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Deconstructing the LGBT Victim of Sex Trafficking: Harm, Exceptionality and Religion-Sexuality Tensions

ABSTRACT

Contrary to widespread belief, sex trafficking also targets LGBT (lesbian, gay, bisexual, transgender) communities. Contemporary social and political constructions of victimhood lie at the heart of regulatory policies on sex trafficking. Led by the US Department of State, knowledge on LGBT victims of trafficking constitutes the newest frontier in the expansion of criminalization measures. These measures represent a crucial shift. From a burgeoning range of pre-emptive measures enacted to protect an amorphous class of 'all potential victims', now policies are heavily premised on the risk posed by traffickers to 'victims of special interest'. These constructed identities, however, are at odds with established structures. Drawing on a range of literatures, the core task of this article is to confront some of the complexities and tensions surrounding constructions of LGBT trafficking victims. Specifically, the article argues that discourses of 'exceptional vulnerability' and the polarized notions of 'innocence' and 'guilt' inform hierarchies of victimhood. Based on these insights, the article argues for the need to move beyond monolithic understandings of victims, by reframing the politics of harm accordingly.

Keywords: victims, victimology, sex trafficking, LGBT rights, sexuality, harm.

Introduction

Since the 1970s, victims of crime have moved from total invisibility within criminal justice policy (Zedner, 2002; Mawby and Walklate, 1994; Rock, 2002) to being the core of political discourses on 'law and order' (Elias, 1986; 1993; Reiner, 2007; Dubber, 2002). Victim-centric discourses have underpinned contemporary 'punitive obsessions' (Reiner, 2007; Garland, 2001). While offender-focused security supports the alleged inevitability of continuing crimes and serves as an incentive for further state 'investments' in pre-emptive actions (Zedner, 2006: 269). Scholars have also expressed concerns about the 'carceral turn' (De Lissovoy, 2013: 740), a tendency toward authoritarianism and punishment. Within this, the expansion of punishment has been supported by the growth of the prison industrial complex (Sudbury, 2004), the targeting of the poor and people of color by prison and criminal justice systems, and by attacks on immigrants and the demonization of specific communities (Giroux, 2009). Other scholars have explored what has been termed the 'politics of victimhood' (Bouris, 2007: 10) and within the context of sex trafficking 'the politics of trafficking' (Aradau, 2008; Limoncelli, 2010). This article extends this discussion by examining the construction of victimhood and harm, within the context of exceptionality discourses and religion-sexuality tensions concerning LGBT victims of trafficking.

Legislative and policy campaigns to enact more punitive measures against sex traffickers have taken global dimensions in recent years. Across different jurisdictions human trafficking legislation has been influenced by the introduction of the US Trafficking

Victims Protection Act 2000 (TVPA), the UN Anti-Trafficking Protocol (UN General Assembly, 15 November 2000; Segrave *et al.*, 2009; Lee, 2011), and the global diplomatic pressure exercised by the US Trafficking in Persons Reports (TIP) (see e.g. Department of State, 2006; Gallagher, 2015).[1] Specifically in the past decade, mounting media and political attention toward the so-called 'epidemic' of trafficking (Hoyle *et al.*, 2011: 313-314) has contributed to the 'emotionalization' of discourses on crime and justice (De Haan and Loader, 2002), through creating connections between anti-trafficking and the anti-slave trade (Hoyle *et al.*, 2011), and through 'memorializations' of some victims but invisibility of others (Pearce, 2014).

This process of (inter)national lawmaking results in what Hoyle, Bosworth and Dempsey (2011: 314) have referred to as a 'rhetorical punch'. Modern slavery is then a recalibrated version of 'chapters of shame' or 'past sins', whereby states advocate for a new 'war' on slavery (Green and Grewcock, 2002; Bosworth and Guild, 2008). The politics of both blame and 'pity' emerge (Aradau, 2004; Walklate, 2011), which legitimize the suffering of certain types of victims through mandated policy intervention (Christie, 1986; McAlinden, 2014). This is then juxtaposed with a 'global gender politics' according to which trafficking constitutes a dangerous manifestation of global gender inequalities (Ertürk, 2005; Tavakoli, 2009), in which a burgeoning range of retributive measures are debated that seek to fix blame on and punish sex traffickers. For instance, in England and Wales the Modern Slavery Act 2015 consolidates offences relating to both trafficking and slavery, aligning with the international UN Guiding Principles Reporting

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[1] Since their inception in 2001, the annual TIP reports are the most prominent instruments performing research, monitoring, comparing data and exercising political pressure globally. These reports carry the aspirational 'promise' (see Aradau, 2014) to shape and sustain a peaceful, prosperous, just, and democratic world, free of trafficking (Askola, 2007; Lipscombe and Beard, 2014; US Laws on Trafficking in Persons).

