the demand for prostitution' and advocated for research 'on the link between models of prostitution and the nature and extent of human-trafficking for sexual exploitation' (Transcrime 2005, p. xiii).

### **1.3 Contribution, originality and significance of this thesis**

An awareness of the scope and consequences of sex-trafficking and the challenges encountered in effectively addressing it was my motivation to undertake this research.

As the research proceeded, it became apparent that sex-trafficking had to be explored within the wider political, economic, social and gender environment. Reason and Bradbury suggest that action research is ‘generally recognizable and not exclusively “owned” by one tradition (2011, p. 151). While this research is not formally ‘action research’, I have acknowledged throughout this thesis the crucial need to draw from various traditions to understand sex-trafficking and not be ‘bound’ by one tradition.

I also discovered that a comprehensive discussion of the demand for services of sex-trafficked persons had to be part of this research. Moreover, to examine the relationship between counter-trafficking policy and demand behaviour necessarily involved trying to clarify differences of opinion within the broader sex-trafficking discourse. This in turn required trying to clarify the conceptual issues behind such differences of opinion and behind the debates over effective counter-trafficking policies and strategies.

It also became apparent that there were gaps in the literature and existing research in precisely these areas: demand for sex-trafficked services and rigorous conceptualisation of the nature of the problem. In order to help to fill the gaps in these areas, it also became clear that deeper foundations would be needed. Hence my research also investigated an appropriate ethical and value-based framework within which to consider sex-trafficking and associated conceptual concerns (e.g., choice, consent etc.). Therefore, the *central objective* of my research – and the original contribution of this thesis – is its contribution to the development of a conceptual-ethical framework that will best inform the subsequent development of effective counter-trafficking policies.

To help achieve this central objective, the thesis will *focus* on demand for the

services of sex-trafficked women within the specific political, economic, social and gender environment of Australia. The comprehensive methodological *approach* to social behaviour employed in this research regards social reality as situational (dynamic, complex, multidimensional and interconnected). It seeks to identify what is not visible: the excluded, concealed and peripheral factors. What might be called positivist approaches routinely overlook such factors. I will argue that sex-trafficking, and the policy responses to it, dynamically intersect with the political, economic, social and gender environment in which they occur.

Hence, the thesis is a contribution to reframe the sex-trafficking discourse holistically from the standpoint highlighted by the italicised words in the preceding paragraphs (i.e. according to the central objective, focus and approach of the research). If successful, it will contribute significantly to an improved understanding of the factors that perpetuate sex-trafficking in Australia and to counter-trafficking policies and strategies. Moreover, combining the standpoint of the thesis with the methods that I will discuss in section 1.4 below, is also another original and significant contribution.

#### **1.4 Research design and method**

So that it is possible to discuss the thesis research design and method, it is necessary to keep in mind the standpoint of the research, as outlined in section 1.3. The methods adopted reflect the standpoint of the thesis, and the standpoint reflects both the nature of the subject matter of the research (or research objects) and the nature of interdisciplinary theories about it (or research discourse). According to critical realist philosopher Roy Bhaskar, the former constitutes the intransitive dimension of knowledge, while the latter constitutes its transitive dimension (inter alia 1975, pp. 21-

24). I will be looking at both dimensions in this thesis. In addition, a brief discussion of the obstacles faced in researching sex-trafficking needs to occur. These obstacles, which reflect the nature of the subject matter, have also had a large bearing on the design of the research undertaken.

I also recognised the need to accept and be responsible for my complicity as an inquirer into sex-trafficking. McKay and Romm highlight the need for researchers to ‘operate in terms of a conscious recognition of (and acceptance of responsibility for) complicity as inquirers (together with others) in the development of the unfolding situations being explored’ (2008, p.149). This approach impacted upon my engagement with both the literature and research participants as well as the consideration of policy implications in chapter 7.

Sex-trafficking research provides unique challenges. Researchers have, at best, restricted access to the immediate subject matter of their enquiries, namely the hidden populations that include victims, traffickers and criminal networks. Even the legal sex industry in countries such as Australia is difficult to research, in part because of social stigma and in part because of its remaining connections with illegal sex-industry activity. This means that the size and boundaries of potential research subjects are unknown, resulting in the lack of a ‘sampling frame’ (Gozdziak and Bump 2008, Laczko 2005), despite the importance of enquiries that either comprise, or rely heavily on, original primary evidence (Kelly 2002, Tyldum et al. 2005).

As a result, researchers tend to rely more on secondary sources than would other social scientists. Inherently problematic in data obtained from secondary sources, however, is the lack of methodological robustness. Estimates thus are given credence based on the authority of the individual or organisation that provided them, rather than

the methods employed to determine them. While Guri Tyldum et al. (2005) argue for a greater focus on primary data collection and analysis, it is acknowledged that gaining access to hidden populations remains an obstacle.

Take the example of evidence on what is known as the trafficking hierarchy: Trafficking victims appear to be the most likely source from which researchers can gain insight into the trafficking hierarchy (Gustaffson 2005). However, the reliability and usefulness of data obtained from traumatised victims is questionable. Trafficking networks appear to be designed in such a way that victims have minimal contact with key players, are deliberately disorientated and are left with a poor understanding of the hierarchy and processes (Kelly 2002, 2005). Victims of trafficking also tend to remain fearful of further violence or deportation if they cooperate with authorities and, combined with the stigmatisation and shame associated with sexual assault, this can make them understandably reticent to participate in research or provide insight into their experiences. All the aforementioned difficulties may lead to problems with representation, empirical data collection reliability and general assessment of the geographical and numerical extent of the problem.

A number of authors have noted that definitional and conceptual discrepancies sometimes results in inconsistent statistical reporting and identification of victims (O'Connell Davidson 2001, Tyldum, Tveit and Brunovskis 2005). Confusion between definitions of human-trafficking and people-smuggling, sex-trafficking and prostitution, child-trafficking and adult-trafficking lead to data incomparability. The exclusion of males in trafficking statistics and people trafficked for purposes of labour exploitation in many countries, including China and Saudi Arabia, similarly gives an incomplete picture of the overall human-trafficking phenomenon (Gallagher and

Holmes 2008, USDS 2008).

Kelly argues, in reference to the language surrounding trafficking, that ‘consistency and care in its use is of the utmost importance’ (2002, p.11). Therefore, in order to be precise, I have made it clear in the preceding sections that my subject is sex-trafficking and not human-trafficking in general. Discussions of human-trafficking and sex-trafficking often blur. Both link strongly to issues of international labour demand and migration. Many fundamental similarities exist between trafficking for labour migration and sex-trafficking. Nevertheless, human-trafficking, international labour demand and migration are not my special interest here, except insofar as they relate directly to sex-trafficking.

Therefore, for clarity concerning the methods I use, it is worth reiterating the standpoint of the research, as summarised in section 1.3:

1. to develop an appropriate *conceptual-ethical framework* that will best inform the subsequent development of effective counter-trafficking policies;
2. to employ a methodological *approach* that regards social reality as situational (dynamic, complex, multidimensional and interconnected); and
3. to delineate the *focus* of study as the demand for services of sex-trafficked women within the specific political, economic, social and gender environment of Australia.

Furthermore, consistent with the central objective of the thesis reiterated above, I will not seek to collect or use original data from those involved in sex-trafficking. Of course, the voices of those involved must be heard, especially those of sex-trafficked victims. Despite the difficulties that arise in gaining access to those voices through

social scientific research, such research is vitally necessary. My focus on conceptual clarity, especially concerning the problem of demand and the wider political, social and economic environment in which it manifests itself, is not to deny the importance of primary research focussing on sex-trafficked women. Rather it seeks to complement that primary research and to assist scholars, policy-makers and practitioners to understand better its implications.

In undertaking this research, I have also been informed by the realist approach to applied ethics of James Doughney (2002) and by an approach to social behaviour that combines multidisciplinary complexity theory (Kuhn 2007) with the insights of critical realism (Archer 1988, Bhaskar 2008), theories of power and framing (Lakoff 2004, Lukes 2005) and situationism (Hanson and Yosifon 2003-2004, 2008; Zimbardo 2007). I will use Jaques Boulet's (1985) multilayered theoretical framework of social life in which to situate sex-trafficking. My analysis will seek to understand the dynamics, relationships and influences of situational and systemic structures on human behaviours associated with sex-trafficking. Within this dynamic space, I also intend to adapt Kane and Kane's (2004) trafficking demand matrix to describe elements of demand for trafficked women (see section 1.7).

This research design had four phases. Phases 1 and 2 comprised an exploration of the literature, while phase 4 sought to reframe sex-trafficking holistically. Phase 3 introduced an approach original to my research, namely critical engagement on the ethical-policy issues with scholars, ethicists, criminologists, jurists, senior policy-makers and outstanding contributors to public-policy debates (see list of discussants in appendix A). The reason for this stage was the perceived absence in the literature of an explicitly formulated ethical perspective that was designed to clarify the conceptual

issues behind differences of opinion in the sex-trafficking discourse. Hence critical engagement helped to compensate for this perceived deficit in the literature and in policy discussions.

*Phase 1.* This phase employed a systematic analysis of publicly available human-trafficking literature to reveal evidence, dominant trends and perspectives, insights within these perspectives and areas of conflict with views derived from other perspectives. I sought to examine strengths, weaknesses and limitations within perspectives on trafficking for sexual exploitation in Australia.

*Phase 2.* This phase analysed foundational works in ethics, applied moral philosophy and social issues (e.g. Doughney 2002, Nussbaum 2006), complexity theory (e.g. Kuhn and Woog 2007, Kuhn 2008), critical realist philosophy and other approaches (e.g. Archer 1988 and 2003, Bhaskar 2008, Boulet 1985, Lukes 2005), feminism and law (e.g. MacKinnon 2007, Satz 2010), behavioural economics (e.g. Altman 2006, MacCoun 1993, Reuter and Kleiman 1986), psychology (Zimbardo 2007), framing (Lakoff 2004, and Yosifon 2003-04) and human rights (e.g. IHRLI 2003). This part of the project provided a solid intellectual foundation necessary for tackling conceptual and ethical issues.

*Phase 3.* This phase saw a critical engagement in discussions with scholars, philosophers, criminologists, jurists, senior policy-makers and outstanding contributors to the public-policy debate to clarify and extend my thinking on ethical, conceptual and policy perspectives. The main purpose of this phase (the ‘virtual colloquium’) was to sharpen and enrich thinking on ethical perspectives required to clarify the conceptual issues behind differences of opinion in the sex-trafficking discourse. (See further discussion in section 1.5 below.)

*Phase 4.* Compiling results from the first three phases of the research enabled me to endeavour to reframe sex-trafficking discourse holistically. The reframing was informed by Jacques Boulet's (1985) framework, which links political, economic and cultural structures with individual and group behaviour.

### **1.5 Sources of data, literature and insight**

Sex-trafficking data rely heavily on enquiries that either comprise or rely heavily on original primary evidence. Aware of the dangers of becoming 'part of the hype-producing machinery' that Jordan and Burke (2011) refer to in their critique of researchers who quote unreliable sources regarding the extent of human-trafficking, I urge the reader to keep in mind the challenges of accurately quantifying the sex-trafficking industry. It is illicit, hidden and stigmatised, and data often rely on definitions that are themselves unstable or contested.

Hence evidence in this thesis, including descriptions of common practices accompanying sex-trafficking, come only from the following four types of sources:

1. *Databases.* I have drawn on existing databases from governments and national and international agencies. Information reviewed includes statistics regarding prevalence, type and geographical spread of human-trafficking, including sex-trafficking. These derive from the following public databases and organisational websites: the Counter Trafficking Module Database (CTMD), International Labour Organisation (ILO), United Nations Office on Drugs and Crime (UNODC), United Nations Educational, Scientific and Cultural Organisation (UNESCO), United Nations High Commission for

Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF).

2. *Documents*. These were sourced from international, regional and national organisations and individuals researching and addressing sex-trafficking.

These included:

- 2.1. *Publications by Australian Government sources and agencies*. These include the Australian Institute of Criminology (AIC), the Australian Federal Police (AFP), the Australian Crime Commission (ACC), Australian Senate Committees and other government sources.

- 2.2. *Publications by international agencies*. These include the International Office for Migration (IOM), International Labour Organisation (ILO), United Nations Office on Drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), International Criminal Police Organisation (INTERPOL), European Police Office (EUROPOL) and United Nations Global Initiative to Fight Human Trafficking (UN.GIFT).

3. *Academic literature*. This includes scholarly articles, conference papers and doctoral theses that discuss sex-trafficking. I have specifically included information from the UN.GIFT, which was set up in 2007 to help gain access to global expertise and partnerships to address human-trafficking and provide direction for regional bodies and national governments. Its 2008 scholarly conference in Vienna brought together government, non-government, academic, industry and other organisations interested in gaining greater understanding of human-trafficking. The role of the UN.GIFT and its member organisations will be expanded upon in chapter 5,

where an analysis of the speeches presented at the Vienna conference in 2008 will be provided.

All data and statistics used are on the public record. Documentary analysis was performed on the literature using NVivo software to reveal trends and inconsistencies. The fourth source of information on sex-trafficking was:

4. *Relevant evidence provided by expert discussants.* These included scholars, philosophers, criminologists, jurists, senior policy-makers or outstanding contributors to the public-policy debate on ethical, conceptual, policy or counter-trafficking perspectives.

Selection of the above discussants was deliberate (see Appendix A for list of research participants). Procedures to identify contributors included a review of international and Australian journals and conference publications addressing human-trafficking, social injustice, exploitation, crime, philosophy, ethics and related fields. Selection also came about through scholarly recommendation (e.g. by supervisors or other contributors).

I first contacted prospective discussants to discuss their interest in participating in the virtual colloquium and to initiate a preliminary discussion. Information and consent forms were then sent to prospective discussants. Questions from prospective discussants were also addressed via email, telephone or mail. Twenty-six of 31 prospective discussants agreed to participate in the research, with a total of 26 actually participating in the discussions. Four prospective discussants did not respond to the request for participation in the research. One participant withdrew his comments after the initial interview. Four participants' contributions from my Masters research on sex-trafficking in Australia were also included. Each discussion lasted for 60 to 90

minutes.

The narrative approach used in this phase provided a discursive space to explore and test the complexity of the ethical and policy issues (e.g. informed choice). This qualitative approach also allowed me to receive critical engagement. Using this method, I sought views from discussants on the following topics: professional experience; comments on ethical and policy aspects of human-trafficking and trafficking for sexual exploitation; relevant opinions on the concepts of exploitation, consent, informed choice and agency in relation to the sex industry; opinions on the relationship between the legal sex industry and human-trafficking for sexual exploitation into Australia; ideas regarding political, social, legal, economic and cultural factors that directly or indirectly influence the demand for services of women trafficked for purposes of sexual exploitation; and matters each wanted to raise. During each discussion, I was able to test ideas raised in earlier conversations: hence the notion of a ‘virtual colloquium’.

## **1.6 Reconceptualising the sex-trafficking discourse**

I have noted above the perceived absence in the literature of an explicitly formulated ethical perspective. However, an ethical framework designed to clarify the conceptual issues behind differences of opinion in the sex-trafficking discourse is essential. Without it, we never seem to get to the real or underlying reasons underpinning theorists’ and practitioners’ differences, whether or not they are aware of their underlying ethical motivations. Hence I begin in chapter 4 to explore fundamental principles of ethics and their application; a process that leads to the critical scholarly engagement of the virtual colloquium of chapter 6.

My exploration of ethics fits with the methodological approach articulated earlier (section 1.4) that regards social reality as situational (dynamic, complex, multidimensional and interconnected). This approach is closely aligned with complexity theory which focuses on uncertainty, non-equilibrium, disordered and highly relational (Kuhn 2007). This is not so much a research finding as a precondition for successful research, enabling a comprehensive discussion of the wider environment in which sex-trafficking operates. Here I have drawn upon Jacques Boulet's political-economic framework (1985) and the work of Jon Hanson and David Yosifon (especially 2004) to make more visible those actors, structures and systems that affect sex-trafficking in Australia. This discussion begins in chapter 2 (an overview of the evidence) and becomes more obvious into chapter 3 (refocusing on the role of demand for sex-trafficked services).

An exploration of the wider political-economic environment must examine systems, practices and policies that affect those involved in sex-trafficking. The scope of involvement is broad and includes people who become vulnerable to sex-trafficking, those who become end-consumers of sex-trafficked persons and those who benefit from the existence of this trade in human beings. The institutions that mediate between the everyday-acting of those involved in sex-trafficking and the wider political economy must also be explored. With a focus on the Australian context, chapters 2 and 3 will thus include a discussion of the journey to becoming a sex-trafficked victim, a human-trafficker and an end-consumer of sex-trafficked services. This is especially necessary in order to understand nature of, and driving forces behind, the demand for services of sex-trafficked women. To do this, a framework is required that moves beyond the compartmentalised, linear and reductionist approaches that are typically invoked in the discourse, but that are inadequate for conceptualising

the complexity of sex-trafficking.

Within Boulet's political-economic framework, I will situate the role of power (social, economic, political, gender etc.). In doing so, I will extensively use Steven Lukes' theory of power, which I will explore more fully in chapter 5, together with the related conceptual roles of framing, situationism and deep capture (e.g. Lakoff 2004, Zimbardo 2007, Hanson and Yosifon 2003-2004, 2008). I will summarise briefly the views of Boulet and Hanson and Yosifon here to help the reader to understand the progressive development of my effort throughout this thesis to reconceptualise (or reframe) sex-trafficking discourse holistically.

Boulet's (1985) approach insists upon situating a problem such as sex-trafficking in its relationship to the wider political economy. Indeed, Boulet is relentless in this assertion. Accordingly, the problem of demand for sex-trafficked services is at best only one-sidedly conceivable outside the realms of production, distribution and reproduction and the relationships that exist between source and destination countries. How can we conceive fully the forces motivating both trafficked women and traffickers without understanding the economic, social, cultural and ideological forces at work? Moreover, the butterfly or rippling effects of movement or acting in one of the levels of the political economy influence, or are felt in, another level. An understanding of the interconnectedness and interpenetration of different levels with one another, and with the actors at these levels, is essential, according to Boulet (1985).

The interconnectedness of power and 'everyday acting' – to use Boulet's phrase – in the global political economy is acknowledged in some current criminological research. Noting that crime, profit and power are interwoven, H. Richard Friman, for

example, criticises conventional explanations, urging in his introduction to the collection *Crime and the Global Political Economy* (Friman ed. 2009, p. 1) a more sophisticated approach to a more complex reality:

Conventional explanations of crime and globalization point to ways in which criminals have exploited technological innovations, deregulation, and free markets to triumph over state sovereignty. Drawing on insights and tools from the field of international political economy ... reveals a more complex reality. State and nonstate actors are challenged by and complicit in the expansion of criminal activities on a global scale. The following chapters demonstrate that the political, economic, and normative agendas of state and nonstate actors lead to selective criminalization and diverse patterns of compliance with prohibition regimes. Crime, we argue, is thus better understood as an integral part of globalization rather than simply its underside.

Thus, (re)conceptualising sex-trafficking as an integral part of the global political-economy, rather than an unfortunate consequence of globalisation, helps us to grasp behaviours and consequences for individuals at the everyday level. The everyday lives of people are understood by Boulet as ‘...the totality of all human activities geared at individual and, hence, societal reproduction’ (1985, p. 249). Our everyday lives can be differentiated into inner determinants that include biophysiological factors, desires, needs, emotions and everyday consciousness and their relationships to each other and to other levels of human activity. The outer or external determinants involve other human beings, material objects, time, space and money. Intermediary or mixed determinants include social obligations, mores, habitus and habits.

Boulet emphasises the ‘reciprocal tension between internal (subjective) and external (objective) determinants’ in the everyday-acting level (2005, p. 249). Similarly to Zimbardo (2007) and Hanson and Yosifon (2004), he acknowledges the interpenetration of political-economic and institutional powers at this level. Steven Lukes’ third dimension of power is evident at this ‘everyday-acting’ level. This third dimension (see chapter 5) is where inner determinants, including desires, wants and perceived needs, and their relationships, are formed and shaped by power operating to maintain the political-economic status quo. Boulet laments the compartmentalisation of the everyday-life world, in which false public/private dichotomies are drawn and any sense of holism (or totality) is lost. The call for the ‘reconstruction of totality’ to enable effective and strategic interventions to be targeted at social challenges is evident in Boulet’s work.

Therefore, the everyday choices of participants in the sex-trafficking demand chain (see chapter 3) will be explored throughout the thesis within the political, economic, social and gendered environment. The victims and traffickers act within a larger situational context and systemic environment in which their desires, needs, wants, values, habits and mores are shaped. Thus, factors, including access to financial loans, education, property rights and income, may all affect the situations people find themselves acting within and the associated risks they may take to achieve what they consider to be an acceptable quality of life. As Boulet puts it:

Pervasive, global social relationships – mainly relationships of production and domination – are presented as objective ‘rules’ and subjective ‘values’ and ‘norms’ within differentiated institutional contexts (which does not imply that those rules/values/norms have a life of their own, or are distinct ‘entities’ or

‘produce’ something; they have a virtual existence) (1985, p. 256).

Accordingly, a discussion of structure and agency will take place in chapter 4 to help to ground the ensuing discussion of moral responsibility in that chapter. The chapter will develop the argument that individuals still possess and exhibit agency, but an awareness of powers and influences on them from other levels of social life may enable them to develop a critical scepticism towards the values, norms and rules that they are told are best for their individual economic, social and psychological well-being.

The commonplace language of ‘choice’, ‘agency’, ‘win-win’ and ‘individuality’ in our society therefore deserve a deeper conceptual investigation (see chapter 5). These concepts seem ready made for the growing power and influence of multinational corporations and global businesses in the international political economy (Clapp and Fuchs 2009). Hanson and Yosifon (2003-2004) suggest institutions such as corporations, which possess both wealth and power, may be particularly interested in capturing the perceptions and behaviours of society in general. Given that corporations’ holy grail is profit maximisation, it is not surprising that they attempt to motivate society at large against government regulations that may obstruct industry profit-making. Hanson and Yosifon’s (2003-2004) arguments concerning the ability of power to manipulate the framing of discourse – e.g. in which the ‘paternalistic bogeymen’ of regulation are summoned forth in argument as imagined threats to personal liberty, freedom and choice – is one example that chapter 5 will also explore in relation to sex-trafficking.

Another conceptual aid from Hanson and Yosifon (2004, 2003-2004) will arise throughout the thesis. This is the notion of the situationist-dispositionist divide or

dichotomy. The situationist framework acknowledges unseen or unappreciated influences on our attitudes, emotions, cognitions and behaviours (Hanson and Yosifon 2003-2004, 2004). Thus causation and responsibility extend beyond the individual to the wider environment that influences the individual (Benforado and Hanson 2008a, 2008b). An actor's environment, his/her situation and its systems, institutions and policies, are considered in relation to the behaviour of the individual or group. The dispositionist framework, in contrast, focuses more on individual dispositions and preferences.

Hanson and Yosifon point out that, in addition to powerful situational influences on thinking in society, there exists another tendency favouring a dispositional or reductionist approach. They attribute this tendency to a proclivity of the mind 'to downplay the role of complexifying context and overplay the role of salient behaviour' (Hanson and Yosifon 2003-2004, p. 137). They call this the fundamental attribution error. Certainly, to identify revealed preferences through actualised behaviour is simpler than attempting to understand individual preferences through observation within various contexts (Hausman 2010). It is much easier than explaining how individual preferences and choices are formed and change. The corresponding stances that researchers, governments, policy-makers, lawyers and others adopt concerning the situationist-dispositionist divide is not some abstract theoretical matter. As Benforado and Hanson explain,

Implicit in all realms of law and explicit in most legal theories is a vision of the human animal. The law ... is built on assumptions about what moves and motivates people. And every attempt to assess culpability requires attributions of causation, responsibility and blame across all relevant actors (2008a p. 1089).

Care must be extended, of course, not to overstate the role of situation, as ‘behaviour can vary as a function of subtle situational changes while individual consistency is maintained’ (Funder 2005, p. 21). We need to integrate individual actors’ predispositions and the external environment. Allport (1937), Lewin (1951) and Fleeson and Nofle (2008) stress the need to consider the interactions of both person and situation in the determination of behaviour. Yosifon (2008) and Benforado and Hanson (2008b) recognise this too, but stress why it is important to emphasise situation. Simply, it is because there remains a lack of consideration of situational influences on human behaviour within standard economic and legal paradigms.

The required integration of individual actors’ predispositions and the external environment, embedded within our economic and legal paradigms, delivers two benefits. First, it will help us to gain a greater critical understanding of the powers that are in play in sex-trafficking. Second, this widened critical understanding may lead policy-makers and legislators to think at a deeper level, which involves an understanding of the relations of power and the causal mechanisms present within systems and situations. This approach is not to deny the agency and responsibility of the traffickers, end-consumers and those who exploit others in sex-trafficking. Rather, it aims to attribute appropriate agency and responsibility to the appropriate actors. This will be my approach in chapters 4 and 5.

Chapter 6 will report on the virtual colloquium, which tested key notions raised in chapters 2-5. Conceptual, ethical and practical notions related to sex-trafficking were explored with the scholars, philosophers, criminologists, jurists, senior policy-makers and outstanding contributors to public-policy who participated. This chapter will serve to sharpen our understanding of concepts concerning exploitation, agency,

choice and human rights. Sex-trafficking in Victoria was also discussed to provide a concrete context in which to situate consideration of the problem. In addition, policy formation and organisational implementation of policy will be considered in chapter 6. The conclusion of this thesis (chapter 7) will crystallise key arguments presented throughout.

This chapter has provided a brief background to sex-trafficking. The need for a solid foundation in ethical argument and a multidimensional situational framework was articulated. The key questions I will explore throughout this thesis, along with my methodology and the contribution I hope to make to a greater understanding of sex-trafficking, were presented. Finally, an overview of the chapters was provided in this section so as to make transparent the way the thesis argument will develop. The next chapter will provide an overview of sex-trafficking into Australia within the greater phenomenon of human-trafficking.

## **Chapter 2**

### **An overview of sex-trafficking into Australia**

#### **2.1 Introduction**

Chapter 1 provided some introductory insights into the phenomenon of human-trafficking for purposes of sexual exploitation (referred to throughout as ‘sex-trafficking’). This chapter will provide the background to the practical focus of this thesis: demand for sex-trafficked services, with particular reference to Australia. As the chapter will explain, it is necessary to locate this background within the context of demand for sexual services in general. I will examine the problem of sex-trafficking demand in more detail in chapter 3.

First, this chapter will give a brief overview of the trafficking process and its associated definitions (section 2.2). Second, it will enumerate the particular harms experienced by victims of sex-trafficking (section 2.3) and provide available data on the extent of the phenomenon, its location and the profits associated with it (section 2.4). The closely related problem of debt-bondage will be explored here in order to understand this particular type of trafficking, which is predominant in Australia. The official sources of data add two important ingredients to the mix of evidence. They illuminate the facts from their particular perspective, and they bring forward additional evidence to fill out the description of sex-trafficking. This helps to overcome a potential problem with heavily cross-referenced sources (see chapter 1, section 1.5).

Third, this chapter will summarise international and regional instruments and

treaties, along with international human rights law associated with trafficking (section 2.5). Dominant counter-trafficking strategies will also be discussed and briefly critiqued. Fourth, the chapter will describe sex-trafficking in Australia and discuss state, territory and national sex-trafficking policies and counter-trafficking strategies (section 2.6). Finally, this chapter will examine some factors that predispose people to being trafficked (section 2.7). Human development indicators from countries from which women found to be sex-trafficked into Australia originate will be used. This will illustrate the stark contrast between Australia and the economic, political, cultural and social environments from which these women depart.

## **2.2 Definitions of the trafficking process**

I begin with a brief overview of human-trafficking generally, and sex-trafficking specifically, at both the global and national level. This will set the stage for a deeper discussion on some of the core issues. From the outset, it is essential to be clear about what is meant by human-trafficking and sex-trafficking.

To understand the various complex forms of human-trafficking, a distinction must be drawn between human-trafficking and people-smuggling. Human-trafficking has as its end point profit from the ongoing exploitation of a victim, and it may not involve transnational activity or illegal border-crossing. In contrast, people-smuggling entails an illegal border-crossing and the payment of services to a smuggler who facilitates this process. However, no further exploitation for profit by the smuggler occurs, and the relationship generally ends at this point (International Centre for Migration Policy Development (ICMPD) 2006).

The trafficking protocol, ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’ (UN 2000, hereafter called the Palermo Protocol) presents the first internationally agreed and accepted definition of the term ‘trafficking in persons’. It is the primary legal instrument forming the basis for counter-trafficking prosecutions and counter-trafficking strategies. The definition is:

The recruitment, transportation, transfer, harbouring 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 the abuse of power or of a position of vulnerability or 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs (United Nations 2000, Palermo Protocol).

Human-trafficking can result in many forms of exploitation. Figure 2.1, developed by the Solidarity Centre and the International Catholic Migration Commission (ICMC), draws on the Palermo Protocol for a simplified visual representation of the process of human-trafficking. For an act to be considered human-trafficking of an adult, it must contain at least one of the elements from all three categories. The practice of debt-bondage, which has been commonly used to traffic women, men and children (Solidarity Centre/ICMC 2003), has been added to the original Palermo Protocol categories in figure 2.1. Note that the consent of the trafficked person is irrelevant if it is deemed that human-trafficking has occurred. Moreover, the elements of coercion, abduction, fraud, deception or the abuse of power

of a position of vulnerability do not need to be present in the trafficking of a child; defined as a person younger than 18 years of age (United Nations Children’s Fund (UNICEF) 2007).

**Figure 2.1 Elements of the trafficking process**

PROCESS	WAYS/MEANS	GOAL
<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Transportation</li> <li>• Transferring</li> <li>• Harboursing</li> <li>• Receiving</li> </ul>	<ul style="list-style-type: none"> <li>• Threat</li> <li>• Coercion</li> <li>• Abduction</li> <li>• Fraud</li> <li>• Deception</li> <li>• Deceit</li> <li>• Debt-bondage</li> <li>• Abuse of Power</li> </ul>	<ul style="list-style-type: none"> <li>• Prostitution</li> <li>• Pornography</li> <li>• Violence/Sexual Exploitation</li> <li>• Forced Labour</li> <li>• Slavery/Similar Practices</li> <li>• Organ Harvesting</li> </ul>

Source: Solidarity Centre/ICMC (2003)

Sex-trafficking is reported to be the most common form of human-trafficking in the world today. It refers to the ‘recruitment, harbouring, transportation, provision or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud or coercion, or in which the person forced to perform such an act is under the age of 18 years’ (US Federal Trafficking Victims Protection Act of 2000 (TVPA), 2000b). This definition encompasses both perceived voluntary and involuntary migration journeys, focusing on the exploitation within the commercial sexual transaction. The international NGO Coalition Against Trafficking in Women (CATW) defines sex-trafficking similarly, although extends it to include trafficking for marriage purposes: ‘the recruitment, transportation within or across

borders, purchase, sale, transfer, receipt or harbouring of a person for the purpose of prostitution or exploiting the marriage of such a person' (CATW 1999). In contrast, the Global Alliance Against Traffic in Women (GAATW) emphasises the means: force, coercion or threat. This it perceives to be where the actual trafficking exploitation lies. GAATW's definition is 'all acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threats of violence, abuse of authority or dominant position, debt bondage deception or other forms of coercion' (GAATW 1999).

The location of sex-trafficking as an independent practice, or as a sub-category within the wider framework of human-trafficking, is a major difference between the various definitions available in the literature (Kelly and Regan 2000). The issue of whether a legitimate distinction can be drawn between labour-trafficking and sex-trafficking is debated, and complex concepts are invoked to defend the various arguments (David 2011). Some definitions emphasise the characteristic forms of control, power, dominance and abuse of vulnerability that may be involved in the sex-trafficking process, in addition to explicit threats and coercion. The definitional intersection of rape and prostitution with sex-trafficking also mark out its distinctiveness. Hence, differing perceptions regarding core beliefs such as consent, choice, free will and human dignity in the acts of prostitution, rape and sex-trafficking influence the legislative, enforcement and counter-trafficking strategies and the often intense debate surrounding sex-trafficking definitions (Cianciarulo 2008). Indeed, as Marisa Cianciarulo (2008, p. 74) argues: 'Given that prostitutes and feminists cannot agree on notions of consent and victimhood, it comes as little surprise that these concepts baffle US legislators and policymakers as well'.

The analysis of sex-trafficking phenomena I undertake in this thesis seeks to overcome the simplistic dichotomies present in much sex-trafficking literature. The framing of a victim who is either unequivocally forced into the trafficking process, or who voluntarily chooses her path, thereby ‘consenting’ to the process, is inadequate for the reality of many sex-trafficked women. Kritaya Archavanitkul’s (1998) model, which conceptualises human-trafficking as a continuum is useful in this respect (see figure 2.2).

**Figure 2.2 The trafficking continuum**

<b>FORCED</b>	
A	Victims are forced and/or kidnapped
B	Victims are given false information and are trafficked into types of business other than promised
C	Victims are aware of the kind of work, but not the work conditions
D	Victims are aware of the kind of work and work conditions, but are not aware of and/or are unable to foresee the difficult situations they may encounter
E	Workers (who may have been trafficking victims before) are aware of the kind of work and work conditions, but are not given an alternative worksite (cannot choose where they want to work)
F	Workers (who may have been trafficking victims before) are aware of the kind of work and the work conditions, and are able to select their worksite
<b>VOLUNTARY</b>	

Based on Archavanitkul (1998)

In the continuum represented in figure 2.2, it is self-evident that victims in categories A and B are trafficking cases who have not consented to being trafficked. However, those within categories C through to E occupy an area in which concepts such as agency, choice, informed consent and abuse of power must be considered and sometimes contested. For example, social and economic policies, practices and

conditions that create an environment in which people's limited livelihood choices leave them vulnerable to being trafficked into commercial-sex industries and informal sectors may impact on their ability to choose and consent freely. Moreover, the specific nature of commercial sexual activity operates at all levels, from A through to F. Therefore, even at level F, it is arguable that commercial sexual activity in societies dominated by men is inherently exploitative and not truly 'voluntary' (MacKinnon 1989, p. 168).

The concepts of choice, consent, coercion, power, agency, exploitation and harm (all vital concepts embedded within the human-trafficking definition) will be further discussed in later chapters. Authors report definitional, conceptual and perceptual confusion on terms relating to human-trafficking generally and sex-trafficking, specifically (Tyldum, Tveit and Brunovskis 2005, Gustafsson 2005, O'Connell Davidson 2001, Cianciarulo 2008). Thus, following further discussion, I will return to definitions later in the chapter.

### **2.3 Sex-trafficking harms**

The evidence for the existence of harm is overwhelming, and the harms involved are not easy to set right. The following quote from the Animus Association Foundation, La Strada (2003, p. 83) is confronting: 'It only takes a few days to break a woman; it takes many years to help her to rebuild her life. What we have learned is that life after trafficking is no less dangerous than life in trafficking'. Reported physical, psychological and emotional trauma associated with the exploitation experienced within trafficking is stark. Trafficked victims' experiences constitute a wide range of harms along a continuum of intensity, incorporating physical and psychological

factors.

Violence may occur during various stages of the trafficking process – from recruitment to destination. This often has a profound impact on the health of the victim. The physical, sexual and psychological abuse experienced by victims trafficked for sexual exploitation, combined with the forced or coerced use of alcohol and drugs, isolation and manipulation, are highlighted in research by Cathy Zimmerman et al. (2003), Donna Hughes (2005), Rosilyn Borland (2008) and Silverman et al. (2007). The long-term implications for victims' overall well-being as a result of chronic physical, psychological and emotional abuse are profound and present a challenge for rehabilitation. The 'Stolen Smiles' report, released in 2006, presented some of the first statistical data on trafficked women's health consequences. 'The findings are startling in the breadth and depth of the harm women sustained', the report found (Zimmerman et al. 2006, p. 2). Physical injuries and assaults, for example, included fractures, sprains, beatings, burns with cigarettes, being kicked while pregnant, having heads slammed against walls and being hit with bats (Zimmerman et al. 2006). United Nations agencies have also called attention to the presence of an intimate relationship between sex-trafficking and the growth of human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS), particularly in the Asian region (United Nations Development Programme (UNDP) 2007).

The psychological harm experienced by victims exposed to severe and persistent trauma and abuse are similar to those observed in victims of torture and repeated sexual abuse. Dissociation, depersonalisation, fragmented memory, severe depression and anxiety are evident in both groups of victims (ICMPD 2006, Zimmerman et al.

2006). Escaping from the trafficking situation does not free the victim from the consequences of the period of exploitation, which she or he has endured. Chronic physical, psychological and social issues often affect sex-trafficked victims throughout their lives, whether they are free or enslaved.

#### **2.4 Extent, profits and geography of trafficking**

Repeatedly selling a human product until they no longer prove profitable is a unique aspect of human-trafficking and one upon which criminal networks can capitalise. Unlike most smuggling, which involves a once-off profit, continuous income via the repeated exploitation of the trafficked victim has proven a lucrative and attractive business for human-traffickers. The total market value of human-trafficking has been estimated at US\$32 billion, where US\$10 billion is gained from the initial sale of the victim, and the remaining US\$22 billion profit results from the services and goods produced by the trafficked person (UNODC 2008c, p. 25). A recent report by the United Nations Office on Drugs and Crime (UNODC 2010), assessing transnational organised crime threats globally, put the total value of the market into Europe alone at US\$3 billion.

It is important, however, to recall the caveats in chapter 1 regarding methodological challenges in measuring and representing a hidden, illicit industry. Furthermore, as Ann Jordan and Lynn Burke (2011) remind us, commonly quoted claims, including that people-trafficking is the ‘third largest source of profits for organised crime’ – e.g. as quoted by UNODC (2000), the US Department of State (USDS 2000) and Interpol (2002) – need to be taken with caution. Jordan and Burke argue that ‘evidence for this claim does not exist or is impossible to locate’ (2011) and

that such statements should be considered as ‘opinions and nothing more’ until evidence proves otherwise. Nevertheless, despite caveats about data estimates, UNODC and other international organisations that address trafficking are reputable agencies. Their reports focus on real problems. So, for example, when UNODC (2008d) and the International Labor Organisation (ILO 2008) suggest that between 2.4 and 2.5 million people are trafficked at any given point in time we should take them seriously.

Criminologists argue that organised crime networks are increasingly becoming involved in trafficking, as huge profits are at stake, and there is evidence to show that criminal networks are closely linked to sex-trafficking (Bruggeman 2002, ICMPD 1999, Scaheur and Wheaton 2006). Existing contacts, webs of corruption, specialised personnel and successfully tested trafficking systems provide an easy path for criminal networks to shift between arms, drugs and human-trafficking (Emmers et al. 2006). The International Monetary Fund (IMF) suggests that human-trafficking is a major source of profits for international organised crime (UNODC 2008d), and there is growing concern that international criminals are shifting from drug-trafficking to human-trafficking (Scaheur and Wheaton 2006).

The following estimates from Patrick Belser (see table 2.1) provide us with a general snapshot of the annual profits from trafficking. Labour trafficking has seen a growth in both the number of identified cases and prevalence (ILO 2005, UNODC 2006, USDS 2008, United States Government Accountability Office (USGAO) 2006). Of the total number of trafficking victims, 1.2 million are estimated to be children under the age of 18 (UNICEF 2007, ILO 2008).

**Table 2.1 Annual profits from trafficking as percentages of total**

	<b>Proportion of profits from enforced commercial sexual exploitation (CSE) (per cent)</b>	<b>Proportion of profits from economic exploitation (per cent)</b>	<b>Proportion of global profits (per cent)</b>
Industrialised economies	47.7	58.3	49.0
Transition economies	11.8	3.6	10.8
Asia and the Pacific	34.3	4.4	30.7
Latin America and Caribbean	2.1	20.2	4.3
Sub-Saharan Africa	0.4	1.0	0.5
Middle East and North Africa	3.7	12.4	4.8
<b>World (Total Profits)</b>	100 (US\$27,820 mil)	100 (US\$3,834 mil)	100 (US\$31,654 mil)

Source: Belser (2005, p. 27)

While the extent of human-trafficking is difficult to quantify precisely, national and international sources agree that a substantial increase has occurred (UNODC 2009a, Gallagher and Holmes 2008). Its increasing profitability reflects the environment in which a seemingly endless supply of, and demand for, services of vulnerable people continues unabated. Its relationship to the global economic environment has been emphasised by the ILO (2009a) and UNODC (2009b), which voice concerns regarding the impact of the recent global financial crisis on the supply of human ‘products’ and the demand for these cheaper, flexible and vulnerable products and the services they provide.

Trafficking for purposes of sexual exploitation has been identified as the most common form of human-trafficking (Belser et al. 2005, UNODC 2006, USDS 2008,

USGAO 2006). Almost all of those trafficked into the commercial-sex industry are women and girls (Belser et al. 2005, Putt 2007, USDS 2009). Victims are trafficked specifically for the purposes of providing sexual services in the legal and illegal commercial-sex industry. The following table 2.2, derived from Belser (2005), depicts the estimated annual profits from forced commercial sexual exploitation (CSE).

**Table 2.2 Estimated annual profits from forced CSE with trafficked victims**

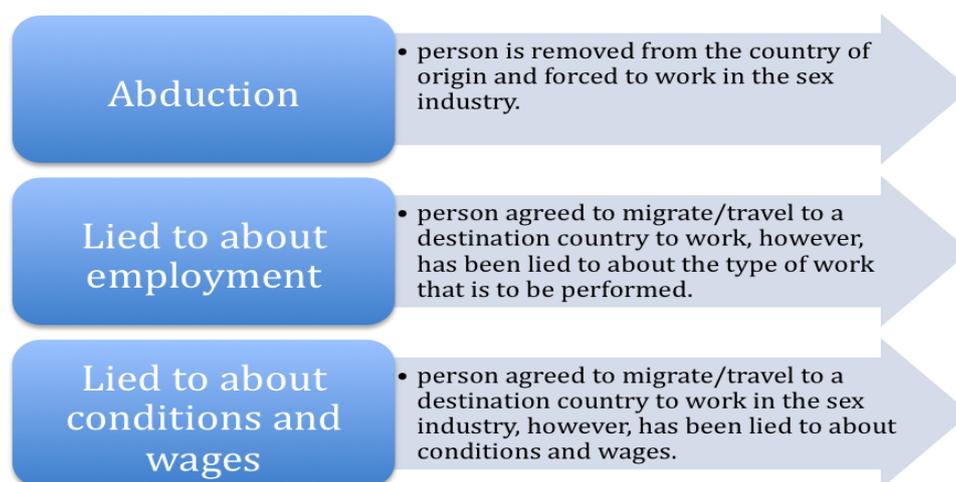
	<b>Annual profits per prostitute (\$US)</b>	<b>Number of trafficked people in forced CSE</b>	<b>Total annual profits (\$US,000)</b>
Industrialised economies	67,200	197,585	13,277,712
Transition economies	23,500	139,697	3,282,867
Asia and the Pacific	10,000	953,958	9,535,980
Latin America and Caribbean	18,200	31,420	571,844
Sub-Saharan Africa	10,000	11,835	118,345
Middle East and North Africa	45,000	22,948	1,032,660
<b>World</b>		<b>1,357,082</b>	<b>27,819,408</b>

Source: Belser (2005, p. 15)

It is important to acknowledge that those ensnared within labour-trafficking are also highly vulnerable to sexual abuse and exploitation (David 2011). Yet sexual exploitation is *precisely* the intent of sex-trafficking. In sex-trafficking, it is at the core of this particular market and constitutes the reality of everyday life for its victims. Those trafficked into the sex industry arrive in this state of exploitation through major pathways (see figure 2.3 below) in which abduction, deceptive recruitment, or

coercive recruitment is likely to be present (ILO 2009b, USDS Trafficking in Persons (TIP) Report 2011).

**Figure 2.3 Sex-trafficking pathways**



Source: ILO 2009b

Consent to travel or work in the sex industry is obviously missing from the first pathway, and overt force is present in the abduction process. In the last two pathways, overt force may not be present, yet coercion and abuse of power in the employer/employee relationship exists. Moreover, situating these relationships in the reality of our world, in which women may be desperate to accept any work arrangement in order to survive, provide for their families, or escape their current more abusive environments, provides a more nuanced and accurate description of their trafficking situations. These situations are captured in figures 2.1 and 2.2, and in section 2.2.

A common method to entrap girls and women into an exploitative contract,

particularly in the Asian region, is through debt-bondage (UNODC 2007). Often, the initial 'agreed upon debt', is artificially inflated to enable substantial profit to be made by the employer, and the woman is lied to about the type of employment, or the conditions and wages she is to receive (Ryan and Hall 2001). Restriction of liberty, removal of travel documents, isolation and threats of harm are often associated with the practice of debt-bondage into the commercial-sex industry (Anti-People Trafficking Interdepartmental Committee, Commonwealth of Australia (APTIDC) 2009). National and international law regard debt-bondage as a form of slavery, whereby the victim is bonded to the employer by debt (Lindley and Davis 2009). People are offered jobs and benefits in order to entice them to travel voluntarily to a country or business.

Debt-bondage has been recognised as a major structural feature of sex work and, indeed, of labour generally in many parts of the world, particularly in the Asian region (Sandy 2006). In a typical debt-bondage arrangement, women entering into prostitution agree to provide sexual services for a given period of time in return for a loan. Once the agreed debt has been repaid, the period of 'servitude' ends. This, Miers (2004) suggests, is the major distinction between debt-bondage and slavery. Varying levels of monitoring and restriction of movement are evident, all dependent upon the owner of the establishment to which the debt-bonded prostitute is bound. Larissa Sandy suggests that there is an increase in the numbers of women in Cambodia 'choosing' debt-bonded sex work, 'primarily for economic reasons that are intimately linked to strong family values of survival and support' (2008, p. 282).

Patrick Daru et al. (2005) emphasise social exclusion, monopolistic credit markets and asymmetrical access to information between the employer and the

employee as major contributing factors to the practice of debt-bondage in South Asia. Exorbitant fees for transportation costs to the destination country and daily accommodation and living expenses are also typically imposed upon these women. A cycle of entrapment to inflated debt thus begins.

## **2.5 International instruments and counter-trafficking strategies**

It is important at this point to review the global and national instruments that address trafficking, as the literature suggests that current counter-trafficking strategies and instruments are limited in their effectiveness (Iselin 2007, Konrad 2008, Steele 2007, UNODC 2010). Trafficking operates across jurisdictional, legislative, cultural and national boundaries. Vanessa Von Struensee argues that '(g)lobal problems are those that by their very nature transcend the capacity of the nation-state to deal with them effectively as an independent entity' (2000, p. 12). The ability of contemporary crime to evade national legislation and enforcement, and indeed to work alongside and take advantage of national legislation, has been well documented (UNODC 2010).

The most specific protocol targeted at human-trafficking is the Palermo Protocol (UN 2000). This was adopted and ratified by a UN General Assembly resolution in 2000 and entered into force at the end of 2003. Article 3 of this protocol provides an internationally recognised definition of human-trafficking (see section 2.2).

Furthermore, international criminal law, international human rights law, international refugee law and international labour law have all been invoked to help to address human-trafficking and its associated exploitation. A specific assembly held in 2008, The United Nations Global Alliance Against Trafficking (UNGAAT), saw interested agencies, governments and specialists in the field come together on a large scale for

the first time.

Specific legislation to target slavery, *An Act for the Abolition of the Slave Trade*, was formulated and passed by the British Parliament in the early 1800s (UK National Archives). Since then various treaties and legislation have attempted to address forms of slavery, including sex slavery (although often focused on white women captured and forced to work in the sex trade). The International Agreement for the Suppression of the White Slave Traffic (1904) was the first international agreement that focused on cross-border trafficking in women. This agreement was extended in 1919 specifically to include cross-border traffic in women for so-called ‘immoral purposes’. The focus on the words – white, women and sex trade, is evident in the development of further protocols, agreements and conventions in developed countries. It was not until 1956, at the UN Economic and Social Council in Geneva, that there was a refocus on the issue of slavery in general and recognition of a need for contemporary legislation to include practices such as debt-bondage, child servitude, servile marriage and slavery-like practices. In the latter part of the 1900s, a broader variety of instruments was developed to encompass exploitation and specific acts that may be associated with slavery and human-trafficking.

A more victim-centred approach is evident in the ensuing protocols, at least in principle. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime (UN 2000), explicitly excluded any smuggled persons from criminal liability and focused on the provision of protection and assistance to those smuggled persons. The Rome Statute of the International Criminal Court approached the issue of crimes against humanity, which includes enslavement, enforced prostitution, forcible transfer

and sexual slavery, thereby encompassing human-trafficking (UN 1998). The Economic and Social Council in Geneva, through its Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), acknowledged that contemporary forms of slavery-like practices exist, and thus extended the concept of slavery to include debt-bondage, servile marriage, child servitude and serfdom (UN 1956).

International human rights law has also been formulated to address the exploitation associated with human-trafficking. Conventions and protocols include:

1. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979 and entered into force in 1981. This core UN treaty explicitly mentions the need for state parties to instigate strategies to protect against forced marriage and trafficking of girls and women (UN 1979).
2. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted in 1990 and entered into force in 2003 (UN 1990). However, as the United Nations High Commission for Refugees (UNHCR) report concedes, ‘To this date, no major destination country for migrants has acceded to the Convention’ (UNHCR 2008, p. 63).
3. The Convention on the Rights of the Child, which was adopted in 1989 and entered into force in 1990. This convention specifically mentions trafficking and the sale of children and encourages state parties to prevent these acts (UN 1990).

4. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted in 1984 and entered into force in 1987. This core UN treaty explicitly mentions the need for state parties to instigate strategies to protect against forced marriage and human-trafficking of girls and women (UN 1984).
5. Other international covenants encompassing civil, political, social and cultural rights, which were adopted in the mid 1960s, also sought to include those who lacked citizenship status, or legal status in a particular country.

Co-operative strategies adopted by and between states include targeted aid and increased co-operation among immigration authorities and regional policing strategies. The following groups and conventions have been formulated in Asia to address trafficking in persons. It is important to remember, however, that declarations and memoranda of understanding are not legally binding, nor are they enforceable.

The Association of South East Asian Nations (ASEAN) has produced various declarations related to human-trafficking, including:

1. The Association of South East Asian Nations' Declaration on the Protection and Promotion of the Rights of Migrant Workers (ASEAN 2007).
2. The ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (ASEAN 2004a).
3. The ASEAN Inter-Parliamentary Organisation Resolution on the Role of Parliament in Combating Trafficking in Women and Children in the ASEAN Region (ASEAN 2004b).

The South Asian Association for Regional Cooperation (SAARC) developed The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). Six nations in the Greater Mekong sub-region developed a Memorandum of Understanding (2004) in order to combat the high levels of human-trafficking and people-smuggling that occurs across their borders. The 2001 Asia-Europe Meeting (formal process comprising 16 Asian countries, the ASEAN Secretariat, the 27 European Union (EU) member states and the European Commission (EC)) developed an action plan focused specifically on trafficking in women and girls. The second UNHCR-sponsored Bali Ministerial Conference on People-smuggling, Trafficking in Persons and Related Transnational Crime, held in 2002, saw a strong involvement from Australian and regional authorities keen on dealing with people-smuggling and trafficking in the region. The first Bali conference (Bali I) had noted that the 'UNHCR's concern was to ensure that the measures being considered took proper account of the human rights and protection dimensions of population movements, properly informed by the complex underlying root causes' (2003, pp. 1-2).

UNODC in 2009 recommended an international framework for action to help to implement the Palermo Protocol. It identified five major categories of concern to address in any global response to human-trafficking, as listed in figure 2.4 below (UNODC 2009c).

**Figure 2.4 Implementation categories for the Palermo Protocol**



Source: UNODC (2009c)

Helga Konrad, an international consultant on human-trafficking, in a speech to the 2008 United Global Initiative to Fight Trafficking (UN.GIFT ) conference in Vienna, emphasised the need for a rights-based response to trafficking (Konrad 2008). However, Konrad and others, including Rebecca La Forgia and Marinella Marmo (2007), explained that the dominant features of the global counter-trafficking strategy, including legislative and enforcement policy, focused on criminal justice and immigration responses. Yet, initiatives focusing on criminal justice and immigration alone have seemingly proved counter-productive in addressing the harms associated with human-trafficking (Dottridge 2007). Such concerns prompted the Office of the UNHCHR to call for a human-rights focused approach to human-trafficking, whereby counter-trafficking initiatives would not ‘adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked’ (2002, p 1). Despite this, Dottridge argued that the focus still remains on arrests, prosecution and punishment of traffickers, rather than the protection of victims’ human rights (2007).

Brothel raids, tightened immigration laws and restrictive visa processes have all been reported as having contributed to increased harms for trafficked women and sex workers (Dottridge 2007, Kapur 2007, Limanowska 2007).

Brian Iselin has argued in similar terms, explaining that ‘the single most compelling reason law enforcement is not the leading tool against human-trafficking and never should be, comes from a simple collection of figures’ (Iselin 2004, p. 4). Andreas Schloenhardt (1999), Andrew Cockayne (2002) and Michael Woodiwiss (2000) have also expressed concern at the limitations of the current criminal justice approach. Salt and Stern suggest that ‘relative to the ability of governments to control them, traffickers, demonstrate greater flexibility, organisation and speed of response’ (1997, p. 485). Albert Moskowitz (2008) asserts that prosecutions rarely capture the master traffickers. The richer and generally more influential people who are directly complicit in the exploitation and abuse of victims tend to operate with greater impunity, escaping the current counter-trafficking strategies. Indeed, crackdowns on trafficking have led to a focus on the poorer and easily replaceable ‘people movers’. Examination of prosecution, conviction and incarceration data from sources including the USDS TIP Report (2011) seems to corroborate this failure of current counter-trafficking strategies on a global scale (see table 2.3 below). Furthermore, when successful convictions are obtained for cases of debt-bondage and human-trafficking, the penalties do not reflect the seriousness of the abuse and exploitation that has been inflicted upon the trafficked victims (Richards 1999, United Nations Mission in Bosnia and Herzegovina 2002, UNODC 2008a).

**Table 2.3 Global law enforcement data on human-trafficking 2011**

<b>Year</b>	<b>Prosecutions</b>	<b>Convictions</b>
2005	6178	4379
2006	5808	3160
2007	5682	3427
2008	5212	2983
2009	5606	4166
2010	6017	3619

Source: USDS TIP Report (2011)

The potentially large profits to traffickers, combined with minimal prosecutions, convictions and penalties, are seen as major contributing factors to criminal organisations electing to diversify into the business of trafficking (Lewis 2010). In addition, according to Iselin (2007), criminal investigations into trafficking are not cost-effective. Physical and technical surveillance, combined with extended witness protection, vital in many trafficking cases, is extremely expensive. In Australia, for example, an extensive case involving criminal networks may cost millions of dollars (Iselin 2007). Richards reveals that, once uncovered, trafficking and slavery cases take an average 12 to 18 months to investigate and prosecute. Richards' interviews with 150 individuals from both the public and private sector reflect the perception that 'uncovering, investigation and prosecuting trafficking in women cases, while protecting, assisting and repatriating trafficking victims, is a complicated and resource-intensive task' (1999, p. 31). Figures from the USDS, published in 1995, recall White House estimates that the US had spent US\$295 million to address trafficking globally (2005, p. 295), yet this had resulted in the identification of fewer than one thousand victims.

## **2.6 Sex-trafficking and the commercial-sex industry in Australia**

Geographically, Australia is located in the leading trafficking region in the world (Belser and Danailova-Trainor 2006, Schloenhardt 1999). The Asia-Pacific region contains more than 75 per cent of the world's forced labour victims (Belser et al. 2005). Australia is considered an attractive trafficking destination due to its geographic proximity to Asia (Australian Federal Police (AFP) 2003) and its high ongoing demand for Asian sex workers (Batros 2004). Australia's geographical isolation and highly marketed tough border controls have been linked to reported lower levels of trafficking into the country (Attorney General's Department 2009, Putt 2007). The Australian Institute of Criminology (AIC) contends, however, that 'there is increasing potential over coming years for trafficking into, within, and between, the Pacific Islands, Australia and New Zealand' (Putt 2009). The Parliament of Victoria (2010, p. 27) reports Australia as 'primarily a destination country for trafficked women', yet the USDS in its TIP report, asserts that 'it is also a source country for child victims of sex-trafficking' (2010, p. 66). In this connection, the 2010 TIP report highlighted that indigenous females, often underage teenage girls, are exploited through prostitution at truck stops in Australia (USDS 2010).

