Symposium:

Uncovered: The Policing of Sex Work

Introduction

Hannah Alsgaard†

My experience has been that women of color and trans people and street workers are arrested more often and kept in jail longer than any other sex workers. This system of oppression is taking our lives away piece by piece, and that pisses me off. Yea, sex workers all face oppression as sex workers, but some of us are at the intersection of racism and classism and transphobia.—Luette Chavez

Twenty-five years after the Berkeley Journal of Gender, Law & Justice was founded as the Berkeley Women’s Law Journal, it hosted a symposium titled “Uncovered: The Policing of Sex Work.” As the first issue announced, this Journal was not founded to be just another law review which would perpetrate existing power structures. Instead, the Journal was founded “to give voice to the complex and varying perspectives reflecting the legal concerns of all women, especially the women of color, lesbians, disabled women and poor women whose voices have been severely underrepresented in existing literature.”

Part of the resistance to existing power structures was to reject the long-standing distinction between “student pieces and the work of scholars, practitioners and community workers” because of a belief that in a “struggle for equality, all efforts are of equal value and importance.”

In tribute to these ideals twenty-five years later, the Journal invited past and current sex workers, along with sex work and human trafficking advocates,

† J.D. Candidate, 2012 University of California, Berkeley School of Law.
1. Luette Chavez has made a good living refusing to abide by laws. She has done sex work all over the United States and Europe, but she is most proud of her time working in New Orleans as a hurricane survivor, hustler, and herbalist. She is a healer, an illegalist, and a proudly loud-mouthed Latina. She is currently writing about race, queerness, and feminist whoring.
3. Id.
SYMPOSIUM: INTRODUCTION

to Berkeley Law to discuss sex work and human trafficking from an intersectional perspective. The symposium was a success and drew larger crowds than anticipated: it is not every day that there are real-life sex workers walking the halls of this law school. Certainly, this is not the first symposium hosted by a law school’s gender journal that has included people or material from outside the law or legal academia, but it is still novel for academic journals to welcome those most impacted by laws, such as sex workers, as experts on the legal topics that impact their everyday existence.

The symposium began with a film screening by Carol Leigh followed by two separate panels. The first panel, entitled “Differential Policing of Sex Work Along Axes of Race, Class, and Gender,” featured former and current sex workers speaking about their experiences of and views on sex work. The second panel, “Sex Trafficking and Sex Work,” explored the conflation of sex trafficking and sex work, as well as sex trafficking as the dominant image of human trafficking.

DIFFERENTIAL POLICING OF SEX WORK ALONG AXES OF RACE, CLASS, AND GENDER

I found that having sex workers speak intellectually and vigorously added a unique dimension beyond the information the other panelists provided. It is true that much of the empirical data and advocacy work could be offered by traditional academics or legal practitioners; however, it is much less likely that academics could convey the personal impact that the current laws and policies have on sex workers’ lives. There is something powerful about hearing former and current sex workers speak about how the laws have actually impacted their livelihood, personal relations, and interactions with the law along with where they believe the law should move. Because the language these women use was distictively powerful, I have excerpted a few of the exchanges that took place at the symposium. Although these exchanges do not, of course, provide a complete rendition of the symposium, they are representative of the content and tone of the conversation.

This was a conversation taking place within the halls of a top law school where students often come from privileged backgrounds and are all in the process of becoming educationally privileged. In relation to the average student or faculty member at Berkeley Law, the panelists were far from privileged; however, we cannot forget that privilege still exists within sex work, both in relation to the type of work being done and to the identity of the worker. Luette Chavez

4. For example, in 1992 the Michigan Journal of Gender & Law sponsored a three-day conference on prostitution, which included a video featuring art and video of and by former prostitutes. The Journal decided to remove the video after other speakers from the conference complained about the prostituting content. Tamar Lewin, Furor on Exhibit at Law School Splits Feminists, N.Y. TIMES, Nov. 13, 1992, at B16.