Framework (United Nations, 2017), and reinstates a 'precautionary logic' (see ss.14-15 Modern Slavery Bill 2014-15; Loader and Walker, 2007).

Simultaneously, a diverse group of social activists, policy makers and celebrities have joined forces to enhance criminalization measures against trafficking, in what has been described as one of the most significant transnational 'social movements of our times' (Hertzke, 2004: 6). This movement involves a wide political spectrum, from diverse feminist groups to well-established Christian organizations (Saunders, 2005; Weitzer, 2007). Despite existing disagreements (Bernstein, 2010; Munro, 2008; O'Connell Davidson, 2006), these groups have found common ground to advocate for harsher criminal and economic penalties against organized criminals/'traffickers' as well as for remodeling gender roles (see, Trafficking Victims Protection Reauthorization Act 2008; United Nations Office on Drugs and Crime, 2010; Modern Slavery Act 2015; Majic, 2015). Fueled by commitments to both 'carceral feminism' and 'militarized humanitarianism' (Bernstein, 2007; 2010), these campaigns involve the constructions of what Walklate (2007) terms 'imagined victims' who fit the profile of 'innocent' trafficking victims rather than supposedly 'blameworthy' illegalized sex workers, in the institutional 'allocation of blame' (McAlinden, 2014). An intertwined construction further occurs between 'imagined victims' and 'imagined offenders' (see, e.g. Majic, 2015, for a discussion of the 'Real Men Don't Buy Girls' campaign and the blurred lines between trafficking and the legitimate sex industry).

Within this context, since 2014, international policy publications, legislative debates and independent research turn to sexuality and suggest that LGBT victims are not specifically covered by many anti-trafficking protections (see, e.g. Mottet and Ohle, 2003). The 'ideal victim' (Rock, 1998; Christie, 1986) of trafficking is predicated on young, 'innocent' and unsuspecting targets within the already marginalized LGBT

communities. Indeed, while many scholars have successfully noted the symbolic in-strumentalization of victims in advancing neoliberal agendas (e.g. Garland, 2002; Bernstein and Jakobsen, 2012), the liberal recognition of sexuality in anti-trafficking narratives charts different levels of newsworthiness and interest for the media and poli-ticians. It also further triggers a balancing act, as sexual rights seemingly need to be balanced against religious rights. Beyond traditional prisms, within the context of traf-ficking of LGBT people, a much richer narrative emerges concerning the politics of victimhood, with victim status changing over time attached to sexuality as a 'mediat-ed' (Carrabine, 2012: 466) social relationship.

The core task of this article is to confront some of these complexities and tensions sur-rounding constructions of the LGBT victim of trafficking.[2] In doing so, the article takes a dual focus: constructions of victims' exceptionality embedded in blame and blamelessness as well as complex constructions of harm. Specifically, in relation to the former, it will be argued that the liberal rights attached to sexuality are negated in the context of trafficking and in doing so broader inequalities are unmasked. Building on the premise of a 'fundamental dissonance' (McAlinden, 2014: 183) between the con-structed identities of victims and the lived experiences of victims, LGBT trafficking victims also carry the blame for supposedly victimizing religious communities and therefore 'blame', 'innocence', 'good' and 'evil' proliferate pre-existing hierarchies of victimhood. Such dichotomous versions of victimage exacerbate the difficulty to ac-commodate victims perceived as 'deviant', while it further expands the reach of puni-tiveness (Weitzer, 2007).

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[2] Although some recent official publications use the acronym 'LGBTI' (see, e.g. Department of State, 2016), the majority of the documents we are drawing on in this article use 'LGBT' instead. We use the acronym 'LGBT' for the purpose of consistency unless a document uses different terminology.

Conservative and religious anti-trafficking activism further counter-pose LGBT protection, which attests to an unfound middle ground between the polarities of accepted victim and offender status. Indeed, in relation to the latter, the article critically explores monolithic constructions of harm, detached from structures and attached to the contingent appearance of emerging LGBT victims of trafficking and their generative legal presence. Harm in this context assuages a false dichotomy between trafficking victimization and 'the cumulative effects' (Office to Monitor and Combat Trafficking in Persons, 2014) of homophobia, transphobia and discrimination, as these two types of harm are not always easily identifiable as distinct, mutually exclusive, or fixed entities. Rather, the article makes the case for recognizing the fluidity of sexuality and gender, in order to develop more effective responses to sex trafficking concerning all people.

In the sections that follow, the article first examines these problematic arguments in relation to victims, exceptionality and blame. While there is an obvious element of overlap between them, they are disentangled and unpacked for the purposes of critical analysis. Finally, based on these insights, ultimately the article argues for the need to move beyond polarized monosemic notions of victims (and offenders) and to reframe our understanding of harm in order to meaningfully engage with the realities of sex trafficking.