Analysis of the patterns of women trafficked into Australia reveal that the majority are trafficked from Thailand, South Korea and China (Parliamentary Joint Committee on the Australian Crime Commission 2004, Parliament of Victoria 2010). Entry points to Australia suggest Sydney as the main gateway, with reports of entry also in Perth and Melbourne. This highly mobile population of trafficked women are believed to be readily shifted between premises and states (Parliament of Victoria

2010). This is in order to minimise detection, encourage disorientation among trafficked workers and to present ‘fresh faces’ to consumers. Sex-trafficked victims have been found both in the legal and illegal commercial-sex sectors in Australia (Parliamentary Joint Committee on the Australian Crime Commission 2004, Parliament of Victoria 2010).

Most research suggests that trafficking of women into debt-bonded prostitution is the major form of trafficking that occurs into Australia (Project Respect 2004, Parliament of Victoria 2010). Authors, including Lara Fergus (2005), who have examined debt-bondage in Australia, highlight the inflation of the debt agreed upon at commencement of the contract, as described in detail above. Debt-bondage is recognised as a form of slavery under the Australian Criminal Code (Parliament of Australia 2004). The Parliament of Victoria Drugs and Crime Prevention Committee recommended in a recent report that ‘an offence of debt-bondage similar to that found in the Commonwealth Criminal Code be enacted in Victoria’ (2010, p. vi). An interview-based and documentary research project carried out by lawyers and researchers on behalf of Project Respect, an Australian non-government organisation (NGO) working to challenge exploitation and violence against women in the sex industry, reported that typical debts incurred in debt-bondage arrangements in Australia are between \$40,000 and \$50,000 (Project Respect 2004). Titled ‘One Victim of Trafficking is Too Many’, the Project Respect report documented 300 cases over a six-week period and estimated that one thousand women were being trafficked into Australia yearly (Project Respect 2004).

Others offer smaller estimates of sex-trafficking and debt-bondage. The Australian Government Action Plan (2004) estimates that fewer than 100 victims are

trafficked into Australia annually. The Scarlet Alliance also claims that fewer than 400 women are in debt-bonded contracts within the Australian sex industry (2009). Putt suggests that intelligence assessments and official information on arrests and victim support would indicate small numbers (2007). In contrast, however, the Australian Centre for the Study of Sexual Assault in 2005 supported Project Respect's findings:

... their research remains the most extensive, evidence-based primary research on the subject at a national level, and there is an urgent need for further and better-resourced studies in order to fully understand and respond to trafficking in Australia (Fergus 2005, p. 21).

Andreas Schloenhardt also argues that 'trafficking in persons in Australia remains a phenomenon poorly documented and not well understood' (2008, p. 34). The American Consulate in Sydney reports that organised crime syndicates are trafficking South-East Asian women into Australia, and there is evidence that these criminal networks make 'multimillion-dollar profits from prostitution, much of it untaxed and moved offshore' (Richards 1999, p. 55). The involvement of organised criminal groups, including the *Yakuza*, Triads and Mafia, in Australian sex-trafficking is highlighted by Iselin (2007). Schloenhardt (2008) and Fiona David (2008) disagree, arguing that there is a lack of evidence of high-level organised crime involvement in trafficking into the Australian sex industry. However, Sarah Steele (2007) suggests that official data from government agencies and non-government organisations offer limited insights into trafficking in this country because methodologically robust and comprehensive research has not been undertaken in Australia. David (2008) similarly cautions about drawing parallels between government statistics and the reality of human-trafficking in Australia. In her work on labour-trafficking in the Asia-Pacific

region, she reports that ‘victims [are] often unwilling (or practically unable) to report their exploitation’ (David 2011, p. 13). Furthermore, international research suggests that immigration and law-enforcement authorities typically detect only 10 per cent of trafficked women (Maltzahn 2002, cited in Fergus 2005). Moreover, research by Janet Phillips and Malcolm Park (2006) reports that less than 20 per cent of females who have been sexually assaulted in Australia ever report the incident to police. The data cited in government reports regarding the occurrence of sex-trafficking therefore need to be understood in this context.

Restrictive immigration policies in the Asia-Pacific region that do not address vital labour supply and demand factors have also been argued to contribute to human-trafficking (Taran and Chammartin 2003). Australian immigration policy, which give preference to skilled over unskilled workers, may result in potential migrants turning to criminals to facilitate their migration. These professional criminals, some of whom are traffickers, often possess the expertise and contacts to circumvent the system (Konrad 2008). Unsystematic crime may thus evolve into an organised, more professional form, in response to enhanced border surveillance and protection. Small-scale criminals may also establish links with organised crime groups (Friman and Andreas 2009, Andreas 1998). The increased profit to be gained by legislation designed to make entry into Australia more difficult may perversely act as an incentive for organised crime groups. Where there is steady demand for cheap, flexible workers and increased competition in global markets, this may also motivate business to neglect private agents’ recruitment practices and workers’ migration statuses. The flow-on effects of this may include the increased presence of organised crime in Australia and greater competition between the licit and illicit sectors. This, in turn, may put pressure on the legal industry to cut costs, which increases the risk to workers

of exploitative practices. Furthermore, increased activity in money laundering activities would be expected, and this enables more funding for illicit activities.

Government regulations that tie foreign employees to one employer may also affect a foreign worker's vulnerability to human-trafficking (Polaris Project 2010). If the foreign worker is a victim of exploitative practices, akin to human-trafficking, she or he may be fearful of reporting their exploitation at the risk of losing their work visa and being expelled from the country if the employment contract ends. If criminals are aware that industries involved in the 'one-visa one-employer' programme are not monitored effectively, this may increase their perception of Australia as a low-risk environment in which to operate. Traffickers and migration consultants may see this as a business opportunity and enter the market.

An important connection to acknowledge is that between the presence of the legal commercial-sex industry in Australia and sex-trafficking (Parliament of Victoria 2010; see also chapter 3, section 3.5). A brief overview of domestic Australian sex-industry law and policy is therefore necessary. Within Australia, the regulation of the commercial-sex industry is a state and territory responsibility. Legislation varies between states and territories, with Victoria and Queensland licensing and regulating sectors of the industry, New South Wales decriminalising sectors of the industry and the remaining states, including South Australia and Tasmania, criminalising aspects of the sex industry such as brothel ownership (Scarlet Alliance 2009). I will focus here on the Victorian legislation to highlight the salient intentions of the shift away from criminalisation in the 1980s and 1990s.

The *Sex Work Act* 1994 is the major Victorian legislation that deals with the regulation and governance of brothels and escort agencies within the commercial-sex

industry. Street work remains illegal in the state. (Parliament of Victoria 2010).

Section 4 of the *Sex Work Act*, previously called the *Prostitution Control Act*, contains explicit objectives on the health and safety of prostitutes, customers of prostitutes and the wider community (*Sex Work Act 1994*). There is no specific reference to the prevention or suppression of trafficking in human beings for the purposes of sexual exploitation. Arguably, however, one could assume that protection of prostitutes from exploitation and violence would automatically include those trafficked into the industry.

Some stated objectives and expected outcomes of the Act include: the promotion of welfare and occupational health and safety of prostitutes; ensuring brothel accessibility for inspectors, law enforcement officers, health workers and other social service providers; maximising the protection of prostitutes from violence and exploitation; seeking to prevent criminal involvement in the prostitution industry; and protecting children from sexual exploitation and coercion within the industry (*Sex Work Act 1994*). Thus, it would be expected that well-monitored and enforced legislation would lead to an environment in which sex-trafficking is unable or unlikely to occur.

However, the reality is different. An unintended consequence of the Act is that potential trafficking victims perceive the regulated sex industry to be safe, which may increase its attraction for vulnerable foreign prostitutes. This, in turn, perversely encourages sex-trafficking and the probability of exploitation. On the one hand, these women may find that their entry into Australia requires debt-bondage, or some other ties to the illicit sex industry (see chapter 3, section 3.4). On the other hand, as legal sectors are inadequately monitored and legislation is inadequately enforced, sex-

trafficked women also find their way into exploitative work in the legal commercial-sex sector (Parliamentary Joint Committee on the Australian Crime Commission 2004, Parliament of Victoria 2010).

The *Sex Work Act*, through the regulation and licensing of the brothel and escort sectors, was expected to maximise the protection of Victorian prostitutes from violence and exploitation, minimise corruption and promote improved occupational health and safety. Research by Basil Donovan et al. (2010), however, contends that ‘most sex workers remain unlicensed’ and that ‘licensing systems ... always generate an unlicensed underclass’ (2010, p.viii). Occupational health and safety standards in the unlicensed sectors are, of course, unable to be monitored and difficult to improve. Kathleen Maltzahn maintains that prostitutes within the legal industry are typically treated as independent contractors and are therefore are not entitled to superannuation, work cover or sick leave benefits (2009). The independent contractor status may also create obstacles to prostitutes wishing to form collective groups to improve workers’ rights and industrial relations (Vixen 2009).

The *Sex Work Act* has no stated objective regarding end-consumers’ sexual behaviour. The Act implicitly assumes that end-consumers will visit legal brothels and be dissuaded, due to their illegal status, from visiting unlicensed brothels and street prostitutes. However, this reasoning does not consider the normalising effect of legislation. Legislation influences perceptions. If something is legal, it is then naturally perceived as being more ethically and morally acceptable. This leads to increased demand for commercial sexual services. Moreover, competition between legal sex establishments is likely to result in agreeing to provide riskier services that users of sexual services have been noted to demand (Consumer Affairs Victoria (CAV 2009).

End-users can choose to frequent establishments that provide them with the services they desire.

An independent report commissioned by Consumer Affairs Victoria (CAV), researching legal and illegal brothel activity in Victoria, highlights that unsafe sexual practices are readily available in unlicensed brothels and similar practices are requested by prostitute users in licensed brothels (Pickering et al. 2009). Women working within the legal commercial-sex industry also reported an increasing demand for unsafe sexual practices (Pickering et al. 2009). One licensee of a licensed brothel reported:

And the thing that attracts a lot of clients to that illegal prostitution is the unprotected sex. There is evidence and it is evidence that is given to us by ladies who work in those areas of unprotected sex, and a lot of the operators dictate those terms. (Pickering et al. 2009, p. 20)

Furthermore, Sharon Pickering et al. found that many operators who managed unlicensed brothels 'have some presence in the licensed industry, through licence transfers or payment arrangements with licensees where the actual licensee takes a fee for giving over effective control' (2009, p. 42). Enforcement regulatory officers interviewed in the above report estimate that 15 to 20 per cent of legal Victorian brothels are involved in breaches of licence conditions by recruiting workers via agents or middlemen who organise and manage groups of women.

The efficacy of the *Sex Work Act's* intention to minimise criminal involvement in Victorian prostitution is therefore questionable. Moreover, legalisation also can create perverse incentives for criminal elements and traffickers. The normalisation and social acceptance that occur when an industry is legalised help to increase demand for

services from that industry. Legalisation also enhances the perception that the industry is adequately monitored and that legislative standards are enforced. We have seen that this is not necessarily the case within the legal sex sector, and the existence of a legal commercial-sex sector obscures the existence of a larger, unregistered, illicit sector that profits from the spillover of increased demand. Hence, legalisation can tend to create the dangerous illusion that problems do not exist within the commercial-sex sector. Public lobbying to address these problems diminishes, and criminals and traffickers are free to continue their activities. In fact, the existence of exploitative, high-return, low-risk methods to recruit prostitutes through sex-trafficking, in the context of increasing demand for prostitution, can attract more criminal elements to the industry.

The Australian Government signed the United Nations Convention against Transnational Organised Crime and has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2005. Its Action Plan to Eradicate Trafficking in Persons in 2004 outlined four central elements on which to focus: prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation. Parallel to this plan, the Government also developed a new visa framework and introduced a new criminal code related to the Trafficking in Persons Act (*The Criminal Code Amendment (Trafficking in Persons) Act 2005*). The Act added Division 271, which related to human-trafficking and debt-bondage. In addition, the two key Commonwealth Criminal Code acts that address human-trafficking in Australia are (Parliament of Victoria 2004-2005):

1. *Slavery Offences – Division 270*, which explicitly makes slavery unlawful in Australia.

2. *Trafficking Offences – Division 271*, which deals specifically with the offences of human-trafficking and trafficking related offences, including debt-bondage.

The extraterritorial nature of the Codes covers offences conducted outside the country by Australian citizens and any elements of the trafficking process that take place outside the country. The Code also covers trafficking in children and addresses trafficking into and outside of the country. Domestic or internal trafficking is covered under Division 271.5.

The offence of debt-bondage is listed under the Criminal Code Division 271.8. The stark difference between penalties for slavery and human-trafficking offences, particularly debt-bondage, is evident. The maximum penalty for slavery offences is 25 years, for human-trafficking offences 12 years (20 years if aggravated) and for debt-bondage 12 months (24 months if aggravated (Attorney Generals' Department 2009)). The seriousness of debt-bondage crimes and the harms suffered by many of Australia's victims is, I believe, not reflected adequately in the relatively light 12-month penalty.

Currently, no state or territory laws exist that explicitly address the crime of slavery, or human-trafficking and related practices. However, many states do have legislation addressing forced prostitution and sexual servitude. There is also no state legislation that addresses the crime of debt-bondage, although it has been recommended that such legislation be introduced into the *Victoria Crimes Act* (Parliament of Victoria 2010).

The Australian Government Action Plan in 2004 was developed in response to particular concerns in the Asia-Pacific region. The plan was spearheaded by an

interdepartmental committee, overseen by the Attorney-General's Department, and involved the Australian Federal Police (AFP), Department of Immigration and Citizenship (DIAC) and the Office for Women (OfW). Some of its earliest initiatives included the establishment of an Australian Federal Police strike team, promotion of so-called 'intelligent' policing strategies, a senior migration officer based in Thailand and the provision of victim support services. By 2007, total funding to extend and support the initial 2004 Action Plan had increased to \$59 million (Australian National Audit Office (2009) ANAO). Subsequent initiatives included the provision of support to specialist investigative teams within the AFP, a National Policing Strategy to investigate trafficking proactively, a National Policing Strategy to Combat Trafficking in Women for Sexual Servitude, new visa arrangements to support victims, anti-trafficking law enforcement liaison officers in Thailand, China and the Philippines and research into regional trafficking activities by the Australian Institute of Criminology (AIC).

Consistent with most global counter-trafficking budgets and strategies, the Australian Government's counter-trafficking budget since 2003 has been allocated predominantly to law enforcement and migration activities. This focus is reflected in the data outlined in table 2.4, which shows that more than 70 per cent of the counter-trafficking budget has been allocated in this way.

**Table 2.4 Australian government funding for anti-trafficking measures (\$m)**

Agency	2003	2004	2005	2006	2007	2008	2009	2010	Total
	2004	2005	2006	2007	2008	2009	2010	2011	
Australian Federal Police	3.0	2.9	2.9	3.0	4.5	3.9	3.9	4	28.1
Attorney-General's Department	0.2	0.2	0.1	0.1	0.7	0.5	0.6	0.6	3
Department of Immigration and Citizenship	0.5	0.5	0.5	0.5	1.4	1.2	1.2	1.2	7
Office for Women (including Health and Ageing, Family and Community Services and Departments of Prime Minister and Cabinet)	1.0	1.3	1.7	1.7	1.0	1.0	1.0	1.1	9.8
Other (including AusAID, Commonwealth Director of Public Prosecutions)	0.1	0.1	0.1	0.1	1.5	2.5	3.3	3.3	11
<b>Total</b>	<b>4.8</b>	<b>5.0</b>	<b>5.3</b>	<b>5.4</b>	<b>9.1</b>	<b>9.1</b>	<b>10.0</b>	<b>10.2</b>	<b>58.9</b>

Source: ANAO Report (2008-2009, p.33)

Despite a significant percentage of the counter-trafficking budget being allocated to the criminal justice process, investigations, prosecutions and convictions for trafficking in Australia remain low. These low numbers have been attributed to the success of preventative strategies initiated through the criminal justice system and Australia's well-guarded borders, stringent visa requirements and immigration controls (Attorney General's Department 2007). However, they may simply reflect the difficulty in obtaining the evidence our judicial system demands to prosecute sex-trafficking cases successfully. Jennifer Burn and Georgina Costello (2006) highlight this failure of law enforcement and judicial systems. Gaining victim compliance in judicial hearings is crucial to obtaining successful convictions. The literature though clearly describes why sex-trafficked victims are typically hesitant to report their trafficking experience. This includes victims' limited ability to understand the local

language, limited understanding of the judicial system and their fear of deportation, reprisals from traffickers and authorities in general (Zimmerman et al. 2003).

In the five years from 2004 to April 2009, the Transnational Sexual Trafficking Team (TSETT), a department located within the AFP, undertook 270 human-trafficking investigations, most related to trafficking for purposes of sexual exploitation. Thirty-four people were charged, with seven convicted (APTIDC 2009, p. iii). Up to 2009, there had only been one successful prosecution and conviction under Division 271 of Australia's Criminal Code, being the *R v Dobie* (2008) case (Schloenhardt et al. 2009). During the latter part of 2009 and early 2010, four separate cases related to the slavery provisions of the *Commonwealth Criminal Code Act 1995* had been appealed (Australian Federal Police 2009-2010). These low Australian prosecution and conviction rates reflect the dismal global prosecution and conviction rates (see section 2.5, esp. table 2.4).

## **2.7 Backgrounds of women sex-trafficked into Australia**

Now I will present a picture of the political-economic situations in the following Asia-Pacific countries using human development indicators. Thailand, China, South Korea and Indonesia are chosen, as they are reported to be countries of origin of most victims trafficked into Australia (Parliamentary Joint Commission 2005, Parliament of Victoria 2010). The Human Development Report reminds us that 'the world distribution of opportunities is extremely unequal. This inequality is a key driver of human movement' (2009, p. 8). My focus will be, albeit at a crude level, human development in the areas of poverty, education, infant mortality, female empowerment and economic health. This is to reflect the inequalities across variables between

Australia and nearby Asian countries. It may also help us to understand why many take risks, agree to dubious contracts, become subject to debt-bondage agreements, agree to debts to registered and unregistered migration agents and become a trafficker or employer of a trafficked person's sexual services.

Philip Martin (2009) suggests that migration in the Asia-Pacific region is likely to increase due to many factors, including recent rapid economic growth, particularly in India and China. However, migration through illegal channels, using smugglers, traffickers and other intermediaries, may be the only option available to large marginalised populations who have limited access to financial capital, identity documents and education. Thus, it is important to understand the factors that contribute to people's decisions to enter risky migration journeys, becoming vulnerable to being trafficked or becoming a peripheral or master trafficker.

The Human Development Index (HDI), compiled by the United Nations Development Programme (UNDP), provides us with a 'macro lens' with which to start an investigation into trafficking into Australia from the Asia-Pacific region. Of course, it is appropriate to acknowledge the limitations of the HDI (Caplan 2009, Hastings 2009, McGillivray and White 2006). Measures such as the unemployment rate, for example, may not reflect the reality of many peoples, especially those in subsistence economies (Hezel et al. 1997). Frank Laczko and Gergana Danailova-Trainor (2009) also caution against making simplistic correlations between measurements of income inequality, rates of poverty, the HDI and the incidence of trafficking. Yet, as they also suggest, issues of development and trafficking are not unrelated: '... there is empirical evidence that initially development may cause migration as people move out of abject poverty and raise their aspirations for a better life' (2009, p. 23). It is therefore not in a

simplistic way that the HDI and other human development indicators will be useful to this research to demonstrate the contrast between Australia and its neighbouring countries.

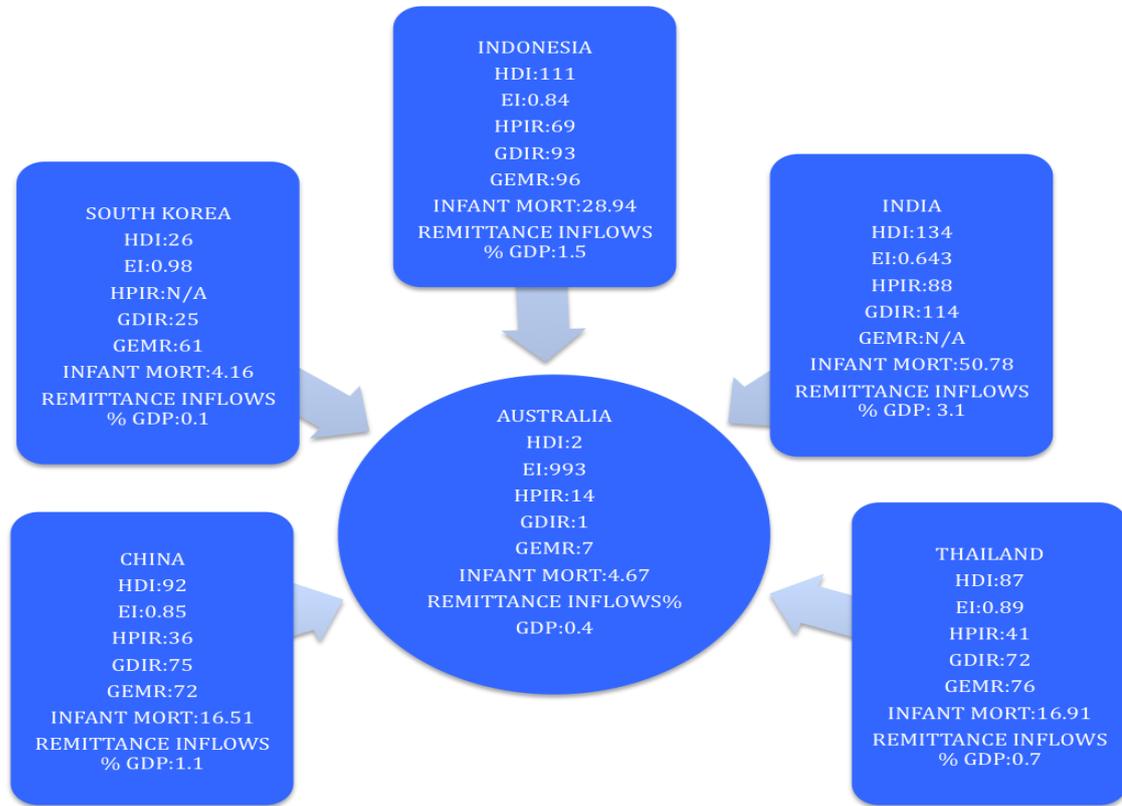
I have also included some human development indicators and rankings that reflect elements of gender empowerment and the ability of women within these countries to engage effectively with the political, social and economic features of their societies. It is important to have some insight into the extent to which women have the appropriate capabilities necessary for a less constrained choice of income and lifestyle. As I will discuss in chapter 4, the provision of human beings with ‘capabilities’ to develop their human potential includes provision of educational opportunities, resources and substantive freedoms. The human development indicators attempt to capture such capabilities, as described by the Human Development Report 2009 (HDR 2009):

1. The human development index (HDI) and rank (HDIR) consider the following in their calculation of human development: access to knowledge, a decent standard of living and a long, healthy life. The statistics are drawn from data on education, per capita Gross Domestic Product (GDP) and life expectancy.
2. The Education Index (EI) involves data gathered on adult literacy rate and the total gross enrolment ratio for primary, secondary and tertiary schools.
3. The Human Poverty Index rank (HPI-1) considers in its calculations measurements of deprivations in living a long and healthy life, a decent standard of living and access to knowledge.

4. The Gender Development Index (GDI) and ranking (GDIR) draw data from female and male life expectancy, estimated earned income and education levels. They attempt to reflect ‘knowledge and decent standards of living incorporating an adjustment for inequalities between women and men, and a long healthy lifestyle’ (HDR 2009, p. 208).
5. The Gender Empowerment Measure (GEM) and index ranking (GEMR) draw data from male/female percentages in various legislative, parliamentary and managerial roles and estimated earned income to try to give an understanding of gender inequality in areas including power over economic resources, participation in political life and decision-making with regards to economic resources.
6. Infant mortality rate per 1000 live births.
7. Remittance inflows as percentage of GDP.

The data below in figure 2.5 are drawn from the UNDP Human Development Report (2009). The HDI is calculated for 2009, the EI and remittance inflows are based on 2007 data and the infant mortality rates are based on 2010 statistics. The GDIR and GEMR are based on 2007 data. Figure 2.5 reflects the scoring of the above indicators and the wide differences that exist in the HDI and gender development indicators between Australia and the countries from which women are sex-trafficked into it. This is not to suggest that these factors alone propel women into debt-bonded contracts in Australia’s commercial-sex industry. Rather, an economic, political, social and gender environment in which there is limited scope for human flourishing, may influence a women’s decision to enter into a debt-bonded contract in the Australian sex industry.

**Figure 2.5 Human development indicators relevant to sex-trafficking into Australia**



Source: UNDP Human Development Report (2009) statistics

It is important to look deeper at some of these factors in the countries from which people are trafficked into Australia, as well as the migration patterns of minority groups. I have drawn the following country data from the Index Mundi website, which obtains its information from various sources such as UNICEF, UNODC, World Bank and CIA World Factbook reports, to provide current and predicted demographic, economic and social data and trends (Index Mundi 2010, 2011).

Sex tourism is a significant part of Thailand's economy, with the tourism industry reported to have contributed approximately six per cent to GDP (Oxford Economics 2010). However, Lin Lim (1998, p. 10) argues that, for the period of 1993-1995, the annual income from prostitution contributed 10 to 14 per cent of GDP and that the sex industry continues to grow. Furthermore, she declared that prostitution was the 'largest of the underground businesses' in Thailand and that 'profitability and ineffective law enforcement' contribute to its growth (1998, p.10). Ko-lin Chin and James Finckenauer (2004, p.17) state that, due to the intimate relationship that exists between the sex trade and the huge tourism industry, as well as the heavy bribes paid to policing authorities by this industry, the 'sex business is not considered to be an organized crime problem' by Thai authorities. Thus, the close ties between the sex trade and tourism, the strong contribution it makes to GDP and corruption may all provide a strong disincentive for dismantling it. Within this sector, many women are in debt-bonded and trafficked situations and are vulnerable to employment opportunities in Australia offered to them by recruiters (Hugo 2005). Many refugees and migrants who lack citizenship, or who are unable to gain access to the capital required to proceed through formal migration channels, turn to smugglers and informal transporters to facilitate their migration (Martin 2009). Thus, the combination of girls and women who have constrained choices to earn a livelihood, with restricted formal migration opportunities, creates conditions facilitating trafficking and debt-bondage.

In 2007, 25 per cent of the Indian population was estimated to live under the poverty line (CIA 2010). Ravi Srivastava and S. Sasikumar (2003) estimates that the majority of the migrant labour force in India has minimal or no education. The caste system has created perceived 'inferior' populations, such as the Scheduled Castes, Scheduled Tribes and Backward Castes, who are over-represented in migration

(Deshingkar and Akter 2009, p. 1). Lack of access to healthcare, education and employment opportunities see this population becoming vulnerable to exploitation in the unskilled and informal labour sectors they are often destined to work within, or susceptible to job offers involving recruitment or facilitation of human-trafficking.

A large local sex industry exists in major urban centres in India (Kara 2009). The workers comprise trafficked, enslaved or debt-bonded girls and *adhiyas*, who are prostitutes working within a contract system where income is shared with a brothel keeper and, often, lodgers (Kara 2009). Siddartha Kara reports, 'Each *adhiya* prostitute I met was a former slave, and each one of them wished she did not have to make a living through prostitution' (2009, p. 55). Kara is referring to *adhiyas* who share 50 per cent of their income with the pimp and have some control over clients they see. Deshpande (2008) and Rao (2008) report a notable number of sex workers are commuters and migrants who are often marginalised, illiterate women desperately seeking to survive and earn some money. A Population Council of India report (2008) contended that increasing numbers of women who are poor and illiterate are drawn into the sex industry to survive. Nonetheless, the Indian Ministry of Women and Child Welfare (MWCW) reports that more than 50 per cent of sex workers in India in the year 2000 were trafficked (MWCW 2000). Certainly the traditional patriarchal culture, the caste system and widespread gender discrimination places girls and women in these groups in positions in which they are vulnerable to being trafficked (Jani 2009, UNICEF 2003).

China has seen a stark decrease in the population estimated to be living below the poverty line, to eight per cent in 2009 and 2.8 per cent in 2010 (CIA 2010). However, the one-child policy, which was achieved partially by forced sterilisation

practices, abortions and female infanticide, has resulted in a severe gender imbalance in the population (Li et al. 2005). Reports suggest that internal trafficking in China is widely practised, with many girls and women, often from rural areas, neighbouring countries and minority groups being trafficked into forced marriage to fill the demand for wives, and as workers and prostitutes (Laczko et al. 2003). This demand for wives alone, which cannot be met from local areas, creates a high profit industry in the form of sex-trafficking and bride-trafficking (Kim 2010).

Tiantian Zheng (2009) highlights the expansion of the commercial-sex industry in the wake of China's entrance into the free market. Yet, while the government adopts an abolitionist stance, its lack of effective enforcement of this policy, and the corresponding poverty and lack of choice for many Chinese rural women, supports corruption, more violence against women and huge profits to owners (Zheng 2009). Domestic violence and high rates of suicide among the female population exist, particularly in rural areas, and China's sex industry has been rapidly expanding in both urban and rural areas (Liu et al. 2002). Jinghao Zhou (2006) estimates the Chinese prostitution industry contributes approximately eight per cent to the Chinese economy. Zheng (2009) contends that the state historically has had a major role in the production and management of the prostitution industry, but in more recent years it has been intimately entwined with entertainment and tourism. Furthermore, Zheng claims that 'an exploitative and violent environment was established in the sex industry through the interplay among state administrative and cultural power, the agendas of local officials, and the manoeuvrings of bar owners' (2009, p. 9). This is the environment from which some Chinese women are trafficked into the Australian sex industry.

Seventeen to 18 per cent of the Indonesian population were estimated to be

living below the poverty line in 2006 (HDR 2009). Women account for an estimated 72 per cent of Indonesian migrants (Tirtosudarmo 2009) and figure predominantly among the unskilled, illegal workforce entering into labour contracts via recruitment agencies and middlemen, thus making them vulnerable to sex-trafficking. Both internal trafficking of young girls and women into the local sex industry and cross-border trafficking into the international sex industry have been reported by local and international agencies. Traditional cultural practices, including child-marriage and lack of education for females, are contributing factors for girls and women to enter the sex industry (EPCAT International 2006). The Indonesian sex industry was reported to contribute between 0.8 and 2.4 per cent to the GDP in 1998 (Jones et al. 1998). The World Bank (1996) attributes the ongoing growth in this sector to a burgeoning tourist industry, changing employment trends and increased demand for sexual services.

In South Korea, an estimated 15 per cent of the national population lived below the poverty line in 2006 (CIA 2010). More than 68 per cent of the South Korean labour force is employed in service provision. The illegal sex industry and sex tourism constitute a large part of this sector, with approximately 14 trillion South Korean won (approximately AU\$12.5 billion), or 1.5 per cent of the GDP in 2007 associated with this industry (Korean Women's Development Institute n.d). Prostitution is illegal in South Korea (USDS 2010), however, corruption, weak law enforcement and a tradition that condones buying sex from prostitutes, have been cited as factors supporting the illegal sex industry into which women are trafficked (Lee 2010). Traditional and religious practices, alongside the economic globalisation of the sex industry, have contributed to the considerable expansion of the commercial-sex industry as a contributor to the GDP in South Korea. Jin-Kyung Lee discusses the role of a daughter's sexualised labour in financing male siblings' education, which results

in improved economic standing for the family (2010). The 'idea of a filial daughter's sexual sacrifice for her male siblings or her parents was a familiar and sacralised Confucian custom' (Lee 2010, p. 26). In South Korea, the influence of Confucianism on a male dominated corporate culture encourages 'women's deference to men' (Lee 2010, Jordan 2000), which fosters sexism, misogyny, gendered power and sexual harassment (Itzin 1996). These, in turn, contribute to male demand for sexual services. The Australian Federal Police in its 2009-2010 Annual Report revealed an increase in reports of suspected trafficked South Korean sex workers (2009-2010).

## **2.8 Conclusion**

This chapter has provided an overview of human-trafficking generally, and sex-trafficking specifically, in both a global and Australian context. Evidence demonstrated that sex-trafficking into Australia is a serious problem warranting study and action. A discussion of legal instruments and counter-trafficking strategies and policies was included to highlight the challenges that addressing this transnational crime presents. Evidence demonstrated that debt-bondage of women sex-trafficked into Australia requires special attention. A particular consideration of the political, economic, social and gender environments from which trafficked and debt-bonded women who enter Australia originate was also provided.

The analysis of sex-trafficking phenomena I undertake in this thesis seeks to overcome the simplistic dichotomies present in much sex-trafficking literature. The framing of a victim who is either unequivocally forced into the trafficking process or who voluntarily chooses her path, thereby 'consenting' to the process, is inadequate for the reality of many sex-trafficked women. Framing refers to ways of representing

phenomena that powerfully influence behaviour. It will be the subject matter of chapter 5. Archavanitkul's (1998) model, which conceptualises human-trafficking as a continuum, is useful in this respect and helps in contributing to an increasingly accurate (re)conceptualisation and (re)framing of sex-trafficking reality (section 2.2, figure 2.3).

The contribution of this chapter to the objectives of the thesis is an important first step. Moreover, the chapter contributed to the conceptual work of the thesis by situating the continuum in the complex reality of our world and by considering definitions in relation to it (sections 2.2 and 2.5, figure 2.1). It examined the situational forces acting on women who may be desperate enough to accept any work arrangement in order to survive, provide for their families, or escape their current more abusive lifestyles (sections 2.6 and 2.7, figure 2.5). This provided a more nuanced description of their trafficking situations (see figures 2.1-2.3), and it explained why many women take these risks despite the possible physical and psychological trauma associated with trafficking. By providing evidence of harms caused to victims, on a continuum of intensity incorporating physical and psychological harm, the chapter also set out the ethically-sufficient case for action (section 2.3).

Additional contributions of the chapter to the objectives of the thesis were the evidence and arguments demonstrating the overlap of legal and illegal brothel sectors and the causal link between legalisation and increased demand for sex-trafficked services (section 2.6). In this context the chapter began the all-important discussion of the process known as normalisation. The chapter also gave evidence that prevailing law enforcement and migration approaches were inadequate to confront a multidimensional problem like sex-trafficking (section 2.5). The problem, despite

extensive criminal network involvement, was greater than could be defined by criminal involvement alone. The chapter demonstrated that sex-trafficking requires an environment conducive to the supply of, and a reason for criminal networks to supply, trafficked sexual services. That reason is demand.

The demand piece of the totality thus requires deeper examination and clarity. The absence of informed and considered reflection on the concept of demand in the setting of sex-trafficking persists. I wish to situate the concept of demand within the wider situational and systemic environment in which actors and elements that constitute demand behave. Boulet's (1985) multilayered framework of social life is useful in this respect, in that it employs a methodological approach that regards social reality as situational (dynamic, complex, multidimensional and interconnected).

The next chapter will address the issue of demand in sex-trafficking. This will enable a more comprehensive discussion to occur on the powers, systems, institutions and actors that contribute to the demand for sex-trafficked services. Furthermore, the accurate identification and understanding of how these factors contribute towards the environment into which women are sex-trafficked is a vital step towards conceptualising the problem within an ethical framework and developing an effective counter-trafficking policy.

## **Chapter 3**

### **A demand focus on sex-trafficking**

#### **3.1 Introduction**

There is sufficient evidence in the previous chapter to start to draw some conclusions about the nature and causes of sex-trafficking. In particular, the chapter described the trafficking process and the physical and psychological harms that sex-trafficking causes its victims. A continuum, based on Kritaya Archavanitkul's (1998) model, was used to portray the reality of trafficking and overcome simplistic representations. Chapter 2 also described extent, profits and geography of trafficking and outlined the relevant international, regional and Australian legislation, conventions, policies and counter-trafficking strategies. Evidence was offered that the prevailing emphasis on criminal justice and migration approaches, both at the international and Australian level, was achieving poor results.

The discussion in Chapter 2 sought to encompass the wider environment in which sex-trafficking flourishes and is tolerated. To emphasise the impact of the economic, political and social environments on an individual's choices, preferences and behaviours, I drew on data from the Human Development Report (HDR) and Index (2009) to compare the country environments from which women found trafficked and debt-bonded in Australia originate. This macro-lens enabled, albeit at a crude level, a description of the disparities of opportunity, gender equality, education, health and income that many women face when they seemingly 'choose' to enter

Australia, often on a debt-bonded contract. Furthermore, the macro-lens described the background from which many traffickers originate, reflecting that similar political and economic environments may produce victims and traffickers.

This was to set the stage for the focus of this chapter on causality: the centrality of demand for sex-trafficked services (hereafter referred to as ‘sex-trafficking demand’). In this chapter, I will draw upon and extend Kane and Kane’s (2004) ‘trafficking demand matrix’ to categorise and explore forms of sex-trafficking demand. This will allow for a deeper exploration of who generates demand, their motivations, how their demand is satisfied and the overall mechanisms that operate in the demand process. Unfortunately, insufficient attention is paid to sex-trafficking demand, in the literature and in practice.

Government and UN reports have identified a dearth of research on trafficking demand and the need to address it via further research to inform effective counter-trafficking strategies (Pearson 2005, Piper 2005). The UN Global Initiative to Fight Human-trafficking (UN.GIFT) programme launched by the United Nations Office on Drugs and Crime (UNODC) in 2007 insists that addressing human-trafficking is a global responsibility. The International Labour Organisation (ILO), International Office of Migration (IOM), United Nation Children’s Fund (UNICEF), Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Organisation for Security and Cooperation in Europe (OSCE), all contributing parties to the GIFT programme, have highlighted in their various papers the lack of research on demand and the vital need for it to happen. The Vienna Forum Report argued that a greater proportion of effort and resources should be directed towards strategies that reduce or eliminate the demand for trafficked services and labour in countries of

destination (2008).

The issue of demand for sexual services is a politically charged one. Bridget Anderson and Julia O'Connell Davidson (2003) suggest that questions about the demand for a sex-trafficked person's labour/services may be analytically difficult to separate from the broader question about the general demand for labour/services that may be considered exploitative. Martha Nussbaum (1999, p. 277) raises a similar difficulty regarding the separation between sexual services and labour services. Elaine Pearson (2005) insists that use of the language of demand firmly situates destination countries within the discourse and suggests an element of accountability at this level, rather than focusing exclusively on the victims' countries of origin. In spite of this, situating the trafficking problem in destination countries raises an additional difficulty. Persons, businesses and organisations using or benefitting in some way from trafficked services become legally liable and morally complicit by commission or omission. This makes the problem considerably more complex.

Complexity notwithstanding, if demand is causally implicated in sex-trafficking then the legal and moral questions must be faced. Hence it is essential to explore and identify who and what *constitutes* sex-trafficking demand and what *influences* such demand. Individual actors, such as end-consumers of trafficked victims' sexual services, pimps, brothel owners, traffickers and criminal networks, have been identified as the major actors who engender sex-trafficking demand (Kane and Kane 2004). Likewise they constitute the sex-trafficking supply chain that meets the demand of the consumer of sex-trafficked services. While I will examine these levels of demand individually, each needs to be viewed as dynamic and evolving. Each influences the other within a larger political, social and economic environment.

The Vienna Forum Report (UN.GIFT 2008b, p. 44), which examined global trafficking and legislation targeted at demand, commented in a fashion similar to that on which I concluded chapter 3:

While it may not be possible to reach consensus on what ‘demand’ means in the context of trafficking or how the issue should be addressed, there needs to be a more regular, systematic and constructive debate on the issue between stakeholders with differing views. Such a constructive debate should also extend to the issue of legalised prostitution and the degree to which it may create an enabling environment for sex-trafficking.

The Vienna Report (UN.GIFT 2008b, pp. 8, 64) moreover highlights the complicity of the globalised economy and calls for proactive measures to stem this demand. The first of its recommendations was that ‘Trafficking must be placed within the context of the ways in which the globalized economy generates supply and demand for all forms of trafficking’ (2008b, p. 8). To assist understanding of what constitutes sex-trafficking demand, I will draw on Kane and Kane’s ‘trafficking demand matrix’ to help identify the relevant actors, relationships and motivations of those complicit in the demand for trafficked services. Kane and Kane’s demand matrix concepts were presented in 2005 at the Yokohama Review Combating Sexual Exploitation of Children, in Ljubljana, Slovenia.

### **3.2 The nature of sex-trafficking demand**

Kane and Kane (2004) break down demand into the following categories (I have extended Kane and Kane’s matrix to include all sex-trafficked persons and not just

sex-trafficked children):

1. *Consumer or primary demand.* Demand generated by customers who passively or actively seek sexual services from prostitutes.
2. *Derived demand.* Demand generated by people and groups who make a profit from the trafficking transaction (this includes brothel owners, traffickers, pimps and others who may be involved in the transaction, from recruitment through to employment).
3. *Perceived demand.* Demand that people perceive to exist somewhere and, for varying reasons, set out to find.
4. *Artificial demand.* Kane and Kane (2004) describe this as an opportunity to profit from some other motivation associated with the trafficked person.

I wish to add a fifth level of demand, being cultivated demand. Kevin Bales introduces the concept of ‘cultivated demand’ in relation to human-trafficking in a paper titled ‘Understanding the Demand Behind Human-Trafficking’ (2005a). He relates this concept to the power of advertising to cultivate demand and draws on marketing notions such as ‘unique selling points’ that enhance ‘enjoyment’ by the end-consumer. Bales lists possible unique selling points of trafficked people, including their low cost, malleability, similarity to the ‘real thing’ and exoticness (especially in prostitution). I will extend Bales’ idea of cultivated demand to others, such as the pornography industry. This industry fosters social and cultural norms that promote the normalisation of participation in the sex industry and thereby increases the primary demand base. Recall again from chapter 2 (section 2.6) that this primary demand base is directly related to sex-trafficking (see also Belser and Danailova-Trainer 2006,

Anderson and O'Connell-Davidson 2003 and Bales 2005a).

A case can be made that government legalisation of brothels similarly normalises the commercial-sex industry and helps to promote primary demand. What can be more 'normalising' than requiring it to pay tax, withhold tax from the wages of the prostitutes who work in it, abide (in word, at least) by occupational health and safety standards, keep the same records as do other businesses, file profit-and-loss statements and balance sheets with corporate regulators? Likewise, some businesses provide corporate 'hospitality' that includes commercial sexual services. Hence I have included 'some businesses' in the extended form of Kane and Kane's matrix and added government in brackets (see figure 3.1).

Incorporated within Kane and Kane's model are a series of questions to help determine the demand mechanisms in play. My thesis will use the terminology incorporated within this framework (primary, derived and artificial demand) and add the notion of cultivated demand. These categories help to focus on and attribute responsibility to the human actors complicit in the 'pull' side of sex-trafficking. Furthermore, within Kane and Kane's concepts of demand, I will explore the varying motivations and behaviours associated with these demand levels. This is in order to analyse how they will react and behave in certain legislative and political-economic environments. Figure 3.1 below reflects the first two and the fourth categories that Kane and Kane (2004) consider important. To these I have added the category of cultivated demand in the final column.

**Figure 3.1 Demand for sex-trafficked labour**

	<b>Consumer (primary) demand</b>	<b>Derived demand</b>	<b>Artificial demand</b>	<b>Cultivated demand</b>
<i>Who generates this demand?</i>	<ul style="list-style-type: none"> <li>• Sex service clients</li> <li>• Sex tourists</li> </ul>	<ul style="list-style-type: none"> <li>• Brothel owners</li> <li>• Pimps</li> <li>• Traffickers</li> <li>• Others</li> </ul>	<ul style="list-style-type: none"> <li>• Business suppliers</li> <li>• Pornography</li> <li>• Alcohol suppliers</li> <li>• Others (e.g. taxis, hotels, bars, casinos etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Commercial-sex industry/some in artificial demand group</li> <li>• Pornography</li> <li>• Some businesses</li> <li>• Some governments</li> </ul>
<i>Why do they do this?</i>	<ul style="list-style-type: none"> <li>• Personal satisfaction of desires</li> </ul>	<ul style="list-style-type: none"> <li>• Profit</li> </ul>	<ul style="list-style-type: none"> <li>• Profit</li> </ul>	<ul style="list-style-type: none"> <li>• Profit</li> <li>• Law changes causing increase in primary demand by normalisation</li> </ul>
<i>What do they demand?</i>	<ul style="list-style-type: none"> <li>• Desired service</li> </ul>	<ul style="list-style-type: none"> <li>• Best returns</li> </ul>	<ul style="list-style-type: none"> <li>• Best returns through increased primary demand</li> </ul>	<ul style="list-style-type: none"> <li>• Best returns through increased primary demand</li> <li>• Desired service causing increase in primary demand</li> </ul>
<i>How do they satisfy the demand?</i>	<ul style="list-style-type: none"> <li>• Purchase services</li> </ul>	<ul style="list-style-type: none"> <li>• Exploitation of prostitutes</li> </ul>	<ul style="list-style-type: none"> <li>• Sale of products to consumer base</li> </ul>	<ul style="list-style-type: none"> <li>• Sales of pornography</li> <li>• Exploitation of prostitutes</li> </ul>
<i>What mechanisms are in play?</i>	<ul style="list-style-type: none"> <li>• Prostitution outlets</li> <li>• Word of mouth</li> <li>• Information rings</li> <li>• Own initiative</li> </ul>	<ul style="list-style-type: none"> <li>• Enticement</li> <li>• Coercion/ deception</li> <li>• Corruption</li> <li>• Information networks</li> </ul>	<ul style="list-style-type: none"> <li>• Marketing</li> <li>• Advertising</li> <li>• Societal acceptance of participation in commercial-sex industry</li> </ul>	<ul style="list-style-type: none"> <li>• Framing</li> <li>• Marketing</li> <li>• Advertising</li> <li>• Inducement of societal acceptance of participation in commercial-sex industry</li> <li>• Normalisation</li> </ul>

Source: Modelled on Kane and Kane (2004)

A brief discussion of the categories involved in the sex-trafficking demand will follow in order to explore the motivations, behaviours and mechanisms implicated in sex-trafficking demand. These groups and factors complicit in demand will be discussed in more detail throughout the thesis. First, we will look at those actors involved in primary demand.

Primary consumers in Kane and Kane's matrix refer to customers of those trafficked for purposes of sexual exploitation. The question of demand in the context of the sex industry is a politically charged one in terms of whether to direct research toward the employers' interest in vulnerable and cheap labour/sexual services or the primary consumer demand for sexual services (Anderson and O'Connell-Davidson 2003). Patrick Belser and Gergana Danailova-Trainor maintain that 'customers "only" buy sexual services, not trafficked victims ... if the customers do not distinguish between the services of a trafficked victim and the same service of a non-trafficked provider, then there is no separate demand for the services of trafficked people' (2006, p. 4). However, the provision of sexual acts in an establishment that is likely to be perceived as cheap, painful, demeaning and novel, thus ultimately harmful on both a physical and psychological level, may tell the Prostitute user that the service is trafficked or unfree. A claim by a primary customer to beg ignorance of the prostitute's status (trafficked/not trafficked), while requesting sexual acts from a girl or woman who may appear vulnerable, inexperienced and not wanting to 'give' the act freely, is unlikely to carry weight.

Bales contends that we need awareness that those who 'consume' trafficked people 'operate within a moral economy that allows them to rationalise this activity' (2005b, p. 156). Anderson and O'Connell-Davidson highlight how many male customers, who knowingly used trafficked or 'unfree' prostitutes, believed that the women became commodities or objects in which 'temporary powers of possession' were given to the clients (2003, p. 24). While this moral economy may not be the dominant culture or be acknowledged explicitly, it may constitute the informal culture that allows the treatment of a trafficked woman in an especially exploitative way (i.e. to cultivate a particular sort of demand). Anderson and O'Connell-Davidson

(2003, p. 42) reflect upon this in their study, noting that:

... indeed, it is depressing how malleable most people are in terms of their morality in any market, and how quickly they can adjust to practices that before they would have considered exploitative, provided no one stopped them and others appeared to be behaving similarly.

Hughes (2005) emphasises that many men purchasing sexual services specifically seek controlled sex in a context where they do not have to be respectful of the woman. Having the ability to humiliate and demand degrading acts, often while the girl or woman has to appear as if she is enjoying them, is evident in many commercial sexual transactions (Hughes 1999;2011, Sullivan 2007, Sheila Jeffreys 2009). The normalisation of behaviour, or the social acceptance of behaviour among demand groups, is, according to much feminist literature, an important determinant of how clients and markets behave towards sex workers. Additional research by Anderson and O'Connell Davidson (2006) suggests that demand is a socially constructed entity, which, when situated in the context of commercial sex consumerism, involves an inducement to the customers to feel they are fulfilling a pleasurable want and that their behaviour is necessary, natural, justified and indeed inevitable.

While it is important to consider the moral responsibility each individual end-consumer has to other human beings, we must also consider the effects of social circumstances. Social psychologist Philip Zimbardo (2007, p. 445) insists that '[h]uman behaviour is always subject to situational forces. This context is embedded within a larger, macrocosmic one, often a particular power system that is designed to maintain and sustain itself'. Research by Robert Cialdini et al. (1999), Lee Ross and

Richard Nisbett (2011) and Robert MacCoun (1998) supports this identification of deeper factors that shape individual behaviours, both licit and illicit. Written laws and perceived levels of enforcement activities may influence the end-consumer's decision or consideration of engaging in certain behaviours. Furthermore, the power of informal social controls such as injunctive norms (my perception of what other people think I should be doing) and descriptive norms (my perception of what other people themselves are doing) need to be considered both when exploring individual behaviours in any market and designing strategies to counter problematic behaviours (Kallgren et al. 2000). This reinforces one of the conclusions of chapter 2, namely that it is necessary to consider the normalising effects that legislation (and levels of enforcement). In addition, it is necessary to consider the framing (i.e. ways of representing phenomena that powerfully influence behaviour) of the sex industry and practices within it so that we can understand demand, especially cultivated demand for the services of the sex-trafficked woman. While an analysis of framing will be the task of chapter 5, the concept will arise in this chapter below. We will now proceed to a discussion of cultivated demand, which includes the commercial-sex industry.

### **3.3 Cultivated demand: law and normalisation**

One resonating conclusion arises from existing research. It is that a positive correlation exists between the amount of prostitution within a country and the amount of sex-trafficking into that country (Farley 2003, Raymond et al. 2002). Gergana Danailova-Trainor and Patrick Belser (2006, p. iv) document in an ILO cross-country econometric analysis of the determinants of sex-trafficking that 'countries that have more prostitution are more likely to be destination places for victims of trafficking'.

This report for the ILO also suggests that the rapid expansion and diversification of a poorly regulated and partly secretive sex industry is likely to contribute to the incidence of abusive practices and exploitation. Anderson and O'Connell Davidson's 2003 work for the International Office for Migration (IOM), a multi-country pilot study on human-trafficking and demand, states that 'growing consumer demand is undoubtedly one of the factors contributing to the phenomenon of forced labour in the sex industry' (2003, p. 11). The authors also conclude that this would indeed provide 'legitimate cause for concern' about any country's expanding sex industry and the corresponding demand for commercial sex.

To help to understand such 'growing consumer demand' (Anderson and O'Connell Davidson 2003, p. 11), it is useful to consider first the cultivated-demand extension to Kane and Kane's matrix. This is induced demand based on unique selling points and stimulated by marketing, normalisation, legislative changes, cultural cultivation, etc. As noted earlier by Belser and Danailova-Trainer, customers of sexual-services do not necessarily buy specifically trafficked sexual services (2006). However, changes in the quantity or type of demand for commercial sexual services will influence the everyday practice of sex-trafficking. The power of cultivated demand is invaluable here to help convince the Prostitute user to overcome any ethical, social or moral concerns or other obstacles that prevent them from participating in a market about which they may initially have had hesitations. This will be reinforced if the framing of the use of prostitution in general is such as to make it increasingly socially acceptable.

Pornography in both soft and hard forms is particularly influential in cultivated demand, insofar as it normalises perceptions of what it is possible to demand from

prostitutes. Research has shown that:

Pornography that portrays sexual aggression as pleasurable for the victim increases the acceptance of coercion in sexual relations, that acceptance of coercive sexuality appears related to sexual aggression, and that exposure to violent pornography increases men's punishing behaviour towards women in the laboratory. (McManus 1986, in MacKinnon 2006, p. 117)

Pornography is a powerful demand-cultivating tool that normalises the exploitation and consumption of women as sexual objects and links directly to the growing demand for cheap and exploitative sexual services (Sheila Jeffreys 2009, Sullivan 2007 and MacKinnon and Dworkin 1997). Catharine MacKinnon maintains that the majority of pornography featuring adult women is produced by organised criminal groups and is intimately linked with trafficking for purposes of pornography and sex-trafficking (2006). She argues that the harms that pornography causes are not only physical and psychological in nature but also political (see also Satz 2010). The status and treatment of women is diminished by pornography, which necessarily contributes to gender inequality (MacKinnon 2006).

Chris Hedges' book on the pornography industry says that 'the theme of luring women to have sex and then discarding them is common' (2009, p. 80). The need to up the ante, with shorter violent films and gonzo porn, where sex and torture converge, is a necessary business strategy to beat competition. According to Hedges:

Torture and pornography inevitably converge. They each turn human beings into submissive objects. In porn, the woman is stripped of her human attributes and made to beg for abuse. She has no identity as a distinct human being. Her only worth is as a toy. She exists to gratify any whim that a male decides is

pleasurable ... She becomes a slave. (2009, p. 73)

Sheila Jeffreys (2009) and MacKinnon and Dworkin (1997) argue that not only does the pornography industry contain trafficked girls and women, but the pornographic material itself normalises the treatment of women as sexual commodities. To create the image of a girl or woman, ready for sexual or violent consumption, is vital for the commercial-sex industry and its profiteers to survive. David Dyzenhaus (1992), however, insists that the softer forms of pornography are also highly problematic in the way they portray consent and willingness of women to engage in the sexual act.

It makes an inequality, which is ultimately rooted in superior physical power and thus in physical coercion, appear sexually desirable. And, at the same time, it attempts to legitimise itself by claiming the consent of women to their subordination (1992, p. 540).

Dyzenhaus argues that the 'harm in eroticising inequality' rests upon its tension with autonomy, which is fundamental to our human interests (1992, p. 549). In addition to the harm of degrading autonomy, eroticising inequality engenders a further harm. The impact of framing women as inherently consenting to their unequal sexual status has a pernicious effect on consumers of pornography. It legitimises and rationalises the consumption of the commercial-sex industry's wider services and rationalises male perceptions of their behaviour as harmless.

It is right to acknowledge that obvious physical coercion or force between the end-consumer and prostitute is not present in some commercial sexual transactions (cf. chapter 4 for a discussion of more subtle forms of coercion and force). However, in the many instances in which overt coercion or force are present, a majority of men will

use coercive power or force only if they can either rationalise that their behaviour is justifiable, natural and a right, or if they can deny or conceal from themselves the exploitive power they are using (O'Connell-Davidson 2001).

The point stands more generally regarding transactions that do not involve obvious physical coercion or force between the end-consumer and prostitute. A majority will feel able to participate if they can either rationalise that their behaviour, as described above, is justifiable, natural and a right or if they can deny or conceal from themselves the exploitive power they are using. This is why those who profit from commercial sexual services – trafficked or non-trafficked, violent or non-violent – need strong, convincing and seductive strategies to encourage men to avail themselves of prostitution services. IBISWorld's (2007) study on 'Sexual Services in Australia', for example, concluded that '... advertising seeks to eliminate the moral barriers a customer may have that prevent him or her from purchasing a sexual service' (see also section 3.6 below). The power of formal and informal marketing to help shape the perceptions, values and norms of end-consumers cannot be underemphasised. At its heart is the framing of the woman as a consenting, indeed willing, participant (see also section 3.5 below).

Before we consider why I have included governments in the cultivated-demand column of figure 3.1, it will be useful to clarify the domains of the other categories to avoid possible confusion. The domain of primary demand by the end-consumer of trafficked sexual services is reasonably straightforward to delineate. That of derived demand is, too. It refers to those in the legalised or illegal commercial-sex industry who participate actively and for profit in the growth of the primary demand base (e.g. brothel owners, pimps and those who exploit trafficked women). That of artificial

demand is one further step removed, as it refers to those who profit from some other activity associated with sex-trafficking and thereby implicitly or explicitly act to generate demand via the commercial-sex industry for sex-trafficked services. In addition to the direct role here of pornography, examples are taxi businesses, hotels, casinos and others who promote their ability to facilitate access to commercial sexual services. Some businesses also increase primary demand to the commercial-sex industry through corporate hospitality. The pornography industry plays a central role in the cultivated demand domain as well, as a participant in the broader commercial-sex industry.