5. Carol Leigh has been a sex worker and activist since the late seventies and coined the term “sex worker” in 1979.
mentioned both her privilege and how her work privileges her:

I’ve worked in several cities around the country and have more or less been an internet-advertising, hotel-working kind of whore. I’ve always considered my place in sex work really privileged because I’ve always worked indoors and I’ve always been really in control of my work. I really love what I do. It’s an amazing income and it’s putting me through college.

She then observed:

While my place in sex work I still feel has been really privileged, I’ve been busted over and over again more so than the peers that I work with, who are mainly educated and white. I know this is because I am a woman of color whose primary income is prostitution. The majority of people who I would consider in my peer group in sex work are educated or not completely dependent on prostitution for their income, which makes a big difference.

The other panelists agree that there is discrepancy in how sex workers are profiled and treated by police. Cecelia Chung⁶, a transgendered woman and a former sex worker said:

When we talk about policing of sex work along the axes of race, class, and gender I cannot say that I’m an expert . . . I could say that as a former sex worker it has also been my experience that it’s very common to see racial and gender profiling, especially on the street.

Miss Major⁷ also spoke about these axes of oppression:

All of the things that are not supposed to be important [to law enforcement]—such as race, such as class, such as gender—all of those things come into play because each and every one of those things can be a strike against you if you happen to be someone who is not a part of whatever is considered or deemed appropriate or respectable.

The panel seemed in agreement that race, class, and gender influenced the way that sex workers are treated by the police and how they are perceived inside the industry.

The conversation also took up the legal status of sex work: panelists spoke about decriminalization versus legalization of sex work. Cecelia Chung expressed a belief that society is not yet ready to move toward legalization, but full legalization will be the best in the long run. She said:

---

6. Cecelia Chung is the former deputy director of the Transgender Law Center, a native of Hong Kong, and a long-time San Francisco resident. She is an openly trans and HIV positive woman.

7. Miss Major is a black, formerly incarcerated, male-to-female transgender elder. She has been an activist and advocate in her community for over forty years, mentoring and empowering many of today’s transgender leaders.
From a personal perspective I do believe that legalization is the way to go, because then you can tax it and can provide better control around health issues—health care, HIV prevention, and other prevention. That is the only way we can really look at creating a healthy community that is sex positive and that would not continue to stigmatize people who are open about their sexuality.

Luette Chavez disagreed:

Personally I feel very strongly about decriminalization versus legalization. One, I don’t want the state taxing what I do with my junk. And two, sex work remains this really special thing that if you are comfortable doing the services you need no startup money. You go to the thrift store and get some lingerie [and] you can start working. I don’t want to pay for testing; I don’t want to pay the state money to give me permission to be a prostitute, I don’t. I think that puts class barriers into an occupation that is very equal for all of us to jump in and participate in.

Miss Major was even less optimistic about potential changes in the law. Although she believes that decriminalization is a step forward, she argues that merely changing the law will not be enough; instead, more than the laws need to be changed—namely, the attitudes and perceptions of law enforcement officers:

Working toward decriminalization is really what is important. [L]egalization makes it hard because it’s kind of like taking a scarlet letter and branding it on your forehead.

She explained:

The police are heavily involved in watching what goes on. They will arrest some of the [transgendered] girls, take them someplace, have them themselves, and then still take them to jail. It’s not just the laws that need to be changed; it’s the people who are supposed to be upholding the law. It would do no good to decriminalize sexual work for any female-identified person and then not have the police know what that law is and then treat the people they are arresting appropriately. [In] treating hookers and prostitutes and transgendered women, there is no appropriate treatment. Supposedly, we get what we deserve. All of us have asked for this by having to do this kind of work in order to be able to survive.

Thus, the first panel addressed many axes of oppression within the sex worker community, stressing that not all sex workers are the same, nor are all sex workers treated the same by the authorities.