LGBT Victims of Trafficking: Hierarchies and Exceptionality

The victimological literature establishes that there is a 'hierarchy of victimhood' (Carrabine *et al.*, 2004: 117) and that 'true' victim status demands 'innocence' (McEvoy and McConnachie, 2012; 2013). In the context of sex trafficking, 'ideal victims' (Christie, 1986: 18-21) and the consecutive distinctions between 'good' and 'bad'

victims (Doezema, 2005: 75), 'deserving' and 'underserving' (Munro, 2005: 108; 2008: 243), 'dignified' and 'undignified' (Musto, 2009: 283), or what has been referred to as 'real slaves' and 'voluntary' immigrants (Andrijasevic, 2007; Agustín, 2002), as well as the most nuanced distinctions between 'sex slave' and 'modern day slave' are binaries indicative of how trafficking victimization has been conceived (Musto, 2009: 283). Within these binaries, the underlying common assumption is that the 'ideal' trafficking victim is a vulnerable and visibly abused victim, possibly a minor, seen solely in terms of enduring physical and sexual abuse by traffickers (Aradau, 2004; 2006).

Critics have argued that existing regulatory frameworks are based on distinctions between 'iconic victims', generally referred to as 'reliable prosecution witnesses' and 'unreliable witnesses' (Srikantiah, 2007: 179, 187), as well as between 'innocent trafficked victims' and 'smuggled complicit illegal aliens' (Buss *et al.*, 2005: 8; Quirk, 2007: 201). Within these hierarchies, the cultural power of a long legacy of 'white slavery' constructions (De Vries, 2005: 49-50; Weitzer, 2007: 467) adds another layer of ethnical boundaries that are to be transgressed by 'non-white' victims of trafficking. This hierarchical order of victims resonates with a 'rationalized' scale of privileges and power (Andrijasevic, 2007; Anderson and Andrijasevic, 2008). In this sense, entitlement to victims' rights, as opposed to being deported on the basis of illegal entry, relies on victims' gender presentation, age, and nationality as well as on their function within regulatory and punitive mechanisms. This leads to axiomatic criminalization-informed distinctions. Therefore, a 'good victim' is assessed by agents and prosecutors on her ability to serve as a 'good witness' for prosecuting traffickers (Srikantiah, 2007: 179).

Victimhood and victimization – the processes associated with becoming a victim – are directly connected to notions of vulnerability and susceptibility (Walklate, 2011). Real or perceived notions of vulnerability, innocence and the notion of being deserving of help (Best, 1990; 1997) have become central to contemporary understandings of human

trafficking, and particularly sex trafficking of 'children' and 'youth' (Runaway and Homeless Youth and Trafficking Prevention Act S.262 (114th Congress (2015-2016), 2014)). Several writers have further highlighted the importance of age in analyses of victimization and have highlighted the 'sacralization' of children in this context (e.g. Zelitzer, 1994). In the context of sex trafficking, the perceived vulnerability of children and youth is instrumentalized by the regulatory framework and instantly interpreted as 'lack of consent', 'innocence' and blameless (e.g. UNODC, 2014: 7). With the purity of children at stake as well as with expressed anxieties regarding the development of children's sexual identity, trafficking of LGBT victims serves to underline the presumed purity of the ideal victim and the culpability and perversity of the offender. Looking across several texts, there is a common assumption that the victimization of LGBT youth by traffickers is linked to 'exceptionality' and 'extreme vulnerability'. The latter intertwines with risk and combines people's everyday experiences of victimization, substance abuse, homelessness and 'trading sex for survival' (Dank *et al.*, 18 February 2016). Especially as LGBT youth are more likely to:

> 'experience mental health issues such as depression, borderline personality disorder, and posttraumatic stress disorder (PTSD). These mental health issues contribute to their riskier sexual behavior and more frequent suicidal behavior' (Dank *et al.*, 18 February 2016).

'Exceptionality' is also linked to extreme 'exclusion' from service provision (Ray and Berger, 2007). As a result, references to 'sexual, physical and emotional' abuse contribute to a wider picture in which children are 'controlled, manipulated and commercially sexually exploited by adults' (Curtis *et al.*, 2008: 1) as well as excluded from service provision.

Extending this line of thinking and drawing on recent work by Walklate (2011), age is a

key attribute informing public and political conceptualizations of children's victimhood, vulnerability and plasticity. Specifically, in constructions of LGBT trafficking victims, age is related to pre-existent narratives of risk posed by 'predatory' and 'contagious' LGBT communities upon children (Lancaster, 2011: 93). In this sense, children are constructed as doubly scarred by trafficking: firstly, due to being exploited by sex trafficking, and secondly, by being at the receiving end of a 'contagious condition'. In the widely circulated case, to which we shall return in the next section, discussing the inclusion of LGBT victims of trafficking in Kansas' service provision and regulatory frameworks, it was argued that harms associated with trafficking could change someone's sexual orientation. Since young victims of trafficking may actually 'have been forced into […] the alternative lifestyle' (Marso, 7 January 2014).