Governments, on the other hand, do not directly exploit the trafficked person through consumption of cheap and vulnerable sexual services, or through the trafficking process and restriction of liberty, debt-bondage or violence. They are not a partner in the industry in the manner in which they are in the gambling industries of many countries (Doughney 2002). Nonetheless, governments have normalised the commercial-sex industry through legislation that has an unintended promotional ('this is ok') effect. A less significant reason, in Australia at least (cf. chapter 2, section 2.7), is that they also benefit from taxation and licensing revenue from legal brothels. Governments also are aware that the commercial-sex industry is not properly monitored and that policy is not enforced effectively. Government reports acknowledge that sex-trafficking into the legal sector occurs (see chapter, section 2.6). Implicitly they make a kind of cost-benefit, or utilitarian, assessment to live with the acknowledged harms in return for what they perceive to be the benefits of prevailing commercial-sex legislation. To this extent governments might also be said to bear responsibility for cultivated demand.

Kane and Kane's matrix is useful in identifying the often hidden actors complicit in the sex-trafficking 'demand chain'. We will now look at the journey a person might make through the institutions, situations and political-economic systems that predispose them to becoming a sex-trafficked or debt-bonded victim; a human-trafficker or an end-consumer of sex-trafficked services. This is in order to situate a person's journey within the larger sex-trafficking demand-chain environment. The obverse of the demand chain is, of course, the supply chain. My focus on demand is to illustrate that the supply of trafficked women, which I will discuss in the next section, is demand dependent.

### **3.4 The demand chain: sex-trafficking journeys to Australia**

Because there is little primary research on the experiences of victims of sex-trafficking into Australia, I will draw on the Project Respect Report (2004), the Parliament of Victoria Report (2010) and information from the University of Queensland Human Trafficking Working Group (HTWG 2009, 2010, 2011). The 2004 Project Respect report on human-trafficking into Australia emphasised that many of the women studied were in debt-bonded contracts and had their freedom, in varying degrees, restricted. Physical and psychological threats to keep the women compliant and to deter them from reporting their situation to authorities were prevalent. Threats against the victims' children and extended families and the other women kept within the brothels were evident. The overwhelming majority of victims within the 2004 Project Respect report found to be trafficked into the sex industry were Thai nationals.

According to the Human Development Index data for Thailand (see chapter 2, figure 2.5), the everyday environment from which many of these women came

provided constrained opportunities and employment choices. As discussed in chapter 2 (section 2.7), sexual violence, familial expectations to provide for the family, limited educational opportunities compared to males and often limited rights to property and financial resources, may provide the platform on which many of these women make the risky decision to work in Australia. Some of these women reported that they had never engaged in prostitution prior to coming to Australia, but they saw it as a means of quickly making money to enable them to provide for their family or to study. A few of these women thought they would be providing an escort service without full sexual services. Some women reported that they had thought they would be working in the hospitality industry and had not expected to be forced into the commercial-sex industry. While the report did not go into the educational, social and economic backgrounds of the individual women, the following quotes drawn from the report are telling.

The victim knew that she would be doing prostitution, but had never done it before, and imagined that it would be escort 'work'. She was told that she would have to pay off a debt of 45,000, but thought it was baht rather than dollars.

(2004, p. 11)

The victim was previously trafficked to Japan and the US. She was told she would have 'work' rights in Australia and would pay off her \$30,000 debt-bondage 'contract' very quickly. She was told ... she would be able to send some money home. The victim was deceived to believe that brothel conditions would be good (e.g. an eight-hour day, adequate food, freedom to come and go.

(2004, p. 22)

The victim agreed to pay a \$50,000 debt-bondage 'contract'. She was told that

Westerners were very wealthy and that she could easily pay off this amount in a few months. (2004, p. 23).

The victim had not previously done prostitution in Thailand. The victim knew she would do prostitution in Australia. The victim was motivated to come to Australia to earn money for a family member ... She thought she would be working in a bar like in Thailand and when she saw the brothel, she wanted to leave. She was told she could not. This same woman reported ... 'Another woman who ran away was hunted down by 'gangsters', beaten and locked in a room without food and drink. Another \$2000 was added to her contract'. (2004, p. 32)

The victim was owned by two men and was forced to engage in sex with both of them and also with other women in the sex industry. The victim was also forced to take drugs. (2004, p. 27).

The victim comes from a poor rural family, had worked as a child in a restaurant, then in a nightclub, and had previously been trafficked to Macau, and had also done prostitution in Brunei (she was not trafficked there). Because of family responsibilities, she needed to earn money. (2004, p. 35)

The victim was told she would be a waitress in Australia. When she arrived, she was told she had to do prostitution. Comes from a difficult background, where high school education was interrupted. (2004, p. 39)

The victim arrived in Australia as a student and began doing prostitution as a way of making money while she was studying ... The victim borrowed \$20,000 from the owner of the brothel to purchase books and a computer to send home to

Thailand ... She was then told she had to 'work' extra hours to pay it back and that if it was not paid back by a certain time, the debt would be doubled. (2004, p. 42)

The victim was part of an ethnic minority in Burma, and was abducted by the Burmese military as a child. She was taken to a military camp where she was raped ... The victim was taken in a truck (by a woman who said she would help her) with many other girls across the Thai/Burma border into Thailand ... She was forced to 'work' as a prostitute ... It was arranged for her to come to Australia to 'work', and she had to fulfil an arrangement by 'working' in Australia (the decision does not state what type of 'work' the victim had to engage in Australia). (2004, p. 45)

The development indicators in figure 2.5 reflect relative gender inequality and violence, absence of economic and educational opportunities and restricted life income choices. These factors in turn are reflected in some of the quotes above. To be mindful of the systemic and structural environments within which many girls and women choose to act enables us to move past over-simplified arguments that focus abstractly on individual human agency and choice and take no account of the force of situation and circumstance.

However, some authors, such as Janie Chuang (2010), assert that some participants in sex-trafficking discussions construct exaggerated stories to further their underlying anti-prostitution or other agenda. Examples are stories which depict sex-trafficked prostitutes as pitiful creatures who have been subjected to lives of sexual violence and constrained economic situations that leave them with no alternative but to become sex workers. Anne Gallagher suggests that some states, in conjunction with

civil society movements, 'continue to manipulate the global momentum against trafficking to wage their own wars against perceived social harms such as prostitution and illegal migration' (2009, p. 8310). It is right to acknowledge these points.

While possible co-option of the sex-trafficking debate to further other agendas is a danger, it is essential nevertheless not to fall into the opposite trap of ignoring or downplaying situational forces. In fact, if we do not understand the force of the relationship between a woman's desire to escape to a better life than the one she is currently living, we will not make even the first step to understanding sex-trafficking and, more pertinently, what might be done about it. To be considered 'impure' and rejected by your community after having been raped or having engaged in sexual intercourse outside marriage, to be within a forced marriage in which rape and sexual violence are common, to be sold by your parents at the age of 12 to a brothel owner contribute to a girl or a woman's desire to undertake a migratory journey in the hope of a better life. If the only labour the girl/woman thinks she can perform to provide for herself, her children and her community is prostitution, then this may be the choice she makes. It is clearly a situationally-constrained choice.

Hence, while authors such as Barbara Ehrenreich and Arlie Hochschild (2003) report that many Asian women have perceived themselves to be empowered as a result of their migration journey into the Western sex industry, it would be simplistic to say that the journey is a 'free choice'. The violence of poverty and structural violence translates into real-life, everyday violent relationships within families and communities from which many of these girls and women come (see e.g. Edwards 2011). This is not to deny agency or to cast someone solely as a victim. It does however, lift the veils of illusion to discover the wider situational and systemic powers

that both create the environment from which these women come and the environment within which they are exploited in the form of sex-trafficking. While a degree of agency is demonstrated by many of these women, to focus on this purely is to focus on individual disposition (dispositionism) at the expense of the situational and structural context within which these women have to act (see chapter 1, section 1.6 and chapter 5, section 5.8).

Note that the environment in the above paragraphs provides a broad understanding of violence, which includes structural and economic violence. Alice Edwards' recent, and evocatively titled work, *Violence against Women under International Human Rights Law* (2011), explains the connection:

The Special Rapporteur on the Rights of Women in Africa has included within her mandate 'abuse intended to deprive women of their economic powers and to prevent them from benefiting from the products of their own efforts'. It is thus normally treated within the African context as violence connected to economic activities – either caused by economic situations or exacerbated by them, whether in the specific context of employment (such as sexual harassment) or the wider context of economic exploitation (which could include trafficking in women for forced sexual slavery or labour, displacement caused by large-scale development projects, disenfranchisement of women in difficult economic times, lack of credit or loans, or domestic violence related to food insecurity). Some of this may be more aptly described as discrimination rather than violence, but the preference in Africa has been to couch it in the language of violence. This is an important breakthrough in international discourse on this subject and revisits earlier global women's conferences that failed to link violence against women

with issues of equality and development ... (2011, pp. 24-25).

Edwards goes on to offer a broad definition of violence against women. It encompasses ‘but not limited to, any act, omission, or threat to life or of physical, sexual, or psychological harm or suffering perpetrated against women’ or, significantly, ‘its structural and economic manifestations’. Edwards draws upon article 1 of the UN Declaration on the Elimination of Violence against Women 1993 (DEVAW) and, especially, the ‘all-inclusive approach’ of the Protocol on the Rights of Women in Africa (Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women) 2000 (PRWA). Her definition also ‘incorporates “structural” violence under which economic violence may be included, but it further covers social, cultural, and traditional practices that are of their very nature violent, or which contribute to violence against women’ (2011, p. 25).

My reference to violence broadly here is neither to diminish direct forms of violence nor to suggest that violence (however defined) is a necessary part of the definition of sex-trafficking. It is intended rather to enrich the description of the conditions that prevail in parts of the world from which sex-trafficked women who journey to Australia originate. It is therefore to enrich the description of the various links of the demand chain, the conceptualisation of sex-trafficking and the attribution of ethical/moral responsibilities to its various participants (from primary demand to cultivation). Refocusing on demand rather than supply, and reframing the discussion in demand terms, makes such attribution possible. In contrast, a supply focus makes it appear that demand agents are merely responsible for what happens at their own particular level or link in the supply chain. The demand chain appropriately appears as continuous because it reaches down right to the origin of supply.

### **3.5 Primary and derived demand: end-consumer, sex-trafficker and employer**

Becoming a sex-trafficker, brothel-owning employer, or an end-consumer of a sex-trafficked woman also involves a journey. Again, I have drawn on international and Australian literature and case studies to provide this picture. UNODC, in the background paper it presented at the UN.GIFT conference in 2008, listed categories of trafficking groups as consisting of individuals through to loosely based associations, independent businesses with contracting agents, family operations and internationally organised criminal groups (UNODC 2008f).

There are many faces to a trafficker. The trafficker may be a desperate parent facing severe financial constraints and other mouths to feed who sells a child into slavery or debt-bondage, so that their family may survive (IOM 2002). An out-of-work male with a lack of formal education and limited employment choices struggling to provide for his family may join traffickers (Levenkrom 2007, p. 76). He may not directly physically exploit the victim but participates in the trafficking process by becoming a transporter. A previously trafficked woman might see no way out of her exploitative predicament, except to become a recruiter to entrap other women into the trafficking process (Europol 2006, p. 29). It could be an informal group of business entrepreneurs operating within the market-based economy that form a cottage industry, which recruits, transports and delivers/traffics girls and women into the high-demand industry of commercial-sex or pornography. It could be a highly organised criminal network, such as the *Yakuza*, Russian or Albanian Mafia, which specialises in the trafficking of girls and women into the sex industry and uses violent techniques to keep women under their control (UNODC 2008f).

Brian Iselin (2004), June Kane (2005) and Donna Hughes (2005) clearly situate traffickers and trafficking organisations in the demand-side of the supply/demand framework. This approach transfers the emphasis from one that posits criminals as merely reacting on the supply side to an opportunity or environment, to one that posits them as also creating, fostering and expanding the end-consumer demand environment. Asian criminal organisations are estimated to be the groups most implicated in trafficking of people into Australia (Iselin 2007, UNODC 2008f). UNODC reports in its background paper to the UN.GIFT conference that organised criminal groups, including organised motorcycle gangs (OMCGs), have ‘strongly penetrated legitimate economy in Australia’ (2008f, p. 19).

Furthermore, the Japanese *Yakuza* and the motorcycle gangs’ ability to make investments in legal adult entertainment establishments, restaurants and security companies also contributes to this penetration of the legitimate economy. However, Schloenhardt (2008), David (2008) and Project Respect (2009) suggest there is no hard evidence of organised crime syndicate involvement in sex-trafficking into Australia. Some literature suggests that small-scale trafficking businesses or cottage industries that do not fit into the traditional definition of organised crime have set up shop in Australia (Project Respect 2009, see also Attorney-General’s Department 2009, David 2008). Yet Iselin (2007) asserts that Japanese and Chinese criminal syndicates have been involved in trafficking for many years in major Australian cities. A report by Sharon Pickering et al. (2009) for Consumer Affairs Victoria suggests the involvement in both legal and illegal brothels of Chinese criminals. The question of whether organised crime groups or smaller cottage trafficking industries operate within Australia may be a moot point. UNODC (2010) reports that Australian authorities suspect that individual traffickers through to traditional organised crime

groups form alliances, which allow adaptation and growth in order to increase profits and bypass counter-trafficking strategies. While Australia has natural geographical isolation and boasts strict border controls, the opportunity for criminals to facilitate the migration journey of many desperate people and to profit from their exploitation provides a large incentive to overcome these obstacles.

Minimal in-depth research exists on those who traffic women into Australia for the purposes of sexual exploitation. Indeed, as Liz Kelly laments, ‘There is remarkably little in the research, or more general literature, on traffickers’ (2002, p.29). The Australian Institute of Criminology identifies significant research gaps relating to traffickers, their accomplices and their motivations (Parliament of Victoria Report 2010, p. 230). While some authors, including Janet Phillips (2009) and Jennifer Cullen (2009), claim that the incidence of human-trafficking into Australia is low, the hidden and illicit nature of the industry makes it difficult to estimate the scope and reach of the problem. Some reports suggest that smaller criminal networks with family and international connections operate between Australia and overseas (David 2008, Attorney-General’s Department 2009).

Thus, it is difficult to present a precise picture of the traffickers who operate between and within Australia and countries of origin, their motivations and the specific environments that shaped their choices. Hence an in-depth discussion on traffickers who bring women into Australia is not possible in this thesis. However, a review of trafficking prosecutions in Australia presents some information that may help to understand the recruiters’ backgrounds and the journey involved. In many cases, a friend of the victim, or the friend of a friend in the country of origin, recommended the better payment and improved conditions in the Australian sex

industry, thus becoming the trafficking recruiter (Project Respect 2004, pp. 21, 23, 26).

One case involved a previously sex-trafficked woman becoming a ‘supervisor’ of the debt-bonded contract workers in the same brothel to which she had previously been debt-bonded. The woman was convicted of possession of a slave and slave-trading by the Australian High Court (*R v Donoporn Srimonthon* 2005). Other cases highlight the corruption of an immigration official who organised fraudulent bridging and protection visas (*R v Sieders and Yotchomchin* 2006). Ten of the 11 cases investigated and/or prosecuted under ‘Slavery and Servitude’, Division 270 of the Criminal Code, involved traffickers and brothel owners who were born in Asia. The two trafficking offences listed under Division 271 of the Criminal Code involved an Australian national, deeply in debt to violent loan sharks, who sought to bring four Thai women to Australia to work for him as prostitutes (*R v Dobie* 2009). One case investigated by Project Respect (2004, p. 32) included an interview with a victim who reported an ‘English speaking man from an English teaching college brought other Thai women to Australia’. Nina Vallins emphasises the under-regulated college and school sector, arguing that there are ‘cases where women have come in on student visas and they never set foot in the school. The school is in on it. The school is paid off ... to tick the women off on their roll ... these are very dodgy schools, which are assisting traffickers in their operations’ (Vallins 2009, in Parliament of Victoria Report 2010).

However, at the head of the demand for services of sex-trafficked victims sit the end-consumers: otherwise known and referred to above as prostitute users. Without the end-demand for commercial-sex services there would be no market into which to

traffic girls and women for purposes of sexual exploitation. The commonly used term end-consumer is therefore a misnomer. The end-consumer is in fact at the end of the supply chain but at the head of the demand chain. My investigation of the end-consumers of trafficked persons' sexual services is also based on previous research on end-consumers of sexual services, within both legal and illegal sectors. Embedded within both these sectors are trafficked girls and women. Therefore, I will look at what these men 'demand' and how they think about women who engage in prostitution. Of course, the wider socio-cultural environment influences much of what men demand from, or think about, prostitutes.

Janice Raymond (2004), Elaine Pearson (2005) and Mary Sullivan (2007) contend that prostitutes' customers constitute the main factor regarding the demand market for trafficked women. What is specific to the consumer demand for commercial sexual services, compared to the demand for products and services produced by other workers, trafficked or not, is that the consumer has a particular interest in the personal attributes of the worker: the age, figure, nationality, language, caste, virginity and personality – all characteristics that are part of the human person. Thus, Anderson and O'Connell Davidson assert that 'consumer demand in these sectors ... is more closely related to the phenomenon of "trafficking" ... than in other sectors, such as the carpet or garment industries' (2003, p. 12).

Factors that predispose males to using commercial-sex services are varied (Anderson and O'Connell Davidson, 2003). They can include the consultation being arranged by friends, a supposed rite of passage into manhood or an independent decision. Anderson and O'Connell Davidson's (2003) research shows a preferred demand for youthfulness, with 22 per cent of prostitute users reporting a preference for

prostitutes aged 18 or younger. The group seeking sexual services from females younger than 18 believed that ‘prostitutes are dirty, but men need them for sexual relief’ (2003, p. 20). Women above the age of 30 were only sought after by six per cent of Anderson and O’Connell Davidson’s (2003) research participants. Greater than one-third of participants perceived migrant prostitutes to be more malleable and cheaper than their local counterparts and that they could obtain better value-for-money services from the migrant women.

The research participants who had personal experience engaging services of unfree or trafficked prostitutes believed that, during the physical transaction, ‘women/girls actually became objects or commodities, and that clients could therefore acquire temporary powers of possession over them’ (2003, p. 24). This perception of ownership over the prostitutes appeared to rationalise violence during the sexual transaction and the preference for vulnerable and youthful prostitutes. This same group of clients admitted that the benefits of using trafficked/unfree prostitutes were that they were easier to control, often new and often lonely and, thus, needing someone to turn to. While the majority of research participants reported being ‘repelled’ by engaging an unfree prostitute’s services, many also reported that they had done so when they were intoxicated, could not afford the higher price for a ‘free’ prostitute or that the unfree girl was immediately available. Anderson and O’Connell Davidson (2003, p. 26) therefore concluded that:

Clients who have principled moral objections to the use of force and/or slavery-like practices in prostitution, and/or who find buying sex more sexually pleasurable when they can convince themselves that the prostitute engages in sex work out of her own free will, are much less likely to pay for sex with unfree

workers than are clients who imagine prostitutes as objects of trade and/or who deliberately seek out the most vulnerable sex workers in order to exercise greater control in the prostitute-client transaction.

Research conducted by Melissa Farley et al. (2009), examining men's engagement with the commercial-sex industry in the UK, reported that around 50 per cent of the research participants obtained sexual services outside the UK, most frequently in countries or areas that had a legal sex industry. They said that they had a more relaxed experience as a result. Other participants reported feeling comfortable visiting prostitutes in countries where prostitution was tolerated and promoted, even if it were not legal. Some research participants (27 per cent) perceived their payment for the service entitled a man '...to engage in any act he chooses with the women he buys' (2009, p. 13). Thus, the ownership of the woman for the time period purchased appeared to erase some of the rights of the woman for this time. Furthermore, one-quarter of the participants perceived that '...the very concept of raping a prostitute or call girl was "ridiculous"' (2009, p. 13). Anderson and O'Connell Davidson (2003) and Andrea Di Nicola et al. (2009) report that most men who buy sex are aware of or have witnessed exploitation, coercion and trafficking but that this does not affect their decision to buy sex. Farley et al. (2009) also find that more than 50 per cent of their study's participants reported an awareness that the women they were using were trafficked (Farley et al. 2009). However, despite the women telling the men that they were trafficked, very few men informed the police or relevant authorities. Farley et al. attribute this reticence to inform the relevant authorities to fear of 'loss of anonymity, especially fearing their families' (2009, p. 17). Maddy Coy et al. (2007) reported that few customers of prostitutes acknowledged using trafficked women's services. However, they also reported that some men '... simply presumed that as long as there

was no incontrovertible, visible evidence of force, women were on an equal footing with them' (2007, p. 17).

As noted in chapter 2 (section 2.6), an independent report for Consumer Affairs Victoria (CAV) into the Victorian legal and illegal brothel sector highlighted that unsafe sexual practices are readily available in the unlicensed brothels. Users of sexual services also requested similar practices in the licensed brothel sectors (Pickering et al. 2009). A licensee of a legal brothel gave evidence of 'unprotected sex' in the illicit sector and that 'the operators dictate those terms' (Pickering et al. 2009, p. 20). Pickering et al. (2009) also reported 'an increasing trend in the demand for unsafe sexual practices' within the legalised sector (Pickering et al. 2009).

At this point, I will move away from the direct actors in the sex-trafficking demand chain, namely the levels of primary (end-consumer) and derived demand (traffickers, brothel owners who use trafficked women etc.) illustrated in figure 3.1. In particular, I want to shift our gaze towards the less overt, but often more powerful, institutions, channels and structures that wittingly or unwittingly help to create, foster and profit from the existence of sex-trafficking.

### **3.6 Artificial demand: legal brothels, gambling and pornography**

Jacques Boulet (1985) describes a level of institutional mediation between the political-economic realm of production, reproduction and distribution and everyday-acting. Mediating institutions both contribute powerfully to shaping the preferences, desires and wants that manifest themselves in behaviours at the everyday-acting level and benefit from those behaviours. Figure 3.1 represents such institutions using Kane

and Kane's (2004) map-of-demand category of artificial demand. In this section, I will focus on the following mediating institutional activities that benefit by stimulating artificial demand: legal commercial brothels, gambling and pornography. These are just three of many that are reported to benefit from everyday activity in which sex-trafficked victims are exploited and harmed (Sheila Jeffreys 2009, MacKinnon 2006, Sullivan 2007).

A direct link has already been established in chapter 2 (section 2.6) between the existence of a legal commercial-sex industry and sex-trafficking (Vic Parliament 2010, Farley 2003, Raymond et al. 2002). Sex-trafficking into the legal and illegal sex industry sectors via the process of debt-bondage is cited to be the most common form of trafficking exploitation occurring within Australia (Project Respect 2004, Parliament of Victoria 2010). If the quantity and kind of demand for sexual services within Australia is greater than the current supply, the industry would be inclined to draw on an alternative source of human 'products' to fill the gap. Basil Donovan et al. (2010) report in their study of the Western Australian sex industry that 'approximately half (48 per cent) of the Perth respondents [i.e. prostitutes] were not born in Australia'. Of course, some of the prostitutes would be Australian residents who have become prostitutes. However, the figure is much higher than the proportion of migrant women in the general population. Donovan et al. report that the WA '... proportions were similar to Melbourne brothels, though less than Sydney brothels where most (53 per cent) of the women were Asian-born' (2010, p. 11). Such data are consistent with the commercial brothel sector containing sex-trafficked women.

Chapter 2 (section 2.6) also described how legalisation of some prostitution activity was, in part, designed to improve safety and conditions for prostitutes and to

decrease criminal involvement. In spite of this, Pickering et al.'s (2009) independent report for Consumer Affairs Victoria reported that unlicensed-brothel operators were also present 'in the licensed industry, through licence transfers or payment arrangements with licensees where the actual licensee takes a fee for giving over effective control' (Pickering et al. 2009, p. 42). Fifteen to 20 per cent of legal Victorian brothels breached licences by accepting sex workers from middlemen who managed groups of women (presumably on a labour-hire model). As will be discussed in chapter 6, evidence from my virtual colloquium indicates that legalisation of sectors of Victoria's commercial-sex industry has neither improved conditions significantly for the female workers nor decreased criminal involvement.

Elena Jeffreys, president of the Scarlett Alliance, an NGO advocating on behalf of Australian sex workers, contends that '... sex workers in the licensed sector in Victoria came off with worse occupational health and safety and sexually transmitted infection outcomes [than] in the fully criminalised industry in Western Australia and the decriminalised industry in New South Wales' (2009, p. 137). Evidence from sex worker unions and non-government organisations working in the sex-industry and human-trafficking domains attest to the lack of improvement for sex workers within a flourishing legal sex sector (Elena Jeffreys 2009, Sullivan 2007). Thus, one must ask, 'who profits?'

The Australian commercial-sex industry has been flourishing, according to independent industry reports. An IBISWorld study examining the commercial-sex industry in Australia reported a 6.8 per cent growth from 2005 to 2006, 4.4 per cent from 2007 to 2008, 6.7 per cent from 2008 to 2009 and 5.3 per cent from 2009 to 2010 (IBISWorld 2007). IBISWorld reported also that 'fees charged by prostituted women

had not changed significantly over the previous 10 years; they did not receive holiday or sick pay, and their “take home earnings” have dropped significantly over the past decade’ (2005, p. 18).

John Trimble, the executive chairman of Planet Platinum, which leases the Planet Platinum brothel site, reported in his company AGM chairman’s address ‘an increase in operating profit from \$689,000 in 2009 to \$1.63 million in 2010’ (Planet Platinum Annual Report 2010, p. 16). ‘This increase arose from firstly the continued tight control over operating costs and increase in patronage revenue’ (Planet Platinum Annual Report 2010, p. 3). The Daily Planet brothel, one of Melbourne’s largest brothels, employs between 100 and 150 prostitutes with an average working age of 25 years (Daily Planet website). The Daily Planet won industry awards for being the ‘Best Brothel Overall’, ‘Best Brothel Services’ and ‘Best Brothel Staff’ (Daily Planet website). However, a Melbourne *Herald Sun* report in 2009 revealed that an inspection conducted by Glen Eira Council of the Daily Planet in 2009, uncovered a doorway between the Daily Planet brothel and an unregistered establishment next door, in Horne Street. Glen Eira council officers discovered the illegal doorway in 2005 on an inspection of the brothel, yet ‘that linking door between the brothel and Mr Trimble’s planned bar at 13 Horne Street was still there when the council last checked in December 2007’ (Moor 2009).

The unregistered establishment, Trimble’s planned bar, contained beds for approximately 20 prostitutes and had not met planning approval requirements nor mandatory safety requirements (Moor 2009). The fact that Glen Eira council officials were aware of the doorway’s existence in 2005, and that it was likely used to enter an illegal and unregistered brothel for at least two years subsequently, highlights the

difficulties in monitoring and regulating the brothel industry. Trimble leases the Daily Planet (though Planet Platinum) and is the sole director of Cameron Lane Pty Ltd, which bought the Horne Street property in 1999 (Moor 2009). Furthermore, Trimble, who is also the operator of Showgirls Bar 20 in King Street Melbourne, fought proceedings brought by the Victoria Police in the Victorian Civil and Administrative Tribunal to cancel or suspend the King Street establishment's liquor licence (Buttler and Laughton 2010).

Alastair Milroy (2009) highlights the challenges law enforcement agencies face with businesses that intermingle legitimate and illegitimate activities. He suggests that 'criminal enterprises can be established in a sophisticated manner that allows them to appear legitimate to the community and at the same time that false appearance provides a cover for their criminal activities' (2009, p. 4).

An IBISWorld study of 'Sexual Services in Australia' reported on competition in the industry. It noted well-targeted and 'heavy' advertising strategies attempted to normalise sexual services. This led the report's authors to conclude that '... advertising seeks to eliminate the moral barriers a customer may have that prevent him or her from purchasing a sexual service' (2007). Thus, the advertising and marketing of a legal commercial-sex sector directly targets the end-consumers' moral and ethical outlook. It aims to ensure that the demand for commercial sexual services continues to grow. Herein is a clear rendition of the notion of artificial demand, as Kane and Kane (2004) propose.

Within Victoria, Ramona Koval (1997), Mary Sullivan (2007) and Sheila Jeffreys (2009) draw a clear link between the commercial-sex industry and the casino business. Sullivan highlights the financial benefits to the State and various industries

of a flourishing commercial-sex sector (2007). Koval (1997) draws on research by Sutherland-Smith, which confirmed links between the influx of brothels and the presence of Crown Casino. Indeed, Sheila Jeffreys (2009) notes that the Australian adult entertainment industry acknowledged that Crown offered a service of procuring sex workers for its guests. While prostitution tourism is evident in states like Victoria, some have challenged the strategies used to help boost both the casino and prostitution industries. Sullivan (2007, p. 143-144) quotes Jean McLean, a former Victorian Labor Member of the Victorian Legislative Council, as stating that ‘... our scummy casino chips were accepted as legal currency in local brothels’, referring to chips from the new Crown Casino in 1994. Sullivan further comments that McLean had ‘... specifically referred to Melbourne’s Top of the Town brothel, which encouraged its “clients” to pay for their brothel booking with casino chips as a means of cross promotion between the two businesses’ (2007, p. 144).

The link between pornography and sex-trafficking has been demonstrated by Iselin (2007), Sullivan (2007) and MacKinnon (2006). Trafficking for the purposes of producing pornographic materials is highlighted by Hughes (2010) and MacKinnon (2004). Another more pervasive link exists in the use of pornographic materials to stimulate demand for sexual services, particularly for violent and degrading acts, which many women would not wish to participate in if given a choice (see section 3.4 above).

The overwhelming financial benefit of this framing of women accrues to those who profit from pornography. According to Chris Hedges (2009), these are now major business interests. Global pornography revenues for 2006 were estimated to be approximately \$97 billion, with revenue for the US alone \$13.33 billion (Hedges

2009). An estimated US\$3 billion profit directly related to child pornography (Ropelato 2005). Hedges calculates that 25 per cent of total internet search-engine requests are for pornographic material, and the most successful and widely visited porn sites are those that use violence and cruelty. Many pornography companies, including Beate Uhse from Germany, list on the world's stock exchanges, and internet pornography sales for 2007 were approximated at \$4.9 billion (Sheila Jeffreys 2009). Pornography has pervaded our everyday lives to the extent that US hotels provide pay-per-view pornography in 40 per cent of their rooms.

John Kenneth Galbraith, a Nobel laureate in economics known for his institutionalist-situationist outlook suggested that '... commercial enterprises did not so much respond to consumer demand as create it, bringing into being wants that previously did not exist' (cited in Benforado and Hanson 2008a, p. 1127). Marketing and advertising thus serve the interests of the most powerful. The need to, as Jon Hanson and David Yosifon (2003-2004) suggest, 'deeply capture' the norms, values and thinking of individuals and groups in societies, is vital to maintaining and expanding the current power of major corporate interests. Furthermore, this deep capture is relatively silent and hidden (see chapter 5).

Notwithstanding this relatively insidious dynamic, however, it is not difficult to observe the advertising and marketing strategies designed in such a way as to normalise and rationalise men's use of commercial sexual services as being healthy, normal and an individual right. Arguments persist among those who defend their respective positions on policy and government regulation of the sex industry and its advertising. Those arguments tend to lock superficially into what we might call a libertarian rights versus a traditional or conservative moral standards frame. What is

rarely discussed are those who profit, the ‘...creators, who make massive profits selling illusions (and) have a vested interest in maintaining the power structures they control’ (Hedges 2009, p. 51).

### **3.7 Conclusion**

This chapter has identified the central role demand plays in global sex-trafficking. It has sought to move beyond the dispositional focus on demand to the wider situational (including political, economic, social and gender) environment in which demand is shaped and influenced. The journeys that a person may take through the political-economic systems, institutions and situations which predispose them to becoming a human-trafficker, a sex-trafficked or debt-bonded victim, or an end-consumer of sex-trafficked services were explored (sections 3.4 and 3.5). The use of Kane and Kane’s demand matrix (2004) enabled us to examine more closely the constituents of demand and the relationships between demand, institutions and the political economy more generally (section 3.2). The demand matrix was extended to include cultivated demand, that is, demand for trafficked sexual services that is induced, based on unique selling points, and stimulated by marketing, normalisation, legislative changes and cultural cultivation (section 3.3).

This chapter has contributed significantly to the objectives of the thesis in two main respects. First, the focus on the demand chain does substantial work in reframing our consideration of sex-trafficking (section 3.4). Just to acknowledge the existence of its various links helps in attributing ethical/moral responsibilities to its various participants (from those involved in primary and derived demand, to those whose role is in the domains of artificial and cultivated demand). Reframing the discussion in

demand terms in fact makes such attribution possible. A supply focus, by way of contrast, makes it appear that demand agents are merely responsible for what happens at their own particular link. The demand chain is continuous and reaches down right to the origin of supply.

Second, the chapter contributes significantly by paying special attention to the roles of marketing, the law and pornography in the context of both artificial and cultivated demand (sections 3.3 and 3.6). This allowed for a deeper consideration of the effect of normalisation on primary and, therefore, derived demand (section 3.5). The key point was this. Legalisation of brothels has made it easier (more apparently normal) for men to use prostitutes. Pornography seemingly normalises ramping up the nature of men's sexual demands from, and their use of, prostitutes. This quantitative and qualitative increase encourages sex-traffickers to supply more profitably women who have less power into legal and illegal brothels. End-consumers' activity depends on the normalisation of their own behaviour and normalising the unequal and sometimes violent treatment of a woman sexually. To do this, in turn, involves for many such men the ability to rationalise to themselves that it is socially and/or morally acceptable to use a prostitute as a mere commodity to own and/or exploit justifiably on command because she has 'freely' consented and is a willing participant. The chapter exposed the fragile (dispositionist) basis of such rationalisations by setting the normalisation process in the (situationist) context of social, economic, political and gender power relationships.

In addition, the chapter reinforced the evidence from chapter 2 that the existence of a legal brothel industry acts to stimulate demand in general and, consequentially, demand for sex-trafficked services (section 3.6). It also challenged readers to reframe

the end-consumer (or user of sexual services) as the one at the head of the demand chain, rather than the one at the end of the supply chain (section 3.5). This simultaneously recast the man into a more powerful role and the trafficked woman, who is truly the one at the end of the supply chain, into a less powerful, commodified role. This is a more accurate framing of the situation, regardless of the fact that both are subject to situational forces. The reframing more accurately depicts how we should view the different levels of agency available to each.

The next chapter will draw on ethical philosophy to enable a more critical examination of some of the fundamental notions underpinning the discourse and approaches to sex-trafficking. The identification and exploration of these vital concepts will provide a firmer basis on which to build an ethical, consistent and multilayered strategy to address the complexity of the relationships between the actors and environments in which sex-trafficking occurs.

## Chapter 4

### Applying philosophy/ethics to sex-trafficking

#### 4.1 Introduction

The previous chapter discussed the centrality of demand in sex-trafficking. It continued the endeavour of this thesis to reframe or reconceptualise the problem by refocusing on demand (the demand chain and its agents) rather than merely on supply (the supply chain and its agents). Reformulating matters in this way continued the work of chapter 2, for example by showing how a narrow and linear focus on supply (traffickers, criminal networks, victims) could result in an equally narrow and linear focus on the choice of women in a developing country to accept a recruiter's offer to be trafficked as a sex worker into a country with a higher standard of living. Furthermore, chapter 3 continued the work of chapter 2 by emphasising the methodological precondition for understanding sex-trafficking, namely that social reality is situational (dynamic, complex, multidimensional and interconnected) and that this means that we need a political-economic framework in which to situate the role of power (social, economic, political, gender etc.). Unless we met this precondition it would not be possible to make sense of a trafficked woman's ostensible choice and the constrained circumstances (situation) in which she made it. Following Roy Bhaskar (e.g. 1975, p. 14), these social circumstances can be said to contain generative mechanisms or causal generative mechanisms. The tendencies of such mechanisms operate together in the complex, open social world and have powers to cause a series of events, actions, and states of affairs (Collier 1994, pp. 42-43). (Of

course, this refers to women who were not physically forced or kidnapped into sex-trafficking.)

Now, by following the methodological approach set out in chapter 1, the previous chapter allowed readers to see more clearly why we must overcome the simplistic dichotomies present in much sex-trafficking literature that frames a victim as either unequivocally forced into the trafficking process or who voluntarily chooses her path, thereby ‘consenting’ to the process. It is clearer why this is inadequate for the reality of many sex-trafficked women. (Note that framing, or ways of representing phenomena that powerfully influence behaviour, will be discussed in chapter 5.) It is also clearer why prevailing approaches to fighting sex-trafficking, which concentrate on law enforcement and migration controls, are inadequate. Moreover, it is also clearer why sex-trafficking cannot be defined in terms of criminal involvement alone, despite extensive criminal network involvement.

The demand (re)focus of chapter 3 forces us to think broadly and situationally: to acknowledge that the social reality of sex-trafficking is dynamic, complex, multidimensional and requires a political-economic framework that takes account of the all-important role of power. To make sense of demand we are forced to look for generative mechanisms at all links in the demand chain, not just in source countries but especially in destination countries. Only then can we possibly attempt to answer such questions as ‘how is it possible for more sex-trafficked women to end up in Australia’s legal and illegal brothels?’ Chapter 3 turned to Kane and Kane’s (2004) demand matrix and Kevin Bales’ (2005a) idea of cultivated demand to enable comprehensive demand factors to be identified and discussed. Within an increasingly marketised society, we observed an increasingly marketised commercial-sex industry

(including brothels, pornography, sex-trafficking etc.) in which women were increasingly commodified (conceptualised as products, things, mere useful objects etc.).

Within this context we saw how the role of marketing and culture, consistent with cultivated, artificial and derived demand, worked to make men feel easier in treating sex workers as commodified objects for their use, including for increasingly exotic and violent use. IBISWorld's (2007) study on 'Sexual Services in Australia' hit the nail on the head when it said that 'advertising seeks to eliminate the moral barriers a customer may have that prevent him or her from purchasing a sexual service'. Chapter 3 emphasised the power of formal and informal marketing and culture in shaping the perceptions, values and norms of end-consumers. The framing of the woman as a consenting, indeed willing, participant and the normalisation/rationalisation of thinking and behaviour that treat her as a consenting, willing commodity were key. A crucial role in the normalisation process is played by pornography and by the law. Decriminalisation of prostitution is one thing, *legalisation* of brothels and other aspects of the commercial-sex industry by governments in Australia sends quite another ('it's ok') message.

An important contribution of chapter 3 to the objectives of this thesis was, in acknowledging the existence of the various links in the demand chain, to clarify the attribution of ethical/moral responsibilities to its various participants (from those involved in primary and derived demand to those whose role is in the domains of artificial and cultivated demand). The chapter made clear that framing the discussion in demand terms in fact made such attribution possible. This chapter takes the process of conceptual clarification further by drawing on ethical philosophy for a more critical

examination of notions fundamental for understanding sex-trafficking. Examples are the notions of agency, harm, exploitation, human rights, consent and justice. This chapter will explore such foundational concepts in order to expose more clearly the cardinal problems we hope to address through strategic interventions. This enables us to get to grips with the fundamental principles required to conceptualise the human-trafficking phenomenon, its related discourse and debate within it. Philosophical ethics or moral philosophy, in particular, will help guide this exploration.

#### **4.2 Concepts embody values, standards and purposes**

This section begins simply by asking the question of ‘how are we to live?’ It will not answer it completely, but just asking it sets the following discussions on a firm base. By implicitly asking what is good for human beings, we better understand harms. By asking how we are to live, as humans, we implicitly shift the conceptual basis of our discussion of choice, for example, away from narrow instrumental reasoning by itself to reasoning about what genuinely is good for us and to deliberations about the sorts of instrumental means that genuinely help to realise those goods. A reflection on the notion of ‘how are we to live?’ would naturally involve a consideration of governance and the principles on which good government policies, organisations and systems are based. James Doughney suggests a quick rule-of-thumb guide for governance, articulated by Aquinas was, ‘Try to do good, but even when you cannot, at least do not knowingly cause harm’ (2002, p. 1). This notion of ‘try to do good, but even when you cannot, at least do not knowingly cause harm’ was not dependent on a particular social, political or economic context: it was an imperative, a primacy, to be placed above secondary aims. I am guided by this approach in this chapter.

The United Nations at its ‘UN Global Initiative to Fight Trafficking in Persons’ (UN.GIFT), held in Vienna in 2008, brought together the largest group of scholars and practitioners from around the globe to tackle trafficking in persons. Helga Konrad, an international consultant on trafficking in persons, stated in her closing remarks, ‘The primary reason to fight human-trafficking was the “harm” it caused people’ (2008, p.6). On the surface, most of us would not disagree. Yet to fight against something entails us accurately identifying and describing the harm-causing act. Already then, definitionally and conceptually, we need to be clear about the harm, exploitation, coercion, abuse of power and positions of vulnerability that occur in sex-trafficking. We also need to know who and what creates, benefits from and/or suffers from these harms.

We might need to know, too, that the concept of harm extends beyond the physical, emotional and psychological trauma inflicted directly upon trafficking victims. It encompasses the harm of injustice, which subtly embeds itself into the structural features of our global community. Raimond Gaita (2002) and Simone Weil (1943) suggest that we need to extend our vision of justice to the level that involves the recognition of the other as fully human. Thus, we must consider others as deserving of equal human status and that others have inner feelings and lives that enable them to suffer from wrongdoing. Gaita posits that this is ‘exactly what they do not find intelligible’, referring to those who exploit others, and herein lies the problem (2000, p. 80). Weil also cautions against a limited idea of justice that focuses exclusively on rights within social conflicts, as it may distract from the central problem. She raises the story of the forcible placement of a young girl into a brothel and suggests that the girl will ‘... not talk about her rights. In such a situation, the word would sound ludicrously inadequate’ (1943, p. 63). The harm that the young girl

suffers transcends far beyond the harm of obstruction of rights.

Hence to comprehend the concept of harm adequately, we need an accurate and full description of terms related to harm. For that some notion of well-being, or ‘how are we to live?, will be essential. It is a small step to recognise that a discussion of terms concerning harm and well-being will also involve, inherently, moral forms of description (Doughney 2005, 2006a). The very words that one uses to describe such an activity such as sex-trafficking will come from our moral vocabulary. Values and purposes are embedded into our definition and language, which is formed within a social context. Thus, describing a phenomenon using words from our moral vocabulary requires just as much attention to the accuracy, fullness and completeness as would be required to describe fully a process in the natural sciences. Brian Mooney et al. (2010, p. 18) thus are able to say that, ‘Because standards permeate discourse, there is nothing special about moral discourse, insofar as it appeals to standards or other normative perspectives’.

Definitions are intended to give an exact statement or description of the nature or scope of something. Description implies a spoken or written representation or account of a person, object or event. Aristotle insisted that the definition of something should include its key essence and be differentiated between the nominal, being the meaning of the actual essence of the thing, and the ‘real, expressing the nature of what that thing must have in order for it to be considered to be what it is defined as’ (Mure p. 2007). The way we attempt to describe the problem ‘all around’ and give it a complete and full a picture as possible, will influence how we then proceed to define it. This will necessarily affect identification and empirical representation of an issue under consideration.

To illustrate the problem, I will identify two issues that muddy the debate on sex-trafficking. The first issue relates to the perception that any mention of ‘morality’ within the sex-trafficking discourse is to do with sexual moralising. The second issue is the belief that people’s choices are stable and that these choices are reflected in their observable behaviours. To attempt to distance ourselves from the language of values, ethics and morals is not possible, unless we wish to perpetuate an illusion. As Bhaskar suggests, ‘The world, we could say, is already moralised; the point is to remoralise it’ (1994, p. 151). Furthermore, the accusation that any moral discussions on sex-trafficking are dominantly from the conservative anti-prostitution lobby and needs to be challenged. While some may be inspired by this type of agenda, there are others who object to the commercialisation of sexuality in a sex industry, which they believe to be morally harmful to human flourishing and well-being. In addressing the second point, to rely on observable behaviours as accurately representing people’s preferences, disregards the influence of adaptive preferences, constrained choice and coercion on behaviours. Thus it misses the point completely to describe a woman’s choice to be trafficked as consenting, and to define consent as the observed choice to be trafficked. These concepts will be discussed later in this chapter and will be expanded upon subsequently.

The term ‘concept’ refers to the characteristic or essential features of a class of entities, which is expressed in an idea or general notion (*Collins English Dictionary* 2003). Julius Kovesi argues that our concept formation, including our moral ones, are influenced by our social contexts, shared needs and wants, and ‘contains descriptions from a point of view’ (Mooney et al. 2010). Purpose, and hence values are embedded within our language, thus elements of ‘sorting’ of what is to be considered and valued has already taken place. Kovesi emphasises that every description is based on a point

of view containing a purpose, not mere facts, and corresponds to a view that is valued (or disvalued) and which fits with our particular interests (Kovesi 2004).

We can see then that the concepts and definitions embedded within sex-trafficking are value-laden, purpose-driven and will define boundaries for what is considered in or out in general discourse. This will affect the perception of sex-trafficking as a problem, the identification of victims and traffickers, the formation of policy to address the trade and financial resources to tackle it. Thus, it is necessary to go much deeper, and understand some of the terminology, assumptions and perceptions embedded within the definitions and concepts. Issues traditionally placed on the edge of consideration or silenced are likely to be brought into focus. Terms and concepts including deception, abuse of power and position of vulnerability, coercion and exploitation will need to be unpicked to discover how they are considered to be instantiated in the sex-trafficking process.

Kovesi argues that ‘recognitors’, which are ‘things, acts, and situations (that) have features by means of which we come to recognise that a given concept is instantiated’, are an essential part of a concept, as it is what is counted as ‘a part of a thing’ (2004, p. 32). This is an important point as Mooney, in his discussion of Kovesi, explains,

Moral perplexity arises only when there are no adequate recognitors for the formal element of a moral concept... Thus we are left with no clue of what value-laden descriptions we are to use as standards for evaluation. (2010, p. 22)

Thus the formation of a normative global understanding of trafficking, with its concepts, definitions and terminology, in a world where our conceptual formation is based on widely different social contexts is challenging. We can ratify and become

signatories to various global protocols, but our conceptual understanding and the embedded values, beliefs and needs may prove to be just one of the obstacles we need to confront. However, despite these challenges, conceptual clarity may, as Jack Donnelly suggests, ‘... help unmask the arguments of dictators and allies’ (2003, p. 3). Unless we get to this level of understanding and comprehension, our discourse, policies and counter-trafficking strategies may not only be ineffective or compound the exploitation, but contribute to the lack of focus on the real powers and mechanisms behind this global criminal industry.

I will use the concept or moral notion of murder as an example. On the face of it, this concept could not be clearer. We know what murder is. It is hardly a question of cultural interpretation. Regardless of culture, murder is murder. I use this example for two reasons. The first is to explain that, in sex-trafficking discourse, we are yet to have this level of conceptual clarity. We must do the hard work of describing relevant notions of informed consent and harm, rights and violations. The second reason is that, once we have reached some level of clarity through argument and evidence that generate an understanding of the essential nature of the concepts involved, we then run into another problem. We may know what murder is, but it is no small task to describe *a* murder. That is, whether this or that set of actions and intentions constitutes a murder is a matter that keeps police, magistrates, judges and juries fully occupied. Their task of determining whether the evidence is sufficient for a set of acts and intentions to fall under the description of murder is one of considerable expertise, one not to be lightly dismissed. We need that purpose in forming the concept murder precisely because we want to designate the acts that fall under it as harmful, wrong, evil and vicious. (Doughney 2005, 2006a, see also Kovesi 1998).

Achieving definitional and conceptual clarity allows us then to more clearly understand and then debate alternative arguments pertaining to the sex-trafficking debate. I have drawn on Doughney's (2002, 2004, 2006b) work on the gambling industry to help categorise common types of arguments/concepts used to diminish public perception of an issue as a problem and thereby to divert policy-makers and governments. Doughney uses an ethical/philosophical approach to help bring into focus industries, governments and individuals who are complicit in the harm that results from the presence of a commercial poker-machine gambling sector. Doughney's work is particularly useful to an understanding of the sex-trafficking debate, as traditional debate lacks the 'wider lens' that exposes those who benefit from the presence from a harmful industry, even though they may not physically inflict the harm upon the victim. He highlights the traditional arguments used by proponents of those who benefit from or who are complicit in the harm that arises from an exploitative industry.

Tellingly, the four predominant arguments he raises in the poker-machine gambling debate are also commonly used in the sex-trafficking debate. The first argument is 'problem-minimisation'. The problem of obtaining concrete numbers of victims, traffickers and concrete measurable impacts related to human-trafficking is well-documented (Laczko 2005, Tyldum et al. 2005). Michael Glanz, speaking at a 'Grupo de Los Cien' (Group of 100) conference in Mexico, lamented, 'If there aren't enough bodies, there isn't a famine' (1995). Glanz's perception of the public institutions' need for precise numbers and statistics, prior to action, and the corresponding lack of forethought or prevention of harm, is salient. Saul similarly identifies public officials and groups who quibble over the numbers 'like little boys caught up in an analytic sandbox struggle' (2002, p. 62).

Recall from chapter 2 the questioning of the claims of sources (e.g. Project Respect 2004) that assert that relatively high numbers of women are trafficked to Australia (see chapter 2, sections 2.4 and 2.6). An example is: ‘There is no evidence of any large scale (trafficking) problem in Australia’ (Carrington and Hearn 2003). It is obviously important to acknowledge that empirical data does need to be considered to help determine levels of resources required to commit to counter-trafficking initiatives and their priority on the public policy and legal agenda. It is vital, however, to be aware that much of this data only represents what we have chosen to measure, what we know how to measure and our definitional and conceptual understanding of what a sex-trafficked victim is. Furthermore, any researcher needs to be aware of who funds, controls, analyses and publishes the data, and whose purposes this information may support.

The second argument Doughney identified was denial that the problem really is a problem (e.g. that poker-machine losses are really just spending on entertainment). The practice of debt bondage is invoked by some to highlight the initial consent and sometimes improved environment in which debt-bonded women operate within their destination countries. Laura Agustin celebrates the ability of trafficked women to become ‘cosmopolitan subjects who may consider the world their oyster, not their home’ (2004, p. 91). John Davies, in a web paper ‘How we are failing the “trafficked”’, comments, ‘Often being rescued can be more traumatic than the trafficking harm. Women regularly report “trafficking” as having been a didactic experience that allowed them to reject previously internalised oppression’ (Davies 2010). It is important to acknowledge that Davies says that ‘Swapping one oppression for another is not an adequate outcome’.

However, it is vital to conceptualise trafficking in a manner that recognises its purpose. Trafficking occurs specifically for the purposes of sexual exploitation and profit. Commodification of women is part of its essential nature. This is why it is possible, despite the particular experiences of some trafficked women, to understand the harm incurred to the ‘inner self’ as a result of the trafficking process. It is not as easily measurable as bruises or body counts, yet it may be just as destructive. The development of adaptive preferences (section 4.6 below), adoption of survival strategies and the controlling exploitative environment in which sex-trafficked women are entrapped often shape women’s perception of themselves and the overall trafficking experience. The normalisation of this exploitative environment where the women are often made to feel insignificant and subhuman, only worthy for sexual consumption may affect perception of their exploitation, self-reporting of their exploitation, participation in criminal trials against their perpetrators and acceptance of help.

The literature reports the effects that forms of persecution and torture have on their victims include shame, guilt and feeling undeserving of help offered after their traumatic experiences (Aristotle 2007, Feiring et al. 1996). Thus, for example, to suggest that a woman’s reluctance to report her trafficking exploitation reflects her preference and/or happiness with her situation is simplistic. It compounds the injustices incurred by the trafficked woman. Sheila Jeffreys emphasises the use of language in downplaying the exploitation and harm that occurs to trafficked women prostituted within the sex industry. Included is the language of commerce adopted by sex industry proponents who frame survival tactics adopted by women in the industry, including trafficked women, into ‘an exercise of women’s agency and a form of entrepreneurship’ (Sheila Jeffreys 2008, p.12). Rescuing strategies employed by

various agencies may be traumatic to some women. However, the strategies themselves need to be refined, not the action of removing a trafficked person from a harmful situation.

The third argument is the traditional fallback ‘there is no alternative’. Therefore the framing of prostitution as a necessary evil enabling men to engage their natural biological urges within a contained vector of female society, created what some perceived as a compelling argument for the practice’s survival (Aquinas in the *Summa Theologia* 1942, Walkowitz 1980). Indeed Aquinas (1942, 2/2) argued, ‘Rid society of prostitutes and licentiousness will run riot throughout. Prostitutes in a city are like a sewer in a palace. If you get rid of the sewer, the whole place becomes filthy and foul.’ This sort of framing of prostitution as a necessary evil, required to be contained and controlled, enabling men to gain safe access to women and girls’ bodies at times convenient for men, contributes to justifying the demand for sexual services into which women are trafficked. This framing is challenged well by Josephine Butler (cited in Jordan 2003), Catherine A. MacKinnon (2006) and Sheila Jeffreys (2009). Sheila Jeffreys suggests that prostitution, often touted as the ‘world oldest profession’, is actually the ‘world’s oldest oppression’ (2009). Butler had criticised the UK *Contagious Diseases Act 1864*, implemented to keep a ‘clean’ class of enslaved women to service men, and contended, ‘Their system is to obtain prostitution plus slavery for women, and vice minus disease for men!’ (Butler, cited by Jordan 2003, p. 3).

Indeed, one needs to question any work situation in which the act of dissociating is frequently employed in order both to cope mentally and physically with pain, discomfort and psychological challenges, such as are experienced by women who

work prostitution. Research reports the act of dissociating during a perceived traumatic experience has links to the development of post-traumatic stress disorder (Giezen et al. 2005, Koss et al. 1996, Panasetis and Bryant 2003). To dissociate on a frequent basis, from one's very inner self, while being a helpful survival mechanism, is harmful to the totality of the person and conflicts strongly with any concept of a human being as a whole and to human flourishing. To suggest, that 'there is no alternative' and that we must accept the industry of prostitution, albeit with ad hoc measures to make the conditions more tolerable for girls and women to perform within, seems inadequate and morally unacceptable.

The final argument identified was a form of right-wing libertarianism. A popular libertarian notion, that paternalistic governments should neither proscribe nor intervene in 'consenting' capitalist acts between adults, was espoused by Robert Nozick. Nozick suggested that if consent is present, and no obvious harm occurs to either individual, then the government and other institutions should steer well clear (Fesser 2005). Doughney (2002, p. 53), however, suggested, 'To focus just on individuals' rights would be to specify the ethical problem incompletely'. Thus, we need to expand our consideration beyond the dispositionist approaches to both the actions and thoughts of the end-consumer of prostitutes (sex-trafficked or otherwise) and the women themselves. Simplistic dispositionist framing ignores the situational complicity of governments (via the law), commercial-sex businesses, traffickers and unjust societies that license, cause and profit from serious harm. The demand focus and its accompanying demand-chain typology allow us to avoid the one-sidedness of the focus on the supposed rights of the user of sexual services and prostitute as if they transacted in a vacuum.

### **4.3 Human dignity and human rights**

Concepts implicitly and explicitly embedded within the Palermo Protocol (UN 2000) are frequently invoked in the debate surrounding sex-trafficking. Two primary concepts are human dignity and human rights. It is important to be clear about what these terms mean, how they came about and the essential features they intend to capture. The United Nations, in its ‘Recommended Principles and Guidelines on Human Rights and Human-trafficking’, contended:

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end all trafficking. (2002, p. 5)

A variety of instruments have been developed by UN agencies, including the Office of the High Commissioner for Human Rights, which focuses on strengthening international legislation that protects political, social and civil rights and a broader aim of raising awareness of human rights globally. Thus, talk about human rights seems central to our very discussion of sex-trafficking. Yet, Onora O’Neill notes that the rise of a:

human rights culture that is replete with claims about abstract rights to goods and services, now seen as universal human rights, but often muddled or vague, or both, about the allocation of the obligations without which these rights merely cannot be met, but remained undefined (2005, p. 428).