SEX TRAFFICKING AND SEX WORK

The second panel then went on to address sex work within a broader topic—human trafficking. In particular, the second panel stressed that not all
human trafficking is female sex work, despite common misperceptions to the contrary. In introducing the topic of the second panel, moderator Alice Miller\textsuperscript{8} described what it has meant for prostitution to have functioned as the paradigmatic form of human trafficking:

The contemporary law of trafficking . . . uses the word trafficking, but it describes a wide range of movements of people, men or women, into a wide range of labor sectors. But that palimpsest effect, the notion that prostitution is the central practice of trafficking bleeds through the law. The law is very awkwardly structured and in practice, as I think you’ll hear people speaking about, the focus of the U.S. internally has been on people moving into prostitution and sex work, not always distinguishing who is exploited and who is in fact making the decision to move into sex work. At the international level, the same double message has held.

Carol Leigh expounded on what it means for human trafficking to have such an emphasis put on sex work:

What about labor abuses, forced labor? That disappears in the sensationalism. . . The realities we need to deal with in terms of labor issues on this planet and economic justice disappear when all we’re looking at is women’s sexual violation. The framework of trafficking is going to lead us to [this perspective].

These anti-trafficking advocates tended to be unsatisfied with the law itself, the interpretation and use of that law, or both. Grace Chang\textsuperscript{9} suggested that the discrepancy between the law’s ostensible goals and its effects illustrates the kind of distortion that the sex work frame produces in human trafficking law:

The State Department said that within the United States since the passage of the TVPA \textit{[Trafficking Victims Protection Act]}\textsuperscript{10} between the years of 2000 and 2005, only 616 people benefitted from the law through receipt of a T visa.\textsuperscript{11} 616 people. Now, the number that has been bandied about by the State Department and the Department of Justice is that approximately 50,000 people are trafficked in and into the United States each year. Fifty thousand people

\textsuperscript{8} Alice Miller is a Lecturer in Residence at Berkeley Law and a Senior Fellow at the Miller Institute for Global Challenges and the Law.\textsuperscript{9} Grace Chang is an Associate Professor of Feminist Studies at University of California, Santa Barbara.\textsuperscript{10} \textit{Trafficking Victims Protection Act}, 22 U.S.C. \textsection 7101 (2006).\textsuperscript{11} The U.S. Citizenship and Immigration Services describes the T Visa: “T Nonimmigrant Status (T Visa) is set aside for those who are or have been victims of human trafficking and are willing to assist law enforcement in the investigation or prosecution of acts of trafficking.” \textit{Victims of Human Trafficking: T Nonimmigrant Status}, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, http://www.uscis.gov/portal/site/uscis/ (follow “Humanitarian” hyperlink; then follow “Victims of Human Trafficking & Other Crimes” hyperlink; then follow “Victims of Human Trafficking: T Nonimmigrant Status” hyperlink) (last visited Nov. 19, 2010).
each year as opposed to 616 people who benefited from a T visa in a five-year period since the passage of the original TVPA. That’s a huge discrepancy. I also say to my students, when you have that kind of discrepancy that’s not an “oops;” that’s not a small oversight. That’s a “what the fuck! You have got to be kidding.” That kind of discrepancy indicates to me that . . . somehow perhaps the policy or the way that the law is being implemented, is being interpreted is off-kilter. Not off-kilter by accident, but by design. . . . I would argue that anti-trafficking policy is really designed to accomplish a whole other set of purposes, including criminalizing prostitution.

Another panelist, Robert Uy, spoke about his work as a direct service provider to victims of human trafficking at the symposium. In his short piece written for this publication he argues that the popular and media focus on sex trafficking harms the larger movement against human trafficking because certain victims are left unrecognized. He addresses in particular men who have been trafficked for non-sex work. This neglect leads to a disparity in the provision of resources, such that non-sex trafficking victims are less able to find community and organizational support.

Ultimately, this symposium offered not only information and analysis for those providing legal advocacy for sex workers or victims of human trafficking in the legal world. It also allowed the voices of those on the ground to be heard. No problem can be addressed solely by those in power, either in the academy or in policy making positions. Instead, responding thoughtfully and effectively to any harm requires listening to the voices of those who have been personally affected by the issue. This symposium was able to blend scholarship, policy, and narratives to provide a more nuanced, and ultimately more thoughtful, view of sex work and human trafficking.

12. Robert Uy is a staff attorney at Asian Pacific Islander Legal Outreach.
14. Id. at 214.