Chapter 8

Pornography and Global Sex Trafficking:
A Proposal for Therapeutic Jurisprudence as Court Innovation in the United States

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ABSTRACT

The primary purpose of drawing international attention to this chapter is to truly understand and subsequently address the abhorrent role that pornography and prostitution play in transnational sex trafficking operations. Pornography, especially when coupled with prostitution unquestionably perpetuates sex trafficking particularly in the commercial sexual exploitation of women and girls across the world, yet the exact role pornography and prostitution play remains largely misunderstood and mostly speculative within the practitioner and scholar literature. This chapter will address those concerns as well propose plausible recommendations based on the research to date in order to assist and support those who are dedicated and committed to eradicating sex trafficking by infiltrating pornographers who create, disseminate, and participate directly and indirectly in the sexual exploitation and abuse of women and children on a global-scale. Also, this chapter will emphasize the need for TJ as a form of Court Innovation in the United States.

INTRODUCTION

Human trafficking is irrefutably one of the most proliferative and continuously evolving transnational crimes of this century, preceded only slightly by gun and drug trafficking; yet if it remains on this current and widespread destructive path which has been projected, it will soon surpass international gun and drug trafficking for the first time in history. One distinctive, yet often under-identified and misunderstood, characteristic of human trafficking is forced criminality (Pittaro & Normore, 2016). For clarity, human trafficking will be defined using the definition provided by the United Nations (2004) in Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons. Therefore, human trafficking is:

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... the recruitment ... by means of threat or use of force or other forms of coercion,... 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 labor or services...

In a 2016 FBI publication, Pittaro and Normore emphasized that human trafficking serves as an opportunistic crime targeting all types of people, with no age, gender, culture, or socioeconomic group immune. To compound matters, this crime has reached worldwide epidemic proportions; therefore, no country is impervious or outside the grasp of traffickers (Pittaro & Normore, 2016). This is a globally facilitated crime where all borders are penetrable with children being the most vulnerable demographic group (Pittaro & Normore, 2016). Additionally, there is a lack of reliable intelligence information regarding the true scope of human trafficking. One reason for this is the lack of systematic, empirical, and methodologically rigorous research on trafficking in human beings (Kotrla, 2010). For the cases of sex trafficking that are international, Kotrla (2010) suggests that some politically and economically disadvantaged countries in particular have a “culture of tolerance” that supports sex trade markets with wide-scale, rampant government corruption.

Since the definitions of human trafficking are not always clear or uniform from county to county, it is difficult to collect accurate data about this phenomenon. Additionally, determining the actual profits generated by human trafficking is considerably difficult due to the clandestine trafficking operations remaining largely outside the scope of law enforcement. Anecdotally, estimates for human trafficking range from $32 billion dollars to $150 billion dollars per year (Pittaro & Normore, 2016). As can be imagined, human trafficking is undeniably attractive to criminals and as alluded, quite lucrative because men, women, and especially children can be bought and sold countless times and are therefore, perceived to be a valuable and quite profitable commodity for transnational crime groups (National Center on Sexual Exploitation, 2011). Simply stated, human trafficking is modern-day slavery that entails forced labor, child soldiering, suicide bombing, organ trafficking, and of course, sex trafficking to name a few. It is a crime with no impenetrable borders, which means that every country, large and small, developed or underdeveloped, is at-risk as both a source and destination country for human trafficking.

SEX TRAFFICKING

Unlike some traditional ‘street’ crimes in which certain geographic areas are more prone to crime and violence in comparison to other areas, sex trafficking transcends all countries, states, cities, and even the smallest of villages worldwide and it is estimated to be one of the most profitable subdivisions of the larger human trafficking (National Center on Sexual Exploitation, 2016). Therefore, all geographic land boundaries are penetrable and the number of potential victims is limitless. Sex traffickers will employ violence, threats of violence, manipulation, deception, trickery, and other forms of coercion and fraudulence to acquire victims (National Center on Sexual Exploitation, 2016). Victims can be U.S citizens, foreign nationals, men, women, children, and LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer) individuals. Those that are especially vulnerable are runaways, homeless youth, victims of domestic violence, victims of sexual assault, those afflicted with addiction problems, those with psychological
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