Anne Gallagher, in acknowledging the difficulties associated with adequate allocation and enforcement of human rights, argues that it is vital to acknowledge and

accept that:

Responses to trafficking and related exploitation have been inadequate, incomplete and sometimes immensely problematic in human rights terms. Even when strong laws and institutions are in place, the attitudinal shifts required to deliver justice, protection and support to those who have been exploited are often frustratingly slow. (2009, p. 831)

For two reasons I will, in this section, explore the relationship between human dignity, human rights and sex-trafficking. The first is in order to help to justify what I conceive are prerequisites for individuals to reach their potential as human beings. The second is to clarify what it means to have a human right, why is it a right and how rights fit in theoretically and practically with our consideration of sex-trafficking. This will be important (essential) not only in itself, but also because it will lay the groundwork for understanding the comments of discussants in chapter 6 and the complexities of the sex-trafficking debate. I take it that the Palermo Protocol and other UN (2002) documents are correct in regarding sex-trafficking as a violation of human rights (see also Edwards 2011), but this position is not universally held. Anyone agreeing with the proposition that a sex-trafficked woman had freely consented to be trafficked, would disagree that her human rights were violated (see section 4.2).

The modern human rights tradition has a number of sources. Plato contemplated the notions of an unchanging natural order and universal truths, irrespective of times and contexts. This may be perceived as the root of the natural law concept of rights (Vizard 2000). Aristotle believed that a universal right conduct, derived from objective facts about human nature, could be used prescriptively through governance and influencing individual behaviour to help achieve human flourishing. Regardless of

what we might think of his conclusions, the importance of good governance and political systems to help achieve individual natural rights was emphasised by Thomas Hobbes in *Leviathan* (1651). He argued that a social contract or covenant was necessary to endow the government with almost unlimited power ensure the stability and security necessary for the protection of individual rights. In the English tradition, John Locke also championed the notion of natural right in, for example, his *Two Treatises of Government* (1689). The enlightenment period following Locke saw a radical challenge to the traditional rights systems that supported hierarchical ruler and subservient peasant relationships. A vision of universal human rights, whereby all humans have as a birthright rights related to natural law, was developed. This vision and concept of human rights was invoked during this period against oppressive regimes and unjust systems of power. Nelson Mandela contended therefore that the current human rights culture:

... is rooted in and inextricably linked to the political revolutions of the late eighteenth century and those that took place during the mid-nineteenth century. It was adopted by humanity as its common heritage in the Universal Declaration of Human Rights after the Second World War. (Mandela 1991, p. 75-78)

One approach to human rights is natural law, which Maritain (1944) described ‘as an order or a disposition, which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being’. While natural law is not a written law, it is eternally in our moral conscience and ‘known by all human beings in various degrees. It essentially encompasses the ideas of “doing good and avoiding evil”’(Schall 1998, p. 92). Maritain describes this instinctive knowledge as guiding our rights and duties in order to do good and avoid

evil (Maritain 1944). Polly Vizard (2000) emphasises the effect of natural law and natural rights traditions on the formation of formal human rights law, ethical traditions and political thought.

The concept of human rights, then, draws on this and other theories to form such rights as protecting our right to live, freedom and the right to keep one's body whole. Human rights are held by every human being, simply because one is a human being and for no other reason. Having a human right empowers the right-holder to press claims that, theoretically, should take precedence over political, economic and social concerns. Furthermore, these rights exist across the globe. Nation states have a corresponding duty to recognise them, irrespective of the claimant's citizenship (Sen 1998). Alongside the ability to claim a right is a powerful ability to demand action. The demand for a human right often challenges existing norms, institutions, practices and legislation.

A close correlation exists between the concepts of human rights and human dignity. Actually, the concept of human rights bases itself on a belief in the dignity of the human person. It recognises that the human person requires certain minimum standards in order to fulfil a basic life of dignity. Furthermore, as they are derived from the dignity of a human being as such, these rights belong to all human beings and cannot be removed by any authority, under any circumstances. The language of human dignity appears in the Preamble of the Charter of the United Nations (1945), the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1976) and other national and international instruments. However, as Schachter reports:

The meaning of respect for the inherent dignity of the human being suggests the

far-reaching implications of an ideal that has not yet been given substantial specific content. At the same time, our analysis indicates that a determinate core of meaning may be elucidated that is in keeping with widely accepted (though not universally accepted) values. This core of meaning has not been formulated as an explicit definition. To do so would result in another highly abstract formula. What is important is the extent to which the analysis leads to more concrete acceptable norms of conduct. (1983, p. 851)

Thus, while an explicit definition of the term and concept human dignity is lacking, the focus and inclusion in our language, debate and frameworks of this concept enables a normalisation of the types of behaviours core to the essence of this concept. In order to conceptualise the meaning behind this term adequately, Schachter (1983) draws on the Kantian concept of treating all human beings as an end and not a means as helpful to ascertain if respect for the intrinsic worth, thus dignity, of the human person is present. Human dignity and flourishing are only achieved in the context of society. Thus human rights belonging to the individual are only grounded in the wider social context. In order to achieve the basic requirements of standards required for human dignity, legal, political, economic and social systems, policies and legislation have to be organised to ensure that these requirements are met. Thus, as Donnelly explains:

Human rights are a social practice that aims to realise a particular vision of human dignity and potential by institutionalising those basic rights ... Therefore, there is both constructive interaction between moral vision and political reality and a constructive interaction between the individual and society (especially the state), which shape another through the practice of human rights. (1989, p. 18)

While the focus of human rights is on the individual, purely because only an individual can be a human being, Locke (1689) insisted that human rights must be firmly embedded in a social context. Furthermore, government and societal duties include the protection of natural rights that are embedded within the wider society. Thus, the concept of individual human rights outside the wider concept of a good society does not exist. While human rights centred on the individual human being and their dignity, the rights reached into the political, civil, legal, political, cultural and social domains. While not legally or practically enforceable and problematic to monitor, many of these rights are recognised in most countries, and most have ratified the associated treaties and protocols.

Debate continues over the universality of human rights in a world where differing cultures, traditions, customs and beliefs exist. Some authors highlight the problematic transference of a Western style human rights framework, with its focus on the individual and property rights, to societies in which the community, not the individual, is the priority (Shivji 1989, Pollis and Schwab eds 2000). Other authors maintain that the ideology embedded within the Western human rights frame reproduces neo-colonialist practices and imperialism (Chomsky and Herman 1979, Ibhawoh 2007). However, Amartya Sen argues that, despite certain elements from cultures not sitting well with contemporary human rights standards, these ‘ought not to be allowed to obscure the presence of other elements that are compatible with, and supportive of, modern ideas about human rights’ (Vizard 2000, p. 25).

Various classes and types of human rights exist, and it is outside the scope of this thesis to discuss them at length. However, a key conceptual issue I wish to highlight is the distinction between negative and positive rights and related issues

concerning acts of omission and commission. In the debate surrounding violation of human rights, much emphasis is on injury or harm occurring because of an ‘action’ – this would be called a violation of a negative right from an act of commission. However, the failure to act (omission) – particularly in the economic and social realm – may result in injury or harm also. Violation of both negative and positive rights may result in harm and, while there are differences, both must command our attention on a moral level. Traditionally, emphasis has been on the commission of harmful acts, yet we need also to acknowledge the interplay between the range of human rights and their obstruction by both acts of omission and commission. Sen and Nussbaum (1993), in their capabilities approach, discuss the importance of positive rights and the indivisibility of all rights. (Their views will be discussed at more length later in section 4.6.)

Perhaps one of the strongest motivations to invoke a human right is to avoid harms, in all their forms, against an individual or a community. Note also that harm is not merely a negative utility, of the sort tallied in cost-benefit utilitarian calculations: it can go much deeper and erode or destroy fundamental human dignity of the victim. Moreover, it is difficult to consider the concept of harm without also considering well-being and what it is that human beings require to achieve well-being.

This is why it is simplistic to consider the violation of human rights as constituting just a single act, of either omission or commission. In keeping with the spirit of this thesis and its theoretical underpinnings, we need to situate acts and individuals (both harmed individual and the one that harms) within the wider economic, social and political environment. This allows us to reframe the issue and encourages us to look at what structures, practices and mechanisms create the

environment in which a particular violation of human rights such as case sex-trafficking occurs. It also compels us to look at the role of the economic reproduction, state and authorities who are/should be responsible for providing the minimum standards required for basic human dignity. Before doing so, I will take a closer look at the state regarding individually harmful activities. I will also introduce what philosopher Debra Satz (2010) calls noxious markets.

#### **4.4 Harm, intervention and prostitution**

The harms incurred by sex-trafficking upon a trafficking victim and the wider society have been discussed in chapter 2 (section 2.3). Aristotle developed the concept of human flourishing or eudemonia. He maintained that the aim of ethics and politics was to show people how to achieve eudemonia, which can be interpreted as well-being (Oswald 1962). The well-being of an individual was to be achieved by living a life in society and living a life concerned with the society. Aristotle's consideration of well-being, human flourishing and fulfilment was firmly situated in the context of society. The 13<sup>th</sup> century natural law philosopher-theologian St Thomas Aquinas, of whom I was critical in section 4.2, is nevertheless an outstanding source for reasoning in moral philosophy. Like Aristotle, he situated his consideration of harm and liberty in a social context (Aquinas *Summa Theologia* 1254 – 1274). The frustration of basic needs or our potentialities as human beings is perceived to be morally bad and harmful, in that it decreases our ability to be fully actualised as a human being. Thus, harm consists in not just the absence of physical injury but also obstacles or lack of resources that prevent us living fully human lives. Harm, then does not just occur at the one to one level, which is often easily visible, but at the institutional and systemic level whereby

human flourishing is constrained.

Philosophers, including Aquinas and John Stuart Mill (1859), however, also struggled with the question of legislative interventions concerning acts that may be perceived as causing harm, particular in those areas perceived as immoral. Examples were acts such as prostitution, drinking or gambling and the particular harm of the acts that society thought were done to the individuals involved. Though very different philosophers in so many respects, both Mill and Aquinas felt law should not concern itself with perceived immoral acts that do not directly affect others. Some similarities in perspective have been observed (Charlesworth 1986 p. 46). Presumably, both Mill and Aquinas also felt that any harm caused to the individual was smaller relatively than the harm arising by attempting a prohibition. Aquinas also contended that civil law should be confined to preventing those acts without the prohibition of which human society could not be maintained. Moreover, it has nothing to do with private acts of morality that are contrary to virtuous behaviour (Symanski 1981). As Max Charlesworth (1986, pp. 44-45) explained, on the one hand, and consistently with his concern for well-being and flourishing, Aquinas thought that:

... the laws of the State ought to be framed in accordance with the moral law: in fact the function of the State is to translate into concrete political practice in particular circumstances those moral rules that are concerned with others. The civil law therefore acts as a moral pedagogue in that its function is to make the citizens more morally virtuous ... Aquinas recognizes, however, that the law is a crude instrument for inculcating morality and that there are severe limits to what the law can do in making people virtuous. There are many immoral acts which do not directly affect others and the law does not concern itself with these.

(Gluttony, for example, is a moral fault but we do not expect there to be a law against gluttony.) Again, in many cases the attempt by the law to control immorality may bring about more harm than good. In these cases the principle of lesser evil enjoins that no law should be enacted and that the immorality in question should be tolerated. For example, prostitution is a moral evil but the attempt to forbid prostitution by laws may bring about more harm than good, so that it is better for the State to tolerate prostitution.

Notwithstanding the pedagogic effect of Aquinas' other remarks on prostitution (section 4.2), this approach has a remarkably modern ring. Perhaps it is to read too much into this 13<sup>th</sup> century view, replete as it doubtless is with 13<sup>th</sup> century views of women and sexuality, but it seems to suggest decriminalisation of prostitution but not legalisation of a commercial-sex industry. The latter's effect, as the evidence of chapter 3 demonstrated, was pedagogically harmful. See here, too, how a concept such as harm, in the context of the perspective of promoting human dignity and flourishing, might just as easily replace the concept of immorality or evil in the above quote. Indeed this might be expected in a natural law framework.

Mill's *On Liberty* also discusses the principle of harm and the limits of power that 'can be legitimately exercised by society over the individual' (1859 (1947), p. 1). Mill expresses concern over paternalistic interventions over individual behaviour and emphasises that power can only be rightfully exercised '...to prevent harm to others' (1859 (1947), pp. 9-10). Thus, preventing harm to the individual engaging in the behaviour under consideration is not grounds enough to legislate against that behaviour. There must be evidence that the harm occurs to others in society and we must not encroach on the individual liberty through law unless others are being

harmed. However, Mill also underlines ‘positive duties’ to the community and individual to help guard against harms that could occur to the ‘act of omission’ (1859 (1947), p. 11). Anchoring the concept of liberty and freedom within a social context is emphasised in Mill’s work. Yet he acknowledges that individuals should not be ‘compelled’ to behave responsibly in society if self-motivation is an effective stimulus to behave in a responsible manner or ‘if an attempt to exercise control would produce other evils, greater than those which it would prevent’ (1859 (1947), p. 11). Mill specifically discusses problems of harmful personal activities in which those with a pecuniary interest solicit socially. However, he struggles with the balance of individual rights versus the legitimate role of the state, particularly in the field of social acts. This is evidenced in the following quote:

It is true that the prohibition is never effectual... and more than this, society ought not to aim at. There is considerable force in these arguments. I will not venture to decide whether they are sufficient to justify the moral anomaly of punishing the accessory, when the principal is (and must be) allowed to go free; of fining or imprisoning the procurer, but not the fornicator, the gambling-house keeper, not the gambler. Still less ought the common operations of buying and selling be interfered with on analogous grounds. Almost every article which is bought and sold may be used in excess, and the sellers have a pecuniary interest in encouraging that excess; but no argument can be founded on this... (for example) because the class of dealers in strong drinks, though interested in their abuse, are indispensably required for their legitimate use. The interest, however, of these dealers in promoting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty (1859 (1947), pp. 101–

02).

Thus, Mill sees the promotion of intemperance, or excessive use of a substance that may be harmful if used in large amounts, as the real problem. Fornication here refers to prostitution. It is worth recording that Mill, whom with Harriet Taylor (later Harriet Taylor Mill) championed the rights of women, also opposed the hypocrisy of the *Contagious Diseases Act 1864* (see section 4.2 above). As Nicholas Capaldi (2004, pp. 335-36) explained:

Mill insisted that women should have equality before the law and thereby gain the protection of the rule of law. ‘The purpose of that book [*The Subjection of Women*] was to maintain the claim of women, whether in marriage or out of it, to perfect equality in all rights with the male sex.’ This means, among other things, that women should have a right to control their own resources; that women should share the guardianship of their children, as opposed to the exclusive guardianship of the husband; that women should be protected from domestic violence and have the right to refuse ‘the last familiarity’; and that divorce should be permitted. As Mill pointed out, ‘marriage is the only actual bondage known to our law. There remain no legal slaves, except the mistress of every house.’ One aspect of this notion of equality before the law deserves special mention. Between 1864 and 1869, Parliament passed the Contagious Diseases acts. The acts permitted compulsory medical inspection of women suspected of being prostitutes in military garrison towns. Mill objected to the acts on the ground that they applied police powers to women but not to the men. In 1869, the same year as the publication of *The Subjection of Women*, W. E. H. Lecky published *A History of European Morals*. In that work, Lecky described

prostitution as necessary for maintaining social stability; Mill denied this, arguing that prostitution reduced women to the status of a thing and undermined honesty between marriage partners. (Capaldi cites *The Subjection of Women*, JS Mill CW XXI, pp. 272-73, 323, 353 and letters to Rusden, CW XVII, p. 1751, Amberley CW XVII, pp. 1692-93)

Satz's book titled *Why Some Things Should Not Be For Sale: The Moral Limits of Markets* (2010) takes up similar themes in contemporary terms. She insists that any market that affects the ability of people to relate as equals is harmful, in that it will 'thwart desirable human capacities; some shape our preferences in problematic ways; and some support objectionably hierarchical relationships between people' (2010, p. 4). She critiques views dominant among economists, who perceive market problems related to merely efficiency dynamics, and egalitarians, who view problematic markets as related to distribution failures of resources. Satz argues for a more nuanced view of markets that encompasses the sources and the underlying vulnerabilities of the market agents and the consequences to the individual and society. Thus, she moves beyond the directly observable consequences and stated preferences of the people involved, to consider notions such as vulnerability and weak or asymmetric knowledge and agency and harm (both to the direct parties involved and the wider society). Table 4.1 below outlines Satz's parameters in which to consider if a market is noxious.

**Table 4.1 What makes a market noxious?**

<b>Source: Weak Agency</b>	<b>Source: Vulnerability</b>
Inadequate information about the nature of and/or consequences of a market, others enter the market on one's behalf	Markets in a desperately needed good with limited suppliers, markets with origins in poverty and destitution, markets whose participants have very unequal needs for goods being exchanged
<b>Outcome: Extreme Harms for Individual</b>	<b>Outcome: Extreme Harms for Society</b>
Produces destitution, produces harm to the basic welfare and/or agency interests of the individual	Promotes servility and dependence, undermines democratic governances, undermines other-regarding motivations

Source: Satz (2010, p. 98)

Some proponents of the prostitution industry cite negative externalities as the problem with the industry and dismiss concerns about the morality of sexual transactions within this industry (Agustin 2004, 2007; Elena Jeffreys 2008, 2009; Ditmore and Weitzer 2009). The sex industry advocate often perceives participation in the sex industry as a right and the harm may result from unjust working conditions, not the prostitution act itself. Opponents of the prostitution industry insist that prostitution itself is inherently exploitative, alienating and impedes the flourishing of its participants (Sullivan 2007, Farley 2005, Raymond 2005). Satz is particularly helpful in both contributing to and widening the debate on this issue, as she provides a space for consideration of aspects of vulnerability and agency for the market agent, and she also considers the wider individual and community harms that affect human flourishing. Satz questions the use of weak agency and vulnerability alone to defend the ‘wrongness of prostitution’, especially as many women who enter prostitution have other viable options for income.

Furthermore, while acknowledging that commodification of another human

being may be morally wrong, Satz insists that ‘The sale of the use of someone’s capacities’ is acceptable (2010, p. 143). Many labour contracts require control of the labourer’s body/capacity in one form or another, whether it be a sportsman, dancer or shift worker etc. This does not automatically lead to what could be perceived as an insult to our human dignity. Therefore, Satz concludes that the commodification of another human being as an argument is inadequate to defend the wrongness of the prostitution industry; the industry into which girls and women are trafficked. However, she also moves beyond the singular agent focus to the wider systemic harms that are produced and reproduced through our actions. Satz contends that while vulnerability, weak agency and extreme harms to the individual and society need to be considered and addressed in various contexts, she insists that the overriding reason why the prostitution market is ‘harmful’ is because ‘the sale of women’s sexual labour reinforces broad patterns of sex inequality’ (2010, p. 135).

Thus, the market itself is noxious due to the reinforcement of sexual inequalities, upon which that market bases itself. The market also draws, in the main, from a supply of girls and women who have weak agency and are vulnerable. This was evident in the chapter 2 discussion, which examined the backgrounds of women who entered Australia and were entrapped by debt-bondage (sections 2.6 and 2.7; see also chapter 3, section 3.4). The process of sex-trafficking contains its own injustices and harms, including deception, coercion and abuse of power etc. However, the commercial-sex industry also provides an exploitative environment in which the trafficking harms occur because of its own particular harms related to its structure and its reproduction of sexual inequalities.

#### **4.5 Harm, exploitation and the definition of sex-trafficking**

Debate continues on how to best address the harms caused by sex-trafficking into the commercial-sex industry. Policy-makers continue to struggle with legislative interventions in markets that have been traditionally regarded as immoral, including illicit drugs, alcohol, gambling and sex (MacCoun 1998). Any policy designed to address the market in which sex-trafficking victims are harmed is bound to encounter passionate and polarised responses. Furthermore, ill-informed policy targeted at the commercial-sex industry may exacerbate the harms experienced by the trafficked victims and others who might choose to work in the industry. The issue of whether one considers the prostitution act inherently exploitative, and thus immoral/harmful or not, may affect which legislation one considers appropriate. In particular, raising the primacy of personal liberty, a concept that has been constructed in a particular social and historical context, should not override the principle of respecting human bodily integrity and the right not to be exploited.

It is important to be clear that the sexual act itself is not morally problematic. Rather the abuse, exploitation, abuse of power, violence and/or reinforcement of sex inequality – in the public or private domain – is. Establishing that the market in sex trafficking is noxious, harmful and incompatible with a vision of equal human status necessary for human flourishing, provides us with a firm base upon which to base policies. However, we need more. To give a full and accurate description of the harms suffered by the victim, it behoves us to provide more than the information on the numbers of broken bones, rapes, infectious diseases, burns, mental health traumas and human rights abuses. To comprehend the environment in which these women have to negotiate their very survival through bargaining, submitting, adapting and/or resisting

one must communicate the fear, instability and uncertainty of many of these women's lives from moment to moment. In doing so, how do we preserve an acknowledgement that we must also respect and communicate whatever degree of power and agency they maintain throughout this whole process?

It is important therefore to refer to rich descriptions of the conditions and environments in which these girls and women often need to survive. Kojuharuova (2000) highlights the violent experiences gained through the trafficking process and pre-trafficking situations, such as rape and forms of abuse. These are often normalised and women develop an identity of a victim, which is used by the traffickers. The women become used to communicating only with violence and in unequal power situations. Zimmerman et al. (2003, 2006), whose research involved multiple interviews with previously trafficked women in a number of countries, reported that girls and women who are virgins are often raped at the time of their abduction into the trafficking trade. This was in order to 'initiate' them and to show them how to perform the type of sex many of their clients will demand. The rape, physical abuse and threats are also used to demonstrate to the women the price of disobedience or non-compliance with customer demands. Women are taught to submit to traffickers and client demands in order to survive. As Zimmerman et al. emphasise, 'Forced dependence is a key feature of captor/captive relationships' (2003, p. 41).

Furthermore, people subject to repeated, prolonged abuse, as often occurs in trafficking and prolonged torture situations, develop a psychological disorder that tends to erode the personality and the victim may lose any sense of self at all (Herman 1997, Choi et al. 2009). Rejection of women and girls entrapped within the trafficking trade, where rape and prostitution became part of their lives, may contribute to their

inability to reintegrate back into their society. The diminished social and economic well-being and the heightened risk of being re-trafficked, or remaining in the prostitution industry due to constrained choices, are also evident. In the country of destination, abuse and psychological coercion is a fundamental tactic used by traffickers to manipulate the women and maintain the women's dependence on their traffickers and employers. As Zimmerman indicates:

One of the most pernicious effects of torture is that in their attempt to maintain attachment bonds, victims turn to the nearest source of hope to regain a state of psychologic and physiologic calm... In a captor/captive-like situation, where her only substantial contact is with the trafficker, a woman's perceptions of the world and herself are reflected through his skewed construction of her universe. His rules are her rules. His needs are her needs. His fears are her fears.

(Zimmerman et al. 2004 p. 45-51)

Ultimately, the goal of control and corresponding dependency is achieved when a woman can no longer distinguish her independent personal and social self from the identity constructed through her exploitation. This state of being may contribute to many of the girls and women seeing no other way out, except tolerating the trafficking exploitation or fulfilling the 'contract'.

Within debt-bonded trafficking cases, severe physical violence or abuse may be lacking. The person may not be physically locked up and may even stay and work in the industry at the completion of her inflated contract. Surviving trafficking process by adopting survival strategies, including submission, or remaining in prostitution as an income-earning strategy or because of self-perception, cannot be reconstructed as the exercise of genuine free agency without doing violence to fact and situation. Yes, we

can acknowledge the agency of survival strategies and the ability of the woman to negotiate a very difficult experience, but we also need to acknowledge that harm on various levels has occurred. This does not diminish the woman's dignity and cast her as a victim without autonomy or agency for the rest of her life. Rather, it leads us to explore why the woman ended up in this position in the first place and what policies, structures, institutions and people created the pre-conditions for this trafficking harm to occur.

A brief aside on the effects of crime is in order at this point. The impacts of illicit markets and unabated crime within a national economy are highlighted by Hung-En Sung (2004), Michael Woodiwiss (1999) and UNODC (2010). Political, social and economic ramifications of an illicit market include destabilisation of governance, financial costs to legal businesses through competition and decreased state revenue from taxes and registration. Legitimate businesses have to compete against illicit enterprises, which are subsidised by proceeds from crime and exploitation. However, there are deeper, more pervasive consequences for society, such as creating a society that accepts, relies and normalises the presence of illicit, exploitative markets and strengthens the presence of organised crime. Pervasive organised crime flourishes in a climate of changing economic regulations, dependence on an underground economy and a weak civil society. Research by criminologists has shown that government agencies and key institutions, such as businesses and corporations, can become so compromised that they can help to sustain organised crime within a society (Block and Chambliss 1981, Rawlinson 1998, Ruggiero 1996). Rather than externalising organised crime, criminal activity may need to be conceived of as evolving with the economic and political power structures within the nation (Woodiwiss 1999).

Indeed, governing authorities and their organisations, by enacting ineffective or ill-conceived legislation, may create the economic opportunities and illegal markets for criminal organisations (Schloenhardt 1999). A focus on the environment and structures that help create and foster criminal activity is particularly evident in the writing of Kip Schlegel (2000), who describes the need to conceive of organised crime as a type of organisational or social pathology. In discussing the behaviour and existence of organised crime, he suggests that ‘We can turn our attention to their incidence and search for those things that serve as hosts for the pathos, as well as study the environment that brings the host and the pathos together’ (2000, p. 384). Sung also describes, in a passage relevant to our consideration of source countries of sex-trafficked women, how ‘An underground economy predisposed citizens to illegality by training large sections of the population in illegal transactions’ (2004, p. 114). This also fosters a social morality that accepts activities outside of the formal legal boundaries. This acceptance of illicit markets by large sections of society, possibly including the government, law enforcement agencies, business and communities, also sends a strong message to criminal networks and traffickers looking for a high profit, low risk environment in which to source and/or offload their ‘products’.

As with any illicit industry involving high profit and exploitation, a high level of violence is part of the everyday-acting working environment. The normalisation of violence within in their daily lives necessarily affects the ability of victims and, in different ways, perpetrators, to live flourishing or even reasonable human lives. The ability to socialise with wider society may be restricted. There may also be limited opportunities to gain education. Work in the licit sector can be out of reach. A cycle of poverty and crime may continue (Christie 1986). Exploitative relationships become

the norm.

Exploitation is a concept closely akin to the concept of harm. The concept of exploitation sits at the very core of the United Nations Palermo Protocol (2000), which requires that exploitation must be seen to have occurred before the process can be regarded as trafficking. The Palermo Protocol is frequently invoked as the gold standard definition of human-trafficking. Global bodies base their identification, policies and strategies to address trafficking upon its formal definition. Thus, a discussion of exploitation, both generally and in the context of sex-trafficking, needs to take place in order to establish what exploitation entails and how it is identified.

In order for a person to be considered to have been trafficked, the element of exploitation has to occur. As the Palermo Protocol states:

For the purposes of this Protocol: (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring 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 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) The *consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used*. (2000, emphasis added)

Exploitation of others is defined by Reeves in the *Concise Oxford Dictionary of*

*Politics* is to 'take unfair advantage of persons, their characteristics or their situations' (2003). Allen Buchanan suggests that the exploitation of a person 'involves the harmful, merely instrumental utilisation of him or his capacities, for one's own advantage or for the sake of one's own ends' (1985, p. 87). Varying definitions are present throughout the literature as to what constitutes exploitation and, as Allan Wertheimer notes:

Although we frequently claim that some act, practice or transaction is exploitative, the concept of exploitation is typically invoked without much analysis or argument, as if its meaning and moral force were self-evident. They are not.' (1996, p. 2)

Robert Goodin maintains that four conditions must be present if dependent relationships are to be considered as exploitable. They are that:

... the relationship must be asymmetrical, the subordinate party must need the resource that the superordinate supplies, the subordinate party must depend upon some particular superordinate for the supply of needed resources and the superordinate enjoys discretionary control over the resources that the subordinate needs from him (1988, p. 37).

Some authors suggest that, for exploitation to occur, harm must occur to the exploited individual (Munzer 1990, Buchanan 1985). Other authors suggest that the exploited individual may in fact gain from a relationship (Levine 1998), while others maintain that elements of coercion must be present, which renders 'consent' questionable (Moore 1973, Holstrom 1997). Joel Feinberg (1988) argues that the exploited individual can consent fully to the exploitation; while others suggest that the act of treating another as merely a means to an end is exploitative (Kymlicka 1989).

Thus, Wertheimer suggests it would be helpful to distinguish between what could be considered to be exploitation that is harmful from that which is mutually advantageous (2008).

Recall that within the Palermo Protocol, an act, for it to be considered human-trafficking, requires control for the purpose of exploitation and that, 'Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation... forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs' (2000). The Bangkok-based NGO End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (EPCAT) defines commercial sexual exploitation of children as consisting of, ... criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children. There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes. (2005)

No overt force, coercion, deceit or fraud needs to be present. The fact that a person under the age of 18 is participating in the any form of prostitution, sexual servitude or production of pornographic materials is considered sexual exploitation.

In the context of adult sex-trafficking, however, Global Alliance Against Trafficking in Women (GAATW) contends that the terms 'other forms of sexual exploitation' or 'exploitation of the prostitution of others' remain undefined in the Palermo Protocol, due, in the main, to government delegates being unable to agree on a common meaning (GAATW n.d.). This essentially means that national governments need to develop definitional clarity on terms that international legislation leave undefined in order for the courts to know what elements need to be proven in a sex-

trafficking case. Thus, the central arguments between those who perceive all prostitution as inherently exploitative and those who maintain that only forced or coerced prostitution is exploitative influence the formal trafficking protocols. GAATW recommends that governments adopt the following definition of sexual exploitation,

‘Sexual exploitation’ means the participation by a person in prostitution, sexual servitude or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt-bondage or fraud. Even in the absence of any of these factors, where the person participating in prostitution, sexual servitude or the production of pornographic materials is under the age of 18, sexual exploitation shall be deemed to exist.

Donna Hughes (1999, p. 3) provides an alternative definition of sexual exploitation, which she regards as:

A practice by which a person achieves sexual gratification, financial gain or advancement through the abuse or exploitation of a person’s sexuality by abrogating that person’s human right to dignity, equality, autonomy and physical and mental well-being; i.e. trafficking, prostitution, prostitution tourism, mail-order-bride trade, pornography, stripping, battering, incest, rape and sexual harassment.

Marisa Cianciarulo argues the need to include ‘compulsion by economic and social conditions within the country of origin’ into our interpretation of ‘force’ or ‘coercion’ in the trafficking definition (2007, p. 5). Thus, poverty and domestic violence that propel women into an industry in which she is essentially forced to sell

her sexual labour in order to survive should be interpreted as force. Recall from chapter (section 3.4) how Alice Edwards (2011) related that international human rights instruments were broadening the definition of violence against women to include but not be limited to ‘any act, omission, or threat to life or of physical, sexual, or psychological harm or suffering perpetrated against women’ or ‘its structural and economic manifestations’. The definition she offered ‘incorporates “structural” violence under which economic violence may be included, but it further covers social, cultural, and traditional practices that are of their very nature violent, or which contribute to violence against women’ (2011, p. 25).

The lack of statutory definition of exploitation combined with the widely varying perceptions of exploitative has provided challenges for legislative bodies (Graydon 2006). Indeed, the concept of exploitation affects the legislative, enforcement and civil society bodies’ selection and analysis of information on crime relating to human-trafficking. To add to the complexity and blurred boundaries, victims are trafficked into the commercial-sex industry where different perspectives exist on whether sex work per se is exploitative at all. The sticky problem of consensual transactions in which nominal consent has been provided at all or some stage of the trafficking or debt-bonded process remains a challenge legally.

Again Kritaya Archavanitkul’s typology of human-trafficking in the context of sexual exploitation is useful in reminding us that trafficking cases exist along a continuum (see chapter 2, section 2.2, figure 2.2). Easily measurable and visible demonstrations of exploitation involved in the sex-trafficking process, such as kidnapping and the use of overt physical force, or the use of minors, may not be debated in many societies. Whether a society’s judicial or political system has the

capacity or political will to deal effectively with such exploitation is another matter. However, the less overt forms of abuse of power, abuse of vulnerability and coercion may be much more difficult to identify and prove in a court of law. This is particularly so when the girl or woman does not identify herself as a victim or being exploited.

A brief discussion of the formation of adaptive preferences will now occur, as it affects conceptions of whether or not some sex-trafficked individuals are victims of unjust circumstances or exploitation. Moreover, as will be apparent from the virtual colloquium in chapter 6, a successful human-trafficking conviction is unlikely to occur in Australia unless the trafficked person perceives themselves to be exploited. Adaptive preference formation is important in understanding why victim self-identification in sex-trafficking cases might not be a reliable guide. The next section will relate the discussion of adaptive preferences to a perspective that presents an objective account of what it is to lead a good or flourishing human life: the capabilities approach. This will help us to consider nominal choices that, objectively, harm or diminish trafficked women's capabilities to lead lives that, but for their situational circumstances, they would have reason to value.

#### **4.6 Adaptive preferences, capabilities and agency**

The formation of adaptive preferences is intimately related to the idea of choice and capabilities. Both the economist-philosopher Amartya Sen and the philosopher Martha Nussbaum have championed versions of what has come to be known as 'the capabilities approach'. Both have also proposed that individuals under unjust conditions or unfavourable circumstances often conform or adjust their preferences to what is considered a viable expectation or preference in those unfavourable conditions.

Observed preferences, which are the choices people actually make, are the basis of preference-based approaches to economics, public policy and the law. These approaches may also be called dispositionist (see chapter 1, section 1.6, section 4.2, chapter 5). Thus, ‘preference-based approaches frequently end up supporting an unjust status quo and opposing real change’ (Nussbaum 2006, p. 283). The concept of preference formation is crucial in our consideration of sex-trafficking for the following reasons.

First, the inadequate reflection of exploitation, justice and a good life, as expressed in desires formed under adaptive preferences, poses challenges to some authors who deride organisations who attempt to remove women from exploitative debt-bonded and sex-trafficking situations. John and Benjamin Davies (2008) and Laura Agustin (2007) argue that many trafficked women wish to hold on to their new liberties they have gained in their trafficking situation and do not wish to be rescued or removed from their trafficking episode and delivered back to the initial oppressive and constrained cultural situations from which they have escaped (see section 4.2). Fiona David also reflects on problems highlighted by varied understandings related to the concepts of exploitation and injustice. She notes that ‘One person’s rescue from exploitation is another person’s interrupted contract of employment, with ramifications for capacity to repay debt and support a family’ (2008). However, as the philosopher Julia Annas has insisted, it is not possible to reflect on concepts such as exploitation and justice using information like this alone. ‘Desires that owe their nature even in part to the agent’s reduced circumstances cannot adequately adjudicate questions of justice’ (1993, p. 282).

Second, adjusting desires, preferences and expectations to unfavourable

conditions is likely to affect the identification of a person as a victim or agent. Thus, self-identification of abuse or exploitation should not be the main grounds for whether that exploitation or abuse has actually taken place. The need to hold onto a belief that one maintains a level of control and possession of power in exploitative situations, to enable tolerance and survival, has also been underlined by Bell Hooks (in Kournay et al. 1992). The effect of victims not reporting exploitative debt-bonded situations and the challenges this poses to law enforcement will be discussed further in chapter 6.

Third, as Annas argues, ‘The crucial thought is that there is something wrong, and this wrongness does not depend on what these people happen to want or think, or on what alternative theories we have decided to hold about them’ (2003, p. 290). Once we have established that something is wrong and an injustice is present, there are moral obligations to address the causative factors. In the context of sex-trafficking, this then, is likely to involve addressing the institutions and political, economic and gender environments that enable sex-trafficking to flourish. It is vital to acknowledge and respect the trafficked women’s agency and the ‘plurality of women’s actual desires and preferences’, to use Annas’ phrase. However, this should not stop us from exploring those institutions and forces that shape the desires and preferences.

Attempting to give an accurate and wider description of harm and exploitation will naturally lead to a development of an approach to help eliminate or moderate the conditions that may create harm. Furthermore, a framework that respects the plurality of women’s choices, while enabling real choices to be available to women, is vital. The framework developed by Sen and Nussbaum (see e.g. 1993) emphasises not only the actual functioning of human persons, but their having a capability to function in ways that promote human dignity, human flourishing and well-being. A brief

discussion of the concept of human flourishing and the requirements or capabilities that need to be provided will follow. This is in order to explore how we can best address the systems and mechanisms that place many girls and women in harms way (i.e. in situations of constrained choice that facilitate sex-trafficking).

The capabilities approach, first developed in the 1980s as an approach to welfare economics, saw Sen and Nussbaum collaborate to develop a paradigm for policy debate in the human development field (Sen and Nussbaum 1993). This development approach involves acts of commission in providing resources, education and substantive freedoms. Furthermore, it is a creative way to think about development responsibilities to a global population. In our discussion earlier on human rights and the natural law tradition, the concepts positive and negative rights (and acts of omission and commission) was discussed. Violation of both these negative or positive rights may cause harm. I intend, at this point, to develop our discussion of positive rights and illuminate their importance in supporting the concept of human rights and flourishing. The vital importance of both restraint and positive action on the part of government is crucial to any serious commitment to human rights issue.

Both Sen and Nussbaum have contributed significantly to the development of the positive rights discourse via the capabilities approach, which emphasises the capabilities to function of each individual. Included is the responsibility of the state to help to provide each person with resources and capabilities to make it possible for them to make genuinely free choices in determining their life paths. Nussbaum argues that in order to ensure human dignity and worth, which springs from the ‘power of moral choice within them’ (Garrett 2008, p. 2), society must through its resources and institutions ‘respect and promote the liberty of choice, and... respect and promote the

equal worth of persons as choosers' (Nussbaum 1999, p. 57). The creation of a 'list of capabilities' Nussbaum sees such substantive freedoms explicitly referred to. The following list derives from Nussbaum (2006, p. 76-78):

1. *Life*. Having the ability to live a normal length of a human life without fear of a premature death.
2. *Bodily health*. Having the ability to obtain adequate nourishment, shelter and good general and reproductive health.
3. *Bodily integrity*. Having the ability to freely move around areas without risk of physical assaults, sexual and domestic violence. Also being able to have choice in reproductive decisions and obtain sexual satisfaction from physical relationships.
4. *Senses, imagination and thought*. Having the ability to engage the senses by use of reasoning, thinking and imagining, and having these sense and abilities informed by an adequate education. Being able to then use this imagination in creative ways in the fields of the arts, politics and religion to express oneself with freedom of expression. Being able to enjoy pleasurable experiences and to avoid pain, which is not beneficial to one's integrity.
5. *Emotions*. Having the ability to form relationships and bonds to other people and things and express love, grieving, longing, justified anger and gratitude. This needs to be supported by freedom of association with other human beings.
6. *Practical reason*. Having the ability to engage in conceptual formation of 'the good' and to ponder critically one's life plans.

7. *Affiliation.*

A. Having the ability to live and socially interact with other human beings and to show concern and empathy for the situation of another.

B. Having the ability to be treated as a human being with dignity, non-discrimination, non-humiliation and respect – as equal with other human beings. This is irrespective of religion, race, caste, ethnicity, sex and sexual orientation and national origin.

8. *Other species.* Having the ability to co-exist and relate with and to the natural world, plants and animals.

9. *Play.* Having the ability to engage in and enjoy recreational activity, playing and laughter.

10. *Control over one's environment.*

A. *Political.* Having the ability to effectively engage with and in political life by means of participation generally and in decision-making, and governance with freedom of speech and association.

B. *Material.* Having the ability to engage in ownership of property with rights, to search for employment, to be free from unwarranted seizures and searches – all on an equal basis with other human beings. In work situations, to be able to participate in mutual recognition of other workers within a work relationship and be free to practically reason.

The capabilities approach provides a framework in which to address the constrained choices that people encounter in particular environments. Thus, this

approach rejects an observed-preference standard as the best indicator of what is socially valuable. This is because preference formation is affected by situations including oppression, poverty and cramped expectations. Because it is objective and emphasises initial conditions and generative mechanisms that place people in positions of constrained choice and vulnerability, the capabilities list is helpful in our consideration of sex-trafficking. A system that focuses on promoting these capabilities, prior to harm in the form of human-trafficking occurring, would focus on the provision of resources to enable women and men to make freer choices. The focus would be placed more prominently on government and institutions that do not provide the resources for people to make reasonably unconstrained choices in their life paths. Thus, if the capabilities framework were in place, legislation and enforcement of policies addressing domestic violence and gender inequalities would help in the creation of an environment from which girls and women felt no need to escape. Political and economic policies that enable girls and women to participate in adequate education and employment would create more income opportunities compared to jobs in the informal sectors, including domestic workers and prostitutes.

Intimately related to the provision of capabilities required for human flourishing is the notion of agency. The respect of human dignity implies that we also respect a person's agency or choices in life, as long as they are not harmful to others' dignity or well-being. Yet, each individual needs to be provided with the capabilities to possess agency, so that the choices they make, or the consent they give to another, is adequately informed. A discussion of agency and informed consent will follow to help understand the influences of structure and agency and how to best conceive of these notions within the sex-trafficking debate.

Our understanding of freedom and liberty runs closely alongside the concept of agency to be or behave in a manner that a person chooses. The property of being an agent and thus possessing free will may be seen as possessing or having the ability to choose and being able to choose between options (Strawson 1998, p. 7). Theorists such as Pierre Bourdieu (1977), Peter Berger and Thomas Luckmann (1966), Anthony Giddens (1984), Ernest Gellner (1968), Roy Bhaskar (1989), Andrew Collier (1994) and, more recently, Margaret Archer (1995, 2003) have reflected upon the question ‘Does human agency or social structure determine an individual’s behaviour?’ This is an important discussion to have, as much debate in literature surrounding sex-trafficking tends to either elevate women’s agency and choice in a trafficking situation or see women’s behaviour as almost totally structurally determined. Recall again that notions of agency and consent are intimately related to terminology embedded within the Palermo Protocol (2000), as noted in section 4.6.

Laurie Shrage (1989) highlights the organisation of the sex market, which places women in subordinate positions, and Christine Overall (1992), Carol Pateman (1988), Elizabeth Anderson (1995) and Margaret Radin (1996) similarly emphasise the harms to the prostitute’s identity, and women in general, as a result of the selling of one’s sexual labour in a commercialised market. Furthermore, many of these authors question whether the majority of women in prostitution are able to act as a free agent in a meaningful way. Kamala Kempadoo (1999, 2001) and Jo Doezema (2000, 2001) challenge this view and argue that prostitution, in many cases, demonstrates an act of agency that sees women breaking away from oppressive, patriarchal customs and capitalistic constraints.

Cianciarulo (2008) insists that the question of choice is at the core of the sex-

trafficking debate. She claims that it affects the sex-trafficked victim's perception and the societal perception of whether that person is a victim, thus lacking in meaningful agency, or a willing participant with meaningful agency in the sex-trafficking process. Fundamental beliefs involving self-identity, personal responsibility, consent, autonomy and dignity are often challenged in this structure versus agency debate. Cianciarulo, in drawing parallels between rape and sex-trafficking, emphasises, 'The significant distance between each end of the spectrum in feminist approaches to rape law evidences the intractability of issues surrounding autonomy and consent' (2008, p. 71). These notions of choice, agency, consent and autonomy remain in a state of flux among counter-trafficking activists and feminists, thus impeding agreement on counter-trafficking strategies.

Margaret Archer's critique of dominant structure/agency conceptual frameworks is very helpful in addressing the simplistic representation of sex-trafficked women's agency throughout their trafficking journey (2005). Archer criticises approaches that support downward conflation whereby women are portrayed as 'indeterminate material' and upward conflationists who emphasise the women's agency in any given situation, irrespective of the structural influences. Archer contends that neither ontological stance is adequate or complete to understand and describe social reality. Elisionists also incur Archer's criticism, as she contends their conceptual framework, which perceives of structure and agency being inseparable, as precluding both the agency and structure of any adequate analysis and resulting responsibility (evident in the work of Bourdieu and Giddens). Archer suggests that, if we dig deeper, we find simplistic dichotomies, the either/or, have a fundamental rooting in empiricism, which ignores the interplay, multiple variables and interdependence between social properties. Furthermore, they ignore two fundamental points Archer emphasises in her

‘morphogenetic’ approach: being that structure necessarily predates the actions leading to its reproduction or transformation and that structural elaboration necessarily postdates the action sequences that gave rise to it (1995, p. 76).

In dealing with how to link structure to agency, Archer suggests that we need to find a framework that allows us to examine ‘the interplay between the “parts” and the “people”, the social and the systemic, structure and agency or action and its environments’ (1995, p. 15). Archer describes the ‘emergentist’ framework as being suitable for this task. She argues, ‘Social interaction is seen as being structurally conditioned, but never structurally determined (since agents possess their own irreducible emergent powers)’ (1995, p. 90). In relating elements of the emergentist approach to the strongly debated issues of sex-trafficking, we see that simple, one-way theorising is inadequate. The flattening out of the ontological depth in the sex-trafficking discourse ignores the history, the generative mechanisms, the powers that are involved and the other causes of the situations in which trafficking occurs as part of people’s lives. In extending our consideration of sex-trafficking to encompass the influence of mechanisms, powers, systems and history, we are also prompted to reflect on the relationship of these factors to concepts of agent choice. To the extent that social and economic policies, practices and conditions create an environment in which people’s limited livelihood choices leave them vulnerable to sex-trafficking, we must contest the extent to which informed choice, consent and agency are applicable.

#### **4.7 Conclusion**

This chapter has used an ethical/philosophical approach to explore foundational concepts embedded within the sex-trafficking debate. Notions of human rights, human

dignity, harm, exploitation, requirements for human flourishing and agency and informed consent have been discussed to provide definitional and conceptual clarity to a debate that is often muddled and highly polarised. One part of the chapter looked at the views of Aquinas and JS Mill regarding prostitution and the role of the state in regulating what Satz (2010) calls noxious markets (sections 4.2 and 4.4). The vital importance of using an ethical/philosophical approach was emphasised to enable us to focus on the core principles that underpin governance, policy and legislation on matters pertaining to social challenges, including sex-trafficking. The ability to more accurately identify sex-trafficking exploitation and its root causes was underscored. As Cianciarulo argues, however, ‘Until there is consensus about the nature of consent in an often unjust and unequal world, the struggle against human-trafficking will not reach its full potential’ (2008, p. 76).

This chapter has contributed the consensus to which Cianciarulo refers and thereby to achieving the aims set out in chapter 1 (section 1.1). It does this in three main ways. First, by distinguishing the different references of concepts (the objects to which they refer, or what they are about) it has drawn the exceptionally important distinction between the different senses in which concepts in the sex-trafficking debate are used. The first cluster of concepts the chapter scrutinised were those concerning choice, agency, liberty and freedom. One distinguishable sense referred to what Amartya Sen (1999, chapter 1) has called the ‘process aspect’. Another phrase for this is agency-in-exercise. Was an act or decision freely chosen or made? Was the woman able to exercise her agency freely, or was her liberty to choose constrained, cramped, restricted and distorted? This process sense is different from what Sen calls the ‘opportunity aspect’ (1999, chapter 1), which refers to ‘extent to which people have the opportunity to achieve outcomes that they value and have reason to value’ (1999,

p. 291). Another phrase is possibility-of-agency. Does the position in which the woman finds herself socially genuinely permit her to exercise freedom, agency, liberty and choice? Can this or that life choice truly be a choice exhibiting freedom and agency and liberty, a choice that one would truly, objectively have *reason* to value? The opportunity aspect primarily refers to a person's opportunities for choice in the first place, but it also alludes to adaptive preference. It is about being able to exercise choice-worthy choice, to have the possibility of achieving outcomes that constitute a truly human and free way of life, well-being, flourishing etc.

The answer to the implicit question 'what sort of life is it, objectively, that one might have reason to value?' was suggested by the tentative, indicative list of human capabilities proposed by Martha Nussbaum (section 4.7). Nussbaum has argued that one might not choose to exercise the various powers to affect states of affairs denominated in her list. One might not, for example, choose to be religious or function within a religious community of practice (exercise the power, capability of religious freedom). However, to deprive a person of the capabilities or power to exercise this freedom would be objectively to diminish that person's ability to live a full life, a life the person has reason to value. Not to have any of the sorts of capabilities on the list would mean that the person would be hampered in leading a fully human life. It is obvious from the list just how diminished, regardless of the exercise/process aspect of agency, is a sex-trafficked woman's substantive ability to lead a fully human life.

My point in this chapter has been this. For us to use this cluster of concepts in the sex-trafficking debate requires us to take account of their substance, and this requires both their process and their opportunity aspects. This is to say that both aspects of concepts like choice, agency, freedom, liberty and agency must be present

for acts and their resultant states of affairs to be genuine. Sections 4.3 through 4.7 concerned themselves with process and substantive states of affairs requiring attention to opportunities. Hence, in drawing conclusions, it is possible to say that a woman who, for whatever reason and under whatever process/exercise conditions, chooses sex work does not ultimately enhance her (or others') agency. The reason, in Satz's terms (2010, p. 135), is that the resultant state of affairs epitomises this society's oppression of women and thereby, regardless of reasons for her choice, the sex worker participates in reproducing women's unequal status, diminution of agency etc. (section 4.4). Too many times the sex-trafficking discourse blurs distinctions such as those between exercise/outcome and process/content.

The second cluster of concepts exercising this chapter were those concerning harm, exploitation, abuse and injustice. A similar distinction of sense and reference is possible to that above. The concepts can refer to the way in which acts embody the exercise (process aspect) of harm, exploitation, abuse, injustice etc. Was a woman forced into a debt-bonded contract, was her trust abused and was she brutalised? On the other hand, even if she were not obviously forced, physically or psychologically, was she subsequently to end in a position in which she is subject to harm, exploitation, abuse and injustice? This cluster of terms thus appear as the obverse of those involving agency. They turn attention from the sex-trafficked woman and her situation to the traffickers, brothel owners and proprietors and end users, just as we saw the demand emphasis reframe the discussion in chapter 3. We saw additionally in the chapter (section 4.5) how the intentions of the traffickers, brothel owners and proprietors and end users actually defined the exercise/process aspects of acts of harm and exploitation by reference to the end states they sought. That is, they intended for the woman to be used for profit in sex work that involves her necessarily lacking in freedom, liberty,

agency, choice etc. This lack might involve anything from having to experience extreme violence and humiliation to simple, everyday disempowerment in the sex act. The latter, of course, is the essence of the commercial-sex industry, namely the commodification of sex/the prostitute such that the agent of demand (the buyer) has control of power over the de-agentified woman (final link in the supply chain, commodity).

The second achievement of the chapter was to expound concepts of essence and intention. For example, the concepts behind Nussbaum's capability list refer to essential features of human need, what it is to have the power to function in a truly human way etc. The chapter also enabled us, first, to appreciate better some aspects of given definitions of trafficking, such as the Palermo Protocol (section 4.5) and, second, through the concept of adaptive preference, to gain a better appreciation of interplay between the sex-trafficked woman's cramped domain for agency and her ability to exercise agency within that domain (intentions governing adaptive choices). Third, the chapter permitted us to see, in a similar fashion, that the grounds for fulfilment of a sex-trafficked woman's intentions, i.e. the circumstances governing her adaptive preferences, desires and choices, could not but be situational (see chapter 1, section 1.6). This offered a sounder argument for the stress on the relationship between structure and agency (situation and choice, determination and free will) that had been presented but not fully demonstrated in earlier chapters.

Intimately related to the discussion of concepts central to the sex-trafficking debate is the notion of power. The Palermo Protocol explicitly mentions 'abuse of power' and 'abuse of a position of vulnerability', thus this notion deserves deeper reflection. Chapter 5 will address the elements of power and framing present in sex-

trafficking. This will expose more clearly the subtler and hidden forms of power and power relationships, thus complementing and partly completing the work of this chapter.

Chapter 5 will also delve into the vital role of dispositional framing to help control the debate and divert its focus onto individual actors, rather than institutions and political, economic, social and gender systems that nourish the trade (cf. chapter 1, section 1.6). The UN.GIFT (2008) conference speeches will be explored to assess the framing of the debate by concerned international organisations. Chapter 5 will endeavour to present an enhanced understanding of the abuse of power or abuse of a position of vulnerability, one that encompass what Hanson and Yosifon (2004) call situationism (chapter 1, section 1.6). Any serious attempt to address the abuse of power involved in sex-trafficking would seek to uncover and attend to the deeper generative mechanisms that systematically create the global environment in which this trade flourishes.

## Chapter 5

### Power and framing in sex-trafficking

#### 5.1 Introduction

The last chapter explored foundational concepts underpinning our understanding of sex-trafficking: inter alia, harm and exploitation, agency and structure, informed consent, human rights and abuse of power. This provided greater conceptual and definitional clarity to the subject and a firmer base upon which to develop discourse, policy and legislation designed to counter sex-trafficking. The chapter sought to assist in developing a critical and ethical approach. A return to fundamental questions and principles was necessary. Finally, drawing on the work of Amartya Sen, Martha Nussbaum and Debra Satz, the chapter outlined important distinctions between the process and the opportunity aspects of agency. Both had to be present for a choice to be genuinely free, and the latter required that the choice be of the kind that one would truly, objectively have *reason* to value it. The opportunity aspect was seen to be partly about choice-worthy choice, agency-enhancing choice. That is, it was about the possibility of achieving outcomes that constitute a truly human and free way of life, well-being, flourishing etc.

This chapter will extend the exploration of core concepts in the sex-trafficking debate and will concentrate on the concepts of power and framing raised in chapters 1 (section 1.6), 2 (section 2.2) and 3 (*passim*). The chapter does not introduce new conceptual material, in the fashion of chapter 4, but rather it looks at those questions through the lens of power. This lens helps further to clarify difficult problems and to

add new accents to clarifications already presented. In essence I wish to make more visible the deeper relationships that contribute to the harm, exploitation and abuse of power that is present within sex-trafficking and its definitions. Traditionally, the focus on demonstration of power has demanded that it be at an easily measurable and visible level. This analysis of power lacks the conceptual depth necessary to expose the influential causal powers behind sex-trafficking. Furthermore, the role of framing and its often dispositional (chapter 1, section 1.6) focus needs to be discussed to see the power embedded within the current discourse.

First, this chapter will explore the concept of power, focussing principally on the work of Steven Lukes (1974, 2005). Lukes' notion of power will be then introduced and used alongside Kritaya Archavanitkul's (1998) typology of sex-trafficking to explore the presence and exercise of power. In particular, Lukes' third dimension of power, namely the shaping of the another's preferences and desires, will be applied to the multiple power relationships in sex-trafficking. The power of the trafficker, end-consumers and the sex and pornographic industry over those vulnerable to sex-trafficking and the sex-trafficked victim will be explored. This exploration of power will extend to include the power wielded by the State (law) and the pornography/commercial-sex industry over the traffickers and end-consumers of sexual services.

The notion of preference-shaping and the marketing of norms, desires and wants for economic and political benefit will be discussed. The vital role of framing, marketing and advertising will be explored to demonstrate their role in the sex-trafficking debate. George Lakoff's (2004) work on framing, including the centrality of metaphors and language in shaping public debate and preferences, will be

introduced to provide the background for a discussion of dominant paradigms and frames underlying the sex-trafficking debate. Finally, to underline the role that framing and language play in both the human-trafficking and sex-trafficking debate, a brief discussion of the speeches presented at the UN.GIFT conference (2008c) will occur.

The motivation for exploring more subtle forms of power present within institutions that shape the environment in which trafficking occurs is two-fold. First, it is important to move beyond a simplistic cause and effect approach in which consideration is granted only to directly observable and measurable manifestations of what would, traditionally, be seen to be an abuse of power. Second, attributing appropriate causal responsibilities to all actors and mechanisms involved in sex-trafficking will enable more effective conceptual grounding of policy. It will also help us to expose prevailing rationalisations.

## **5.2 Dimensions of power in theory and practice**

The concept of power remains contested among theorists, including Michel Foucault (1982), Friedrich Nietzsche (1968), John Locke (1823), Stefano Guzzini (2008) and Lukes (2005). Key points of controversy revolve around whether power is consensual or conflictual and whether the theorists adopt an agent-centred view or a systemic or structure-centred view (Arendt 1970, Barnes 1988, Weber 1978, Dahl 1957, Lukes 2005, Foucault 1982). Many social theorists, including Anthony Giddens (1984) and Barry Barnes (1988), sit somewhere in between these positions (Haugaard 2006). The notion of consensual power was developed by some Marxist theorists, including Antonio Gramsci, who argued that the success of capitalism and its hegemonic order was partly dependent on consent, namely by convincing the working classes that their

interests were similar to those of the capitalists (Gill and Law 1989).

The concepts of coercion and persuasion to gain consent and minimise observable conflict will be expanded upon throughout this chapter. They are central to an understanding of why there continues to be a supply of apparently voluntarily, consenting women to work within the commercial-sex industry. I will draw below on Steven Lukes' (2005, 1974) concept of power to examine power dynamics within sex-trafficking. Lukes goes beyond explicit demonstrations of power and emphasises the more subtle representations of power, which may be 'invisible' to many under its influence. Lukes' concept of power therefore enables actors, structures, systems, practices and environments traditionally absent from or invisible within the sex-trafficking discourse to be considered. It moves beyond behaviourism and observable conflict to the more subtle mechanisms that shape public debate, namely the effect of power on preferences and desires. His conception represents power as working through people rather than only being in conflict with them.

Lukes' three-dimensional conception of power (see below) can be employed in a number of practical ways. First, we can explore how these levels of power operate in the sex-trafficking relationship generally. Second, we can explore the impact of these levels of power on the actors who constitute the supply and demand sides of trafficking. It is important to remember that it is the power relationships, not just the power, that is vital to understand in sex-trafficking. This includes the economic, political, social and gender power relationships that are formed prior to the sex-trafficking process. We must take prior power relationships, often sustained by systemic, cultural and institutional practices into account when exploring aspects of coercion, abuse of power and position of vulnerability (see chapter 4, section 4.7).

Lukes' articulation of the first dimension of power refers to Robert Dahl's definition of power: 'A has power over B to the extent that he can get B to do something that B would not otherwise do' (Dahl 1969, p. 80). Lukes highlights the focus in this first dimension of power on observable and measurable forms of power, as present in decision-making and enacted behaviours. Observable behaviour and conflict need to be verified before an acknowledgement that power has been exercised (2005, p. 17).

It is useful to recall Archavanitkul's model from chapter 2 (section 2.2) to explore which categories of trafficked women are covered under Lukes' first dimension of power. The scenario of a girl or woman who is abducted, and in which physical violence used to keep her under the abductor's control, fits with the power described in this first dimension. Observable, measurable behaviour and conflict is present between the trafficker and victim. If the brothel owners and pimps are aware that the girl has been trafficked, and observable strategies are in place to keep the victim under their control, this would be construed as using the first dimension of power. The end-consumer (i.e. the user of sexual services) would be complicit in this first dimension of power by participating in the sex act. In addition, the user of sexual services may engage in further demonstrations of physical and psychological power, for example in raping the victim. Thus, as illustrated in table 5.1, women in categories (A) and (B), highlighted in tan, would be considered as having power wielded over them according to Lukes' first dimension.

**Table 5.1 Archavanitkul’s trafficking continuum and Lukes’ first dimension of power**

<b>FORCED</b>	
A	Victims are forced and/or kidnapped
B	Victims are given false information and are trafficked into types of business other than promised
C	Victims are aware of the kind of work, but not the work conditions
D	Victims are aware of the kind of work and work conditions, but are not aware of and/or are unable to foresee the difficult situations they may encounter
E	Workers (who may have been trafficking victims before) are aware of the kind of work and work conditions, but are not given an alternative worksite (cannot choose where they want to work)
F	Workers (who may have been trafficking victims before) are aware of the kind of work and the work conditions, and are able to select their worksite
<b>VOLUNTARY</b>	

Based on Archavanitkul (1998)

However, this dimension of power does not encompass the many women who seemingly voluntarily enter the sex-trafficking process. Physical force may be absent in gaining their compliance to undertake the journey. This is particularly evident in the Australian context, where some women who engage in debt-bondage when they are trafficked consent to travel into Australia and work within the sex industry. Within Archavanitkul’s model, women in categories C through to F would not qualify as having being abused by the exercise of the first dimension of power. It does not account for more subtle or less overt forms of social and cultural power within relationships. Constrained choice due to lack of income opportunities, lack of education, or sexual and domestic violence in the country of origin, which propel the woman to accept a risky work contract, is not encompassed. The impacts of these social and cultural forms of power have been discussed in previous chapters. Lukes’ critique of this first dimension of power highlights the problems with reliance on observable conflict, outcomes of decisions and actualised behaviour for a

comprehensive understanding (Lukes 2005).

Lukes' addition of a second dimension of power widens but still incorporates the one-dimensional view of power. In addition to the first dimension, the tools used in the second dimension of power include coercion, authority, influence, inducement and persuasion (2005, p. 21). A is still getting B to do what he/she would not otherwise do by securing their compliance. This time it is done by shaping B's consideration of the issues (2005, p.21). Creating and shaping preferences through framing and marketing is crucial to those who wish to benefit from power. Blocking or excluding from consideration issues is part of the process. At a political level, this level of power involves creating the ideological atmosphere that permits some matters making it to the agenda but precludes others. Peter Bachrach and Morton Baratz (1970, p. 44) explain that preclusion is:

... a means by which demands for change in the existing allocation of benefits and privileges in the community can be suffocated before they are even voices, or kept covert, or killed before they gain access to the relevant decision-making areas, or, failing all these things, maimed or destroyed in the decision-implementing stage of the policy process.

Lukes also argues that 'Power is a capacity, not the exercise of that capacity (it may never be, and never need to be, exercised); and you can be powerful by satisfying and advancing others' interests' (2005, p. 12). Thus, the concept of unexercised power and power potentiality also exist in this realm. Power may never need to be actualised in behaviour for A to exert power over B. For example, I do not need to not turn up to work to know I may be sacked if I do not turn up. Similarly, a woman in debt-bondage does not need to try to escape or report her exploitation to know that her traffickers

may severely beat her or punish her family and children, should she do so. Roy Bhaskar's critical realist approach is also helpful here in understanding the power of unexercised tendencies or potentialities, without that power needing to be actually exercised in some way (2008).

Applying this level of power to the sex-trafficking continuum is helpful in understanding the shaping, bounding and framing of decisions. In terms of the demand chain, all of these influences may result in the stimulation of demand for sexual services and the market in which sex-trafficking occurs. The vital need to disrupt market forces in which global criminal syndicates operate is emphasised in contemporary research in criminology (UNODC 2010, British Serious Organised Crime Agency 2009-2010). UNODC remarks, 'Most trafficking flows are driven more by the markets than by the groups involved in them' (2010, p. 276). Again this reinforces the point of chapter 3 that the focus must be shifted to include factors that affect the market demand for services for which women are sex-trafficked.

Lukes' second dimension of power operates within the sex-trafficking process, but at the level of decision-making, discourse, debate and demand. On the demand side, stimulation occurs via pornography, sexualisation of children and young girls, and obvious public/cultural media and mass entertainment, all of which help to normalise and create an environment into which women are sex-trafficked. Integral to this stimulation of demand is a discourse, debate and framing espousing the voluntariness, agency and free choice of prostitution. On the supply side, this can have the effect of making a sex-trafficked woman's choices appear as freer than they are in truth (chapter 3, *passim*; chapter 4, sections 4.6 and 4.7). One effect of this dimension of power is that the sex-trafficking debate within Australia is subtly shaped so that it

remains dispositionally focused. The notion of demand is generally limited to that of end-consumers of sexual services. The debate centred on criminal elements involved in sex-trafficking is limited to individual ‘bad traffickers’ and organised criminal groups. The debate rarely, if at all, considers Australian policies that create the markets and environments in which traffickers, end-consumers and victims act. Powerful sex industry and related interests (see Kane and Kane’s matrix in chapter 3, section 3.2) benefit from the existence of a flourishing commercial-sex industry into which women are trafficked.

Thus, framing strategies that the commercial-sex sector and related interests employ to help block or control the debate are important to understand and counter. For example, it is easy for a dispositionist focus to help block a deeper consideration of the environment into which people are trafficked. This approach would keep the focus on the choices of those trafficked and bad traffickers. A dispositionist focus can therefore be imposed on Lukes’ first two dimensions of power. The first two dimensions of power still have a continuing emphasis on observable decisions or non-decisions, which need to be verified by overt or covert conflict in order for it to be considered an act of power (Lukes 2005). Dahl suggests that leaders in a modern pluralist environment ‘do not merely *respond* to the preferences of constituents; leaders also *shape* preferences’ (1961, p. 164). Lukes argues that the need for verification of overt or covert conflict remains problematic in that ‘it crucially ignores that the most effective and insidious use of power is to prevent such conflict from arising in the first place’ (1974, p. 23).

In Lukes’ discussion of the third dimension of power, A still has power over B, yet this is done by shaping B’s preferences and desires (2005, p. 27). He explains:

‘Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires?’ (2005, p. 27). Elements of the second dimension of power operate at this level, but this dimension is widened to incorporate the more hidden or less visible entities involved in sex-trafficking. This expression of power is not easily observable, but its existence is inferred from language, structure of institutions and systems. The idea of latent conflict is raised in this dimension, which Lukes describes as ‘a contradiction of those exercising power and the real interests of those they exclude. The latter may not express or even be conscious of their interests’ (1974, p. 25). Foucault argues in similar vein that power ‘is only tolerable on condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms’ (Foucault 1980 (1976), p. 85).

Thus, those captured in categories C through to F, highlighted in beige, would be included in Lukes’ complete conceptualisation of power. The seemingly voluntariness or consent of women who enter sex work may mask the power of the political, economic, social and gender policies which led them into making that choice.

**Table 5.2 Archavanitkul’s trafficking continuum and Lukes’ third dimension of power**

<b>FORCED</b>	
A	Victims are forced and/or kidnapped
B	Victims are given false information and are trafficked into types of business other than promised
C	Victims are aware of the kind of work, but not the work conditions
D	Victims are aware of the kind of work and work conditions, but are not aware of and/or are unable to foresee the difficult situations they may encounter
E	Workers (who may have been trafficking victims before) are aware of the kind of work and work conditions, but are not given an alternative worksite (cannot choose where they want to work)
F	Workers (who may have been trafficking victims before) are aware of the kind of work and the work conditions, and are able to select their worksite
<b>VOLUNTARY</b>	

Based on Archavanitkul (1998)

Conceptualising power using Lukes’ third dimension is useful to explore the relationships of power within sex-trafficking. Moving beyond a demonstration of easily observable conflict at the individual level enables us to examine the power present in our political, economic, social and cultural practices and institutions. That is, it gives the possibility of a more complete and therefore more accurate description and understanding of sex-trafficking. Furthermore, causal mechanisms and powerful relationships that produce and reproduce practices that enable the environment in which sex-trafficking occurs must be considered. Immigration, labour, economic and gender policies that affect the vulnerability of women to sex-trafficking, and the development of male consumers, who wish to consume the services of a trafficked prostitute, must also be discussed. Gender and economic policies that enable a commercial-sex industry to exist, which fosters the reproduction and reinforcement of sexual inequality, servility and dependence, need to be encountered. Government policies that create sex industry legislation, but do so without adequate monitoring and

enforcement, also need to be captured in the wider debate on power relationships within sex-trafficking.

A situationist approach (see chapter 1, section 1.6) is evident in Lukes' third dimension, in which the formation and shaping of individual desires is strongly determined by powerful economic, political, social and cultural systems. The notions of derived, artificial and, principally, cultivated demand fit also with Lukes' third dimension and the situationist approach (see chapter 3, sections 3.3, 3.5 and 3.6). Hence it will be helpful at this point to apply Lukes' third dimension of power specifically to sex-trafficking and to the individuals and groups of actors involved in the sex-trafficking demand and supply chains.

### **5.3 The third dimension of power in sex-trafficking**

Archavanitkul's model has been used throughout this thesis to represent the supply side of the process of sex-trafficking. It addresses the false dichotomy by which women are seen to be either kidnapped and forced into trafficking, or, in possession of complete choice and agency when they entered an exploitative contract. We can use Lukes' third dimension of power to expand on the victims in categories C to F, who are aware of the kind of work into which they are entering (in this case, prostitution), but are unaware of the work conditions, unable to foresee the difficult situations they may encounter, unable to negotiate work sites or are aware of all the previously mentioned but seemingly 'choose' to work in a sex-trafficking environment.

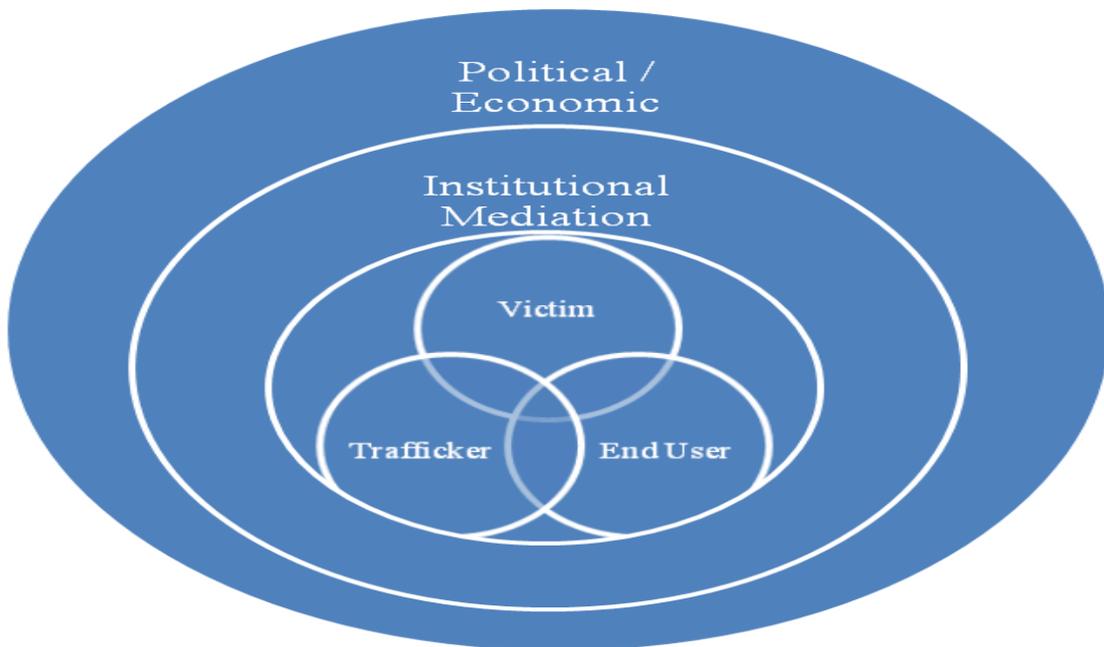
To think adequately about sex-trafficking and power, it is important to move beyond an overt and linear conception of abuse of power by an individual over a

potential victim. As chapter 4 made abundantly clear, it is important to turn the focus around and conceptualise the causal power of the demand chain, including its cultivated-demand influences. In figure 5.1 below, an overwhelmingly dispositional, linear and one-dimensional view of power is apparent. Easily observable forms of power between the trafficker and victim, and the end-consumer and victim, are focused upon. As discussed in chapter 2 (section 2.5), dominant counter-trafficking strategies, also dispositional and one-dimensional, focus on these actors, particularly the traffickers and criminal networks at the expense of the other links in the demand chain. In figure 5.2, I have extended the power relationships to encompass the less observable forces that affect the traffickers, victims and end-consumers. Thus the inclusion of levels of power relationships in sex-trafficking will expand to include the political, economic, gender, social and institutional factors that shape the decisions of potential victims, sex-traffickers and end-consumers of sex-trafficked women. In particular, we must be sensitive to the powerful social forces that foster the environment in which sex-trafficking flourishes.

**Figure 5.1 Linear relationships present in sex-trafficking**



**Figure 5.2 Complex relationships in sex-trafficking as per Boulet (1985)**



This thesis discussed end-consumers of sexual services and trafficked sexual services in chapters 2 (sections 2.6 and 2.7) and 3 (sections 3.3, 3.5 and 3.6). The preference for youthful, vulnerable and malleable prostitutes (trafficked and not-trafficked) who were easier to control, was evident in the research discussed (Anderson and O'Connell-Davidson 2003, Farley et al. 2009). Furthermore, Maddy Coy et al. (2007, p. 17) suggested that some men rationalised their behaviour morally by framing prostitutes as being 'on an equal footing' with their customers, if no 'incontrovertible, visible evidence of force' was present (2007, p. 17). While some customers purposively sought out vulnerable sex-workers 'in order to exercise greater control' in their sexual encounter (2003, p. 26), others wished to create the morally self-satisfying illusion of an equal 'power relationship', if no evidence of abuse or force was present (Farley et al. 2009). However, greater than 25 per cent of sex customers reported that payment for the prostitute's services entitled him to any sexual act that he wished to perform (Anderson and O'Connell-Davidson 2003). Therefore, a desire for power over the prostitute during the sexual encounter or the illusion of equal power with the prostitute was expressed.

Abduction, kidnapping, physical and sexual violence are common strategies used by traffickers both to recruit and control their victims (Kangaspunta et al. 2008). Less explicit forms of control through threats, removal of passports or isolating victims are also evident in the sex-trafficking and debt-bondage processes (Kangaspunta et al. 2008). Such methods all constitute an abuse of power and, on many occasions, the abuse of a position of vulnerability. Obviously, adequate processes to prosecute, convict and incarcerate need to be established and followed in order to deliver justice to the victims. However, my focus in this chapter is upon the less obvious actors and powers that contribute to the environment in which sex-

traffickers, end-consumers of sex-trafficked victims and sex-trafficked victims relate. Unless we identify the deeper causal mechanisms and structures that create the environment for the actors involved in sex-trafficking exploitation, adequate policy to address it is unlikely to be formulated.

The Palermo Protocol's trafficking definition in chapter four (section 4.5) explicitly refers to the concept of power. 'The abuse of power or of a position of vulnerability for the purpose of exploitation' is considered so as to ascertain if particular methods have been used to gain consent or co-opt a potential trafficking victim's compliance with the traffickers (2000). One may imagine this 'abuse of power or position of vulnerability' to be self-evident. However, more subtle effects of power exist in ways that may not be so obvious. A central aim of my thesis is to get to the underlying reality of sex-trafficking. This entails a journey beyond what we see and what we measure to uncover the deeper causal mechanisms that make our habitat so welcoming for the practice. A closer scrutiny is required of the relatively hidden discourse and power relationships that sit behind the individual demonstrations of power clearly evident in the one-to-one relationships between a user of sexual services and a sex-trafficked woman or the trafficker and the victim.

Power relationships are central in the consideration of sex-trafficking cases in Australia. The High Court decision in *The Queen v Wei Tang* (2008) to overturn the order for a new trial lodged by the prosecution, rested on the belief that:

The prosecution did not need to prove that she [Ms Tang] knew or believed that the women were slaves. The critical powers she exercised were the power to make each woman an object of purchase, the capacity to use the women in a substantially unrestricted manner for the duration of their contracts, the power to

control and restrict their movements, and the power to use their services without commensurate compensation. (HCA 2008, p. 1)

While the focus of power in *The Queen v Wei Tang* (HCA 2008) remained essentially dispositional (that is, focused on individual pathologies or preferences as determinants of behaviour) the exercise of power went beyond the physical and observable demonstration of power to one that encompasses elements of physical, psychological, emotional and economic control.

The creation of an environment, through economic, social and business policies, in which it is perceived to be both desirable and acceptable to exert power over a woman who is obviously in a position of vulnerability, is morally wrong. I have developed this argument throughout the thesis, especially in chapter 4. That we look for moral responsibility at a systemic level is a corollary of the situationist perspective that I have taken. This does not shift individual responsibility from traffickers, brothel owners and end consumers of trafficked women, as critics of the situationist approach might imagine. It does, however, attempt to align moral responsibility with causality. Examples are evident in some government policies that contribute to the environment in which sex-trafficking occurs.

Labour and economic policies that do not address the exploitation of an illegal workforce need to be examined. Illegal non-citizen workers are particularly vulnerable to trafficking. Many countries, including Thailand, Greece, Canada, the UK and the US, have relied on illegal non-national workers to support their respective economies. Amina Sherazee, an immigration lawyer, commented in an interview regarding illegal workers in Ottawa, Canada, 'It's almost a deliberate attempt on the part of the government to keep a competitive workforce here who can be exploited cheaply to

meet the demands of the market' (Sherazee 2009). Similarly, the Labour Institute of the General Confederation of Greek Workers, (LIGCGW) reported the valuable contribution that illegal immigrants make to the Greek economy. Indeed, it is estimated that in 2007, before the impact of the GFC, 'undeclared employment represented 25 per cent of the volume of total employment which corresponds to more than 20 per cent of Gross National Product' (LIGCGW 2008, p. 59). Thus, labour policies enacted by governments create a workforce vulnerable to labour exploitation, and sex-trafficking, in order to meet the destination countries' demands.

Immigration policies that marginalise the less skilled and less educated populations who try to enter into the country contribute to human-trafficking and sex-trafficking. This has been briefly discussed in chapter 2 (sections 2.4 and 2.5). Marginalised populations such as these tend to turn to smugglers and traffickers to facilitate their journeys, as they are unable to gain formal identity papers, documents and financial resources (Pearson 2004, Bales 2007, Jahic 2009). Thus, policies enacted by governments that restrict formal access by low-skilled migrants affect an already marginalised population. Furthermore, policy that enables less skilled migrants to enter a country to work on temporary visas, yet does not adequately monitor or enforce adequate standards of conduct from employers, increases vulnerability. Australian institutions responsible for border control and immigration thus need to be aware of the harm caused by their policies and enforcement practices and held accountable for it.

Likewise, responsibility can be attributed to governments in source countries that do not address/enforce domestic violence laws or international human rights covenants such as, for example, the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW) and the UN Declaration on the Elimination of Violence against Women 1993 (DEVAW). Girls and women exposed to sexual and physical violence in the home environment have attempted to escape by accepting risky job offers in the informal sectors overseas, making them vulnerable to traffickers (Zimmerman et al. 2003, Banwell et al. 2002, Meadows et al. 2001). The following comments by sex-trafficked victims reflect the circumstances from which they seek to escape:

‘Well, better to be a prostitute abroad, than to be raped and abused by my husband’ (Zimmerman et al. 2003, p. 31).

‘When I was 12, my mother died, my father became an alcoholic and would beat me and my brother. A cousin said he would get me out of this situation and into a “normal life”. He sold me like a slave’ (Zimmerman et al. 2003, p. 31).

The exploration needs to extend further to the power that is wielded by the state, businesses and other players. Both John Mill (1989 (1869)) and Pierre Bourdieu (2000 (1997)), in their work on gender domination and the subjugation of Victorian women, emphasise the creation and maintenance of an environment or ‘habitus’ by the powerful, which leads ‘those subject to it to see their condition as “natural” and even to value it, and to fail to recognise the sources of their desires and beliefs’ (Lukes 2005, p. 13). The formation of a ‘habitus’, in which women form adaptive preferences that affect their lifestyle choices, self-identity and self-perception, may also lead to the internalisation of a demeaning or inferior image, which twists their sense of identity into being that from which the commercial-sex industry and related business may benefit. In patriarchal societies, the rules, cultures and outcomes in many organisations, including business, are modelled on male values and attitudes, thus

‘often reproduce the gender hierarchies and inequalities dominant in the wider world’ (March et al. 1999, p. 9). Girls and women trafficked into sexual exploitation are often from minority groups (Kara 2009, Deshingkar and Akter 2009). Lukes suggests that these groups may eventually come to accept the ‘arrangements that justify their subordination’ in order to grab on to the hope that they may escape eventually from their lower status or situation (2005, p. 129).

Alternatively, some women may perceive their role in the sex industry as being normal, natural and indeed a liberating experience. Recall from chapter 4 (section 4.2) how Laura Agustin described the ability of trafficked women to become ‘cosmopolitan subjects who may consider the world their oyster’ (2004, p. 91). John Davies similarly asserted that trafficked women report that becoming trafficked had caused them to ‘reject previously internalised oppression’ (2010). However, as also discussed in chapter 4, the formation of adaptive preferences, the acceptance of an unjust situation and the effect of an exploitative environment all affect a woman’s perception of exploitation in her trafficking journey. Thus, reported experiences of exploitation are not an accurate guide for the actual exploitation taking place. In reality, the sex industry reproduces practices that keep women in relationships of subordination. Again, recall in chapter 4 the assertion that any market is ‘noxious’ if it contributes towards ‘servility and dependence’ (2010, p. 98). Furthermore, Satz contends that the reinforcement of ‘broad patterns of sex inequality’ is the major reason the commercial-sex market is problematic and harmful (2010, p. 135). Prevailing cultural and social mechanisms that support the economic and political status quo also contribute to this subordination. The economic, political, social and gender environments that create a habitus for girls and women in which they either accept or celebrate their participation in the sex industry is vital for the commercial-

sex industry and the sex-trafficking industries to survive.

Recent evidence (see below) records a disturbing trend of some victims turning traffickers. One reason they give is that this enables them to escape their present situation. Often they see no alternative, see it as ultimately beneficial and believe this is what they must do in order to survive (Kangaspunta 2008, Shahinian 2008). Thus, the habitus created by powerful political and economic, social and gender situations also helps to generate traffickers. Hence in reconceptualising the sex-trafficking discourse by shifting from a dispositional outlook to a wider situational focus, we take in the habitus created by government, business and powerful others that contributes to the environment conducive to sex-trafficking.

#### **5.4 Power, framing and sex-trafficking**

In order for any business, including the commercial-sex industry to profit, the demand for its services must be maintained and increased. The use of pornographic materials and lifestyle expos to help normalise and stimulate the demand for prostitution services is essential to help shape the public's preferences, desires and wants (power's third dimension) in relation to commercial sexual services. The effect of this marketing on the general Australian male culture is far-reaching. The perception of women as things to be possessed and conquered physically and sexually, together with the perception that women want to be possessed and conquered physically and sexually, affects male/female relationships generally and the sexual encounter between the user of sexual services and the prostitute. In order to increase the demand for sexual services to enable the industry to flourish, a strategy to help normalise and rationalise that it is a man's individual right, indeed a healthy natural male biological

disposition, to avail themselves of commercial-sex services, needs to exist. (Compare how far we have come in normalising the activity in this way from normalising it, in Aquinas's terms (chapter 4, section 4.2 and 4.4), as an outlet for men's desires better tolerated than prohibited.)

Lukes (2005, p. 115) puts it this way:

Power can be deployed to block or impair its subjects' capacity to reason well, not least by instilling and sustaining misleading or illusory ideas of what is 'natural' and what sort of life their distinctive 'nature' dictates and, in general, by stunting or blunting their capacity for rational judgement.

The insidious twisting and shaping of the preferences and desires of users of sexual services, in order to consume an exotic, vulnerable and seemingly promiscuous woman in the commercial-sex industry, is necessary for the most powerful in this industry to profit. What is framed as 'freedom', and a liberating sexual experience within the commercial-sex industry, is merely a clever strategy by those gaining a benefit financially from the growth and development of this industry. This illusory freedom, espoused by advertisers and marketers, tells us 'We have a right, in the cult of the self, to get whatever we desire' (Hedges 2009, p. 33). Our desires do not need to be constrained or tainted by a wider knowledge of the situations within which the 'other' may be struggling to survive. This kind of desire is framed as biologically natural and healthy.

Sadly, this culture of illusion has created a world in which many are unable to separate illusion from reality and have been denied or have lost the intellectual and linguistic devices to tackle the complexity of many contemporary challenges (Hedges 2009, p. 44). What is to be debated is whether sex, in the context of any relationship,

including prostitution sex, is viewed as a commodity to be had without a sense of responsibility or care for a fellow human being and if this is a healthy and desirable view to hold. On one hand, the user of sexual services is the one who wields power over the sex-trafficked woman in the sexual encounter. On the other, we also need to be aware of the power of the commercial-sex and related industries, which through their advertising and its resonance in cultural stereotypes of men and women, wield over the user of sexual services. This power, by influencing the preferences and desires regarding commercial-sexual services, is pervasive, especially in societies where legalisation, as opposed to decriminalisation, has given those services a stamp of approval. Foucault (1980, p. 39), on the issue of the power of domination and the compliance of willing subjects, suggests that such power goes deep:

In thinking of the mechanisms of power, I am thinking rather of its capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies, and inserts itself into their very actions and attitudes, their discourses, learning processes, and everyday lives.

Foucault elegantly describes a mechanism of power similar to Lukes' third dimension, which reaches into one's very being, infiltrating thoughts, perceptions, wants, desires and perceived needs. This subtle process, often unconscious to the person it transforms, can be co-opted by powerful groups with political, economic and social agendas. No conflict or perceived exploitation may be present; instead a powerful, silent and pervasive force prevails. Bourdieu refers to a 'symbolic violence – a gentle violence, imperceptible and invisible even to its victim' in many relations of power; thus, moving beyond just the concept of power and extending it to include violence (2001, pp. 1-2).

This chapter thus far has explored power in the context of sex-trafficking. The inclusion of the more subtle and hidden forms of power as elucidated in Lukes' third dimension enabled us to widen the discourse. The expression of such power may be almost imperceptible, and seemingly shape the very desires and wants of the person to coincide with that of the power holders. Vital to this ability to wield power to shape people's preferences, desires and wants is the ability to frame the idea in such a way that no conflict is perceivable, indeed, where the 'power reaches into the very grain of the individual' (Foucault 1980, p. 39). Thus, how these ideas are presented to both the individual and the wider public is crucial in gaining its interest and acceptance and in influencing behaviour. It is important to explore the presence of power within the framing of the sex-trafficking discourse at this point, in order to examine the impact that framing has on the sex-trafficking debate.

Philip Zimbardo suggests that the framing and definition of the reality of a social issue is not only derived from the power of the framers, but it shapes and influences how participants and the public conceives the issue:

The way issues are framed is often more influential than the persuasive arguments within their boundaries. They influence us without our being conscious of them, and they shape our orientation toward the ideas or issues they promote. (2007, p. 454)

George Lakoff, a cognitive linguist known for his work on the centrality of metaphors to human perception and behaviours, argues that metaphors and frames influence the way we see the world (Lakoff 2004). Therefore, they are powerful tools that provide direction for our thinking, our behaviour and how we perceive outcomes of that behaviour. Lakoff's concept of the 'embodied mind' involves the idea that most

human cognition relies on and uses concrete and lower-level facilities including the emotions and sensorimotor system. Thus, ‘our brains take their input from the rest of our bodies. We cannot think just anything – only what our embodied brains permit’ (1999). Appealing to facts and logic in order to persuade the public on issues may be ineffective if these do not fit in with the audience’s frame of the world. Lakoff emphasises the importance of mental frames, which are mental structures that affect our perception and thinking, often at a subconscious level, and powerfully influence our values and opinions (Lakoff 2004). Lakoff argues that:

If the facts do not fit a frame, the frame stays and the facts bounce off.

Neuroscience tells us that concepts are not things that can be changed by someone just telling us a fact. People believe things because it fits in with their understanding of the world (2004, p. 17).

Framing is present in everyday conversation, but perhaps more vital is the use of framing in debates that address issues involving core values and belief systems. Manipulation of frames, often called spin or propaganda, is commonly used to get the public to support a frame or idea, for the purpose of political or economic control.

The framing of concepts in the political arena influences our perception of an issue as a problem, our social policies, our government budgets and our public institutions that are formed to carry out the related policies. The criminal justice, national security, border control and illegal immigrant frames surrounding human-trafficking generally, and sex-trafficking specifically, have led to a dispositional focus on the victim or trafficker. Furthermore, it geographically and morally externalises the problem and absolves the country in which the consumption and exploitation of the trafficked person takes place (La Forgia and Marmo 2007). The frames invoke in the

public a sense of fear, threat to well-being and the 'Australian way of life'. The processes of criminal justice and immigration are set in motion, often resulting in incarceration, and then deportation, of the woman back into the situation from which she was trafficked. The concerns of these dominant frames on counter sex-trafficking strategies, including denial of basic human rights to the sex-trafficked victims, were highlighted throughout chapter 2. Furthermore, current discourse, policy and legislation related to sex-trafficking are firmly underpinned by a dispositionist frame that does not reflect the deeper reality and mechanisms causing sex-trafficking. The pervasiveness of this dominant paradigm in the sex-trafficking debate specifically, and economics, law and related policy-making generally, disguises who and what benefits from the current framing and who controls this paradigm.

As discussed in chapter 2 the dominant paradigm that underpins human-trafficking counter-strategies involves a strongly dispositionist lens focused on criminal justice, national security and illegal immigration. Broadening our discussion from the dispositional paradigm to a situational paradigm may be perceived as threatening by a variety of actors in the human-trafficking debate. The use of the neo-liberal language and arguments centred on 'free choice', 'consenting adults' and 'agency' in the sex-trafficking debate has contributed to a 'victory' for the sex industry public relations departments (Jeffrey S 2009, p. 15). Furthermore, this strategy is vital if the focus is to remain *on* the dispositions of those involved in the trafficking process and, more importantly, *off* the situations and environment created by the systems, political economy and industries that benefit from the environment in which sex-trafficking occurs. Martha Chamallas contends that, 'Many economic presuppositions, such as the presumed autonomy of choice-making agents, implicitly removed the role of power from the analysis' (1996, p. 16). The blocking of situational influences from

the discussion and from general awareness fuels both the situational power and the entities that benefit from that situational power. The focus on the supposedly stable sets of preferences of individuals, ‘freely chosen choices’ and individual ‘autonomy’ can, as Jon Hanson and David Yosifon state, ‘actually curtail individual autonomy and alter perceived preferences’ (2003-04, p. 220).

The ability to influence people’s thoughts, beliefs and values by the powerful is what Hanson and Yosifon refer to as ‘deep capture’ (2003-2004). Rather than confine our considerations of institutions and individuals to measurable behaviours, they propose that we go deeper to investigate how the interiors, the beliefs and thought processes of people and groups, are captured and influenced by, for example, powerful corporate interests. Hanson and Yosifon suggest that ‘Much of the power of deep capture comes from the fact that its targets include the way that people think and the way that they think they think’ (2003-2004, p. 214). The concept of deep capture is consistent with Lukes’ third dimension of power, which sees the use of persuasion, convincing those over whom this type of power is wielded that their interests are akin to those who actually wield the power. The general invisibility of deep capture is problematic to society, whose focus is on the observable and measurable behaviours of the salient actors. Chamallas (1996) laments this invisibility of institutional structuring as a reflection of the interests of those in power. It includes our apparent blindness to the deeper mechanisms at play. The framing of human-trafficking generally, and sex-trafficking specifically, impacts powerfully on public perceptions at various levels.

### **5.5 The framing of sex-trafficking in Australia**

Sarah Steele discusses the reframing of human-trafficking in Australia from one of

‘migration’ and ‘illegal immigration’ to one of ‘transnational crime’ and ‘victim of crime’ (2007). While Steele uses the broader term human-trafficking and not explicitly sex-trafficking, trafficking into the commercial-sex industry is the most common type reported in Australia. This framing has informed Australian counter-trafficking strategies and policies, approaches initially centred on migration strategies that changed to a criminal justice focus in the late 1990s. This depicts the prevailing Australian strategy primarily as one of deterrence to organised crime, traffickers and potential victims, which is also evident in the Australian counter-trafficking budget over the past eight years.

As section 5.4 argued, the framing of issues, besides drawing attention to what those in power consider helpful to their agenda, also blocks conversations and the consideration of other issues. Rebecca La Forgia and Marinella Marmo (2007, p. 115) say that ‘The identity of the trafficked woman is formed and shaped to fit the users’ need’ and that trafficked women are not only ‘used’ by traffickers and consumers, but by the criminal justice system and national politicians. Thus, the framing of the sex-trafficked women as illegal immigrants and those who present a threat to Australian values is part of a wider strategy to pursue border protection, criminal justice or wider political and economic objectives.

Particularly evident and powerful in the discourse of human-trafficking is the use of the ‘evil/bad’ frame. Recall our brief discussion of the fundamental attribution error in chapter 1 (section 1.6), whereby focussing on an overt, easy to think character flaw, problem or presence of ‘evil’ in the concerned individual may lead us to absolve the wider society and its related policies and practices from further investigation. Patently, many sex-traffickers and criminal organisations exhibit depraved, immoral

and malicious behaviour towards the girls and women they sex-traffic. However, this should not blind us to all the underlying factors that cause and shape the problem. A simple question in this respect is sufficient to make the point. Would eliminating the current crop of evil traffickers end the problem once and for all, or even end it for most part? Surely the answer is no, and with that answer we see the danger implicit in the fundamental attribution error. One-sided, lazy framing of this type merely obscures the truth of the problem under investigation.

Zimbardo acknowledges the immense power of this frame in his discussion of the Inquisition, commenting, 'The ardent and often sincere desire to combat evil, generated evil on a grander scale than the world had ever seen' (2007, p. 9). It is important to note that not only does this framing intensify our focus on an individual or group, it also takes our focus *off* those in power who benefit from the maintenance of this status quo.

Other metaphors, particularly applicable in the sex-trafficking and the wider human-trafficking discourse are the 'security' metaphors. Once border security, national security or the global security metaphor are invoked, all other concerns dissolve. Lakoff argues, 'As soon as you say "national security", the security as containment metaphor will be activated, and with it the missile shield' (2005, p. 58). A natural consequence of the 'security threat' metaphor is the 'war against' metaphor. The 'war against' metaphor – war against crime, drugs, terrorists, traffickers – creates an 'us and them' frame. A clear delineation of what is good and what is bad is formed, which often destroys the reality and complexity of any social issue.

Moreover, as Zimbardo comments, 'Fear being the State's psychological weapon of choice' is often invoked to frighten the public into trading their freedoms

for what they perceive to be security (2007, p. 430). Once the frames of ‘evil’ and ‘threat’ are invoked, they are hard to displace. Yet, a comprehensive examination of sex-trafficking, which involves an analysis of power relationships that draw on framing, calls us to move beyond these simplistic frames. The frames need to be displaced, uncovered and exposed for what they truly are: a political strategy to enable societal institutions to control the debate, to maintain and strengthen political and economic power and to instigate policies, laws, behaviours and wars that often impinge on very basic human rights. Zimbardo draws on Albert Camus’ concept that ‘fear is a method’, insofar as once we conceive of others as ‘abstractions’, they meld into ‘faces of the enemy’ and ‘primitive impulses to kill and torture them surface among ordinarily peaceful people’ (2007, p. 432). Thus, framing the sex-trafficked woman as a whore, an illegal immigrant or a threat to our national security enables the public to conceive of the woman as ‘other’, not deserving of a good person’s human rights, thus deserving of punishment for the overall societal good. Similarly, framing the trafficker as an aberrancy, in an otherwise well-ordered world, allows him or her to be punished and locked away, banished from society. Framing the end-consumer of commercial-sex services in either a ‘dirty’ frame or an ‘autonomous, liberated male frame’ serves to produce the desired reaction from the public that benefits those who most often gain from the existence of a commercial-sex industry. While, in the context of sex-trafficking, we may not be motivated to kill or torture those actors mentioned above, we conceive of them abstractly and all their faces meld into ‘faces of the enemy’. All the time, those who stand to gain politically and economically from these frames, and the continuation of an industry in which sex-trafficking thrives, remain deafeningly silent in our discussion of causes.

The illegal immigration frame also reduces the considered set of problems to a

narrow field and thus limits the solutions. It invokes in the populace a sense of fear in that an ‘other’, who has not come through our ordered legal processes, will take our jobs, threaten our lifestyle and cause disorder in our ordered world. By framing the presence of trafficked victims in Australia as ‘illegal’, we are compelled to focus on ‘them’, with their dispositional faults, rather than considering which Australian and global policies are contributing to people choosing to migrate under such dangerous circumstances and which international trade agreements are pushing people into risky migration journeys. Furthermore, the demand from Australian employers for cheap, flexible labour in various industries, combined with Australian consumer demand for cheap and readily available products and services, is not considered. The term ‘illegal’, which implies an illegal ‘act’, fundamentally frames a problem one to be dealt with by the criminal justice system not other arms of policy. Yet, research by the American Immigration Law Foundation suggested that the ‘vast majority of immigrants, both documented and undocumented, are law-abiding people: a century of research finds that crime rates for immigrants are lower than for native-born’ (Haas 2007).

The criminal justice frame has been strongly co-opted by bodies addressing sex-trafficking. The dispositionist lens within which many criminal justice policies have been developed and with which enforcement has been implemented, lacks a broader focus on the environment in which sex-trafficking functions. While not undermining the deterrent effects of good law-enforcement strategies directed at what society perceives to be real threats, they should only be part of a wider strategy and discourse surrounding global illicit markets. Marie Segrave, Sanja Milivojevic and Sharon Pickering (2009, p. 176) suggest a wider exploration of the ‘criminogenic conditions’ in which trafficking occurs.

Others, including Nils Christie (1986) and Marie Segrave et al. (2009), lament the simplistic construction of the trafficked person into a young, naive woman who has been kidnapped and exploited within the sex industry. The reduction of the complexity of a situation into a simplistic issue is harmful. First, it focuses on the person only when the exploitation has occurred and they are accorded ‘victim’ status. This dissuades policy-makers from intervening prior to the exploitative event. Second, it ignores the many women who ‘choose’ to migrate for a variety of reasons, often to avoid exploitation and abuse by their family members in their country of origin. Finally, basing policy interventions on an incomplete understanding of the cause and effects of sex-trafficking, may result in restricting migration and labour rights for women. The framing of all women who have been trafficked into one simplistic frame denies the reality of the situation they have come from and the situation in which they find themselves in the destination country. Researchers need to articulate the messy and sometimes complex reality of sex-trafficking and not merely react to the frames that are dominant in the dispositionist paradigm.

In order to clearly demonstrate the power and use of framing and language in the human-trafficking and sex-trafficking debate, I have drawn on the speeches presented at the UN.GIFT conference, held in Vienna in 2008. A brief analysis of these speeches will be sufficient to demonstrate the power of language and framing in the sex-trafficking debate.

### **5.6 Framing in the UN.GIFT conference speeches**

The UN describes human-trafficking as ‘a crime of such magnitude and atrocity that it cannot be dealt with successfully by any government alone’, and it suggests that

‘everybody takes responsibility for this fight’ (UN.GIFT Hub 2011). The UN.GIFT conference, briefly discussed in chapters 1 (section 1.2), 2 (section 2.5) and 3 (sections 3.1 and 3.5), gathered together academics, researchers, government and non-government bodies and others involved in the human-trafficking debate and sought to build on the knowledge and awareness of human-trafficking and to build the capacity both to fight against and foster cooperation to address human-trafficking. The key themes of the conference, were ‘The Vulnerabilities and Root Causes: Why does Human-trafficking Happen?’, ‘Impact: The Human and Social Consequences of Human-trafficking’ and ‘Action! Implementing the Trafficking Protocol – Innovative Approaches to Solving Complex Problems’. They provided a framework in which to situate the various background papers, presentations and workshops.

As discussed throughout this chapter (see especially sections 5.4 and 5.5), the framing and construction of a social issue and its participants will influence the debate and any related strategies to address a perceived problem. This section will begin with a discussion of the speeches delivered at the conference by representatives of various organisations, governments and bodies. The material allows readers to reflect upon the approaches of the various organisations and others involved to the issues raised in preceding chapters. It sets the scene also for the virtual colloquium of chapter 6.

My method here proceeded from a reflection on the following, as visible through the prism of speeches delivered at the UN.GIFT conference in Vienna 2008 (UN.GIFT 2008c): (a) language and framing; (b) consideration of the wider situational and systemic political and economic, social and gender environment in which human-trafficking and sex-trafficking operates; (c) reflection of demand issues that go beyond the focus on the end-consumer of sexual services; and (d) a deeper exploration of

fundamental concepts embedded within the human-trafficking phenomenon. All quotations below are from UN.GIFT (2008c). I used NVivo software in the analysis, which I acknowledge is a summary only. The following intersperses my interpretations and conclusions with the selected remarks from participants at the conference.

A 'leviathan' of human-trafficking was constructed in the opening speech of the UN.GIFT conference by the late UN official Luiz Carlos Da Costa (UN.GIFT 2008c). The ontological status of trafficking was 'externalised' into an 'other' – an external entity. Da Costa described human-trafficking as a 'monster', whose 'footprints... shape and ferocity we can only guess'. He developed this image by suggesting that the 'monster' takes different shapes in various contexts, cultures and time phases and warned us that 'profiles of its cronies and their networks are sketchy' and we 'currently have no means of tracking this monster'. Suzanne Muburak suggested the ontological status of a pathological growth, a 'pervasive cancer', which is global in nature and threatens national security. Terms such as 'nightmare', 'scourge' and 'evil' were included in the description of human-trafficking by various presenters.

While the majority of presenters acknowledged that human-trafficking is abhorrent, unjust and immoral, the subtle dangers of representing human-trafficking as something pathological, external, even metaphysical and the use of metaphors that invoke external 'evils' and 'others' is problematic in a variety of ways. This framing blocks a comprehensive exploration of national and global policies that create the markets, the environments, the actors and the demand for services of trafficked victims. In the latter way, human-trafficking and sex-trafficking can be seen to be part of but acting against society, rather than being external to it.

Much research shows government agencies and key institutions such as corporations, which are part of our society, have frequently gained from and sometimes helped to sustain organised crime (McCoy 1991, Pearce 1976, Rawlinson 1998, Ruggiero 1996). Michael Woodiwiss went further and contended that organised criminal activity ‘complemented rather than conflicted’ with established or evolving economic and political power structures in the US (1999, p. 8). Recall from chapter 1 (section 1.6) the remarks of criminologist H. Richard Friman (2009, p. 1) that crime, profit and power are ‘interwoven’, and that international criminal activity ‘is thus better understood as an integral part of globalization rather than simply its underside’.

In contrast, the representation of traffickers as ‘shady entrepreneurs operating in a deceptive underground industry’ creates a mystical, almost metaphysical group of beings, not of us, not of our world. A moral and physical ‘distance’ is created. These criminal networks and their shady entrepreneurs are represented as presenting a threat to our national security and order. This does not address the deeper, more powerful underlying mechanisms that enable human-trafficking to flourish, and nor does it help us to look inward to find the causes of the demand chain *responsible* for trafficking.

Helga Konrad insisted that:

The primary reason we must object to THB (trafficking in human beings) is because of the harm it causes to people. We must never forget that THB is about the plight and suffering of human beings and not about the transactions in soulless goods. After all, we are dealing with people and not in stolen cars.  
(2008)

Konrad returned to the fundamental reason of why we should object to human-trafficking. The basic principle of ‘avoiding harm’ is a healthy focal point on which to

base our objections to the exploitation related to any act, including human-trafficking. Avoidance of harm should be elevated above, but still inform political and economic policies and strategies, migration control, national security concerns and human rights concerns. The harmful impact of human-trafficking and sex-trafficking has been discussed at length in chapters 2 and 4. Many of the conference presenters suggested that the harmful practice of the commodification of human beings needs to be addressed.

HT (human-trafficking) is a dehumanising crime, which turns people into mere commodities. (Lagon)

How can we tolerate this state of affairs, where human beings are treated as profitable commodities and defined in terms like ‘expandable’, ‘reusable’ and ‘resalable’? (Muburak)

Human-trafficking is not new, but in its present character, sophistication and the sheer volume of the commodification of women and children as articles of trade that is alarming. (Agbu)

... cannot tolerate human beings to be bought, sold and hired like commodities in the 21<sup>st</sup> century. (Planisek)

Thus, the reduction of human beings into commodities and objects of profit was of concern to the presenters at the conference. Yet, lacking in the presentations was a call for an examination of our political, economic, educational and social systems that foster this prevailing commodity/profit concept – concepts that, when placed above human dignity and well-being, contribute to an environment in which sex-trafficking flourishes. The presentations also failed to address adequately, or even mention,

economic, political and social policies, often aligned to the current neo-liberal system, which nourish the space for traffickers and consumers to engage in the exploitative behaviours evident in sex-trafficking.

In discussion of the root causes of trafficking, the Nigerian presenter Osita Agbu made clear in her presentation that economic factors contribute to the supply side of trafficking in her country:

... 1986, saw the introduction of the World Bank sponsored SAPs (Structural Adjustment Policies) with its anti-poor conditionalities, leading to the generation of economic migrants and brain drain. Among these economic migrants are today's trafficked women and abused children, who, for the sake of a better life, ignorance or greed, fell victims to the ploys of organised criminal and trafficking syndicates.

Archbishop Agostino Marchetto, secretary of the Pontifical Council for the Pastoral Care of Migrants and Itinerant Peoples, highlighted multiple factors that he considered significant to individuals' vulnerability to trafficking:

... poverty, lack of opportunity and social cohesion push people to look for a better future, increasing their risk of being trafficked. Absence of specific rules in countries, victims' ignorance of their own rights, the socio-cultural structure and armed conflicts (are) all contributing factors to the spread of the crime.

Another delegate argued that 'The root causes of trafficking have to do with supply and demand. Social, economic and legal factors can all contribute to fuelling the trafficking cycle' (Planisek). Da Costa agreed, but he turned attention to gender as well:

In terms of supply, trafficking is too often the result of gender discrimination.

Yes, poverty is a factor, but it is an insult to poor people everywhere to suggest that economic hardship alone would cause them to sell their children. It is a sad truth that in societies where children are sold into slavery, it is usually the girls that are victims.

While Agbu, Agostino and Planisek acknowledged the wider environment that increases vulnerability to trafficking, Da Costa, in his closing address, re-emphasised the point that gender discrimination figured starkly in vulnerability to trafficking. To consider and address sex-trafficking within a gender mainstreaming framework, will involve a deeper investigation of causative factors that impact upon supply and demand. However, gender mainstreaming is both a technical and political process which requires changes in organisational attitudes, thought patterns and culture, as well as resource allocation within the organisation (Kardam 1998). Thus political will is crucial to effective implementation of any gender-based counter-trafficking strategy. Other presenters suggested that the absence of human security has contributed greatly to human-trafficking. Muburak stated:

It is in fact, this absence of human security that defined the root causes of human-trafficking worldwide, and provides its perpetrators with an endless reservoir of disadvantaged, disenfranchised and disillusioned people from which to draw profit.

Muburak also emphasised the need to focus on human security as a central element in our development strategies. Poverty reduction, promotion of gender equality strategies and attention to social justice issues were vital parts of this strategy. Agbu, however, argued that corruption is a root cause, as well as greed, breakdown of

traditional family systems and values and poverty: ‘Firstly, it is the issue of corruption. The impact of corruption on human-trafficking is barely discernable, but it is both an underlying root cause and a facilitating tool for human-trafficking’.

Agbu further stressed the role globalisation and its associated policies play in ‘creating inequalities and inequities leading to migration of people from poor to rich regions of the world’. She cited a study by Cortemiglia and Idowu (2003), which estimated that between 60 and 80 per cent of immigrant sex workers in the Italian sex industry were Nigerian, with many other Nigerian immigrants working in the Netherlands and Spain. Agbu explicitly emphasised the policies related to globalisation that contribute to human-trafficking and sex-trafficking, making the point that destination countries are implicated in the root causes of trafficking, both through the creation of an environment in which people become vulnerable to trafficking and in the demand for services of those who may be trafficked. The main focus in the speeches remained, however, on the supply side issues of poverty and corruption.

The majority of presenters acknowledged the growth of trafficking in recent years, and some suggested that the problem is growing in severity. Planisek reported that ‘80 per cent of victims are women and children; the crime persists and is even increasing’, and Muburak contended that human-trafficking is an ‘ever-increasing scourge’ and ‘despite the efforts of so many individuals and organisations around the world, the problem keeps growing in severity and magnitude’. While Agbu acknowledged that progress has been made through improved prosecution rates and awareness-raising in Nigeria, she was at pains to make clear that, ‘This is not to say that the illicit trade has subsided. The traffickers have continuously devised new ways

of carrying out their nefarious activities.’ Statistics were also seen to have an important place in understanding and addressing the problem. Da Costa argued that:

Having dissected the human-trafficking drama by the type of exploitation, the age and gender of victims, the profiles of perpetrators and the source/transit/destination of human cargoes, we will soon be able to describe the problem, its time trends and space patterns.

This emphasis on data collection was apparent throughout the conference, yet Konrad emphasised, ‘Even more important is better analysis of what the data means and linking the findings to policies and operations to make them more effective’. Konrad’s understanding that an accurate analysis and meaning of the data is important and the linkage of that information to effective policy-making is apparent. Da Costa acknowledged our lack of evidence regarding numbers by suggesting, ‘We have shaky evidence regarding numbers of victims. We see the tip of the iceberg, but how deep is the problem below the surface?’

However, regardless of our best statistical efforts, trafficking is not a static problem that can be easily counted. Chapter 1 (section 1.4) discussed the challenges of penetrating the depths of any illegal industry in order to get accurate numbers and data. While trendings and patternings may be helpful in determining the direction of an activity, it may be more helpful to redirect our focus to examining the political and economic and social environment in which criminals and business entrepreneurs seek profit opportunities. Thus, understanding the limitations of any statistical data on an illegal industry and placing the data *within* the context of the larger political and economic environment may be a more effective way forward in understanding the complex reality of human-trafficking.

The framing of human-trafficking within a human rights discourse was adopted by many of the UN.GIFT presenters. Planisek decried that human-trafficking is ‘one of the most serious violations of fundamental human rights and dignity’, and Muburak suggested that it is ‘one of the gravest sources of human rights abuses of our times’. Archbishop Agostino similarly stated that human-trafficking is a ‘dreadful offence against human dignity which is the foundation of human rights’. The importance of placing human rights at the centre of any strategy to counter sex-trafficking was also favoured by Agostino and Konrad. Surprise and incredulity at the perseverance of this ‘evil activity’ in our world today was displayed by presenters:

We are all disturbed by the question of such a despicable crime can still exist.  
(Muburak)

[regarding] the persistence of violence, exploitation and slavery over time and space despite the compassionate messages of religions, revolutions pushing equality and recognised supremacy of human rights. (Da Costa)

This incredulity and dismay at the persistence of exploitation in the form of human-trafficking is surprising. As discussed in chapter 2 (section 2.5) and 4 (section 4.3), international human rights are not enforceable. Moral pressure can be applied, however the force of normative declarations and covenants, which are not physically enforceable, will vary in national and domestic contexts. Compelling situational and systemic influences may override our ability to encourage morally acceptable behaviour, or these systemic structures may have strongly influenced exploitative behaviours in the first place. Indeed, they may even influence perceptions of whether particular behaviours are exploitative at all (see chapter 3, sections 3.3, 3.5 and 3.6, and chapter 4, sections 4.4 and 4.5). The tension between international human rights

and the holy grail of neo-liberal economic policies that place the market above the primacy of human dignity is a challenge for any human rights law to deal with. Furthermore, various domestic political and economic priorities are often in tension with global policies that have come from the developed world. National governments struggling with feeding their people, repaying trade debts and keeping power from the hands of the military (or, alternatively, from the people) are likely to view their domestic challenges as more of a priority than exploitation in the practice of human-trafficking. Therefore, while a human rights focus and framework is important in any consideration of human-trafficking interventions, the consideration of the tension of this framework with national and global political, economic and social agendas needs to be acknowledged. A human rights framework may provide direction and guidance for counter-trafficking strategies, but it is not a panacea.

Demand was both challenged and supported as a causal factor, particularly regarding trafficking for the purposes of sexual exploitation. A summary note recorded that 'We do not need rocket technology for us to understand that demand raises the bar for supply'. Yet the question about what exactly sex-trafficking demand is, was left unanswered. US Ambassador Mark P. Lagon (currently Executive Director of the anti-trafficking Polaris Project, formerly Director of the Office to Monitor and Combat Trafficking in Persons (TIP)) focussed on the commercial-sex industry and prostitution and directly linked the existence of these industries, both legal and illegal, to demand-driven sex-trafficking. He cited a policy directive from the George W. Bush era, which stated that:

Prostitution is inherently harmful and dehumanising and serves as a magnet for human-trafficking. Normalised, tolerated or regulated prostitution is a clear

driver for sex-trafficking. And, as this market flourishes, the most hideous acts of brutality are occurring.

Donna Hughes' views (e.g. 1999, 2005, see also 2010) were invoked to support Lagon's argument that trafficked prostitutes have to be brought in to fill the demand in flourishing brothels. Lagon extended his demand argument to the labour sectors, suggesting that national immigration and labour policies 'combined with a bias against foreign workers, create a situation conducive to trafficking in persons'. The representative from the Holy See, Archbishop Agostino, expanded on demand, suggesting that a greater understanding of motives behind the misuse of women by men is needed. Interestingly, his framing of the customers of sexual services as 'ordinary men, young men, husbands and fathers', suggests that a normalisation of men who participate in the commercial-sex industry has occurred. This is in stark contrast to the representation of traffickers and known exploiters as 'monsters' in other speeches. Agostino's reference to these men being 'ordinary' is confronting, but, as Harry Muslich has argued, 'We do not have to continue to be wary of criminals; we must continue to be wary of perfectly ordinary people' (1961, p. 117).

Lagon contended that 'Despite the demand that exists for ... foreign labourers, stringent immigration provisions combined with a bias against foreign workers create a situation conducive to trafficking in persons'. Lagon described how local economies and households in destination countries 'thrive on the immigration of foreign labourers'. While Lagon discussed 'other' countries and 'other' economies that 'thrive on the immigration of foreign labourers', he neglected to discuss his homeland's penchant for flexible foreign labour from over the border in Mexico and other regions. Indeed, it is estimated that seven million illegal immigrants currently work in the

USA. A report by Jeffrey Passel, a demographer at the Pew Hispanic Centre who has long studied immigration trends, estimates that 247,000 illegal immigrants were employed as ‘miscellaneous agricultural workers’ in 2005 – only 3.4 per cent of the nation’s 7.2 million illegal workers, but 29 per cent of all workers in this job category. According to Passell, 22 per cent of maids and housekeepers (including domestic help) are in the US illegally (Passel 2006).

Lagon included a brief discussion of sponsorship laws that tie foreign workers to the sponsor who employed them in the destination country, giving employers power over when they can leave their work sites, jobs or even leave the country. This was one of the few times the role of policies fostering an environment conducive to human-trafficking was mentioned throughout the presentations. However, Lagon also acknowledged that the global reality was such that ‘the demand for this workforce will not subside, so in the context of this demand we must confront the incentive structures that lend themselves to exploitation’. Da Costa, in his powerful closing statement, concluded:

If supply is very much an issue of developing countries, demand – at least for sexual exploitation – is largely the problem of the developed world. So let us not be too quick to pass judgement on sexual discrimination in poor countries. Sexist attitudes, lifestyles that insult the dignity of women, and expensive media and advertising campaigns that exploit their bodies create a market for gender-based exploitation.

Moving beyond the traditional dispositional frame that blocks a comprehensive discussion of demand factors, Da Costa acknowledged the role that media, organisations and gender practices play in creating the wider market for sex-

trafficking. The power of marketing, advertising and framing of women – in such a way that moulds the demand for women into a market that is ripe for exploitative practices – were stressed by Da Costa. He also expressed serious concern regarding the lack of a:

... mechanism for reviewing implementation of the Convention against Transnational Organised Crime (TOC), and its Protocols. Roughly one-third of UN Member States (76 countries) have not ratified the Protocol. Some major countries have not even signed... however, the implementation of the Protocol is characterised by gaps and omissions.

It is evident that just having a protocol as a focal point for counter-trafficking strategies is not enough. A reviewing mechanism and a comprehensive implementation of that protocol on the ground level are necessary. Language such as commitment, responsibility and obligation were used in a number of speeches. Muburak believed it is the ‘responsibility of every country to accelerate its efforts in putting into place effective initiatives, which focus on eliminating these root causes through an integrated and holistic approach’. Konrad maintained that ‘What is needed, first and foremost, is the political will to put theory into practice, to implement the relevant laws and commitments. Political will means proactive political leadership on the issue.’ As discussed earlier, however, political will in addressing trafficking will be dependent upon how important a national government perceives it to be compared with its other domestic issues. Muburak contended:

We have also re-examined our policies and strategies for the protection and empowerment of women to complement our anti-trafficking objectives. This means intensifying our efforts to address risk factors, vulnerabilities, and the

obstacles and barriers women and girls face in their everyday lives, through better access to quality education, healthcare and other services, as well as income generating schemes.

Konrad proposed a 'shift in perspective', especially due to the seemingly failing strategies focused on traditional methods – e.g. deterrence, control and shifting the problem by repatriation of the victim. Furthermore, these methods, according to Konrad, have 'reportedly already caused collateral damage' due to the lack of a holistic response with human rights as its focus. Konrad also acknowledged the need to address law enforcement, through disruption of trafficking networks and administering jail sentences that reflect the seriousness trafficking offences.

Agbu proposed a campaign of 'naming and shaming' perpetrators involved in trafficking, along with a 'de-emphasis on materialism and emphasis on importance of the family and good family name'. Sadly, taking away the emphasis on materialism and the consumer culture that comes with it, is in tension with the growth of the dominant neo-liberal economic machine that is taking hold in Africa. Indeed, the current global political-economic system itself would need to be challenged to address the materialism Agbu mentioned. Of greater concern is Agbu's mention of a 'good family name'. This concept has been invoked to rationalise 'honour' killings and the rejection of girls and women who have been raped, thus left too unclean to be included in particular societies. The patriarchal system is dominant throughout the globe, thus the 'good family name' is often based on what the male members consider good and not good.

The final session called upon all sectors, private and public, government and non-government, national and international, to address the key issues of vulnerability,

impact and action through a variety of measures. Da Costa supported this call and discussed the implementation of a concrete project that would have an effect on the ground. Strong emphasis on better supply chain management and reporting methods was evident, as well as the traditional victim-support and criminal-justice focus. Regrettably, there was no mention of strategies to address economic or social policies that create the environment or space in which end-consumers of trafficked services or the perpetrators of this crime operate and behave. Da Costa also expressed what he perceives to be a problem within the issue of labour exploitation. He described the ‘dilemma between the constant quest for low wages, on one hand, and the impact of poverty on the other, that dictates a low wage is better than no wage. The vulnerable are trapped in the middle.’

While it may be acknowledged, that we, like Da Costa, need to ‘understand its complexity’, in reference to labour exploitation, we may need to ‘shift our perspective’ and our thinking to a more complex framework that can deal with global issues more effectively. Perhaps the real tension in the trafficking scenario lies in the attempt to help trafficking victims, while holding onto our powerful systems; the same structures, systems and policies that perpetuate the inequalities and injustices that create the supply of potential victims and traffickers and demand environments in which victims are exploited.

This brief analysis of the UN.GIFT speeches highlights prevailing attitudes among the main international organisations with the task of combating trafficking. It is all too brief and, by being summarised heavily, is likely to have done some injustice to the views of the contributors cited. Nevertheless, the summary here attempts to give a rounded appreciation of the main lines of argument. Some of the themes expressed in

this section resonate, if somewhat patchily, with arguments that I have been developing throughout the thesis. This resonance will lead into the discussion by participants in the virtual colloquium of chapter 6.

My criticism is that the approaches at the UN.GIFT conference mention but do not focus sufficiently on three essential ingredients required to understand and combat trafficking, especially sex-trafficking. By using the perspective of power in this chapter, these three ingredients have come into sharper focus. That is, we need:

1. to change the political-economic environments that, in their different ways, operate as causal generative mechanisms for sex-trafficking in both source and destination countries, reframing the discourse situationally;
2. to address the central, causal, role of demand in destination countries by, in part, reframing the conceptual apparatus used in sex-trafficking discourse; and
3. to recognise point made by Satz that the reinforcement of ‘broad patterns of sex inequality’ is the major reason the commercial-sex market is problematic and harmful (2010, p. 135).

## **5.7 Conclusion**

The powerful closing speech of the UN.GIFT conference by the late Luiz Carlos Da Costa (UN.GIFT 2008c) captured an important aspect of the sex-trafficking debate that this thesis aims to address by refocussing, reconceptualising and reframing the issues:

If supply is very much an issue of developing countries, demand – at least for sexual exploitation – is largely the problem of the developed world. So let us not be too quick to pass judgement on sexual discrimination in poor countries. Sexist attitudes, lifestyles that insult the dignity of women, and expensive media and advertising campaigns that exploit their bodies create a market for gender-based exploitation.

This chapter has explored the concepts of power and framing in both theory and in relation to sex-trafficking. The extension of our vision beyond easily visible and dispositional expressions of power in sex-trafficking to more intricate and often hidden expressions of power present in the political and economic environment enabled a more comprehensive exploration. Furthermore, the power encompassed within language and framing in the sex-trafficking debate was explored in order to illuminate how particular frames and language may benefit the agendas of those who profit from its existence.

The main contribution of the chapter was to link the exposition of power in sex-trafficking to the way in which participants in the sex-trafficking discourse frame the problem. In this respect, Steven Lukes' conceptualisation of the 'third dimension of power' (2005, p. 27), whereby power shapes the preferences and desires of those over whom power is exercised, does most of the work. 'Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires?' (2005, p. 27). Direct aspects of power operate at this level, but the third dimension incorporates hidden or less visible entities involved in sex-trafficking.

Significantly, this expression of power can be inferred from language, structure

of institutions and systems. Lukes described the ‘contradiction of those exercising power and the real interests of those they exclude. The latter may not express or even be conscious of their interests’ (1974, p. 25). Foucault was cited in the chapter to similar effect, namely that power ‘is only tolerable on condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms’ (Foucault 1980 (1976), p. 85). The compliance of willing subjects suggests that such power goes deep.

The chapter emphasised that this aspect of power reaches into one’s very being, infiltrating thoughts, perceptions, wants, desires and perceived needs. The process is often unconscious to the person it transforms. No conflict or perceived exploitation may be present. The chapter quoted Bourdieu’s concept of ‘symbolic violence – a gentle violence, imperceptible and invisible even to its victim’ in many relations of power; thus, moving beyond just the concept of power and extending it to include violence (2001, pp. 1-2). This notion of power was applied in the chapter to Archavanitkul’s trafficking continuum (see table 5.2) to insist that the seemingly voluntariness or consent of women who notionally choose to be trafficked (e.g. debt-bonded) for sex work masks the power of the political, economic, social and gender policies which led them into making that choice.

Such influences also shape conceptualisation of the problem. The chapter drew especially on the work of Lakoff (2004) and Hanson and Yosifon (2003-04) to make the point that the criminal justice, national security, border control and illegal immigrant frames surrounding human-trafficking generally, and sex-trafficking specifically, lead to a dispositional focus on the victim or trafficker. It geographically and morally externalises the problem and absolves the country in which the

consumption and exploitation of the trafficked person takes place (La Forgia and Marmo 2007). This linked power and framing to the conclusions of chapter 4. It also raised the problem of what Hanson and Yosifon called ‘deep capture’, which is the opaqueness of the underlying issues because the exercise of power and interest has commandeered the very language and thought processes acceptable in the discussion.

A ‘virtual colloquium’ will be undertaken in the following chapter to enable a more critical debate on sex-trafficking and fundamental concepts underlying it. Scholars, senior policy-makers, criminologists, philosophers, jurists, sex-industry representatives and contributors to the public policy debate will be challenged to help develop critical thinking on ethical, policy and conceptual issues. The virtual colloquium will test my thinking, in particular because I will present voices that oppose positions that I have been developing to this point. Confrontation with alternative perspectives, and insight from more congenial ones, will enrich our ability to think through difficult issues that are often shrouded by the effects of power, framing and, in some instances, deep capture.

## Chapter 6

### The virtual colloquium

#### 6.1 Introduction

Chapter 5 explored the fundamental concept of power in the context of sex-trafficking. Steven Lukes's notion of power (2005) was applied to Kritaya Archavanitkul's typology of sex-trafficking (1998) in order to illuminate the more subtle expressions of power and to identify more clearly those who wield it. This approach enabled the discussion to move beyond a dispositional focus to the broader political-economic environment (situation) in which sex-trafficking operates. The vital role of framing was explored to emphasise the effects that this has on preference-shaping, public debate and responses to sex-trafficking. The United Nations Global Initiative to Fight Trafficking (UN.GIFT) conference speeches were used to help to demonstrate the common frames used in public discourse. The analysis of the speeches (section 5.6) is a neat segue to the content of this chapter.

In chapter 1 (section 1.1), I explained that one of my objectives, perhaps the most important of all, was to contribute to efforts to reframe the sex-trafficking discourse holistically by clarifying conceptual problems and disagreements behind debates over effective counter-trafficking policies and strategies. To begin with, I had hoped to explore effective counter-trafficking policies and strategies per se. However, it became clear to me that this task required a common understanding of the problem. The more apparent it became that there were wide differences of opinion, the more my emphasis needed to shift towards trying to clarify the conceptual issues behind debates

over the most effective counter-trafficking policies and strategies. Unfortunately, the gaps in the literature tended to coincide with areas of disagreements.

This is why the method of approach of the research behind the thesis included a phase involving critical engagement in discussions with scholars, philosophers, criminologists, jurists, senior policy-makers or outstanding contributors to the public-policy debate (see appendix A) to clarify and extend my thinking on ethical, conceptual and policy perspectives (see chapter 1, section 1.5). The main purpose of this phase was to enhance my thinking on perspectives required to clarify the conceptual issues, but it also enriched the sources of evidence and insight available to me. Procedures to identify contributors were set out in chapter 1 (section 1.5). Discussions with each contributor (also called discussant or participant) lasted for 60 to 90 minutes each. With each successive discussion, I was able to test ideas raised in earlier conversations and in the development of my own thinking. Hence I called the process and the title of this chapter a ‘virtual colloquium’.

Note that narrative approach afforded the space to explore and *test* the complexity of the ethical and policy issues (e.g. informed choice). Placing the virtual colloquium at this stage of the thesis therefore fits with its role first, in fulfilling my aim in helping to reframe the sex-trafficking discourse holistically by clarifying conceptual problems and disagreements and, second, enriching my own thinking as I delved deeper into the literature and tried to fill the conceptual gaps within it. In other words, it was necessary to reach this point in the exposition in order for the testing engagement with critical voices to make sense.

Participants generously agreed to provide the discussion with the necessary competing views, grounded experiences and passion. I am deeply grateful to them.

While it was impossible to get participants into one room for a discussion, the methods endeavoured to simulate just that. Participants were asked questions that others had raised, so the dialogue tended to have a snowballing effect. My role was that of moderator, trying to obtain as much interwoven comment as possible in the central themes of interest. Readers will note that my comments throughout are of two-fold purpose: 1. to stimulate, probe and enquire in order to clarify and extend the participants' engagement; and 2. to express and to develop my own thinking. It should be apparent which is which.

The virtual colloquium ranged across the benefits of an ethical/philosophical approach, conceptual frameworks and language, institutional challenges, debt-bondage, sex industry legislation, Australian counter-trafficking strategies and the concept of demand. The vital notions of power, framing, choice, agency, exploitation and consent, previously discussed in chapters 4 and 5, were deliberated upon by the participants. These notions often became major points of contention. A discussion of these concepts, as used explicitly and implicitly within the language, framing, institutional structures and legislation related to sex-trafficking, is the major contribution of the chapter. Within this virtual colloquium, knowledge and opinions gained from each discussant were used to strengthen or widen understanding. In combination with the issues discussed, ideas were bounced from one discussant to the next. Further and deeper insights, challenges and opinions were then obtained. While many of the discussants are not experts on sex-trafficking per se, they provided informed insights into legal, ethical and philosophical concepts.

An adequate consideration of sex-trafficking must stem from an ethical and philosophical reflection on essential concepts. The strength of this approach has been

established in chapters 4 and 5. An ethical and philosophical approach encourages ethical, consistent and critical thinking in our reflection and strategies to address sex-trafficking. The first task in this chapter is to explore with discussants why an ethical philosophical approach is vital to uphold principles upon which a just and democratic global society is based. Furthermore, I wished to explore how this approach can benefit our understanding of sex-trafficking and clarify exactly the dimensions in which sex-trafficking is wrong.

## **6.2 Ethics, philosophy and sex-trafficking**

The benefits of adopting an ethical philosophical approach were implicit in chapters 4 and 5. However, was this kind of explicit demonstration genuinely necessary?

Reverend Dr Rufus Black, Master of Ormond College, University of Melbourne and chair of the Human Research Ethics Committee of the Walter and Eliza Hall Institute, in our discussions on ethical philosophy, remarked:

*I think you are right in taking the ethical angle. It simply adds explanatory power to what's going on. Understanding whether something is ethical or not helps you understand what kind of issue you are dealing with. It changes your view on how you respond to it. If there is no reason to think this is an unethical activity to participate in, the way you socially regulate it differs very much from one which you think is a fundamentally unethical activity and, therefore, [in which] my range of policy responses is much broader. As soon as you [decide it is] an unethical activity – the degree you may be permitted to do it, if either you think it causes no harm to other people, because permitting self-harm is just part of what we do in the wider context of respecting people, or if you accept that its*

*wrong, but you say the only way we can manage the social impact of this is by permitting it, because this is the least destructive way as a society of managing it.*

Black delineated between the actual act of sex-trafficking as ethical or unethical and the harmful consequences that may result to the victim and wider society. He argued the importance of understanding the ethics of an issue in order to lay a consistent policy foundation. Besides providing a more comprehensive understanding and clearer lens through which to see the issue:

*it ‘helps clarify what the actual problem [is] and what we are dealing with here. It illuminates the issue and is potentially a very valuable way of solving the problem. You are getting to the root cause of what is fundamentally at stake.’*

Dr Simon Longstaff, executive director of St James Ethics Centre, Sydney cautioned us not to consider ethics ‘*in isolation from the other factors*’. He also said, though with an emphasis on the law, that:

*The important thing to determine is whether or not a practice of this kind is intrinsically wrong – or simply wrong because it violates an existing law? If the latter case applies, then the wrong could be avoided simply by legalising the practice. However, amending the law will not correct a situation in which the ethical problem emerges at a deeper level; for example, where fundamental values and principles are violated by the practice itself. In this latter case, you will be obliged to adopt a critical stance in relation to the suite of policies, regulations and laws in order to determine if they are adequate to the task of addressing the intrinsic wrong.*

Longstaff urged that the exercise of discerning if a practice is wrong or right at some deeper level *'is a useful thing to do'*. We are then led to consider *'what we really think about such a practice, and why we might be inclined to condemn it or support it'*.

Professor Spencer Zifcak, Allen Myers chair in Law and director of the Institute of Legal Services, Australian Catholic University and former Australian vice-president of the International Commission of Jurists and current president of Liberty Victoria, struggled with why I even needed to ask the question of why we should refer to ethics in our consideration of sex-trafficking.

*I am struggling to give you an answer, because it seems so obvious. Well, you go back to the categorical imperative, the Kantian categorical imperative. You never use a person as a means to an end. [Sex-trafficking] is about the grossest violation of that fundamental philosophical principle that you could imagine. So how could you not immediately think of the moral and ethical dimensions of the problem? As soon as you think of the moral and ethical dimensions of the problem, you get a sense of how wrong is what is happening. Unless you have a sense of how wrong it is, you can't even begin to look at how the problem might best be tackled, resolved or eliminated. I'd like to hear an opposite view, but I would be struggling to understand it if I did. I don't think there is a way of discussing this issue without there being some sort of ethical content or framework within which it is discussed. You can't just do it.*

Longstaff emphasised the critical need to be clear about the argument about why sex-trafficking is wrong and not simply to conflate sex-trafficking with prostitution. This is where critical, consistent thinking embedded within ethical philosophy may be helpful.

*The very notion of ‘trafficking’ implies that people (persons) are being passed from hand to hand and that this is being done without the consent of those being trafficked. Indeed, a person often falls under the power of the trafficker as the victim of an act of deception. Once snared, the victim is entrenched in their diminished position by a range of mechanisms; including, economic dependence, systems of ‘indenture’, etc. In these circumstances, there is no free, prior and informed consent. As such, trafficking can be distinguished from the circumstances of those people who freely choose to be sex workers. Uncritically conflating trafficking with prostitution is unhelpful. The distinctive wrong of trafficking is not that sexual services are sold for a price but the non-consensual nature of the practice and the associated exploitation that takes place. That is, the particular wrong is to treat the trafficked person simply as a means to an end – a violation of the principle of respect for persons.*

Longstaff emphasised the ‘real wrong’ of sex-trafficking lies in its non-consensual nature and the exploitation that follows. He asserted that he doesn’t ‘*have any problem with people choosing, if the choice is actually free. The only situation in which we should impede is where there is not proper, informed, consent.*’ However, as will be discussed later in this chapter, the challenges in determining ‘informed consent’ are significant in a world in which women will voluntarily agree to enter a debt-bonded or trafficked contract in order to escape situations of sexual and domestic violence or in order merely to survive. Without the capability to choose between viable alternatives, should this consent diminish the traffickers’, employers’/brothel owners’ and end-consumers’ culpability in the exploitative practices that occur in debt-bonded and trafficking situations?

Zifcak, similarly to Longstaff, argued that:

*Prostitution is almost irrelevant to the problem. The issue here is to do with ownership and coercion. It's not to do with the particular activity in which the person is involved. The crime here is the exploitation of the person for personal gain by using the person, in effect, as a thing – using them as a piece of property, without considering the fact that they might actually be something resembling a human being. So, the prostitution is really, in my view, irrelevant to the nature of the offence and the nature of the harm being inflicted on the individuals concerned.*

Black emphasised the need to be clear about the fundamental principles underpinning the ‘wrongness’ of sex-trafficking. Varying ethical constructs of a problem will result in different policy responses.

*This debate goes back to why you need an ethical angle. Either it is something that you think is wrong, in which case the social policy is to work out how to put a stop to it, or you think it's not wrong, in which case we need to minimise social harm, to make it as safe as you can. They lead to two totally different responses.*

Black highlighted the power of the framing and language in the description of the problem. He related an ethical construct centred on ‘free choice’ being related to ‘moral’ and ‘less free choice’ related to ‘immoral’.

*The closer you can get to the case that this was a ‘free’ choice, the greater the degree in which you could make a case up. That's one ethical construct of the way you analyse the problem. That's an analysis that at the end of the day, if people choose it, it's okay. So whatever you choose to do, if it doesn't cause any*

*harm to other people, that's okay. I think that's a peculiar view of choice, by the way, and I could make a strong argument that it's a misunderstanding of what we are seeking to value by valuing freedom and choice.*

Sheila Jeffreys, a feminist scholar from the School of Political Science, Criminology and Sociology, University of Melbourne and representative of the Coalition Against Trafficking in Women (CATW), challenged an ethical construct and framing of a problem based on the language of 'free will', 'choice' and 'consent' – all terms she considers based in neoliberalism. She argued, *'If we don't talk about free will of the victim, then you have to recognise systems of oppression and forces of oppression'*. Sheila Jeffreys' move to a less dispositional construct of sex-trafficking, one that includes the political and economic forces that create the supply and demand for services of sex-trafficked victims was evident. The power in constructing and maintaining the ethical debate at the level of individual consent, choice, voluntariness (all dispositional frames) helps to ensure that it remains narrow and ignorant of the wider powers and groups that gain from sex-trafficking.

Black asserted an ethical debate centred on the status of the human person and the reduction of that human person to a commercial product would be a more accurate ethical construct on which to base our debate on sex-trafficking.

*Do we regard human bodiliness as something [that] is absolutely integral to the understanding of the human person? We are a united entity and any reduction of that to anything other than a uniquely valued and valuable entity is not to treat the human person as a human person should be treated. At any point where we are reducing the human person as a unique entity to some other category, we are mistreating it. I think the problem with any form of [sex-trafficking] is that*

*we have reduced the human person and their bodiliness to a commercial product, and at that point we have crossed the line in understanding what it is, in its human essence, to be a person.*

The construction of an ethical argument dealing with sex-trafficking is then the foundation on which one proceeds to construct strategies to deal with it. The journey from an ethical construct to development of policy, however, requires comprehensive understanding of the problem and an understanding of the consequences of interventions on society as a whole.

The explicit inclusion of ethics, morals and values into the debate centred on human-trafficking generally and sex-trafficking specifically, should, I felt, be an integral part of the discussion. I noted, however, in background conversations with various activists and organisations dealing with human-trafficking and sex-trafficking, a strong reluctance, almost embarrassment, to use these concepts in discussions. I raised this problem with discussants and asked if they had encountered similar reluctance to include these notions in general discourse and practice in their respective fields. Julian Burnside AO QC, barrister of the Supreme Court of Victoria and past president of Liberty Victoria responded:

*I don't really get to talk about values or ethics in my professional work, because they are legally irrelevant for the most part. You might occasionally touch on them, but it's fairly rare. The only time I talk about it is in general conversation with people, and I guess you only have conversations like that with people who aren't likely to strike you when you talk about such dangerous things such as values.*

Questioning Burnside further on the exclusion of values, ethics and moral in the

legal realm and discourse, I asked if this concerned him.

*Well, yes, it frustrates me, because I think we've got laws on the statute books that proceed from, or give effect to, the wrong values. One of my arguments about the treatment of asylum seekers was that the legislation, if faithfully put into effect, creates an injustice. For any lawyer, the idea that the law as written creates injustice gives you a bit of a shock, and there are other laws [that] create an injustice. The whole area of so-called tort law reform has created statutory injustices among people who suffer injuries, and that worries me. But talking about values won't get you anywhere at all, because you read the statute, you see what the statute says. If there is any wriggle room, you might be able to soften it up a bit, but usually these things are pretty clear and values don't have a chance. I'm afraid that's the way statutes work.*

Some of the participants underlined a lack of inclusion of ethical language and concepts in our everyday discourse and not just in the context of sex-trafficking. Furthermore, an exclusion of ethics and values was also evident in conversations at the political and legal levels. While it could be argued that values and ethics are implicit within these political and legal systems, the discussants suggested that these concepts are often 'used' to increase political or legal power. Some participants highlighted the tensions between an ideal judicial and political system that aims for an ethical and just society, and the actual reality of these systems, which often ignore or co-opt these concepts to further their positions or agendas. This state of affairs presents a challenge to any society attempting to deal with the unjust and unethical practice of sex-trafficking through political and legislative processes.

The framing or ethical construct of the sex-trafficking problem often sees a

battle between the pro sex industry advocates and the anti-prostitution lobby, both invoking ethical and moral concepts to support their respective stances. The Honourable Michael Kirby AC CMG, former Justice of the High Court of Australia and former chairperson of the UNAIDS Expert Panel on HIV Testing of the United Nations Peacekeeping Operations, expressed his frustration and suggested that many (but not all) commercial sex workers (CSW)

*... wish to protect their economic livelihood, resent the moralistic endeavours of agencies (often American) and organisations (sometimes feminist) demanding that all CSWs leave the sex industry and take up sewing machines. The United States administration of [President] GW Bush imposed restrictions on any organisation receiving US funds that did not commit to the abolition of commercial sex work. That commitment was based on fundamental religious views that are not universally shared.*

Kirby related the dangers of 'moralistic endeavours' to the wider fight against HIV and improvement of conditions for sex workers who were already struggling to survive and provide for their families. Laura Agustin (2007) and John and Benjamin Davies (2008) also admonish some organisations that engage in the 'rescue' of women from debt-bonded and trafficked situations. These authors often perceive the women to be demonstrating agency, thus have the right to take on inflated debt and abusive conditions. Indeed, Agustin along with Davies and Davies perceive rescue efforts targeted at sex workers in debt-bondage and exploitative situations as paternalistic and disrespectful to sex workers' agency, dignity and rights. However, as Martha Nussbaum (1999, p. 8) has argued:

*It would be very odd to conclude that the only way to respect people's dignity as*

*agents is to create an uphill unequal struggle for them at every turn in the road.*

*It would be odd to conclude that treating people with equal respect for their dignity is a way of turning them into victims rather than agents.*

Kirby rightly highlighted the dangers of groups that support policy that may create more harm and less choice for women who are already in a vulnerable position. He cited the consequences of moralistic policies that created a more dangerous environment for sex workers and obstacles to the fight against HIV. However, those who wish to provide alternative choices in income for prostitutes are not necessarily linked to religious ideology based on narrow moral constructs or a ‘wowsersish’ approach to sex. The religious and feminist and ethical construct may be related to the concern that these women have not been provided with the capabilities and choice for human flourishing (not just through economic channels). These capabilities are unlikely to be gained through prostituted women’s engagement in commercial-sex work that verges on trafficking. Such an ethical construct of the sex-trafficking problem enlarges our focus to a political, economic and gender environment that does constrain girls and women’s choices to such a degree that participation in the commercial-sex industry is one of their few options.

What I have found deeply disturbing is the missed opportunity of drawing on the practice of ethical philosophy to help to move beyond the polarised debates related to sex-trafficking. Drawing on ethics rigorously may enable us to provide clarity, understanding and truth in determining exactly what is wrong with sex-trafficking and how we can deal in a holistic and moral way with the harms that result.

### **6.3 Conceptual frameworks and sex-trafficking**

We have established that the problem of sex-trafficking is complex and strongly influenced by the political, economic, social and gender environment. Thus, when aspects of the environment shift, this may cause a change in the processes or expression. Having established that we have (a) a complex problem, and (b) a problem that is influenced by its environment, we need to acknowledge that dealing with (a) and (b) is likely to be compounded by institutions that are not designed to deal with complex problems.

This challenge to deal with the complexity of transnational crime generally was emphasised in the recent ‘International and Serious Organised Crime’ conference held in Australia in 2010. This conference brought together leading scholars and practitioners in the field from the US Federal Bureau of Investigation (FBI), United Nations Office on Drugs and Crime (UNODC), British criminal intelligence agencies, the Australian Crime Commission (ACC), the Australian Federal Police (AFP) and other organisations dealing with transnational crime. Hand-written notes by the author recorded comments by participants in the conference. These included remarks such as ‘old concepts and paradigms are no longer effective’, ‘traditional law enforcement paradigm is not effective’, ‘the analysis and understanding of a problem is becoming more important than law enforcement’, ‘we need new tools for understanding’, ‘we need to be less dependent upon traditional statistics and we need to think broader and laterally’ and ‘unless you understand the problem, you can’t find a solution. We need responses in the preventative space.’ The United Nations Office of Drugs and Crime, in its 2010 report on transnational organised crime threats, also acknowledged the need for a new approach. Thus, the call for a new paradigm and conceptual framework

is coming from within powerful official organisations with a traditional criminal justice approach.

In attempting to discern what elements constitute a complex problem, in order to break down what could be perceived as an overwhelming challenge into a more manageable one, I drew on Rufus Black's speech 'Educating the Millennial Generation for the Challenges of the 21<sup>st</sup> Century' (2008). It classifies the major elements as:

... complex: the problems involve dynamic natural or dynamic human systems, wicked: the problems change as you work on them, global: a high level of dependency exceeds our current global governance arrangements and are attitudinal and behavioural: the problems are shaped by current beliefs and behaviours.

Sex-trafficking fulfils all Black's elements. It involves dynamic human systems; participants adapt and alter processes as counter-strategies are implemented. The problems thus are 'wicked'. Our current global institutions are struggling to deal with the dynamic and complex behaviours of those involved in it. Gender, cultural and social beliefs and practices also influence the practice of sex-trafficking. Black, in response to my queries regarding human-trafficking generally, suggested that:

*... this phenomenon [human-trafficking] emerges and is amplified in different periods. Human-trafficking has been around for a great deal of time, but it emerges in particular environments. So, to understand the complex system, one is trying to have a description of what the total environment is, and what all the contributing influences are that amplify it or dampen it.*

Black also emphasised the relationship between the phenomenon and the environment and systems in which it occurs. This relationship between the environment and transnational crime is supported by contemporary criminology research (Friman and Andreas 2009, UNODC 2010) and was discussed in chapters 1 (section 1.6) and 2 (section 2.6). In relation to sex-trafficking, the environment (political, economic, social and gender) will directly influence traffickers, potential victims, end-consumers and those responsible for addressing sex-trafficking. An example is the ability of those who benefit from it to adapt, transform or shift their operational processes or location (Milroy 2009). This is often a response to policy initiatives or a transforming political-economic environment. For example, the sex industry model implemented in Sweden in 1999 prohibited the purchase of sexual services (Swedish Government Official Reports (SOU) 2010a, p. 4). The model was based on the premise that prostitution was inherently exploitative and a form of violence against women. Furthermore, the Swedish Government believed that ‘a clear link between the existence of prostitution and human-trafficking for sexual purposes’ existed (SOU 2010a, p. 5). Therefore, to reduce prostitution as a whole would decrease the trafficking of women and children into that industry. However, critics including Liv Jessen (2002), Petra Ostergren (2004) and Judith Kilvington et al. (2001) have insisted that the policy has just moved the industry underground or moved it to a neighbouring country. Thus, the industry and criminals have adapted and the sex-trafficking exploitation continues. Black responded:

*That’s why single-country actions are almost bound to fail – it will just squeeze it elsewhere. By pushing them into other countries you may be in fact making the problem dramatically worse.*

This response by traffickers in adapting to a changing environment underlines the vital need to develop strategies that address sex-trafficking at multiple levels and at vulnerable junctures in the trafficking process. Using singular strategies for complex, adaptive, wicked and attitudinal and behavioural issues may not only be ineffective, but contribute to the exploitation that the sex-trafficked victim experiences.

In our ethical/philosophical enquiry, it was also important to review with the discussants, the legislative tools, framework and language we currently have to enable our conceptualisation of the problem. Currently, sex-trafficking practices are prosecuted under a slavery framework, either under *Slavery Offences – Division 270* or *Trafficking Offences – Division 271*, which deals specifically with human-trafficking and debt-bondage offences. These have been briefly discussed in chapter 2 (sections 2.5 and 2.6). Sex-trafficking into Australia is overwhelmingly in the form of debt-bondage. Debt-bondage and the criminal codes that deal with sex-trafficking and debt-bondage were discussed in chapter 2 (sections 2.6 and 2.7). The use of the *Slavery Offences* required further exploration. This was in order to ascertain their perceptions on the adequacy of this framework for conceptualising, prosecuting and forming of strategies to counter sex-trafficking. Ethically, government and society have a duty to ensure that the legislative mechanisms we have in place to address sex-trafficking are adequate and appropriate to address the problem.

#### **6.4 Human-trafficking definitions and the slavery framework**

Chapter 2 gave a brief discussion of the history of slavery (section 2.5). Historically, slavery was explicit and visible: formal ownership of another human. Yet slavery in its contemporary forms appears to be more hidden, blurred and embedded within

economic practices and labour migration. In exploring the virtual colloquium participants' thoughts on situating sex-trafficking in a slavery framework, I used the law reports of *The Queen v Wei Tang 2008* (HCA 2008).

This case against a brothel owner, Ms Tang, was the first jury conviction under Australia's Criminal Code *Slavery Offences*. The accused, Ms Tang, was convicted in 2006 of purchasing five Thai women in 2003 and subjecting them to debt-bondage conditions in a legal brothel in Melbourne. The women were in Australia on fraudulently obtained tourist visas and then granted protection visas that enabled them to work legally in the sex industry. The women had previously worked in prostitution, voluntarily consented to engage in prostitution work in Australia and had entered agreements with the Thai broker to repay approximately \$45,000 to the contract owner. However, the debt-bonded contract saw Tang purchase contracts from a Thai recruiter for \$20,000, and this 'act' was the ground upon which the charges of slave-trading were based. Tang required the women to work six days a week to repay the total contract debt and withheld the women's passports and return airline tickets to Thailand (Schloenhardt 2009). Tang successfully appealed against the conviction in 2007-08, and a retrial was ordered on the grounds that the prosecution failed to prove to the jury that Tang had knowledge or a belief that she was exercising powers of ownership associated with the practice of slavery. Furthermore, the prosecution had to establish Tang's intention to exercise those powers of ownership (HCA 2008). In 2008, the initial conviction was upheld by the High Court on the grounds that the definition of slavery 'required intention only in relation to the exercise of any powers attaching to ownership' rather than the accused intentionally using powers in relation to someone they knew to be a slave (Schloenhardt 2009, p. 5).

The Wei Tang case and the related slavery framework and definitions drew concern from a participating judge, Justice Gleeson, who commented, ‘We have to make the definition work, obviously. How do you make it work in a world in which the critical legal element of the status of slavery is now impossible?’ (2008). Michael Kirby, a dissenting judge in *The Queen v Wei Tang*, however, was particularly concerned that, if courts did not define slavery carefully, then many harsh employment contracts may be perceived and prosecuted as slavery, leading to imprisonment periods of 25 years (*The Age*, 2008). Kirby’s dissenting judgement, which saw him in agreement with the Court of Appeal to have a retrial, was surmised as follows:

It is not enough for the accused to ‘possess’ a slave or to ‘exercise’ control over a slave ‘any of the other powers attaching to the rights of ownership’. To be guilty of the offence provided by the Code, the accused must do these things, and all of them, ‘intentionally’. (*The Queen v Wei Tang* (2008) HCA 39, [93])

Kirby, during the Wei Tang proceedings, also emphasised the fact that the women were previous sex workers, made the contractual arrangement themselves to work in the Australian sex industry while in Thailand and continued working in the brothels after payment of their debt. He suggested that this was ‘arguably evidence against notions of involuntary slavery’ (*The Queen v Wei Tang* 2008, HCA 180).

I discussed these and other issues with Justice Kirby, now retired from the High Court. However, before moving on to his remarks, it will be useful to hear how some of the lawyers who participated in the virtual colloquium, responded to this discussion. Anne Gallagher, former special adviser on Human Trafficking to the UN High Commissioner for Human Rights and technical director of the Australian Regional Trafficking in Persons Project, commented on the adequacy of situating sex-

trafficking within a slavery framework. She said that she found the slavery framework useful as a lawyer, but emphasised her concern in its relation to law.

*I find it very useful as a tool of rhetoric, because it makes it really easy for people to understand what you are talking about. People very easily understand that slavery is about loss of freedom and loss of personal autonomy, and that is very much what trafficking is about as well. I only have a problem with it in relation to law. Human-trafficking is not slavery in international law, and slavery is not trafficking, and when you are talking about law, you have to be really careful. This is about one of the most powerful laws on the international statute books. It is also about people being locked up for a very long time. There is no room, in this context, for sentimentality or imprecision.*

Dr Julie Debeljak, senior lecturer, Faculty of Law, Monash University, also highlighted the problem of the slavery framework in the legal setting.

*Human-trafficking has slavery as one of its endpoints of exploitation. It's only one. The problem – I'm talking legally now, not about public perception – is I think we needed to use the concept of slavery in the very loose sense to secure convictions of people who might otherwise have been convicted of something other: say debt-bondage etc. From a legal perspective, I have a problem with this. Slavery is but one aspect of human-trafficking. We ought not be trying to push things that aren't slavery into that category. Let them go if you have to, until the right case comes along.*

Similarly to Gallagher, Debeljak expressed the usefulness of the slavery framework in increasing public understanding of human-trafficking.

*I think in terms of public perception, though, it attracts the public imagination. I think the concept of slavery is a lot easier for them to grasp, and it can't be confused with people-smuggling.*

Burnside, however, commented on the difficulty of moving into the realm of metaphor.

*Everyone understands the notion of slavery, but it is certainly being used metaphorically. Maybe they ought to step around it, either by inventing a new expression that doesn't have the surplus baggage that slavery has, or else define it in a way that is critical and doesn't require you to draw [upon] original notions of slavery and treat it as a metaphor. What we need is for the legislature to be a little more inventive and stop falling back on an ancient word for 21st century things. The difficulty in legislation concerning crimes is that courts tend to resolve ambiguity in a statute in favour of the accused. It's one of the natural conservative safeguards, just as we have to prove guilt beyond reasonable doubt. So there is a convention [that] any ambiguity will be resolved in favour of the accused rather than against them. Now, if offences are defined by reference to antiquated expressions used as a metaphor for what is in question, then there is no doubt that it will not work as it should And you have got to allow this, even if you quite like the idea of calling something slavery, and even if most people would have no difficulty in understanding it as slavery – taking a girl to a foreign country, inflating her debt and trapping her until she has paid it off. Would they also go along with the metaphor of domestic slavery? Many housewives regard themselves as domestic slaves, and some people might think this was a justified use of this expression, but probably not the sort of thing that*

*was intended to be reached by legislation about sex slavery.*

Kirby responded strongly to our discussion of the slavery framework and language with, ‘*the challenge is to ration the talk of slavery, a technical and value-loaded word*’ and referred to groups that co-opt this language to further their own agendas, including ‘*American Bible bashers together with their Australian friends*’. As noted above, Kirby was the dissenting judge in the Wei Tang High Court case and argued strongly for a clear and carefully considered definition of the term slavery. Kirby, while acknowledging that there are many cases of abuse of commercial sex workers by clients, authorities and brothel owners, and employees and troops, wanted to underline the need to protect the rights of those who work as commercial sex workers.

In general, the colloquium participants suggested that to frame contemporary sex-trafficking practices as slavery might not be helpful legally, in prosecuting cases and obtaining convictions. The framing was helpful, however, in enabling the public to understand the exploitation.

Wanting to broaden the conversation, I called on the participants to give me their opinion of whether we need a new framework and terminology to capture contemporary sex-trafficking practices. Dr Larissa Sandy, Visiting Fellow at the Research School of Pacific and Asian Studies, the Australian National University, responded with an emphatic yes.

*Yes! That’s a resounding yes, and I think that’s what’s happening in Australia in the slavery prosecutions. The Australian Institute of Criminology’s work is interested in what’s happening, in looking at criminal justice responses to trafficking and Australian legislation that puts it in the framework of slavery and*

*sexual slavery. They are not procuring any prosecutions because [juries] are standing back and going, 'Where is the slavery? This doesn't look like slavery – not how I interpret it in the Western sense, not how I understand it.' The slavery framework now is very much a Western framework. It is very much around the discourse of liberal rights and the processes that are going on with trafficking don't necessarily equate with our understanding of slavery, which comes from the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> century understanding. So, I do believe what we need to do as researchers, as thinkers, is to think about what may be more appropriate frameworks for trying to understand and communicate about people's experiences of being trafficked or about exploitation.*

Sandy then raised a controversial point, to which we will return in section 6.5. She argued for an entirely different approach.

*'I think the way we need to do that is through labour frameworks, because that's the crux of it. The exploitation is happening through labour and contemporary labour practices.'*

However, to confine the exploitation of sex-trafficking to a labour framework, without considering the exploitation of women and damage to society through the reproduction of patriarchal practices, would be incomplete. Recall that Debra Satz in chapter 4, p. 25, contends that the reinforcement of 'broad patterns of sex inequality' through the practice of prostitution is the reason that the prostitution industry is problematic and indeed noxious (2010, p. 35). Thus, to address the exploitation of sex-trafficking merely through the lens of a labour framework, would, according to Satz, miss the exploitation inherent in prostitution itself.

Burnside also responded positively to the idea of a new language or framework.

He related the story of Raphael Lemkin, a Polish lawyer, who developed the word 'genocide' to capture a new criminal conduct in society. In his book titled *Axis Rule in Occupied Europe* (1944), he outlined the reorganisation of the population instigated by the Nazis 'coining the word genocide to denote the murder of millions and setting out his proposals for redress' (Cooper 2007, p. 4). A campaign, initiated by Lemkin, assisted by Christian, Jewish, UN, women's and Eastern European refugee groups, was then mounted at the United Nations to demand that the slaughter of racial, ethnic, religious and national groups be a crime in international law (Cooper 2008, p. 4). Lemkin encountered resistance among world leaders to the development of this new term, yet he persuaded these same leaders that they needed an adequate language to reflect the atrocities that occurred in Armenia in 1915. Burnside remarked:

*Now we have, in a sense, a new species of conduct, and maybe it does need a name. There is a difference between a girl willing to work in the sex industry, willing to travel to another country, but not expecting to be held in bondage by an artificially inflated debt. There is a difference between that case and Africans being sold on the block and being transported to America. So maybe there is a problem with the [slavery] word.*

Burnside and Sandy emphasised the role of language in accurately representing an act. Their point is about accuracy. To continue to use terminology, framing and metaphors that do not accurately reflect the contemporary practice of sex-trafficking is therefore problematic. One such practice, although not a new species of conduct in many areas of the world, is debt-bondage. Burnside alluded to the idea that a girl or woman may be 'willing to work in the sex industry', yet become debt-bonded in an inflated debt. This needs to be discussed further, as this practice is the most prevalent

form of exploitation associated with human-trafficking into Australia (Parliament of Victoria 2010, TIP 2009).

## **6.5 Debt-bondage**

Debt-bondage has been discussed in detail in chapter 2 (sections 2.5 and 2.6). Some scholars and activists suggest that many women who voluntarily enter into a debt-bonded situation to escape oppressive situations could be considered ‘small business entrepreneurs’ (Davies & Davies 2008, Agustin 2002). In contrast, others, including Debeljak (2009), contend that the practice of debt-bondage, due to the artificially inflated debt, is exploitative. Thus the women become victims during that period of debt-bondage. I was particularly concerned that the current slavery and debt-bondage frameworks did not capture the exploitative practices that are less explicit and physically violent, yet just as powerful at controlling the debt-bonded victims. Discussions followed with participants regarding whether debt-bondage should be considered exploitative in itself and the most effective legislation under which to convict the debt-bondage holder. Furthermore, I wished to pursue the discussion of whether some debt-bonded victims, in escaping their original oppressive environment, were in fact ‘better off’ in their debt-bonded arrangements. Anne Gallagher, in our discussions on prosecution of those who hold people in debt-bondage, said:

*Debt bondage is illegal under Australian and international law. People have absolutely to be prosecuted for violating these important laws. [Then] you need to have a separate discussion on how unfair the world is; how desperately unfair the world is to the point that people are actually better off putting up with that kind of treatment. Our counterparts in a South east Asian country were involved*

*in a raid in a factory, with kids, Burmese, probably getting a dollar a week and locked up etc., and people were saying they are better off there. And, in a technical sense, it is quite possible it's true. But I find that to be a separate discussion. And that is also what I hate about this discussion I find it intellectually sloppy. I hate it that they shift of focus away from whether a crime was committed to the state of mind of the victim. It is very patronising.*

Gallagher expressed her frustration at the slippage of the debate from one about the prosecution of people responsible for criminal acts to one that puts the focus on whether the victim is in fact better off, despite being essentially a victim of a criminal act. In effect, she clearly delineated between the exploitation of the victim by the trafficker and the exploitation by the political-economic and gendered environments that may contribute to the vulnerability of the individual to exploitation and/or sex-trafficking. In response to my question as to whether we should consider the practice of debt-bondage exploitative in itself, irrespective of levels or types of physical or psychological exploitation that occur, Gallagher replied:

*Should we consider [debt-bondage] exploitative for what reason? If we are talking about [debt-bondage] in terms of prostituting the people who are holding the debt, then of course you should. Debt-bondage is illegal, so absolutely. Now the question of whether someone is being truly exploited in that situation, I think that's another [question]: that is one for society, one for them. In law, an illegal contract is an illegal contract.*

Debeljak also discussed her perception of the reality of debt-bondage.

*Your debt is never reflective of what has actually been paid for you to get to where you need to work. I mean, if the airfare included a small fee that reflected*

*someone securing your visa, covering the first two weeks of rent/food – but it's never that. It's fifty to sixty thousand per person per debt. How you pay it off isn't fair either. So I think my answer would have to be, in practice, yes, debt-bondage always seems to be exploitative, because of the terms on which the debt has been created and under the terms on which it has been paid off.*

I was particularly keen to speak to Larissa Sandy about her perception of the exploitation involved in debt-bondage. Sandy's PhD thesis was centred on female sex workers in Cambodia and had a particular focus on debt-bondage in the culture.

*I don't know whether or not there needs to be other elements in there that recognise it as exploitation, or we need to go further. Just because that woman has a debt, does that constitute exploitation? I think these are the questions we need to be asking ourselves. Is exploitation a good framework for us to be moving into, and what do we need to consider within this? I don't want to sound like a cultural apologist or a cultural relativist, and I'm not in any way trying to use culture as a reason to excuse a practice somewhere else, but when you do look at countries like Cambodia, there is no banking infrastructure like in Australia. A woman cannot go to a bank in Cambodia to get a personal loan. What is available are money lenders at exorbitant rates – 100 per cent interest minimum. The other option is a micro credit organisation. Their rates are almost as bad as the money lenders, but to access these sorts of schemes you have to have some sort of capital or collateral. Now, women going into these debt-bondage contracts don't have capital or collateral, but have immediate necessary need and the only way in which they can get that money is through debt-bondage. Now, I mean that is exploitative in a way, the social structures*

*and the social infrastructure that are pushing women into agreeing into these sorts of contracts, but what can we do in the time being? We need to go in and look at banking infrastructure. Until we have got that sorted, then maybe we need to reconsider how we are looking at these sorts of arrangements and also consider women's own views of them as well, because when women are agreeing to it and they are not seeing it as inherently exploitative, well, then perhaps we need to question our views of exploitation and what constitutes exploitation and consider that not only from our very privileged position, but from the women themselves, what they can [gain] access to. I think that needs to be part of the re-evaluation, rethinking and the reconsideration of what we do.*

Sandy then underlined the wider political economy that created the environment in which women often had no choice but to resort to debt-bonded arrangements to survive and feed their families. Evident in my discussions with Sandy and other participants were the effects of patriarchal practices that deny women access to property rights and free movement. These patriarchal practices, however, traverse the political and economic levels through to the institutional and everyday-acting levels. Thus, these practices contribute to the establishment of an environment in which women become vulnerable to sex-trafficking and the maintenance of an institutional level that provides structures such as brothels and nightclubs into which the women are trafficked. Furthermore, the patriarchal system through its normalisation of gendered values, norms and behaviours creates and enables the demand for the services of these women to flourish.

The possibility of pursuing debt-bondage, both in sex-trafficking and general labour-trafficking under an exploitative labour contract rather than under the slavery

framework was then discussed, as this had been mentioned by research participants early in the discussions. Evidence highlights the low conviction rates in human-trafficking using the slavery framework (UNODC 2006, USDS 2009). This was discussed in chapter 2 (table 2.3). Debeljak voiced her frustration, saying, *'We can't get convictions. The Wei Tang case was successful, but [the other cases] are all being appealed.'* She argued:

*Maybe in the meantime, you have to use those labour regulatory offences to their full potential, until we have got a clear idea of how we prosecute these [human-trafficking] cases successfully. We need to stop making it a profitable business, so in my mind, in that sense, the regulatory approach could be good, in that you are going to get more successful prosecutions, perhaps at a lesser level, in terms of lesser fines, shorter prison terms, but it's easier to get offences/convictions Maybe that is worthwhile.*

While Debeljak was in no way minimising the harm and exploitation that results from debt-bonded situations, she felt that pursuing these cases under a labour framework may be a more effective 'stopgap' in a system that is not currently effective in securing prosecutions. Sandy argued that an enhanced understanding of debt-bondage and sex-trafficking may result from using the frame of labour exploitation. Recall that Sandy suggested that the *'exploitation is happening through contemporary labour practices'*. She did acknowledge, however, that this approach may be at odds with various feminist groups who maintain that prostitution should not be viewed as work or labour. Zifcak felt that any consideration of prosecuting sex-trafficking through a labour regulation framework was inadequate.

*My own view is, to regard [debt-bondage] as some sort of exploitative*

*employment practice is completely and utterly inadequate to contain the problem. I have no difficulty with the idea that it should be framed within the broader context of slavery. I have no difficulty with that at all. Exploitative labour practice: completely inadequate! Totally inadequate!*

When I interjected at this stage to point out that pursuing the debt-bondage holders and traffickers through a labour framework may be the only way of securing more convictions, albeit, at a lesser sentence, Zifcak responded firmly with, *'I would not compromise on that basis; charge them with both and see what happens'*. Professor Zifcak's response reflects his belief that the practice of debt-bondage itself is inherently exploitative and closely akin to the practice of slavery. Thus, diluted strategies in an attempt to secure more prosecutions do not capture the slavery-like conditions and exploitation that occurs in debt-bondage.

Firmly embedded within the definition of human-trafficking, sex-trafficking, debt-bondage and slavery are the notions of consent, exploitation, choice, agency and force. These have been discussed extensively in chapters 3-5. It was vital to extend the discussion of these fundamental notions with the research participants as these notions appeared to contain central points of contention between various authors and advocates involved in the debate on sex-trafficking. Thus, this ethical philosophical approach sought to help clarify these notions with research discussants, particularly as they had worked with these concepts in both theory and practice and had encountered challenges when dealing with these concepts.

## 6.6 Sex-trafficking and the concepts of agency, choice and force

The concepts of agency and choice within the sex-trafficking situation are worth clarifying further. This will be followed by a brief discussion of the relationship between consent and force, which are intimately related. *The Queen v Wei Tang 2008* High Court case (section 6.4) explicitly brought these notions into legal and public debate. This discussion was expanded upon in the interviews, particularly the structure versus agency debate that is common in sex-trafficking discourse. I wished to explore how to move beyond the dichotomous structure versus agency frame to one that acknowledged the presence of both structure and agency in the reality of sex-trafficking. Furthermore, I wished to ascertain if transcending the simplistic dichotomous debate would have ramifications for counter-trafficking policy.

Sallie Yea, a lecturer at Charles Sturt University, experienced in research in human-trafficking, responded with a sense of frustration regarding this debate.

*Frankly, I am sick of this agency/victimhood debate. I think it's just a frustrating and pointless debate. Basically for me, agency is always expressed most forcefully under conditions of vulnerability and exploitation. There is no dichotomy: one is influenced by the other. Agency always comes to the fore in circumstances such as this, where you are facing really hard times and extreme vulnerability. So to me, it's kind of saying they are either victims or agents. It's not a realistic understanding of what goes on in trafficked women's lives over time. The responses and manoeuvring that they end up practising is always within the context of constraint that they find themselves in.*

Elena Jeffreys, president of the Scarlett Alliance, an NGO advocating for Australian sex workers, decried the arrogance and injustice of those whom she thought

detracted from the basic rights of a person to exhibit a sense of agency in whatever context they chose.

*It's been absolutely disgusting and horrific; the removal of agency from those individuals. Those people are human beings and they have the right to choose what work, within the social context, within which they live. They can choose to sell items on the side of the road for a meagre income, or build up a small business in the space of big business monopolies that are ever-standing in the developing world. They can choose to engage in factories, but that again is controlled and owned by big business monopolies with [the] majority of ownership within the West. They can choose to engage in sex work that allows them both to have access to travel and to have access to possibly a degree of social mobility that other incomes can't give them. The notion that because they also don't have the choice of living a life like a Westerner in a developed country, therefore that choice is somehow less valid, is, I think, a racist view that is coming from a Western lens and not coming from a view of sex workers in developing countries.*

Furthermore, Elena Jeffreys argued that migrant sex workers coming into Australia are '*participating in an innovative sector of work, where they are coming to another country and using their ethnic identity to create an eroticisation around sectors of our [commercial-sex] industry*'. Margaret Archer (2005), in her work on agency and structure (chapter 4, section 4.6), also recognises the creativity of individuals and groups who demonstrate a capacity for 'innovative responses' in the midst of their constrained situations (2005). Davies and Davies give two examples of women whom he perceives as operating within difficult situations, yet 'successfully

transiting the trafficking episode’:

I needed him to get here and to have a way of staying here, so of course I gave him the money, but what do I need money for? What I need is a French husband and papers. Once I have those, that bastard is history (A1, Albanian trafficked woman in Lyon, France, 1999). (2008, p. 122)

Get here, get fucking, get a husband, get the papers, get out. It is the perfect plan and works 100 percent. Only the silly ‘I am in love with him’ brigade can’t seem to manage it (Z1, Albanian trafficked woman in Lyon, France, 1999). (2008, p. 12)

As to whether the ‘successful transits’ of the two women mentioned above have led to increased capabilities for human flourishing and fulfilment remains to be seen. The strategies adopted by the two Albanian women in order to survive the environment from which they have come are likely to have harmful consequences (see chapter 2, section 2.3 and chapter 4, section 4.4). Sex-trafficked women, while adopting creative and often necessary strategies in order to survive, sometimes adopt strategies that should not be celebrated.

Sheila Jeffreys challenged the use of language in the sex-worker debate. She argued that basing the debate on terminology such as choice and agency ignores the fundamental systemic oppression against women in many countries.

*The language of choice and agency is neoliberal language. It’s extremely inappropriate for looking at systems of oppression and subordination. In fact, it has no relevance. If we are talking about supply countries, there is the hierarchy of gender. Then there is the fact [that] in those countries, cultural constraints*

*upon women are much more serious than in the West and they have extremely limited choices compared with their sisters in the West. In Thailand, girls were sold [into] prostitution by parents. Familial obligations exist etc. And, in brothels in India, one-third of the girls have been sold into brothels, often by their mothers. Sometimes they work alongside their mothers. What we have to understand is that there is no choice as such, or extremely limited choice in terms of the entry into prostitution of the women in the countries [from] which trafficking emerges. In Korea, the way the women are hooked in, is that women are given a gift by the traffickers, it could be a goat. They give it straight to their family and then immediately they are hooked, because they now have to pay it off. They are then trafficked into Seoul into huge brothels. There is no way out. I am saying this because we are getting so many women from Korea and we need to understand what has created that circumstance. So, to talk about whether they have chosen to come to work in a country to do prostitution makes no sense.*

Fiona David, a research expert on trafficking in persons, and researcher with the Australian Institute of Criminology, emphasised that it is necessary to recognise both exploitation and agency within sex-trafficking.

*The key question is where you draw the line between right and wrong and what's criminal and not criminal. It's a value judgement. There is no absolute right or wrong. It's purely a value judgement on what's exploitative and not exploitative and it's different for different people. And people aren't used to making these decisions. That's what laws are for. It's a social dictate for what's right or wrong. And I think this is an area where the lines are still being drawn.*

Rather than get stuck at this level of discourse, however, we need to progress to

a level of debate that explores what factors create the political, economic, gender and social environment in which girls and women often have no real choice but to enter prostitution in order to survive. From there it is not a long step to consider the sort of model of economic development would provide for fulfilling lives (see chapter 4, section 4.6). It is hard to conceive that such a development model would include the stunted agency available within trafficking or prostitution.

The notions of agency and choice are intimately related. With restricted choice comes restricted agency and this was emphasised in discussions with Sheila Jeffreys and Nancy Hanley, a former Programme and Research coordinator for the Kids Under Cover NGO. Hanley argued a similar case to Sheila Jeffreys', namely that if your options are so constrained, and survival is the goal, then choice is almost a moot point. *'If your choice is to starve, there isn't really a choice'*. Sandy, who focused on debt-bondage, noted the limited options women have who enter the industry.

*It is a very constrained choice – that's the crux of it. It's the ever-narrowing range of choices, it's not expanding, and that's part of global capitalism. We may think in the West we have an ever-increasing range of choice open to us. We can choose. But for people in the developing world, on the whole, that choice is constrained: ours grows, theirs shrinks.*

Sandy, in response to our discussion of adaptive preferences and my comment that a number of sex-workers rights groups insist that many sex workers from developing countries are happy with their work, but not their work conditions, responded:

*I think that the argument that's being made, with sex workers being happy with their work but not their conditions, is largely from [sex workers based in]*

*industrialised nations.*

While not wanting to claim to speak for the sex workers she had associated with and researched, she believed that:

*... their fundamental principle was 'we're doing this work: let us do it safely. It's not something we really want to do, but we've got very little choice, we've got family obligations etc. We have limited opportunities.' That's a very different statement to make than to say 'we're happy with the work, we're happy with the conditions'.*

Again, the role of the political economy and gendered environment that leaves the women with limited opportunities is emphasised in Sandy's work. Hanley also emphasised the role constrained choice plays in the choice of entering sex work by the girls and women she researched.

*A lot of people I interviewed in my research were above the age of 18 and thus would have considered it 'my choice' to enter into the industry. In fact, they entered sex work at age 12 and what choice do they have now? It's all they know. It's about opportunity. It is constrained choice.*

The notion of constrained choice affecting a person's agency is also important to discuss for another reason. Many sex worker advocates argue that women may not wish to be 'rescued' from conditions that may be perceived by many as exploitative. Thus, this wish is to be respected. It is important to delineate clearly between counter-trafficking strategies that place prostitutes at more risk of harm, such as the closure of brothels in countries where no support, welfare or alternative choices exist and the prostitutes end up in jail, only to be abused again, and strategies that close brothels and

offer women educational and other employment opportunities. Furthermore, self-reporting of practices in the sex industry is not necessarily an accurate reflection of whether exploitation is actually occurring (see chapter 4, section 4.6).

Sole reliance on false perceptions of victims can have implications for counter-trafficking and law enforcement. My discussions with senior law enforcement officers highlighted the current dependency on self-identification to authorities of abuse and exploitation. One suggested starkly: ‘*Unless the girls say they are victims, they are not victims*’. This underlined the challenge that the AFP faces in effectively conducting an investigation or facilitating the placement of suspected human-trafficking victims on a trafficking support programme Unless the victims communicate to the police that they have been victimised, little action can be initiated.

The notions of autonomous consent and ‘threat of force’ were a focus of intense consideration in *The Queen v Wei Tang* (HCA, 2008). Justice Hayne explored the notion of autonomous consent in this case and wanted to consider ‘whether the Commonwealth says that anything less than force or threat of force will be relevant in determining autonomous consent’ (*Queen v Tang HCA, 2008*). Keeping in mind Lukes’ third dimension of power in which less visible forms of force and power are present, discussants’ opinions were sought in relation to the determination of autonomous consent and the need to prove force or threat of force to secure a decision that autonomous consent was not present in the sex-trafficking cases within Australia. Only a couple of respondents were familiar with *The Queen v Wei Tang*. However, common among the participants’ responses was the need to clarify the notions of force, coercion, consent and exploitation in sex-trafficking. Consent will be discussed in more detail in the following section. Yet, significant differences existed as to what

constitutes these notions and the impact these elements have on informed consent and responsibility. Indeed, these conceptual variances among academics and practitioners from similar cultural and educational backgrounds highlight the challenges of attempting to establish a globally accepted understanding of terminology embedded within trafficking. Sandy suggested:

*You need to look at force and what constitutes force by that definition. Is it a very obvious force or coercion? That's one of the issues and problems that I see with a lot of trafficking research. The focus of human-trafficking is always on the more obvious forms of coercion. What I tried to draw out in my research is that some forms [of coercion] are not so obvious, not kidnapping etc. It may be much more subtle. You have certain structural factors that may be there. This is one layer that is limiting your choice. Familial obligations you need to meet, that is another layer as well. So, you have all of these. It's a very complex dynamic of choice and coercion that women do have in their lives and we also experience that as well. We may say we are fully autonomous, but we do have some constrained choices. Not all options are open to us. I would say what needs to happen is that we do need to bring (this concept) into the debate, but it needs to be done in a cross-cultural manner. It has to respect and understand culture, the country and the background where women are coming from if you're trying to recognise some of the factors that constrain women's choices. But, at the same time, this is where it will get tricky in the legal sense, you have to notice the woman's choice as well. You need to more clearly define force, and what actually constitutes that force by the legal understanding of that. We need to say, does that force need to consider other constraining factors that may be limiting women's choices and women's agency and their ability to consent as*

*well? It's not as obvious as either this or that.*

Larisa Cianciarulo argues that the cultural norms strongly affect the notions of force and coercion (2007). She suggests that, in many situations, poverty and domestic violence can propel people to accept risky terms offered by human traffickers. However, Cianciarulo says that, in countries 'where such dire economic need' is rare and social support services exist for victims of domestic violence, 'such actions are often judged to be free choices worthy of contempt rather than compassion' (2007, p.839). This fact, according to Cianciarulo, should 'lend strong support to the proposal that poverty and domestic violence should be considered as perpetrators of force and/or coercion that force an individual to subject herself or himself to a trafficker in humans' (2007, p.839).

### **6.7 Sex-trafficking, consent and adaptive preference formation**

Article 3(b) of the Palermo Protocol (2000) states that 'The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.' Thus, consent to 'the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs' is considered irrelevant if there is 'threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of 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' (Palermo Protocol 2000). However, as Raymond (2009) notes:

A definition of trafficking that is limited to fraud, force, coercion, deception, kidnapping and abuse of authority will not protect a large number of victims of trafficking and will allow the traffickers to use consent as a defence against prosecution. Because the traffickers control the trafficking, they also control the evidence.

In an attempt to expand the limited definition of trafficking to one that encompasses the more subtle and often powerful influences that affect a woman's decision to enter into a risky contract, I raised the formation of adaptive preferences, previously discussed in chapter 4 (section 4.6). If obvious threat, force and deception were absent, and women were entering into an exploitative debt-bonded or trafficked situation due to limited opportunity and other constraining factors, should this not be considered as influencing consent? In our virtual colloquium, I referred to the work of Amartya Sen and Martha Nussbaum (e.g. 1993), who contend that those living in persistent unfavourable conditions may accommodate or adjust their preferences to that contextual constraint. I raised the impact of adaptive preference formation on the notion of informed consent. It was important to explore with participants whether constraining factors and the formation of adaptive preferences should be considered when assessing if a woman freely consented to a debt-bonded and trafficked situation. I was particularly keen to hear challenges to my view that adaptive preferences constituted an important conceptual tool.

Elena Jeffrey remarked:

*It is this concept alone that has undermined the notion of consent within Australian trafficking laws and within the UN. It is an absolute crime against human rights that consent has been totally pushed aside as a possibility by*

*people who have experienced trafficking: that their consent should have an affect sentencing and the way laws should be viewed and should be implemented. It is a total undermining of those people who are doing what they are doing in their lives. I mean, I would refer to the work of Laura Agustin, who talks about people with a range of choices in front of them choosing sex work as an option, so they don't have to be part of the military industrial complex, they don't have to be part of the working for a multinational corporation getting totally screwed over, they don't have to be part of being criminalised when they join the union of their public service, they don't have to be part of having a male boss telling them the long hours they are going to have to work, and fight every minute for increased pay. The choices that a sex worker has within those contexts, within that context, is a greater degree of choice, than the choices that they would have if they entered into the kind of economic relationships that the West pushes upon those people, which is colonisation or in those countries that haven't been overtly colonised, the economic colonisation of their access to work.*

Thus, Elena Jeffreys viewed any consideration of the impact of notions such as adaptive preferences and constraining factors as diminishing the prostitutes' agency. Larissa Sandy also related the discussion to the complexity of individual women's situations that she researched in Cambodia. She described her PhD research as an attempt to: *'challenge a lot of dominant feminist frameworks, that view sex as only disempowering for women'*, thus regarding the women as 'victims' only. I sought Sandy's thoughts on the development and expression of adaptive preferences under unjust background conditions and the relationship to validating the status quo by participating in the commercial-sex industry. Sandy quickly pointed out to me that

these preferences sometimes challenged the status quo.

*Yes, it was the patriarchal, social order that defined the very relationships and structures of the sex industry. Very clearly that is the case, yes. But within that space, women were also able to challenge a lot of those dominant patriarchal practices as well, but it was still done in such a way that it did reinforce the patriarchal culture in the end run. It's very complex and very confusing, so while it could be read as an act of resistance, it was still reinforcing patriarchal culture, moral and sexual order and values.*

Thus, while women display 'resistance', 'agency' and autonomy in politically, economically, socially and gender constrained environments, the paths they choose from are still structured by the patriarchal social order in which they currently exist. It is important to acknowledge that the women are still making choices, however constrained, and they are still attempting to resist and challenge the patriarchal order, even if they end up inadvertently supporting it. Sandy insisted that this 'resistance' to the normal patriarchal order, in the form of sex-work, could be viewed as a '*potential point of disruption and fissure*'. This, she thought, could alter my perception of viewing sex-work as merely fortifying the patriarchal order. She suggested that:

*... they are challenging and attempting to disrupt the order, but as this is a new form of resistance, for the time they may end up reinforcing the structure, but this may be only until the space and necessary conditions are created to imagining a different kind of order.*

Sandy emphasised the significance of the act of resistance that women in sex work are demonstrating and the '*potential for transformation that it entails*'.

A different view came from Professor Hilary Charlesworth, Professor of Human Rights and International law and director of the Centre for International Governance and Justice at the Australian National University, who participated in discussions on the concept of adaptive preferences and their affect choice and consent. Charlesworth questioned the whole notion of ‘free choice’. She suggested that we are all constrained in various ways by schooling, parenting and expectations. So perhaps the concept of absolutely free choice is essentially meaningless, because of the constraining parameters we operate within.

The negative consequences of some strategies to address sex-trafficking were discussed earlier in this chapter (see section 6.6). Many advocates assert that unless the human-trafficking and sex-trafficking are situated within a human rights framework, harm will continue.

## **6.8 Sex-trafficking and human rights**

Much of the literature suggests that human rights should be at the core of any counter-trafficking strategy (UN.GIFT 2008, Piper 2005, Fitzpatrick 2002-2003, Amiel 2006). This was noted in chapter 2 (section 2.5). Human rights and human dignity, at a more theoretical level, were expanded upon in chapter 4 (section 4.3), where authors, including Jack Donnelly, argue that the social practice of human rights ‘aims to realise a particular vision of human dignity and potential’, thus institutionalising these in the form of rights (1989, p. 18). The need to move beyond an abstract right to a system that ensures the delivery of rights was, therefore, essential. I wished to explore in the virtual colloquium how most effectively to incorporate the human rights approach into sex-trafficking policy and legislation. I was concerned, however, at the lack of

practical guidelines on how to incorporate a human rights approach and human rights law in practice.

Charlesworth emphasised the strengths and limitations of international human rights law. Its great value stems from the provision of a common set of international standards that many national legal systems take seriously. This may provide a normative global framework within which national legislative bodies may sit. This relies, however, on individual nations voluntarily complying with the standards. The lack of direct enforceability is a challenge. We also discussed the problem that human rights are often perceived as a panacea, as salvation, based on the hope that this focus will provide special traction. One could not deny the power of moral pressure from the international community on individual countries to comply with international standards, but this could be problematic if tensions exist between internal and international priorities. Furthermore, the authoritative body of international law, being the UN Security Council, contains five permanent members with a veto. Thus, achieving consensus on international legislation is a challenge. Debeljak reiterated Charlesworth's concern with the enforcement of international human rights.

*The biggest problem everywhere is enforcement of rights. The problem is enforcement. Even in our own country, it's a problem. One thing I love to speak to students about is, 'Should law even be in the title of human rights?' You think without enforcement and obligations, and duties, so we really have rights? We might have rights, but where does the obligation lie? With law? With other individuals? At an international level, it's hard law, but at a domestic level, it's not enforceable. Is it law? So, it can be used as a policy [or] diplomacy tool, rather than a hard law. But I think, increasingly, the words resonate.*

*Increasingly, states are adopting frameworks of human rights. So it's not the only tool, but I think it's a useful tool.*

Similarly to Donnelly, both Charlesworth and Debeljak emphasised the normative power of human rights. The transition from aspirational vision to practical implementation was the challenge to policy-makers. Burnside, however, argued that a substantive vision of human rights, never mind a practical implementation, was lacking within Australia law.

*We don't justify human rights for ourselves though. Not in Australia, no. We don't have any coherent system of human rights protection in Australian law, so human rights in Australia are really just a nice idea. Fragments of human rights are protected, not because they are human rights, but because they are specific rights the law protects. And in that sense we don't distinguish between human rights of Aussies and the human rights of others – we ignore the lot.*

Thus, invoking human rights in an abstract form to defend treatment of foreign workers and those vulnerable to sex-trafficking compels us to refer to global human rights and not those particular to the Australian context.

Gallagher highlighted the often 'inadequate, incomplete and sometimes immensely problematic in human rights terms' responses to human trafficking (2009, p. 31). She argued that some of the challenges to make the human rights vision reality include national conflicting interests and use of the trafficking phenomena to further personal agendas related to immigration, the sex industry, national security and labour law. She argued, however, that:

These obstacles may be daunting, but they serve to underscore the strong

relationship between trafficking and human rights, and the fundamental importance of international institutions, including the human rights bodies, using the full range of tools at their disposal to hold states accountable for their actions and omissions. (2009, p. 831)

Thus, difficult challenges exist to the implementation of an effective human rights framework, both to prevent and to counteract sex-trafficking. It is important to remember, however, that it has never been easy to champion human rights to challenge oppressive regimes or unjust systems of economic, political and gender power. Nor is it easy ever to take on institutions that enable exploitative practices such as sex-trafficking to occur. Yet, for all that, the human rights framework and approach, thus far, seems to be the most widely supported ethical place in which to situate our understandings and responses to sex-trafficking. Furthermore, the power of narratives in the field of human rights is well documented (Benhabib 1990, Orford 2003, Schaffer and Smith 2004). Stories directly from those sex-trafficked helps raise the awareness of the issue, as well as an emotive response which may spur listeners into action. These narratives within a human rights campaign have the capacity to transcend traditional boundaries of sex-trafficking literature, highlight the critical points of vulnerability and help understand the diversity of experiences and identities that occur/reside in the sex-trafficking phenomenon. Yet as Schaffer and Smith rightly point out, ‘Whether or not storytelling in the field of human rights results in the extension of human justice, dignity, and freedom depends on the willingness of those addressed to hear the stories and take responsibility for the recognition of others and their claims’ (2004, p. 5). These stories, often of suffering, exploitation and survival, often circulated around world with global technologies, have the capacity to activate the emotional, affective and cognitive dimensions of the listener into an ethical

response. Yet, if the listener does not ‘recognise’ the other, or feel a sense of responsibility to act, the ‘story’ may essentially be unheard.

The environment in which sex-trafficking occurs is an integral part of any comprehensive discussion of sex-trafficking. Chapter 1 established that human-trafficking for purposes of exploitation is the main type of trafficking that is reported in Australia and that debt-bondage appears to be the most common form (see section 2.6). It is now important to consider the environment into which victims are sex-trafficked.

## **6.9 Sex-trafficking and commercial-sex industry legislation**

The commercial-sex industry is the market environment into which women are sex-trafficked. Contemporary criminology literature underlines the need to concentrate on the markets and market environments in order to counter human-trafficking (UNODC 2010, SOCA 2009). An exploration of the market and environment in which sex-trafficking takes place necessarily involves an investigation into the legislation that helps shape the environment and the demand for services provided in this environment. Thus, I sought the opinions of the discussants on how different commercial-sex industry typologies and market environments affect sex-trafficking demand.

First, I was interested in whether participants felt that the Victorian *Sex Work Act* (SWA 1994) helped create an environment uncondusive to exploitative practices and sex-trafficking. The SWA was previously referred to as the *Prostitution Control Act* (PCA) and respondents used both terms in their responses. I drew on three of the

SWA's major objectives and asked the discussants if they felt that the Act had achieved these objectives. These included decreasing criminal involvement in the prostitution industry, the protection of prostitutes from violence and exploitation and the promotion of the welfare and occupational health and safety of prostitutes (SWA 1994). If, indeed, criminals were not involved in the industry, the prostitutes were protected from violence and exploitation and their overall welfare was enhanced, one could assume that sex-trafficking would be unlikely to be occurring within that industry. The overwhelming reply from *all* research participants that responded to this query was that the regulation of the Victorian sex industry under the SWA had *not* decreased criminal involvement nor had it made conditions safer to work within. However, their reasons and motivations for reporting what they perceived as a failure of the SWA to achieve its stated aims differed. I was keen first to hear the voices of those who were connected in some way with the commercial-sex industry and/or operated a business within the industry.

Elena Jeffreys responded: *'The legalisation and licensing of sex work in Victoria has not improved the occupational health and safety of sex workers in Victoria'*. She cited the Law and Sex Worker Health (LASH) study conducted by Harcourt et al. (2010), in which sex workers under the full decriminalisation of the sex industry came out best in the Occupational Health and Safety study, followed by workers under the criminalisation model and, lastly, Victoria, under the licensing model. Her rationale was as follows:

*Licensing leads to a reduction in sex workers' access to occupational health and safety. Because it is over-regulated, it gives an overbearing and disproportionate amount of power to the bosses no other industry in Victorian*

*experiences, because of the extreme licensing that the sex industry has placed upon it, above and beyond what other industries face. Sex workers have less control of their workplace in the licensed brothel sector in Victoria than they do in any other legislative model in Australia.*

Furthermore, Elena Jeffreys, in addressing the second part of my question regarding legalisation decreasing criminal involvement, argued that:

*Crime is an artefact of the law. If it's not illegal, it's not criminal. So, what's happened in Victoria? They have taken an industry which was 100 per cent illegal, therefore totally run by criminals, and have licensed a very small part of it. When they licensed a small part of it, they also prevented people with criminal charges from being able to be involved in the small licensed part, so everyone involved in sex work in Victoria was effectively rejected, or did not have eligibility of entering into the privilege of becoming licensed or legal. So, everyone who has participated in sex work before licensing began in Victoria was excluded from that moment. So, then you had the white shoe brigade, who didn't know what they knew or what they were doing, setting up businesses in the licensed sector, who hadn't been involved in the sex sector before and didn't have criminal records. Everybody else remains the same. The industry has ostensibly remained almost the same, except the small part of it has become licensed. The licensing regime in Victoria has created more criminals than it has reduced. If I go to Victoria and I do private sex work from a hotel room and I haven't applied to have my name and address and public details exposed on public record, through the registration of private work in Victoria, then I too am a criminal. If I go to Victoria knowing I don't have any sexually transmitted*

*diseases, and have my regular health checks and have a certificate in New South Wales and borrow my friend's certificate so I can get through the door and work there, I too become a criminal. If I drive around my friend from one booking to another, I too become a criminal. So Victoria's system of licensing has created criminality among the sex work community and continues to do so. The notion that individuals are attracted towards criminality and we can just call them criminals, I totally reject.*

Evident within Elena Jeffrey's response is frustration with disjointed, piecemeal sex-industry policy that, if not adhered to, creates a criminal community of prostitutes.

William Albon, the Australian Adult Entertainment Industry spokesperson referred to the SWA as a '*bold social experiment*' but said:

*Has it succeeded? No, it has been a dreadful, dreadful failure. Has the Act failed in relation to one of the objectives to keep the criminal elements out of the industry? Quite clearly and very emphatically it has. What's happened as a result of regulation? You have had a burgeoning and a proliferation – it grew dramatically. When in 1994 the legislation regulated the industry, the crooks who were running it (some crooks were working in the industry) recognised they simply could not meet the requirements regarding the business act, and getting the licence, and many dropped out and discontinued. So, who came into the industry in 1994? School teachers, pharmacists, ex-police officers, accountants, businesspeople, who saw a business opportunity. Did they know much about the prostitution industry? No. Did they learn very quickly? Yes, they did. But, many who saw this proliferation of the industry and saw that they could not meet the tough tests that go with the licensing of the industry, elected to set up illegally.*

Albon went on to comment about the failure of the Victorian Government and its various bodies to deal adequately with the proliferation of the illegal sex sector.

*There are more than 400 illegal brothels in Victoria, and that's the figure that senior Victorian police officers have not denied. It's come about because there is not one agency in Victoria that is prepared or is willing to combat this proliferation of the illegal brothels. The cops that have marked it as a cost-shifting exercise said that the illegal brothels are an offence against planning laws; planning laws administered by local government. So it's the council who has to prosecute the illegal brothel operatives. Now councils across the state have been fairly effective in closing down the illegal brothels, they do that through the Planning and Environment Act, but they have no power to bring a prosecution against the operator of the illegal brothel ... For 15 years, a government agency administering an Act of Parliament [that] says it's unlawful to run a brothel without a licence and empowers people under the Act to do something about [it]. Four hundred illegal brothels, 15 years later and Consumer Affairs Victoria has not brought one operator of an illegal brothel before a court or a tribunal. That is dereliction of duty, it's negligence of a higher order. So, has the Act been a success? No, it's a dreadful failure.*

An investigation by journalists Nick McKenzie and Maris Beck for *The Age* underlined cases of 'under-age women working in illegal brothels in Melbourne's inner east and Richmond' (McKenzie and Beck 2011b). Particularly disturbing is that illegal brothels in Preston, Malvern and Thornbury continue to be run by a woman under investigation for running illegal brothels and bribery of government officials. Furthermore, during the course of the investigation by Richmond detectives, evidence

of Chinese crime syndicates involved in running ‘dozens of illegal brothels’, has emerged (McKenzie and Beck, 2011b). However, reports exist of council officials being subject to threats at home when attempting to shut down illegal brothels using planning laws (McKenzie and Beck, 2011b).

Sheila Jeffreys argued:

*Clearly legalisation doesn't work, because the major form of prostitution developing is outside brothels. Even if legalisation was a good idea (and of course we know all the reasons it isn't) [there] is the fact that only a tiny, tiny percentage of brothels are legal and the vast percentage of them are illegal. In Queensland, 25 per-cent of the industry is legal and 75 per cent illegal. Legalisation creates an illegal industry, because there are such massive profits. As you know, the trafficking cases found in Australia are in the legal brothels. They are probably in the illegal brothels as well, but we don't know. But the legal brothels themselves cannot be regulated, so as to make it safe for women because the activity is inevitably unsafe.*

Sheila Jeffreys underlined an important point: that trafficking cases are also found in legal brothels in Australia. Indeed, an investigation by McKenzie and Beck into visa agents involved in the sex trade, reported that ‘the two licensed brothels [are] linked to a human trafficking and sexual slavery enquiry’. Furthermore, these registered and government approved brothels have ties to organised crime (2011b). Thus, organised crime is linked to both legal and illegal brothels in Australia.

Former Federal Agent and United Nations adviser on combating human-trafficking in South-East Asia, Brian Iselin, supported the Swedish model in preference to that in Victoria. He argued that targeting male demand for commercial

sexual services was a vital part of an overall strategy to address sex-trafficking. He suggested that trafficking for purposes of sexual exploitation *'is the obvious result of our demand, inadvertent but obvious'* and thinks that the criminalisation of demand *'is the only reasonable way to go, given that it is the only part of the equation left unanswered'*. Iselin does not, however, reduce the concept of demand just to end-consumers of sexual services. Traffickers, employers, policies, legislation and the wider moral environment also affect the demand for services of sex-trafficked women. A major focus of this thesis is the issue of sex-trafficking demand. Thus, it is important to explore this element in more depth with the research participants.

### **6.10 Sex-trafficking demand**

Sex-trafficking demand was the specific subject of chapter 3. As I emphasised there, the consideration of demand in sex-trafficking needs to go far deeper than the visible, linear relationships between the trafficker, the end-consumer of sexual services and the sex-trafficked victims. Within this virtual colloquium, I wished to explore a wider conception of demand that included discussions on the actors, policies, legislation and industries that contribute to the environment in which demand for sex-trafficking flourishes. Iselin, in immediately drawing a link between demand for sexual services, sex industry legislation and sex-trafficking, drew on his criminal intelligence background and market analysis to support his argument. His argument as to why sex-trafficking flourishes in legalised and normalised environments is as follows:

*The first link is that there is still more demand in absolute terms. There is a gap in the market where potentially high returns can be made. (You would realise that where supply is short, but demand high and rising, it becomes more of a*

*seller's market and so price [equals profit] tends to be higher.) The second link into trafficking is in the area of sexual acts and behaviours that 'normal' prostitutes will either not allow or not endure. This niche market is perfection for traffickers – women in a trafficked position are the only ones not able to negotiate fully the terms of their labour, and become used in the perhaps more degrading and more dangerous roles within the system. The third link is simply that, as foreign migrant women become more common in one place, it is a rather simpler matter than to traffic women of that nationality to that destination. Volume of traffic equals a concealment opportunity for criminal networks. It is not always underground when it does not need to be: the relationships between trafficked and traffickers are sufficiently complex to make this unnecessary.*

Iselin emphasised the vital need for criminal elements to unload their human products into an established network of sex consumers to enable the criminals to reap substantial profits. Thus connections to the sex industry, brothels and pornography businesses will increase the overall profit. Marketing and advertising of the sex industry will consequently affect the sex-trafficking trade in this roundabout way.

Iselin also strongly supported the Swedish approach, which targeted the end-consumers of sexual services, yet did not criminalise prostitutes. However, any law that may be interpreted as violating the rights of the women to engage in prostitution and violating the supposed 'rights' of men to use the prostitute services is controversial. In discussion with Simon Longstaff, I raised this concern and asked whether he thought the Swedish law could impinge on the prostitutes' and consumers' rights. He responded:

*Yes, I do. There are many laws that have an ethical foundation – e.g. laws*

*prohibiting murder; which is based on the recognition of a fundamental (but not absolute) right to life. Laws of this kind give legal effect to ethical considerations. Other laws are enacted as a matter of prudence (e.g. ensuring that people all drive on the same side of the road). I am inclined to the traditional, liberal view that the law should only prohibit conduct that is harmful to others who have not consented to engage in that conduct. It may be argued by some people that the sex industry is so riddled with trafficked women (who by definition have not consented to be part of this industry) that the only way of addressing this wrong is to close down the industry as a whole. If that's true, if that is the only remedy, then you might be ethically justified in enacting a law to achieve this end (thus preferring the interests of trafficked people to those who have chosen to engage in the sale of sexual services). It could be argued that this reduction in liberty (for some) would be a reasonable price to pay. But that's not my preferred starting point. Before taking such a step, it would be necessary to determine the actual state of the industry and exhaust all other means by which trafficking might be eliminated. That is, one would only move to close down the industry if unable to weed out the incidence of exploitation.*

Kirby expressed his concern about the 'thinking behind the Swedish laws'.

*The problem is that it starts from a premise that sex is something to be discouraged and punished. When that moralistic attitude is taken, it leads to hurried negotiation on terms and police harassment of both sides.*

While Justice Kirby wished me to make clear in this thesis that the views he expressed in response to my questions were purely personal views and not necessarily the views of the UNAIDS reference group, he did draw on his experiences with

representatives of commercial-sex workers involved in addressing HIV. Kirby, in his experiences and work with HIV/AIDS, was worried about the impact the Swedish legislation could have on the health and well-being of prostitutes, particularly in regard to HIV/AIDS. He argued that the resulting police harassment and hurried negotiation that occurred from implementation of the Swedish model *'is decidedly bad from an HIV/AIDS point of view and commercial sex worker empowerment when it matters most'*.

Sallie Yea replied to my questioning in similar terms:

*I guess that I don't think criminalisation will get rid of the problem. It will just lead to alternative forms of manoeuvring. And that manoeuvring is the stuff I've been doing/working on in Singapore. It leads to worse outcomes for women who want to work in the sex industry. It almost, without exception, leads to worse outcomes for them.*

However, Sheila Jeffreys and Mary Sullivan, an academic formerly from the School of Political Science, Criminology and Sociology, University of Melbourne and author on sex-trafficking into Australia, felt that criminalisation of the users of sexual services, encompassed within a wider programme of support for women engaged in prostitution, had overwhelming benefits. Sheila Jeffreys particularly felt that an industry, which she perceived as inherently exploitative, should and could be closed down.

*In Sweden, police see prostitution as violence against women. The extraordinary thing is the industry has so many harms to it, and is such a source of social disruption. No one here wants to speak about it, do anything about it, and yet in Sweden they have, and what have they got? A few hundred people in prostitution*

*there compared to 17,000 in Australia. You can close down an industry, you can do it.*

Sullivan argued that we should:

*... adopt the Swedish model, which is now being looked at by other countries. Criminalising male demand along with pimps, brothel owners etc. and working to deter violence against women can only work if done in conjunction with proper strategies, career paths, support systems etcetera. We need structures for women where no violence is allowed or normalised.*

A study conducted by the Swedish Government, released in July 2010, explored the impact the Swedish model had had on the overall prevalence of prostitution and sex-trafficking in Sweden (SOU 2010a). The report argued that the ‘number of women in street prostitution decreased by half’ and there was no overall increase in prostitution in Sweden, despite neighbouring countries all reporting increased prostitution activity (SOU 2010a, p. 20). While this report has been criticised by various pro-sex worker writers, including Agustin (2010) and Persson (2010), the Swedish National Criminal Police maintain that ‘it is clear that the ban on the purchase of sexual services acts as a barrier to human-traffickers and procurers considering establishing themselves in Sweden’ (SOU 2010a, p. 9).

Interviewees including Valli Mendez (former coordinator of Project Respect NGO, 2007), Brian Iselin (2007), Mary Sullivan (2007), Wilma Gallet (founder and CEO of the Salvation Army Employment Plus and previous coordinator of a UK World Vision campaign on human-trafficking, 2007) and Sheila Jeffreys (2009) all suggested that there was a lack of adequate consideration of demand factors in the context of sex-trafficking in Australia. The lack of response included a lack of will

from government to address demand structures that have been legalised, in part because of their economic contribution and in part because governments were not being criticised by NGOs, churches and charities that were concerned about being seen as morals police (Connell, 2007). Iselin believed that demand for commercial sexual services was the major causal factor in sex-trafficking.

*Women are the products, and they get shifted around in and between shops as needed and demanded by the men and women trading in them, in response to what they perceive their clients (men) would like and will pay for. As men want more violence, so they get it. As men want different or certain races, so they get it. It's demand-operated. I adopt a pure economic definition that effective demand is a willingness to buy, coupled with a capacity to buy. This is where the popular categorisation of the three Ds (dirty, dangerous and degrading) comes into play. Where there exists a demand for people to work in these areas, there will be traffickers who sense profit and act to supply the services. These illicit markets exist where a demand cause is proscribed; for instance, where there are strict migration controls over certain classes of labour, where domestic law creates illegal but unabated demand, or where social mores proscribe certain acts. If we are to understand better the demand side, it is essential that we go beyond the simple individual demand proposition and better understand the appreciation of aggregate demand and markets in the minds of those running the businesses.*

Iselin suggested that it is the 'sellers' perceptions of consumer decisions that determine what services will be provided, in what quantities, and how resources will be allocated'. Iselin also claimed that traffickers will use pornography and advertising

to increase and shape demand for the supply they have access to.

Dr Gabriella Coronado, a complexity theorist from the School of Management, University of Western Sydney, drew parallels with research on drug-trafficking and the political economy in Columbia. Coronado suggested that: *'all the policies to reduce drug-trafficking ignore deliberately, because of the economic benefit of drug-trafficking, the demand in the US, Europe and elsewhere'*. Furthermore, she suggested that: *'the only way to make that business break down is to reduce that demand for that commodity'*.

Some participants were keen to highlight their opinion that there is no direct demand for trafficked services per se. Rather, it is the demand for cheap services that needs to be explored further. One senior investigator reported that *'[demand] will always contribute, but there is no demand specifically for trafficked victims. Anecdotally, there is demand for risky, unsafe practices, but we are not sure of the prevalence. But this is not the cause for trafficking'*. Associate Professor Andreas Schloehardt, from the TC Beirne School of Law, University of Queensland and coordinator of the Human Trafficking Work Group, emphasised the need to separate the demand for prostitution from the demand for services/labour of women trafficked for purposes of sexual exploitation, saying that *'it is vital'*. Yet, both Iselin and Ken Wolfe, a former police officer and coordinator of Planning Enforcement, Yarra City Council, Victoria, who had previously been involved as a witness in a Hansard Senate Committee addressing human-trafficking in Victoria in 2003-2004, strongly contested this point. Iselin insisted that:

*A critical point to be made is the inefficacy of differentiating between those who buy sex from trafficked women and those who do not. For the simple fact is that*

*those who buy sex do not care sufficiently about the identity or situation of the prostitute for this to become a useful distinction to make.*

Hanley strongly supported the idea of considering demand and even suggested, *'Do we honestly think all the men want an equal sex exchange?'* Brian Dow, the communications and advocacy officer for the Asia and Pacific Region International Labour Organisation, highlighted the growing scepticism among NGOs and academics regarding the term 'demand for trafficked women', which he assumed in the context of my research *'refers to men seeking commercial sex'*. Like other participants, he wondered whether the question should be *'is there demand for "trafficked women" for commercial sex or just demand for commercial sex?'* Gallagher warned against emphasising demand in our analysis of sex-trafficking. She suggested that many who focus purely on this approach *'tend to be associated with those who are feeling very aggrieved about the global sex industry, which they see as really dangerous'*. Other participants, including Vallins and Mendez, saw demand in broader terms of end-consumers of sexual services, but also the brothels, pimps and others who profited from the trafficking industry. Sister Stancia Vichie, former chair of the Australian Catholic Religious Against Trafficking in Humans (ACRATH), supported the view that demand should be considered in contributing to the overall trafficking phenomenon, but she highlighted the challenges that a group of religious nuns would face in taking on an industry based on sex, considering their vows of chastity and their general lack of engagement with the physical side of sexual relationships. Other participants suggested it is almost impossible to ascertain if there was a specific demand for trafficked sexual services. Yea suggested: *'no one really knows if there is a specific demand for trafficked sex workers'*.

The majority of discussants acknowledged, to some degree, the role demand plays in sex-trafficking. A notable exception to this, however, was Elena Jeffreys, who contested the point that demand has been neglected in consideration of trafficking. Moreover, she suggested that considering male demand as a contributing factor to sex-trafficking was ridiculous.

*The idea that clients in a developed country are creating the demand that makes people from a developing country travel there to do sex work is such a long bow, it's a joke. There is not an economic theorist on the planet that would put their name to that. It's absolutely pathetic. In fact, the concept of demand is worse than a distraction. It's just undermining, again, the notion that demand creates trafficking, and implicit within that idea, that women who travel don't have agency to make decisions about what they demand from their world.*

The majority of discussants acknowledged the influence demand had on sex-trafficking. Yet the thorny question of how to address this demand drew various and passionate responses. I challenged some discussants to explain why strategies to address demand for trafficked persons' services remained wanting in the countries where trafficked people's services are exploited. Fiona David replied:

*I think it's just about basic power differentials – who has power and who has money to fund projects and programmes. It would be very challenging to start thinking, well okay, we have policies that prohibit low-skilled workers coming to Australia or X country, or we have regimes of migration that differentiate based on country of origin or we have regimes based/discriminating on [the] basis [of] on skills that we need. I think it's just really fundamentally challenging. I think it's about power. I think it's about what people are prepared to challenge. It's*

*much easier to say something bad is happening over there rather than look at our own social structures and what we're doing.*

I was interested in exploring the point further with Gallagher, who had suggested that the working party of the UN on trafficking wanted to address the demand for services produced by the exploitation of trafficked persons (Pearson 2005). I asked her if countries that she had worked with, in her positions as trafficking adviser to the UN High Commissioner for Human Rights and in other consultant/researcher roles, encouraged policies to address their own demand. Gallagher replied:

*No, because they don't want to. That's the whole point. And my classic example of that is Thailand that maintains a huge illegal labour force that powers the Thai economy. The government has no economic interest in changing that situation. Absolutely not. Keeping them illegal suppresses wages. Also if there is another global financial crisis, they can sweep them all out because they are all illegal. It's completely within their interest to maintain this status quo. I think they consider trafficking is the worst excess. They don't like it, they think it's awful in fact But you know in the scheme of things it's just the worst of a much bigger thing The much bigger thing is quite okay.*

Gallagher's comments are akin to those of both Amina Sherazee and the Labour Institute of the General Confederation of Greek Workers (see chapter 5, section 5). In an illegal, disposable workforce, wages and conditions can be reduced, and governments can maintain an ability to control the flow of labour into a country, depending on its economic and labour needs or demand at any time (Gallagher 2009, Sherazee 2009). The Victorian Government receives benefits from the commercial-sex industry in the form of licensing fees and redistributed taxes. The relationship that

exists between the Victorian Government and mainstream financial institutions enables the growth of the prostitution industry through the provision of loans and tax incentives (Sullivan 2007, p. 33).

Yea, in our discussion of demand, emphasised a third kind of demand, which she described as a community or public demand, being the '*willingness to buy products produced by trafficked labour*'. Although Yea suggested that a general lack of awareness of our complicity existed due to extended supply chains, she contended that this willingness to buy 'tainted' products could be extended to the commercial sexual exploitation inherent in sex-trafficking. Yea related the following story to emphasise an even larger type of demand occurring at the state/supplier level.

*There are around 300,000 or 400,000 unskilled male migrant workers at any one time in Singapore, South Asia and Thailand. In order to ensure that these men, who are often on two, three or four-year contracts, don't engage in relationships with Singaporeans, the state either facilitates or turns a blind eye to migrant women in prostitution to service these men, many of whom are actually trafficked.*

Thus, the demand by the group of workers for migrant prostitution, which in many cases involves trafficked prostitution, is 'enabled' at the government level. This is to ensure that the wider political-economic and social objectives of the nation are met. Zifcak, in response to my discussion of demand:

*We are talking about demand for trafficked people and, you know, it follows logically if there was no demand for trafficked people, there wouldn't be any trafficking. So, sensible policy responses to human-trafficking would have to deal with push factors and pull factors and demand factors too. Now, having*

*said that, those demand factors could be incredibly difficult to both identify, and even if you identify them, to deal with them. Where it is not so difficult, perhaps, [is] if you are looking at unscrupulous employers, engaging people on exploitative terms and that you can outlaw through all sorts of workplace legislation, that's not so hard. But if you are looking at, to take the obvious example, demand for prostitution services, maybe even worse, demand for prostitution services which involve even greater exploitation of the women concerned by virtue of demand for some violent sexual activity, I don't know what to do about it. I don't know what you would do about it.*

The responses from the discussants emphasised the complexity and dynamism of the sex-trafficking trade and the actors who operate within it. Operating from a purely national strategic response, rather than a regional or global paradigm, may contribute to consequences that result in increased harm to those most vulnerable to sex-trafficking. Furthermore, to address sex-trafficking demand, we need to implement strategies to address the global, wicked, dynamic, attitudinal and behavioural factors that affect the demand chain.

The previous sections in this chapter have discussed core principles and issues related to our understanding of sex-trafficking. It was important now to focus discussions on strategies to address sex-trafficking and challenges to implementing these strategies. This will necessarily involve a discussion of both policy and institutions that formulate policy to counter sex-trafficking.

## **6.11 Policy formation and organisational implementation**

Policy formation is not independent from the wider political-economy, gender and cultural environment in which it is formed. Furthermore, institutional structure and process affects any policy formation, including policy related to the environment in which sex-trafficking occurs. Thus migration policy, labour policy and sex industry policy will be influenced and constrained by the organisational body or institution that designed it. Nicole Jones et al. (2009) describes a policy as, ‘a plan of action, usually based on certain principles and decided on by a body or individual, designed to administer, manage and control access to resources’ (2009, p. 4). Julius Court and John Young (2006) contend that the journey from research to policy is influenced by multiple factors, including socioeconomic, political and cultural environments, the relationships between research communities and policy-makers (which necessarily involve power, knowledge and competing discourses) and the credibility and framing of the evidence. Creators of policies to address sex-trafficking are also influenced and/or constrained by factors that affect their perceptions, will and ability to address the trade in an effective manner.

A crucial factor in policy formation is the ability to deal with unintended consequences and second- and third-order effects that may be exhibited in the immediate or longer-term. Unless strategic planning, funding and the intellectual ability is fostered to deal with the increasing complexity of policy formation in a global environment, the outcomes of a policy are likely to be inadequate. Thus forming effective policy to deal with a complex issue may need to be preceded by an organisational change, in order to create a culture and ability to transcend constraining boundaries embedded within organisations. The institutional management structure and culture needs to be explored to identify systemic and procedural constraints that may negatively affect their policy-making. The mediatory bodies and the environment

they operate within are strongly influenced by the political-economic level and tend to reproduce the current status quo. Policies and organisational bodies need to be visualised within a wider global framework so as not to miss the subtle, yet often powerful, interactions and relationships that impact strongly upon sex-trafficking policy formation.

UNODC claims that in the global arena of transnational organised crime, there exists 'a fundamental mismatch between the nature of the issue and the body assigned to deal with it' (2010, p. 30). Alastair Milroy (2009, p. 3), a former CEO of the Australian Crime Commission, claims that:

Traditional law enforcement tends to operate in a silo, with existing internal resources, without seeking the expertise of other law enforcement agencies, academia or the private sector. Turf wars between state and federal agencies are common and information sharing of intelligence is complicated due to a lack of trust and long-standing police cultural barriers.

I sought opinions on the ability of our systems and policies to deal with global challenges generally and sex-trafficking specifically.

Black explained that:

*Public policy is often not well-formulated when it comes to dealing with complex systems. Partly because it tends to be cross-jurisdictional, interagency involved and they don't like that. It's outside my silo. Hang on, if you silo up this problem; no chance. If it's a complex problem; for sure, no chance. It's not just a legal problem. It doesn't manifest as any one of these problems. It crosses all these boundaries; it's a social problem, policing problem, it's a criminal*

*problem, court problem – problems in so many different dimensions. It doesn't mean that it is unmappable. It just means that it's a patient task doing that.*

Julian Burnside concurred with Black's concern regarding transnational challenges.

*Most countries aren't well-equipped to deal with transnational crime, because enforcement methods tend to be restricted to jurisdictional boundaries and the application of laws tend to be restricted to jurisdictional or territorial boundaries.*

Participants responded strongly to this issue of uncoordinated and ineffective monitoring, investigation and enforcement of the Victorian sex industry into which women are trafficked. Ken Wolfe claimed:

*It's very frustrating! We visit [legal and illegal brothels] and find out what people are doing. We are getting new names etc, look for alarm bells, pass the information on, but nothing happens. We pass information on to the Department of Immigration and Citizenship (DIAC) that somebody can't speak English, is producing a passport for identification - Alarm bells – straight to DIAC, but [DIAC] say they've got a student visa. But I say, they are working in a massage parlour and haven't been to school for six months. But DIAC say, 'They've got a student visa and they are allowed to work'. There are unhealthy relationships between the industry and those charged with enforcing the industry.*

Wolfe was generally more critical of the overall coordination between the law enforcement agencies, licensing authorities, immigration agencies and councils. He suggested, *'It's all hit and miss'* regarding strategies in Victoria and, *'We aren't*

*monitoring the legal or the illegal sector at all. No one is doing it. That's why it flourishes'. Wolfe also highlighted the perception of the police, who consider the presence of illegal brothels:*

*... as a planning offence. [It] is seen as a victimless crime, but they have no idea of [the] circumstances of people working in there. It's not seen as a priority. It's never going to jump out at them. The investigations don't go deep enough.*

While Wolfe expressed his frustration at the lack of depth of investigations involving illegal brothels by police, he acknowledged that the current system, which regulates the legal and illegal sex sector, is inefficient and problematic. Having local councils, state police and the Department of Justice and Consumers Affairs all involved may lead to dissolution of responsibility and confusion regarding who is responsible for what. Wolfe suggested:

*[The system] will just continually perpetuate itself, because we make it so easy for the unscrupulous to exploit the system and exploit women. Plain and simple. It's an absolute cash cow. There is a lot of money and it's all cash, it's all cash, and that's why it will go on, unless we do something.*

Here I must acknowledge that Ken Wolfe himself has since been subject to criminal charges for taking bribes from two men associated with criminal syndicates operating illegal brothels in Victoria. He is currently serving a three year jail sentence. In a statement by Wolfe to 'The Age' journalists Nick McKenzie and Maris Beck, he acknowledged his own failure to uphold justice and reiterated his belief that the brothel regulation system was a failure in Victoria (2011a).

*Something good has to come out of this [the investigation of his case]. The*

*problem is huge and Victoria is not doing anything about it. I did the wrong thing and I should pay a price. But I am part of a bigger problem that no one is doing anything about. The laws must be changed.*

During the course of the trial, counsel revealed that Wolfe was a gambling addict and the proceeds from his crime were used to fund this addiction.

The role of policy and legislation upon legal and illegal markets has been emphasised by Henk van de Bunt and Cathelijne van der Schoot (2003) and Ernesto Savona et al. (2004). A report by the Directorate General Justice on trafficking in human beings contends that the task of policy developers and researchers is, ‘to identify those legislative elements that contribute to crime waves and to close these gaps through targeted interventions’ (2004, p. 12).

It would be inadequate, however, to leave the discussion at the level of policy, as the actual *regulation* and *enforcement* of policy has a critical role in the prevention of sex-trafficking. Donna Hughes suggests that ‘the stroke of the regulatory pen may be mightier than the law-enforcement sword’ (2010). Yet unless the legislation, regulations and policies are adequately funded, resourced, monitored and enforced, the stroke of the pen may be a waste of ink. Moreover, the consequences of unenforced or poorly enforced policy may contribute to an environment that is more conducive to criminal behaviours and a societal acceptance of criminal behaviours. H. Richard Friman and Peter Andreas (2009, p. 1) argue:

The gap between the state’s metapolitical authority to pass prohibition laws and its ability to fully enforce such laws is the space where clandestine transnational actors operate. The illicit global economy is defined by and depends on the state exercising metapolitical authority to criminalise without the full capacity to

effectively enforce its criminal laws.

Zifcak, in turn, emphasised that poorly enforced law and law that is perceived as essentially ineffective may lead to a general disregard for the ‘rule of law’.

*You won't get respect for the law, unless it actually means something and people see it's worth something. It has to work, people have to see that it's working and people have to believe that the law is not only important, but fundamentally just and most times it is, but in a substantial minority of instances, it's not.*

Thus, the vital need to monitor and enforce any legislation targeted at sex-trafficking was stressed by discussants in the virtual colloquium. I will briefly discuss the role the political-economic level plays in sex-trafficking as well as the problems in attempting to challenge global injustices directly at this level.

## **6.12 The political-economy and sex-trafficking**

Research participants identified aspects of the global political economy that contribute to the rise of the human-trafficking phenomenon. Elena Jeffreys underlined the effects of globalisation that create conditions in which people have constrained labour and migration options. Zifcak urged us to question why people live in conditions that make them vulnerable to making risky migration journeys to strive for survival, escape violence, support their families or achieve a better quality of life. He argued, *‘Until we deal with the international political, legal, economic framework around refugee and immigration problems, globally, then I don't think we'll get too far with this problem’*. Similarly, Sandy drew an intimate link between human-trafficking and global capitalism. She asserted, *‘It's not until you fundamentally change the current*

*economic system and structures that you are really going to see any change*'.

Virtual colloquium participants, in the main, suggested that the current global political economy is intimately related to the creation of an environment in which people enter into risky migration journeys. Furthermore, it is also intimately related to the creation of an environment in which societies are willing to commodify and consume cheap, vulnerable and malleable services of trafficked persons. The perception of a person as a commodity, to be consumed within the global political economy, will be discussed later in this chapter.

### **6.13 Criminal justice, migration and law reform**

According to one senior law-enforcement investigator who participated anonymously in the colloquium, sex-trafficking was '*...the most challenging area I have worked in*'. This comment launched the discussions into the challenges criminal justice intermediaries face in dealing with human-trafficking and sex-trafficking into Australia. This particular investigator's comment was telling, considering his extensive experience with sexual assault crimes. The fact that trafficking was a victim-based crime and investigators had to rely on victim testimony was highlighted by discussants.

One officer underlined the difficulty in dealing with people who '*do not see themselves as victims, thus we often can't proceed with a case*'. He discussed the fact that many sexual assault victims want justice, yet, with sex-trafficking victims, the victims are less likely to talk and to self-identify as victims. It was also noted that '*having to deal with a person/human being, not hard evidence, like drugs*' was

challenging. The senior officer also highlighted some differences between labour-trafficking and sex-trafficking and the impact this may have on effective prosecution and deterrence. *'In labour-trafficking, it is easier to recuperate earnings from the illegal business. With sex industry trafficking, it is more difficult to recuperate monies as [there are] no records etc.'* While a broad range of Commonwealth legislation exists that can be used to recover unpaid entitlements to labour-trafficking victims, the lack of accurate records in sex-trafficking cases presents a challenge to pursuing illegal profits in such cases.

The investigators noted the challenges of getting hard evidence to help in the prosecutions. One agent called on his experiences with rape cases in which *'you can generally get corroborative material'*, but then contrasted the problem with *'brothel workers who see numerous customers'* and cited the difficulty in getting corroborative evidence. Furthermore, the significant difficulties in investigating sex-trafficking cases were compounded by the challenge in gaining the trust and cooperation of foreign sex workers who have been victimised. In our discussions on transnational crime and how best to address it, one officer suggested that the *'only long-term deterrent is prosecution'*. She also asserted that *'higher level organised crime'* does not appear to be involved in the trafficking cases into Australia, but there are *'likely links with organised crime in source countries'*.

Wolfe, drawing on his experience with law enforcement and council regulation dealing with the brothel industry, recommended the establishment of a dedicated government department that deals with this sector. This would be in order to address the ineffectiveness of current monitoring and enforcement and *'unhealthy relationships between the industry and those charged with enforcing the industry'*.

Furthermore, Wolfe believed this may help establish that people who want to work in the sex industry have made a considered decision to do so, and are not under some form of debt-bondage and coercion. The establishment of a dedicated unit to address the sex industry in Victoria is supported by Zana Bytheway, executive director of Job Watch Inc, which is a community legal centre specialising in employment law and exploitation. She proposed:

*People could come anonymously and could report their experiences properly, enabling us to have a better understanding and mechanisms in place to assist them. We could then make referrals to appropriate authorities. I often find when things are so unruly and out of hand, having one central organisation that is well known and that people can turn to, can make a real difference.*

In June 2010, after these research discussions took place, a Victorian State Parliamentary inquiry into people-trafficking for sex work emphasised the ‘clear and close connection between sex-trafficking and the legal and unregulated industry’ and recommended that ‘the Government should establish a whole of government Sex Industry Regulation, Policy and Coordination Unit’ (2010, p. 5). In addition to the call for a coordinated unit to address the sex industry environment into which women are sex-trafficked, some research participants highlighted the difficulty of proving threat, force or coercion in human-trafficking cases. This has been attributed to many of the cases being strongly reliant on victim perceptions and testimonies. This issue of proving force or coercion was discussed in section 6.6. The senior officer voiced his support for the ‘trafficking support programme’, which gives women a 45 day period to help recover from their ordeal. He suggested that this may help them cooperate in prosecuting cases and to identify the exploitation to which they may have been

subjected.

While criminal justice should be one of the arenas from which we address both prevention and strategies targeted against sex-trafficking, some suggest that this main focus remains problematic and inadequate to address the problem (Iselin 2006, Richards 1999, Schnierer 2010, Woodiwiss 2000). Zifcak commented on the need to address the deeper causal mechanisms that contribute to the trafficking phenomenon. *'I agree, we should go after the bad guys, but in going after the bad guys, we are just dealing with the symptom. We are getting nowhere near the global causes of this and a whole range of related problems.'* Tactically, Wolfe recommended that any planning scheme should make it mandatory that massage centres have to be registered with a public authority. The literature highlights the use of fronts such as massage, sauna and beauty therapies for illegal sexual services (Townsend 2011, Farrer 2008, Lan 1986, Zaitch and Staring 2009). Furthermore, Wolfe suggested the allocation of authority cards or registration cards to practitioners who are qualified to work within the massage establishments.

Iselin emphasised four main policy areas that have an affect the decisions of 'entrepreneurial criminal sellers'. He situated the concept of demand firmly within these areas. 'Traffickers procure and supply in anticipation of demand, as well as attempting to create demand by push methods including pornography and advertising' (Iselin 2007). Thus, the expectations of future demand for services are very strongly linked to the criminal elements' decisions on types of services to provide. The presence of a legalised environment enables easier concealment of the illicit activity, whereby the trafficked woman becomes almost invisible in the crowd of legal prostitutes. Iselin argued that *'... clustering behaviour to boost sales explains in part*

*the prevalence of trafficked women in existing red light districts and legal brothels*'. The search time for buyers is reduced in this legalised environment, thus increasing the efficiency of the overall process. Furthermore, Iselin suggested that, in the main, sexual services for the buyer are a luxury, thus any policy that increases inconvenience or effort in actually locating a sexual service will *'take many buyers out of the market'*. Thus *'cogent human-trafficking policy should seek to drive up search times for buyers'*. This ultimately affects the demand for services in a market into which women are trafficked. Iselin, in his strategy to specify sex-trafficking demand, suggested policy formation that *'enforces protection'* of any market from the entry of traffickers. He also emphasised the vital role that unions, employer groups, industry and corporations play in the formation and application of anti-trafficking policy.

The nexus between human-trafficking and migration, including migration for labour, has been addressed by many authors and organisations (IOM, ILO 2009, Gallagher 2008, Elena Jeffreys 2009). Davies and Davies (2008) suggest that many of the harms associated with trafficking in the European Economic Area (EEA) could be diminished through better migration policy. I was keen to explore views on the link between migration and sex-trafficking, particularly in the Australian context. Furthermore, I wanted to ascertain if better migration policy would help to reducing the harm.

Nina Vallins, former director of Project Respect (an NGO supporting women working within and trafficked into the Australian sex industry) replied:

*There is a certain logic, which is quite appealing in saying its immigration. Clearly people want to migrate for [the] purpose of labour. This desire and need to migrate is exploited by traffickers. It is logical to say if we make it easier to*

*migrate, then people won't be vulnerable to brokers and won't end up in situations of exploitation. While it sounds logical and intuitive, I don't think it's correct. I certainly think that migration should be easier.*

While Vallins supports more easily accessible migration, she questions the 457 visa scheme set up by the Australian government, which addresses the *'mismatch between [the] desire to migrate and the demand for labour'*. She claimed that the 457 scheme contributes to an easily removable and malleable workforce from which governments benefit and *'often you just end up with people on those visas being exploited'*. Vallins argued:

*Making it easier for people to migrate doesn't address the root of the problem. You've got to look at the core problem within the trafficking paradigm and that's the exploitation. It's not just migration; migration is one part of it. There have been a number of migrant worker programmes in the Philippines, but there are still a number of Filipinos being exploited. Another thing we hear, 'If there was just a sex worker visa for sex workers, who all want to come to Australia because the conditions are better etcetera, than where they've come from, i.e. better wages; if we just have a visa class for them to come here, they wouldn't have to be exposed to traffickers/brokers to get here'. But, okay, initially they may not have to come through brokers to get here, but how would they organise the work from their home country? You are just changing where the exploitation starts.*

Elena Jeffreys, however, asserted that visa arrangements must be addressed and that we must introduce *'global visa arrangements'* into our discussion of human-trafficking if we seriously wish to address the issue. She maintained that:

*We are just totally talking in circles if we don't. There is just so much discussion about trafficking. It's so esoteric and pathetic and totally beyond anything that would be of use to sex workers and continues to stigmatise the marginalised. It ignores the practicalities of preventing trafficking.*

Andreas Schloenhardt suggested that we needed to 'explore creating more legal avenues for sex workers coming into Australia' and argued that immigration policy is vital in countering human-trafficking. In my discussions with Anne Gallagher, former Special Adviser on Human Trafficking to the UN High Commissioner for Human Rights and technical director of the Australian Regional Trafficking in Persons Project, I focused on a quote from one of her papers:

Unless and until a radical shift occurs in the structure and orientation of current migration regimes, there will be a market distortion; more people prepared (or forced) to move than safe, legal opportunities are available. Traffickers and smugglers are a result of this anomaly. (2009, p. 834)

I was interested in how we could reorientate current migration schemes to reduce trafficking. Gallagher responded that this would not occur in our lifetime and suggested demographic and population changes over the next few decades could provide the impetus needed for governments to make such a radical shift in immigration policy. She asserted that, in the meantime, small shifts that governments allow and approve of may occur, but fundamental changes would be unlikely.

Another vital area to explore in the virtual colloquium was the growing global economic dependence on cheap, disposable workforces, in which the flow of labour and immigration could be controlled according to the needs and demands of countries at specific times. Periodic crackdowns and raids by the authorities helped control the

flows for short periods, yet this placed those desperate for work and an income in vulnerable situations (Dottridge 2007, Limanowska 2007). Moreover, the Polaris Project (2010) has argued that these crackdowns could dissuade those on temporary visas from reporting situations of exploitation, debt-bondage and slavery-like practices for fear of being deported. The role of, and benefits to, governments and other stakeholders in the regulation of migratory and labour flows was raised with discussants. Elena Jeffreys responded:

*Government makes conscious and deliberate decisions when deciding one-on-one approaches with visa regimes, when they are negotiating [with] one or another country. Clearly that's a result, often, of the relationship between Australia [and] another country. But when you look at things like the 457 visas, undoubtedly economic issues [are] at play, the idea of bringing in slabs of the workforce that can also be gotten rid of very easily at any one particular time. So, on one level [the Government] is conscious of trying to control the internal economy of any particular nation state, but, on the other hand, in the last 20 years, the Government has willingly put aside its ability to control its internal economy through processes of globalisation. They have willingly let go in the last 30 years of dollars being floated.*

In discussion with Elena Jeffreys, I raised a point she made in the Law Report on ABC Radio National, 13 May 2008. She had asserted that:

A fully thought out response to trafficking in Australia will include a range of prevention measures, including allowing women to travel into Australia on visas that they can access themselves without having to go through third-party agents and therefore be vulnerable to trafficking.

This ‘visa solution’, however, was contested during the Law Report by Jennifer Burn, director of the University of Technology Sydney Anti-Slavery Project. Burn argued that exploitation and slavery-like conditions also occur on legitimate visas. Thus, the visa category in many situations does not seem to be directly correlated with incidences of trafficking and slavery. Reports by Nick McKenzie and Maris Beck (2011b) support the assertion of Burn that women holding legitimate visas, including student visas to Australia, have been recruited to work in illegal prostitution. Indeed, McKenzie and Beck reported that the Australian Federal Police:

*... is investigating people linked to two state-licensed brothels as part of a human-trafficking inquiry that has already led to the charging of a woman for allegedly forcing Chinese students to work as prostitutes (McKenzie and Beck, 2011b).*

Thus, Wolfe, Burns, and McKenzie and Beck highlight the fact that legitimate visas do not necessarily protect against exploitation and sex-trafficking. In discussions about Burn’s comment, Elena Jeffreys argued:

*I think we should remember that all sex workers coming into Australia are coming in on a legitimate visa, and all the different research in the last 15 years supports this fact. It’s just different to the legitimate visa that you and I might get, because the sex worker is paying \$10,000 to \$30,000 for the privilege of accessing that visa. So Jennifer is right, sex workers who find themselves in trouble in Australia have legitimate visas. They just have to pay heaps to people who are prepared to exploit that situation, and on top of making people pay for them, giving them bad work conditions.*

Colloquium participants overwhelmingly supported migration policy

interventions as part of an overall strategy targeted at sex-trafficking. Vichie proposed a new visa framework and improved support services to address the problem. Both Elena Jeffreys and Vallins raised the issue of the 457 visas that facilitate migration journeys to fulfil the demand for labour within a market. Yet, exploitation occurs to people on these visas, and some research participants suggested that these visas merely create an easily removable and malleable workforce from which businesses and governments benefit.

Another important issue to explore here is the ability of criminal elements, including sex-traffickers, to adapt to legislative interventions. Changing strategies, supply workers and points of exploitation and profit are some things they are likely to do and do efficiently. They are not constrained by bureaucratic processes or procedures and are likely quickly to adapt to visa changes. Many foreign women and prostitutes from developing countries still need access to financial resources to pay for their journey into Australia, whether it is for a visa, the aeroplane ticket or basic financial support as soon as they arrive in the country. Some discussants asserted that new visa arrangements may deny recruiters, traffickers and all middlemen the opportunity to exploit the travel of desperate or illegal immigrants. Global visa arrangements, while sounding ideologically attractive, are likely to be in tension with larger political-economic imperatives of nation states. In our discussions, Schloenhardt acknowledged the challenges of introducing a migration strategy to address the vulnerability of foreign workers into Australia during the time of the global financial crisis. This may lead to more of a protectionist environment in which governments will be pressured to look after locals or suffer the consequences of losing power. Thus, an increasing number of those unable to migrate through regular channels might engage middlemen to facilitate their journeys. The focus on border control has the

most severe consequences for those most vulnerable to exploitation.

The inadequate monitoring of labour policy, including the lack of labour inspectors, and the fear of an employee when it comes to speaking up about exploitative practices, particularly when their work visa is tied to one employer, creates an environment conducive towards human-trafficking. Thus, a relationship exists between labour and migration policies. The ILO suggests that some economic activities operate outside the boundaries of formal law as ‘the law discourages compliance, because it is inappropriate, burdensome or imposes excessive costs’ (Trebilcock 2005, p. 4).

Iselin suggested in the discussions on labour markets, *‘Regulation and peer or industry self-regulation are also two fields of coercion that deserve attention in any future study on demand reduction’*. His emphasis was on demand-reduction strategies, where the introduction of policies into everyday industry practice could contribute to a long-term strategy in restricting entry points for traffickers to offload their human products. The normative influence of strategies informing everyday practices is likely to reach into the everyday-acting realm of the workers and their peer groups. This normalisation of socially acceptable behaviour among peer groups is viewed as a vital influence on how employers, workers and end-consumers behave towards other workers, including foreign domestic and sex workers (Anderson and O’Connell 2003).

The total market environment is important to consider when formulating strategies to address the illicit component of that market (UNODC 2010). The monitoring, regulation, licensing and taxation of the legal sector may affect the size and operation of the illicit sector. At the Serious and International Organised Crime Conference held in Melbourne in 2010, Victorian Chief Commissioner of Police

Simon Overland noted the role of the regulatory environment in creating a marketplace for criminals to operate within. Thus, in the context of sex-trafficking, policy regulations pertaining to the commercial-sex industry, the environment into which women are sex-trafficked, are vital to include in our discussions.

It may be helpful at this point to draw on a study by Transcrime, which maintains that levels and types of violence occurring within the trafficked sex industry market '[do] not seem to be strictly dependent upon the model of prostitution' (Di Nicola 2005, p. 131). The study suggested that within the 11 countries covered in the research, the models of 'regulationism' (indoor and outdoor prostitution is regulated by the state and how registration of prostitutes occurs) and 'new abolitionism' (the state intervenes to prohibit the existence of brothels, yet indoor and outdoor prostitution is not prohibited) appeared to produce an increased number of sex-trafficking victims compared with prohibitionist models. The prohibitionist models included models where indoor and outdoor prostitution were prohibited and clients and those involved in the prostitution transaction may be subject to penalties. The report emphasised that sex-industry legislation is only one factor that may contribute to the occurrence of trafficking into the industry and highlighted other factors including unemployment and strict migration controls. Furthermore, the report acknowledged that particular legislative typologies increased the difficulty of measuring numbers of trafficked victims, so the report needs to be read with this in mind. It is difficult to establish a clear causal relationship between prostitution models and numbers of sex-trafficked victims. No specific policy and enforcement direction is without risk, some consequences and opposition. A policy that may deter sex-trafficking of women into an industry may not improve the conditions for local women within that industry. Thus, exploitative practices occurring to women within the sex

industry may continue.

A number of recommendations regarding effective sex-industry legislation to reduce sex-trafficking were raised in the virtual colloquium. Albon lamented the current *SWA* in Victoria and suggested that it was in need of a '*thorough review*'. It is important to note, however, that in the Victorian case, some research participants reported that the industry and related *SWA* was not well-monitored or enforced, thus enabling criminal elements to operate with impunity. It is also worthwhile noting that Vanessa Munro and Marina Della Giusta (2008, p. 3) have reported that the regulatory/legalised prostitution model was:

... explicitly rejected by New Zealand, on the basis that a licensing regime would need extensive administrative and enforcement resources, and risked the creation of a two-tier industry, in which the legal side of the market would come under the control of big business and the illegal side would be populated by sex workers who are most vulnerable to exploitation.

Other discussants argued that the industry was over-regulated and this was the cause of the failure of the legislation to have any meaningful affect on exploitation and criminal involvement within the sex industry. A blanket criminalisation or abolition of the commercial-sex industry was opposed by the majority of the research participants because of its likely dangerous, unintended consequences. These consequences included increased criminal involvement, police corruption and the industry going underground. One noticeable exception was Sheila Jeffreys, who suggested that we should '*close down [the] sex industry in Australia*' due to the inherent exploitation embedded within the industry environment into which women are trafficked. Elena Jeffreys, however, recommended decriminalisation of the sex industry to improve the

conditions for sex workers generally and drew on the Donovan et al. (2010) study that suggested that sex workers benefited most in a decriminalised working environment. Indeed, a review of the New Zealand prostitution law, which decriminalised all aspects of prostitution, concluded that it:

... has been effective in achieving its purpose and sex workers are better off in a decriminalised environment. Increased rights have had a positive impact on their health and safety. They have more power in their negotiations in dealings with clients and management, and the law change has created an environment where they feel more supported by the legal system. (2010, pp. 260-261)

The Review Committee also noted the improved relationships between the police and sex workers, with sex workers being able to manage their work environment and customers more effectively and deal with violent situations with customers through legal channels (2010, p. 262).

Varied and passionate responses to the Swedish legislation occurred in the virtual colloquium. Participants, including Iselin, Sheila Jeffreys, Sullivan and Yea argued that this may be the most effective way forward in the fight against sex-trafficking. This is because it directly targets the market in which trafficking occurs, without criminalising the women and girls who, many due to constrained choices, survived within it. This legislation offered financial, educational and general support to the women who worked within the sex sector and offered a way out. Elena Jeffreys contended, however, that sex work is legitimate work and various constructs of abolitionist-influenced laws affect the human rights and freedom of the sex worker.

Many discussants were hesitant to recommend a particular sex industry legislation to address sex-trafficking. This, in part, may be due to the awareness that

illicit industries and criminals adapt and get around many policy initiatives, and that any policy would need to be part of a wider multi-pronged attack to address global sex-trafficking. Furthermore, the deeper issues of choice, consent, human rights, coercion and agency were raised during the discussions on sex industry legislation, and most participants were wary of intruding on the rights of women who expressed their willingness to work within the industry and the rights of customers to avail themselves of the services offered by prostitutes. It was also difficult specifically to target policies that may reduce trafficking into the sex industry if these same policies contributed to exploitation and harm incurred upon local sex workers who ‘chose’ to enter the sex industry. Iselin, however, asserted, *‘Any policy that allows price to fall, including legalisation of buying sexual services, increases demand’*. He contended that any public policy that increases search times, including reducing a market into which traffickers can slot victims, decreasing advertising and marketing of women by age or ethnicity to make access to these women more difficult and time consuming, has multiple benefits in the fight to counter human-trafficking.

#### **6.14 The everyday-acting level and sex-trafficking**

A genuine appreciation of everyday consciousness is perhaps of the most central importance for any assessment of intervention margins (Boulet 1985, p. 253). The everyday-acting level is vulnerable to powerful influences who seek to shape desires in order to profit. The lack of awareness and reflexive consciousness in some individuals, including sex-traffickers, end-consumers of sex-trafficked women, industry and individuals within the wider society often blinds us to the consequences of our actions. The end-consumer of a foreign prostitute often remains blind to the real

conditions that led a girl or woman down the path of becoming a prostitute. Society often remains blind to the condition of the trafficked woman, who is often portrayed as consenting adult or an illegal whore. Traffickers often remain blind to the reality of the harm they are causing; they only reflect on their profit and risk. Wolfe, in our discussions on sex-trafficking in Australia, asserted that:

*Society doesn't want to be hearing about this. We don't want to be hearing about it, and the menfolk who visit don't want to hear about it. They don't want to read a sign 'Is this person in servitude?' And that, unfortunately, is the way society has probably gone.*

However, the development of an awareness of self, of attitudes and behaviours that encourage an understanding of others, is an important step in the fight against sex-trafficking. Powerful forces in the wider political-economy, however, operate to frame the reality of sex-trafficking and debt-bondage as an illusion allowing traffickers, employers/brothel owners, end-consumers and society rationalise their actions. Recall in chapter 3, the IBIS World (2007) report assessing sexual services in Australia concluded that 'advertising seeks to eliminate the moral barriers a customer may have that prevent him or her from purchasing a sexual service'.

Black emphasised the importance of the attitudinal and behavioural elements of complex, contemporary challenges. Our perception of ourselves, others and the globe is intimately related to how we treat ourselves, others and our world.

*I think our challenge in the world is to stop reducing people to categories other than being a human person. We reduce them to technological categories, commercial categories and I think it's because we have done that in so many spheres of life, intruding on what we think human people are, not treating them*

*as individuals in their entirety, uniquely valuing in respect that we, in a sense, set up a world where this kind of stuff happens.*

The power of the political-economic environment, often wielded through institutional mediators such as marketing and advertising, which influences cultural, social and general norms, attitudes and behaviours, has been discussed in chapters 3-5. Particularly stark is the ability of these mediators to help shape preferences, wants and desires of the population within a frame of ‘individual freedom, autonomy and choice’. Nevertheless the deeper hidden agenda of those seeking to reproduce the current political-economic order remains silent. This shaping of preferences and desires is strongly present in the construction of human beings as commodities, whose ‘goods and services’ can be consumed in an apparent ‘win-win’ transaction. Black commented on the framing of behaviours in relation to human-trafficking.

*We have created a world where the commodification of people, of the human body and the human person has become extraordinary prevalent. I think that creates the right environment for demand, for all things that drive some forms of human trafficking.*

Similarly, Simon Longstaff commented on the reduction of the human person to

*‘some kind of commodity - carted from one place to another. In effect, those trafficked are reduced to being treated as nothing more than chattels. [They are] seen as an economic resource to be deployed at the whim of the ‘masters’ who control them’.*

Participants in the UN.GIFT conference also emphasised the commodification of the human person as an integral part of trafficking exploitation. Thus, education to

encourage our society to understand the dangers of commodifying human beings is essential. Indeed Pearson (2005) argues that changing public attitudes towards migrant workers is a vital part of any counter-trafficking strategy, and Anderson and O'Connell-Davidson (2003, p. 44) say:

*Unless governments do something to address the social devaluation of migrants, and their social, political and economic marginalisation, regulation may merely serve to reinforce existing racial, ethnic and national hierarchies in the sex industry and in domestic work.*

Many research participants emphasised the contribution that an education and awareness campaign could make towards the larger counter-trafficking effort. The importance of good role models and social media in the delivery of the message was felt to be a key determinant in the effectiveness of the message. Iselin emphasised the role of Australian males who *'reflect where Australian men should be today, not where Australian men were in the 1950s'* to help improve the attitude of future male generations towards violence against women. Iselin also suggested that:

*Information to potential buyers about the health impacts of sexual exploitation on women would go some way to dissuading some buyers out of the market, filling in the dots in their minds between their actions and the aggregate consequences of their action. Better information in the hands of buyers should not be underestimated in allowing them to act consciously on the dimensions of their own demand.*

Some respondents felt an awareness campaign targeted at actors who constitute the demand in sex-trafficking should be embedded within a wider 'violence against women' campaign. Tension was raised again in this area with regards to respondents

who felt all prostitution was a form of violence against women and others who felt prostitution was a legitimate form of work, and the exploitation and violence arose due to poor working conditions combined with the lack of rights for sex workers.

Black argued that, 'Our education system will need fundamental reform to develop the capabilities required to ensure that the millennial generation becomes the solutions generation' (2008, p. 2). In order to address complex, contemporary challenges, including sex-trafficking, Black highlighted distinctive capabilities that society will need to develop. The development of a core curriculum that develops skills – including inter-systems thinking, good judgement abilities, adaptive leadership skills, network mobilising skills, a developed meaning and emotional intelligence and a solid global ethic – is imperative if we are to address current and future complex challenges adequately (Black 2008, Helfetz 1994). This will equip generations to embrace complexity and challenge, cope with conflicts and diverse perceptions regarding solutions, accurately identify challenges and engage in root-cause analysis.

Zifcak strongly supported a multidisciplinary focus for university students. He emphatically supported a stronger focus on educating rather than training students in our education system, thereby leading to a greater interdisciplinary approach to learning and thinking. Furthermore, the inclusion of aspects of moral philosophy in our education system and ability to think more broadly about human rights and social responsibilities, '*which all of us possess and need to exercise*', should be an important part of comprehensive education. Interestingly, the focus in many Australian universities in producing market-ready students, may be perceived as creating cogs in the wheels of the current political-economic order, rather than laterally thinking, creative and socially responsible human beings.

## 6.15 Conclusion

This virtual colloquium provided me with a rich source of information that occasionally challenged, but also clarified and deepened my understanding of many conceptual, ethical and policy issues underpinning sex-trafficking. The aim of the virtual colloquium was to reframe the sex-trafficking discourse by clarifying conceptual problems and disagreements. I also welcomed confirmation, challenges and insights from the participants as I sought to fill conceptual gaps in both the literature and sex-trafficking debates.

At the outset, the participants' responses confirmed my belief that the ethical-conceptual approach to sex-trafficking remains the most effective way both to understand and to formulate policy to minimise harms. The participants - from philosophy, ethics and various other academia backgrounds strongly supported this framework, which embodies rigorous critical thinking. Automatically, key notions underpinning sex-trafficking, including harm, choice, agency, consent and rights enter into the conversation. Participants also felt that a more consistent policy foundation, based upon a rigorous ethical philosophical consideration would result from the ethical-conceptual approach. Seeking policy responses from across the labour, human rights, criminal justice, law and migration domains similarly aimed to assist in developing anti-trafficking strategies that would be based upon firmer ground. Furthermore, using this type of critical analysis would illuminate deficiencies in alternative personal and political agendas, which could then be more effectively challenged. The implications of policy responses on the agency, choice and rights of those involved in the industry, including prostitutes, users of sexual services,

businesses, governments and the wider society would automatically enter in the conversation. Importantly the discussion would also involve a consideration of the wider political, economic, social and gender environment. This is consistent with Boulet's approach (see section 1.6), which maintains that the dynamics, relationships and influences of situational and systemic structures on human behaviour needs to be part of a comprehensive analysis of social life.

The virtual colloquium also highlighted the critical divisions that existed between the participants at the ethical-conceptual level. These divisions were reflected in their positions on notions such as choice, agency, rights, consent and what was deemed to be the appropriate policy response to sex-trafficking. Exposure to these divisions provided me with an opportunity to explore opinions and stances and determine, with the help of the participant, the underlying sources of these opinions and stances, and how and if these differences could be reconciled in the wider debate. While the general opinion pointed to an ethical conceptual framework providing a firmer base upon which to challenge ill-informed, reactive and faulty arguments and corresponding policies, many of the participants suggested that power-based political and personal agendas often provided obstacles to moving forward in the sex-trafficking debate.

Different, but often nuanced ethical stances existed on issues related to sex-trafficking among research participants. This led to very different recommendations for policy interventions. Thus, while I believe that the ethical-conceptual approach is still the most effective way forward to inform policy at this level of debate, divisions and arguments will continue to exist. This may be related to an ongoing tension between political and economic perspectives as well as varied ethical stances on social

issues. This is likely to remain a challenge to future strategies to address sex-trafficking.

A need for conceptual clarity and an appropriate framework and language to address sex-trafficking was also voiced by participants. To express more clearly and represent what sex-trafficking, related practices and notions actually are, as well as to identify perpetrators and ‘victims’ of the process accurately, was seen as vital. Conceptual clarity on the notions of power and framing and conceptual clarity was developed with participants. Indeed, one participant, Anne Gallagher contended that the law related to slavery, for example, to be ‘one of the most powerful laws on the international statute books ... there is no room, in this context, for sentimentality or imprecision’ (p.248). Thus an appropriate concept and language to represent contemporary sex-trafficking practices more accurately and to ensure that effective and appropriate prosecutions take place was emphasised as important. Former High Court Justice Michael Kirby, in contrast, highlighted the need to be alert to those groups who co-opt the language of slavery. The use of frames that may obscure the truth of the problem under investigation and destroy the reality and complexity of the social issue under investigation was therefore discussed (see section 5.4). The political and economic perspectives that underlie our discourse, continued to be noted by participants throughout this colloquium. Thus the challenge remains to represent an issue accurately, such as sex-trafficking, which requires a ‘moral’ language to reflect the reality of the harms inflicted upon those involved (see section 4.2). This remains true even in a world where different moral perceptions, beliefs and agendas exist.

Participants noted that within a global political economy with patriarchal systems and gendered norms, values and structures, the concepts of choice, agency and

consent become blurred. Constrained choices and lack of agency combined with a demand for sexual services, often created by cultural norms and market forces, contribute to the conditions of a flourishing sex-trafficking trade. Some participants emphasised that this is the 'space' in which many women battle to survive. This reinforced the need for consideration of constrained choices and adaptive preferences in any discussion on sex-trafficking. Yet, the need to acknowledge women's agency was also recognised in the choices they made, albeit within a political economy and patriarchal society which limited their choices. Thus a consideration of these fundamental notions underpinning sex-trafficking must acknowledge the complexity of sex-trafficking and the fact that both constrained choice and agency can operate in the same space. The sex-trafficking debate cannot afford simplistic, reductionalist notions that do not represent the reality. A deeper exploration of the wider global political economy and cultural environment which put girls and women into this situation in the first place was firmly supported in the colloquium. Thus, the need to move beyond the dispositional focus to the situational and systemic was perceived as vital, to explore 'who' and 'what' created the conditions that support the existence of the sex-trafficking industry.

Strong responses were invoked from participants in our discussion on sex-trafficking legislation. These clearly demonstrated the passionate responses that this particular debate arouses. Yet, a lack of clarity existed on why some particular individual or group was more important than another when it came to the prevention of harm or protection of rights. The ethicists, philosophers and some academics, however, insisted on clarity at the conceptual level. Harm prevention was primary and was therefore logically prior to consideration of the other dimensions of legislation. Again, the importance of clarity at the conceptual-ethical level was reinforced during

discussions.

One overwhelming area of agreement existed among the research participants in the virtual colloquium. This was the belief that the legalisation of the sex industry in Victoria (under the *Sex Work Act, 1994*) had not improved conditions in the industry for the prostitutes, nor had it decreased criminal involvement in the industry. I had hypothesised that this was the case, after studying the literature and case studies. However the virtual colloquia strongly confirmed my views. The reasons why this belief existed varied among participants, but all felt there was enough evidence to show that the legislation had been unsuccessful in achieving its stated aims.

Addressing sex-trafficking demand is a controversial issue, and the discussions provoked varied and passionate views. Debate took place at the ethical-conceptual level with the philosophers, ethicists and academics and at the more practical strategic level with the police, activists and industry representatives. While most participants emphasised the need to address sex-trafficking demand, the notions of harm, rights, freedom and liberties and what is practically enforceable, also became part of the wider discussion.

Different opinions were offered by participants on priority areas to address. The problems associated with a complex, wicked, dynamic and global trade were emphasised, especially in relation to producing effective policy. However, all participants who engaged in this discussion agreed that policy and strategy needed to be wide-ranging and encompass the political, economic, social and gender realms, as well as the traditional agencies currently dealing with sex-trafficking. Boulet's framework was particularly helpful here to help identify potential points of vulnerability across all these levels and variables, thus avoiding limiting our

discussions to traditional fields such as criminal justice, law, labour and migration.

Overall, the majority of the virtual colloquial participants provided me with confirmation that an ethical-conceptual framework in which to consider and inform policy to address sex-trafficking is the best approach. Key concepts underpinning sex-trafficking could be unpicked and explored. Embedded within this ethical-conceptual framework was the need to regard the reality of sex-trafficking as dynamic, complex, multi-dimensional and interconnected with the wider political, social, economic and gender environment. However, while some participants strongly supported a focus on addressing the demand for sexual services generally, other participants felt this was not the best approach to minimising the harms associated with sex-trafficking. My consideration to address sex-trafficking in the context of demand was challenged by several participants. However, I maintain that addressing demand from a less dispositional focus and a more situational/systemic focus, whereby the political economy and culture which creates an environment in which demand for sexual services flourishes, still needs to be part of any comprehensive strategy to address sex-trafficking.

The final chapter will crystallise my key arguments throughout this thesis. First, that counter-trafficking policy directed at sex-trafficking must consider the wider political, economic, social and gender environment in which sex-trafficking occurs. This reflection on the environment must include a consideration of the demand by end-consumers, employers and traffickers for services of sex-trafficked victims *and* the factors that influence the actors complicit in demand. Second, our consideration of sex-trafficking must be grounded in fundamental ethical and philosophical understandings of human rights, morality and human well-being.

## **Chapter 7**

### **Conclusion and policy implications**

#### **7.1 Introduction**

In this thesis, I have made three central and connected arguments. These arguments emphasise the importance of the following: employing an ethical-philosophical foundation to give a firm base from which to consider notions that underpin sex-trafficking; a conceptual framework which acknowledges the wider political, economic and social environment in which sex-trafficking and the actors participate; and finally a greater understanding of the demand for services of sex-trafficked victims.

In this chapter I will clarify the argument I have laid out in the thesis and suggest recommendations to mitigate sex-trafficking and its associated harms.

#### **7.2 Thesis argument reviewed and clarified**

At the outset of this chapter, we must reiterate why sex-trafficking is a problem that must be comprehensively understood and then countered. Trafficking is first and foremost a problem because of the harm it engenders to victims and the wider society. Physical, psychological and social harms that result from sex-trafficking have been

detailed throughout this thesis. This harm extends beyond obvious physical abuse to a deeper harm which pervades the very core of those whom are sex-trafficked, the traffickers and the society in which the trade operates. The physical, psychological and emotional survival strategies required to survive the sex-trafficking process may impede the victim's ability to flourish and reach their full potential as human beings. Human-trafficking into any industry is exploitative and harmful, however sex-trafficking contains a qualitatively different level of harm. While the human-trafficking industry draws from those who are often vulnerable and have weak agency, the sex-trafficking industry is inherently exploitative and reinforces sexual inequality. The abuse of the sexuality of the person and violation of their dignity is at the core of the industry. Thus, this causes a qualitatively different level of harm above and beyond, labour trafficking.

The harm of sex-trafficking is not limited to the victim. Those societies which contain the supply of persons vulnerable to sex-trafficking and those which demand the services of those whom are sex-trafficked, suffer deep and serious harms. This extends beyond the obvious political and economic harms to the deeper social and psychological which impede our flourishing to be fully human.

Major challenges limiting our ability to prevent and counteract sex-trafficking and its resulting harms exist. These are both conceptual, i.e. our understanding of the problem, and strategic, i.e. our policy responses to reduce and/or prevent sex-trafficking. Thus, to achieve the necessary deep and critical consideration (both conceptually and strategically) of sex-trafficking, I proposed that it was vital to have an ethical-philosophical foundation. This was in order to analyse, identify and clarify key issues such as harm, consent, choice, agency, exploitation, abuse of power and

demand. It was also important to explore and address sex-trafficking within a conceptual framework of social relations within the wider global environment in which sex-trafficking occurs. The complex, global nature of sex-trafficking means it cannot be understood within traditional linear frameworks which emphasise more direct, local, observable phenomena and often disregard the hidden, powerful agents and environments which impact upon causality.

In order to achieve this, it has been necessary to draw upon theories and frameworks that allow a clearer view of the dynamics at work. Hence complexity theory (see section 1.6) and Rufus Black's work (see section 6.3) were employed to move beyond these linear frameworks and locate sex-trafficking as a complex phenomena. Jacques Boulet's model (see section 1.6) was employed to increase our understanding and identification of the multiple actors, intentions and powers that interact and impact upon sex-trafficking.

The complexity embedded within sex-trafficking also impacts upon issues such as responsibility and attribution of causation to the appropriate agents who operate and interact in the environment in which sex-trafficking operates. Hence this expands the moral complexities beyond those that are presented in the traditional, linear frameworks.

Chapter 2 provided a detailed overview of human-trafficking generally, and sex-trafficking specifically, at both the global and Australian context. Legal instruments, policies and strategies were included to highlight the challenges that society faces countering this global trade. As discussed in chapter 2, current global and Australian counter-trafficking strategies have been criticised for being ineffective and having a law-enforcement and immigration focus (see section 2.5). Furthermore, a dearth of

strategies is noted at targeting the actual market into which women are sex-trafficked and debt-bonded. This is despite contemporary criminology literature highlighting the need to target market demand. Debt-bondage into Australia was explored, particularly as evidence points to this being the most common form of trafficking into Australia. A consideration of the economic, political, social and gender environments from which these debt-bonded women originate from, was included. Simplistic dichotomies surrounding 'force' and 'voluntariness' present in much sex-trafficking literature ignores the complexity of women's journeys into sex-trafficking. Thus Archivanitkul's (1998) model was drawn upon to help (re)conceptualise and (re)frame sex-trafficking to enable a more accurate representation of reality (section 2.2). This provided a base from which to examine situational and systemic forces which influence women's decisions to enter a migration journey or work contract which leads to their sex-trafficked situation. Evidence of widespread harms to the victims was presented, thus providing an ethically-sufficient cause for action (section 2.3).

Causal links were established in this chapter between legalisation of the brothel industry and increased demand for sex-trafficking services (section 2.6). These links, combined with the overlap between the legal and illegal brothel sectors were shown to present significant challenges to current law enforcement and migration approaches to counter sex-trafficking. This chapter also demonstrated that sex-trafficking depends upon an environment conducive to the supply of, and a reason for criminal networks to supply, trafficked sexual services. Demand is this reason.

However, a lack of in-depth understanding and consideration of the role demand plays in sex-trafficking within the wider political-economic, social and gender environment exists. For example, the impact of sex-industry legislation, marketing and

advertising of the sex industry, and gender and cultural practices upon male sexual desires for access to easily accessible girls and women's bodies, must be included in a comprehensive analysis of demand. This consideration of demand encompasses the often powerful and more silent actors and variables such as the sex industry, pornographic industry, economic, gender and cultural practices and belief systems which help create a base of male consumers who demand services into which women are sex-trafficked. Thus chapter 3 focused on the role demand plays in sex-trafficking. To address this lack of understanding and consideration of the wider concept of demand, I drew upon Kane and Kane's model (2004) and Boulet's framework (1985) to help provide a broader and deeper understanding of what constitutes demand and what impacts upon demand. This provided a firmer base on which to formulate strategy and policy to deal with this important factor which impacts upon the sex-trafficking trade.

The need to be clear about language and definition are crucial to our understanding and strategies to minimise sex-trafficking. It also provides us with a firm conceptual ground to challenge arguments that support existing systems and institutions that benefit from the presence of the demand for services of sex-trafficked victims. Contemporary practices associated with sex-trafficking such as debt-bondage enter a 'blurred, messy' conceptual realm where notions such as choice, consent, voluntariness, exploitation and agency are often debated and contested. Polarised views, often based on a narrow understanding of these notions, without the wider consideration of the political, economic, social and gender environment, and the power relationships embedded within, dominate the conversation and impact upon counter-trafficking strategies. Yet, as previously mentioned, it is vital to consider these key notions underpinning our understanding of sex-trafficking within the wider political,

economic, social and gender environment. By widening our approach to consider power and the political, economic, social and gender policies which impact upon the environment from which girls and women make a choice or consent to enter a risky migration journey or undertake a contract overseas, a deeper and more encompassing understanding of sex-trafficking follows. What is often construed as a voluntary, consensual journey and act, is re-construed, into a journey and act that has been influenced by constraints, gender and role expectations, adaptive preference formation and limited opportunities. Hence chapter 4 provided a deepened understanding of fundamental concepts embedded within the sex-trafficking debate. This understanding will have powerful consequences for our policy formation and strategies to counter this trade. To achieve the necessary deep and critical consideration (both conceptually and strategically) of sex-trafficking, I proposed that it is vital to have an ethical-philosophical foundation. This is in order to analyse, identify and clarify key issues such as harm, consent, choice, agency, exploitation, abuse of power and demand. It was also vital to explore and address sex-trafficking within a conceptual framework of social relations within the wider global environment in which sex-trafficking occurs. The complex, global nature of sex-trafficking means it cannot be understood within traditional linear frameworks which emphasise more direct, local, observable phenomena and often disregard the hidden, powerful agents and environments which impact upon causality.

This consideration would not be complete without understanding the major role power and power relationships play within this environment, on actors impacted by, and complicit in, sex-trafficking. For example, a consideration of choice and agency in relation to those vulnerable to sex-trafficking often ignores the influence of power and power-relationships have on a person's options, agency, perception of exploitation and

choice. Chapter 5 explored the concepts of power and framing, both in theory and practice, in relation to sex-trafficking. Steven Lukes' conceptualisation of power (2005) (see section 5.2) along with Lakoff (2004) and Hanson and Yosifon's (2003-04) (see section 5.4) work on language and framing informed this chapter. Widening our lens beyond the explicit and visible, to the more hidden, subtle, yet powerful forces that impact upon sex-trafficking demand, enabled a more comprehensive exploration of the phenomenon. This broader lens brought into focus the power of framing and language in the debate. Various frames and language were discussed, particularly in relation to how these may be co-opted to benefit agendas of those who profit from the existence of sex-trafficking. Luke's notion of power was applied in this chapter to Archavanitkul's trafficking continuum (see table 5.2). It was insisted that the seeming consent or voluntariness of women who notionally choose to be trafficked (e.g. debt-bonded) into sex work masks the power of the economic, political, social and gender environment which influenced these women's choices. Drawing on Lackoff (2004) and Hanson and Yosifon (2003-04), I asserted that the dispositional focus present in many human-trafficking related frames (i.e. criminal justice, national security, border control, etc.), masks the powerful role that the wider situational and systemic environment plays in sex-trafficking.

The concepts of 'abuse of power', 'abuse of a position of vulnerability' and 'coercion', can be expanded beyond our focus on traffickers and end-consumers of sexual services to encompass government and industry policies which contribute to girls and women becoming sex-trafficked. This expansion from a purely dispositional approach to one which considers the system, allows us to identify and attribute appropriate causal responsibility to actors and institutions who contribute to the environment in which sex-trafficking occurs. For example, government legislation

which has legalised sectors of the sex industry has impacted upon male consumers beliefs that using commercial sexual services is normal, a right and okay. This has increased the demand base for services into which girls and women are sex trafficked. Sex industry advertising and marketing initiatives to help increase the demand base for sexual services, also increases the demand base for services into which girls and women are sex-trafficked. Pornographic industry policies which enable increasingly violent sexual images of gang rapes and sexual torture, often portraying the female victims as 'enjoying' the experience, contributes to the demand for particularly violent and demeaning sexual services of girls and women. These services are often met by trafficked girls and women (Hughes 2005, Sheila Jeffreys 2009). Most girls and women with legitimate alternative choices are unlikely to agree to sadistic gang rapes and near-strangling. The combination of government legislation legalising the commercial sex industry, marketing and advertising of the sex industry, and violent pornography contributes to the normalisation of using commercial sexual services.

Similarly, the notions of choice and agency related to the end-consumer demand for services into which girls and women are trafficked often ignore the power and power relationships between the sex and pornographic industry and the individual male sex-service consumer. The framing of end-consumers of sexual services commonly highlights the freedom, individual rights and autonomous choice the male sex consumer demonstrates when he visits a prostitute. This framing ignores the power that the sex industry, pornographic industry and government sex industry policy, have in shaping the male sexual perceptions, desires and wants. The portrayal of the legalised commercial sex service industry as safe, clean, award-winning, and where ladies and gentlemen engage in normal, healthy, consensual sexual acts, is a marketing strategy, similar to that used by the cigarette, gambling and alcohol industry, where the

profits flow to those who control the industry. By looking deeper into the power relationships present within the wider environment, an act which is initially construed as end-consumers' displaying free choice and agency, is re-construed as an act which, to varying degrees, is influenced by powerful industries, societal norms, and government policy. This harmful and exploitative practice is an abuse of power by the sex industry, pornographic industry and government who benefit from the presence of a commercial sex industry: the industry into which women are sex-trafficked.

Chapter 6 through the virtual colloquium tested key notions raised in my previous chapters. Exploring ethical, conceptual and practical concepts with academics, practitioners, activists and those outstanding contributors to the public-policy debate on ethical, conceptual policy or counter-trafficking perspectives helped sharpen our understanding of these concepts. This narrative approach enabled critical engagement and a discursive space in which various ethical and policy issues could be tested. During each discussion I was able to test ideas raised in earlier conversations, thus enabling a type of 'virtual colloquium' to take place. Issues such as sex-trafficking demand, language and frameworks, and the practice of, and response to, sex-trafficking within Australia were discussed to help provide a strong practical bent to the exploration. Fundamental concepts including agency, choice and exploitation were more deeply explored to increase clarity in the debate. Finally, opinions were provided from discussants to how best counter sex-trafficking through policy formation and strategic interventions. I quoted, perhaps excessively, views that were contradictory to my arguments, however, that said, I did not find some of the views of Elena Jeffreys, William Albon, and Larissa Sandy, convincing enough to challenge the arguments that I had presented.

A major impasse I encountered during this research needs to be acknowledged at this point. In the final analysis, this impasse is as much political as philosophical, and it is not just the clarity of concepts that are at stake. The conceptual and definitional clarity can clear away some of the debris that clutters our debate and muddies the discussion. However it does not reconcile fundamentally different political positions. I believe the thesis has helped make visible many of the fault lines that exist in the sex-trafficking debate, but it does not resolve the difference in political positions.

This impasse does not mean that we do not persist with an ethical-conceptual approach to considering sex-trafficking and informing policies to counter the trade. Rather, it raises the awareness of potential blockages in the debate and the effort needed to address, understand and resolve these blockages.

Having identified appropriate conceptual frameworks from which to consider sex-trafficking and its associated practices and having established a greater understanding of sex-trafficking and the core concepts underpinning our understanding of it, chapter 7 will now discuss implications for policy to counter sex-trafficking. Furthermore, having previously considered sex-trafficking as a global, wicked, complex issue; the wider political, economic, social and gender environment in which sex-trafficking occurs and in-depth understanding of demand for services into which girls and women are sex-trafficked it is necessary to acknowledge that addressing these three points will have implications for policies which address the sex-trafficking trade. Political, economic, social and gender policies which both create the environment from which victims originate and create the environment in which they are exploited were needed to be explored and addressed. An appropriate framework which encompasses these three points was necessary to identify potential areas of

strategic intervention that may minimise both the presence of and the harm associated with sex-trafficking. In this final chapter I draw upon Boulet's framework again, to situate policy suggestions at the wider level of the environment while acknowledging the role of demand in the complex, global environment in which sex-trafficking operates.

I argue that unless we adequately acknowledge and address the following: the complexity and global nature of sex-trafficking; the wider political, economic, social and gender environment in which it occurs and the demand for services into which women are sex-trafficked, we will continue to have a limited understanding of the sex-trafficking trade and its deeper root causes and mechanisms which enable its presence in contemporary society. This will lead to ineffective strategies to address sex-trafficking and its harms.

Yet, Greenwood and Levin caution against slipping into 'short term interventionalist styles in which the "action intervention" is seen as a "fixed episode" (1998, p. 18). McKay and Romm suggest that, within the informal economy, the plight of workers 'cannot be seen independently of the widespread poverty prevailing in these countries, nor can they be considered independently of the unequal gendered and economic relations' (2008, p. 151). Thus, while I have discussed some policy suggestions within traditional areas such as law enforcement, migration and labour sectors, these are to be considered in the larger picture of development programs that address economic, political and gender issues. Any policy initiative needs to consider, for example, mainstreaming respectful gender relations, which are at risk of being further undermined through the normalisation of the sex industry. Systemic interventions to empower women, educate men and women through gender

mainstreaming approaches, and more wide-ranging national, regional and global strategies may thus be crucial for effective counter-trafficking strategies.

### **7.3 Policy considerations and implications**

Collins emphasises the importance for ‘academic researchers [with (perceived) professional credentials] to share their own power and points of access to the policy process’ (2005, p. 28). My discussions here on the implications for policy and suggested ways forward in the fight against sex-trafficking are based on the knowledge gained throughout this thesis. I have confined my discussion to four main policy areas in traditional fields that are currently tasked with minimising the harms associated with sex-trafficking. However, as the participants suggested in the previous chapter (section 6.12 and 6.14), policies need to focus on the wider political-economic environment as well as the everyday-acting level. The harm from sex-trafficking is not easily reduced by application of linear, reactive local and national strategies.

Interventions based upon our holistic understanding drawn from various traditions must also cross traditional boundaries if we wish to minimise and prevent the harm associated with sex-trafficking effectively.

Four policy areas have been chosen in this section as potential areas to counter sex-trafficking. Policy initiatives in the areas of criminal justice, migration, labour market, and the sex industry all have the potential to impact, both negatively and positively, upon the actors, industry and environment related to sex-trafficking. I will emphasise the importance of addressing demand in the wider consideration of criminal justice, migration and sex industry intermediaries. An exploration of policies in these respective arenas is warranted for the following reasons. Firstly, to identify the

policies and enforcement practices that create a space for sex-trafficking and the demand elements that benefit from it. Secondly, to propose policy interventions targeted at the criminal justice, migration, labour, and sex industry to more effectively address sex-trafficking. It is vital to remember, however, that the environment and actors adapt and change as a result of policy development. Furthermore, competing national and global priorities will exist that impact upon the political will and funding of policies to target sex-trafficking.

Criminal justice policy considerations:

The following policy considerations may be best achieved through the formation of a single body, responsible for research, policy development, monitoring and enforcement of the sexual services environment in each Australian state and territory.

Greater attention to political, economic, social and gender policy that creates the environment and space in which traffickers operate. Criminal justice policy should then instigate more proactive policy to address this policy environment to decrease the opportunity for criminal elements to operate within.

Adequate monitoring and enforcement of sex industry policy by the relevant criminal justice authorities, to minimise the gap within which traffickers and demand elements complicit in sex-trafficking operate. This 'gap' has been identified as an area that provides an opportunity for criminal elements to operate within (Friman and Andreas 2009).

Greater focus on factors that influence market demand for services that women are trafficked into. Thus, more rigorous enforcement of the following: illegal advertising of sexual services, illegal use of rental establishments for sexual

services and false advertising of sexual services under the guise of massage or beauty salons.

Prosecution of males/females visiting illegal/unregistered sexual service establishments. This is to discourage the use of sexual services that are not properly monitored or licensed, and are thus vulnerable to greater exploitative practices than legal/registered establishments.

Specific criminal justice policy to target points of vulnerability of the relationships between the market, the demand elements and the traffickers.

Greater involvement of business experts in the formation of policy and strategy initiatives to help understand how illicit business ‘morphs’ and adapts to policy and enforcement initiatives. This may help in more forward thinking strategic policy formation, rather than reactive criminal justice tactics.

Coordination of criminal justice policies related to sex-trafficking with other specific policy initiatives instigated by migration, labour, sex industry and other intermediaries to ensure they do not work ‘against’ each other, but rather complement each other.

#### Migration policy considerations:

Establish a national standard and increased monitoring of private migration agents, who engage in ‘contractual’ arrangements between industry and foreign workers. This will address the gap between demand for labour and the supply of willing foreign workers, which provides an opportunity for criminal migration agents to benefit from exploitative practices.

Ensure greater funding of immigration/labour inspectors to enable adequate monitoring of worksites that are known to employ large groups of foreign workers. This monitoring must be followed up by prosecution and significant financial penalties for any employer that engages in the recruitment of cheap, exploitable labour, which verges on human-trafficking or is human-trafficking.

Liaise with regional authorities to develop 'formal' migration processes that are affordable and accessible to those most likely to engage in risky migration journeys.

Greater liaison between national and regional security organisations, industry, migration and labour authorities, to help formulate complementary policies that do not 'work against' each other and lead to harmful consequences to those most vulnerable.

#### Labour policy considerations:

Many people migrate to Australia for the purposes of labour employment. Thus, close liaisons should be established between migration and labour policy development to ensure complementarity of each policy.

Increased industry and government liaison with unions to ensure a balance is achieved between a safe working environment and the ability of employers to access foreign workers without costly and overregulated processes. This may decrease transfer of this role to private recruitment agencies and decrease the labour supply chain, making the overall practice easier to monitor and regulate.

Awareness campaign delivery to industry and union groups to help formulate policies and barriers to discourage market entry for those plying trafficked

workers.

Ensure greater funding of labour inspectors to enable adequate monitoring of worksites that are known to employ large groups of foreign workers. This monitoring must be followed up by prosecution and significant financial penalties of any employer that engages in the recruitment of cheap, exploitable labour, which verges on human-trafficking.

The development of government policy that requires industry and corporations with lengthy supply/commodity chains to develop counter-trafficking policies and ensure staff are aware of, and implement, those policies.

Sex industry policy considerations:

Due to the widespread harmful consequences of the following typologies – regulation/legalisation of the sex industry and abolition of the commercial sex industry (as discussed in sections 2.6 and 6.9) – neither should be considered an effective strategy to address the exploitation associated with sex-trafficking into the sex industry.

While decriminalisation of the commercial sex industry or criminalisation of the users of sexual services (Swedish model) both have negative consequences in some areas they provide the best opportunity to decrease the harms associated with sex-trafficking into the commercial sex industry. One of these models should be adopted to mitigate the harms associated with sex-trafficking and to counter sex-trafficking.

Some critics of the decriminalisation model may assert that the adoption of this model ignores the complex ideological questions associated with condoning what may

be considered inherently exploitative labour. Iselin expressed concern about this model and asserted:

*As often happens in most models of decriminalisation, those who do not think too deeply interpret this as being official sanction for the acts that are decriminalised. It is important to overturn this perception that legal means right, for the wrong. It is not clear enough when legalising the entirety of the sex industry that it is still wrong to buy. This ambiguity translates badly, leading to increased demand, as men equate being legal, or not being criminal, with being okay (Iselin 2007).*

Yet, the adoption of a model may provide a starting point to address the immediate harms associated with the sex-trafficking trade. Marketing, advertising and trade practices constraints, however, may be needed to ensure that the normative effect of this legislation does not increase the demand for sexual services. Furthermore, providing girls and women, globally, with the capabilities to make minimally constrained choices – so they do not feel compelled, coerced or constrained to participate in an often exploitative industry – would be part of a much wider strategy to address these concerns of the critics. After a decision is made on which sex industry policy is to be implemented, however, it is vital that the following occurs. The policy must be adequately monitored and enforced with significant penalties for perpetrators and end-consumers of illicit services. Furthermore, implementation of a strategy to restrict advertising and marketing of the commercial sex services to help decrease normalisation of prostitute consumer behaviour must occur. The establishment of a coordinated independent body to help in the monitoring, enforcement, support and future policy direction with regards to this industry is also crucial.

General policy and sex-trafficking.

A more humane framing of foreign workers, refugees and boat people should be promoted to the public as a whole, in order to help normalise the perception of other human beings as people and not threats, which induce fear responses from the Australian community.

However, the reality is that the larger national agenda of ‘national security’ and ‘control of the population’ is likely to prove a great obstacle.

A more Kantian approach to the consideration of others, who should not be used as a ‘means to an end’ and as ‘commodified products for consumption’. This should be encouraged amongst the education system and population as a whole.

But again, the reality is that the larger global politico-economic status quo depends upon society maintaining and increasing consumptive behaviours. The large industry profits gained from the commodification of another human being will prove a major obstacle to those within the mediatory and everyday-acting realm trying to change this mentality.

An awareness campaign targeted at male consumers of the commercial sex industry should be developed to increase their awareness of sex-trafficking into the Australian sex industry. This should only be done after careful and well-informed research involving multiple sectors of the community. The involvement of unions, legal commercial sex sectors and sporting clubs to help spread the message across a wide sector of the male society should be undertaken.

Research and development of strategies that can deliver the capabilities listed in

Black's suggestions. Taking the emphasis away from preparing 'market-ready' workers to contribute to the current political-economic system, and moving it onto human beings who can creatively contribute to the common good, through sustainable economic, political and social systems.

Incorporation of ethical and moral philosophy into school and university education to encourage responsible and ethical thinking about contemporary issues.

#### **7.4 Conclusion**

In this final chapter, I have reviewed and clarified my thesis argument. The three central and connected arguments made in this thesis, being firstly, the need for using an ethical-philosophical foundation to provide a firm base to consider key notions that underpin sex-trafficking; secondly, the importance of using a conceptual framework which acknowledges the economic, political, social and gender environment in which sex-trafficking and the actors participate; and finally, the need for a greater focus and understanding of the demand for services of sex-trafficked victims, were emphasised. However, this was not enough. A feminist approach to research often carries an implicit commitment to action (Hammersley, 1992). This thesis did not want to remain just at the conceptual level, but offer practical policy considerations that can inform effective action. Thus, drawing upon literature, research participant's opinions, and the developing knowledge of the author, I offered policy considerations to help counter sex-trafficking and its harms.

This thesis has presented a conceptual framework in which to consider the

complexity, power relationships and reality of sex-trafficking. The ethical-conceptual approach has enabled a comprehensive exploration of fundamental issues underpinning sex-trafficking to take place. This has been essential to help ‘nut out’, the underlying reasons for the different views of various theorists and practitioners in the area. Furthermore it has enabled a conceptual clarity and firmer ground upon which to base policy. This sits well with an approach that regards sex-trafficking as dynamic, complex, multi-dimensional and interconnected. Hence, I drew on complexity theory (Kuhn 2007, 2008) to help to explore entities that are uncertain, disordered and highly relational. Particularly helpful in widening our lens to the political, economic, social and gender environment was Jacques Boulet’s political-economic framework (1985). Within Boulet’s framework, I also situated the role of power, using Stephen Luke’s theory of power together with the related conceptual roles of framing, situationalism and deep capture (e.g. Lakoff 2004, Zimbardo 2007, Hanson and Yosifon 2003-2004, 2008)). This enabled me to make more visible those actors, systems and structures that impact upon sex-trafficking in Australia.

Reconceptualising sex-trafficking as part of the global political economy, rather than external to it, was an important part of this exploration, as potential victims, traffickers and users of sex-trafficked girls and women, are now seen as acting within a larger situational context and systemic environment in which their opportunities, desires, needs, wants and values are shaped. Moving from a dispositional to a situational focus enables responsibility to include but also move beyond individuals to systems and structures that create the conditions in which sex-trafficking and the demand for services into which women are sex-trafficked continue to flourish. Thus, we are able to gain a more comprehensive understanding of sex-trafficking and the relations of power and causal mechanisms present within situations and systems.

Ultimately, ethically sound policy that considers the global economic, political, cultural and gender environment, and the demand for services of sex-trafficked women, is crucial if we truly wish to counter the global sex-trafficking trade.

## Appendix A

**Participants in the virtual colloquium listed by field of expertise.  
(Positions current at time of interview)**

<b>Academy (complexity theory, philosophy, criminology, law, feminism etc.)</b>	<b>Participant</b>	<b>Field of Knowledge / Experience</b>
	<b>Professor Hilary Charlesworth</b>	Professor of Human Rights and International Law and Director of the Centre for International Governance and Justice, Australian National University
	<b>Dr Gabriella Coronado</b>	School of Management, University of Western Sydney
	<b>Dr Fiona David</b>	Research Expert Trafficking in Persons, Australian Institute of Criminology
	<b>Dr Julie Debeljak</b>	Senior Lecturer, Faculty of Law, Monash University
	<b>Professor Sheila Jeffreys</b>	School of Political Science, Criminology and Sociology, University of Melbourne
	<b>Dr Lesley Kuhn</b>	School of Management, University of Western Sydney
	<b>Dr Larissa Sandy</b>	Faculty of Health Sciences, La Trobe University (formerly of Australian Institute of Criminology)
	<b>Associate Professor Andreas Schloenhardt</b>	TC Beirne School of Law, University of Queensland Co-ordinator of the Human Trafficking Work Group, University of Queensland
	<b>Dr Mary Sullivan</b>	School of Political Science, Criminology and Sociology, University of Melbourne
	<b>Dr Sallie Yea</b>	Faculty of Business and Information Systems, Charles Sturt University
	<b>Professor Spencer Zifcak</b>	Allan Myers Chair in Law and Director of the Institute of Legal Services, Australian Catholic University, former Australian Vice-President of the International Commission of Jurists, current Vice-President Liberty Victoria
<b>Law</b>		
	<b>The Hon Michael Kirby AC CMG</b>	Former Justice of the High Court of Australia. Former chairperson of the of the UNAIDS Expert Panel on HIV Testing of United Nations Peacekeeping Operations
	<b>Mr Julian Burnside AO QC</b>	Barrister of the Supreme Court of Victoria and past-President of Liberty Victoria
	<b>Ms Zana Bytheway</b>	Executive Director of Job Watch Inc., Community Legal Centre specialising in employment law and

		exploitation
	<b>Dr Julie Debeljak</b>	(see above)
	<b>Ms Anne Gallagher</b>	Special Adviser on Human Trafficking to the United Nations High Commissioner for Human Rights and Technical Director of the Australian Regional Trafficking in Persons Project
	<b>Professor Spencer Zifcak</b>	(see above)
	<b>Professor Hilary Charlesworth</b>	(see above)
	<b>Law enforcement officer A</b>	Anon.
	<b>Mr Brian Iselin</b>	(see above)
	<b>Law enforcement officer B</b>	Anon.
<b>Philosophy and Ethics</b>		
	<b>Reverend Dr Rufus Black</b>	Master Ormond College, University of Melbourne. Chair of the Human Research Ethics Committee of the Walter and Eliza Hall Institute
	<b>Dr Simon Longstaff</b>	<b>Dr Simon Longstaff</b> Executive Director St James Ethics Centre, Sydney
<b>Human rights advocacy</b>		
	<b>Mr Julian Burnside AO QC</b>	(see above)
	<b>Professor Hilary Charlesworth</b>	(see above)
	<b>Professor Spencer Zifcak</b>	(see above)
	<b>Ms Zana Bytheway</b>	(see above)
	<b>Mr Brian Dow</b>	Communications and Advocacy Officer, International Labour Organisation, Australia and Pacific Region.
<b>NGOs/ Advocacy organisations</b>		
	<b>Ms Wilma Gallett</b>	Founder and the CEO of The Salvation Army Employment Plus and previous coordinator of a UK World Vision campaign on human trafficking
	<b>Ms Nancy Hanley</b>	Program & Research Coordinator Kids Under Cover
	<b>Ms Elena Jeffreys</b>	President of the Scarlett Alliance, NGO advocating for Australian sex workers
	<b>Ms Nina Vallins</b>	Director of Project Respect, NGO supporting women in the sex industry, including women trafficked to Australia, and researcher for Australian Institute of Criminology
	<b>Ms Valli Mendez</b>	Former coordinator of Project Respect, NGO supporting women in the sex industry, including women trafficked to Australia
	<b>Sr Stancia Vichie</b>	Chair of Australian Catholic Religious Against Trafficking in Humans (ACRATH)

	<b>Mr William Albon</b>	President of the Australian Adult Entertainment Industry
<b>International Organisations/ United Nations</b>		
	<b>Mr Brian Dow</b>	(see above)
	<b>Ms Anne Gallagher</b>	(see above)
	<b>Mr Brian Iselin</b>	Former Federal Agent and United Nations adviser on combating human trafficking in South-East Asia.
	<b>The Hon Michael Kirby AC CMG</b>	(see above)
<b>Government</b>		
	<b>Ms Anne Gallagher</b>	(see above)
	<b>Mr Ken Wolfe</b>	Coordinator Planning Enforcement, Yarra City Council, Victoria
	<b>The Hon Michael Kirby AC CMG</b>	(see above)
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