In this sense, young victims are being at least linguistically removed from the LGBT community, and are reconstructed as trafficking victims being victimized by predatory members of this community. These reductionist narratives concerning legitimate victimhood run counter to available evidence, especially for those victims who do not fit the profile of the passive victim in a one-off random victimization scenario. As a result, these narratives further support strict hierarchies and the stigmatization of victims while delegitimizing victims' experiences and subjugated voices.

Indeed, 'victim' is a label attached to someone to momentarily describe a process, this labeling process depends both on the attributes of victims themselves and on the reactions of others (Rock, 2002; Christie, 1986). When references are made to 'LGBT persons' (as opposed to children or youth) the US 'Trafficking in Persons Report 2014' (Department of State, 2014) has pioneered constructions of LGBT trafficking victims for law enforcement purposes. The subsequent TIPs (Department of State, 2015; 2016) actively include LGBTI trafficking victims as an exceptional – *special* – category in need of protection. Generally, these reports perceive LGBT individuals as 'particularly

vulnerable', among other minority groups varying from 'indigenous persons', 'Romani victims' and 'suicide bombers', while arguing that trafficking is not merely harmful to specific persons but also to the environment (in instances of trafficking for 'maritime labour', 'logging' and 'mining') (Office to Monitor and Combat Trafficking in Persons, 2014).

TIPs, which have been used to exert global diplomatic pressure and influence the implementation of international criminal law, serve a dual target. Firstly, following Aradau (2004; see also Agustín, 2007), generally the reports instill the 'politics of pity' as a global governmental anti-trafficking strategy that 'legitimates (includes) or delegitimates (excludes) the suffering' of other victims (Walklate, 2011: 189). Secondly, most recent TIPs often argue that LGBT individuals continue to be subject to discrimination and violence within many implicitly non-American and non-Western societies (Office to Monitor and Combat Trafficking in Persons, 2014). For instance, the TIP 2015 report explicitly highlights the increased vulnerability of LGBT people in Central America, Mexico (Department of State, 2015: 89), Bolivia, Argentina, Peru, Chile (Department of State, 2015: 93), Africa and South Africa (Department of State, 2015: 309), El Salvador (Department of State, 2015: 149), Honduras (Department of State, 2015: 178), Asia (Department of State, 2015: 89) and Syria (Department of State, 2015: 218), who fall victims to 'sex trafficking and forced labor' (Department of State, 2015: 89). These LGBT victims are 'particularly vulnerable to traffickers who prey on the desperation of those who wish to escape social alienation and maltreatment' (Office to Monitor and Combat Trafficking in Persons, 2014). Concluding with recommendations for new partnerships between LGBT organizations and law enforcement officials, the reports seek to rectify through 'criminalization and service cooperation' existing biases and discrimination on behalf of officials and service providers (Office to Monitor and Combat Trafficking in Persons, 2014).

In doing so LGBT victims are being transformed from being a 'dangerous other (not to be pitied) to being the subjects of pity; a transformation process that also denies' these persons status as migrant workers (Walklate, 2011: 189; Agustín, 2007; Doezema, 2010). In total, seven countries in the global south are deemed to provide insufficient protection and resources for LGBT victims. The 2016 TIP report extends its remit from LGBT to LGBTI people and specifically identifies LGBTI victims as 'more likely to be penalized for acts committed as a result of being subjected to trafficking' (Department of State, 2016: 20). Within a hierarchy of human trafficking victimisation (Walklate, 2011: 183; Carrabine *et al.*, 2004), therefore, official reports place LGBT victims at the bottom of this hierarchy. There are several useful case examples, which demonstrate the highly moralized discourse of legal actors in relation to 'victim precipitation' (Timmer and Norman, 1984) and the most 'culpable' victims (Mendelsohn, 1976; Rock, 2007), of which LGBT victims of trafficking are one example.

In one case, a young transgender woman was arrested for solicitation after being trafficked to the US by multiple people (Egyes, 2017: 172). Upon being arrested and while explaining how she was trafficked and forced into prostitution as a child, the officers 'used transphobic language' and 'refused to take a police report' (Egyes, 2017: 173). In many cases, sweeping statements like 'there is no such a thing as trafficking of LGBTQ individuals' (Egyes, 2017: 173) exist as concrete barriers to justice. In this context, the invisibility of LGBT trafficking victims exists due to the force of cultural stereotypes. When people and law-makers imagine a trafficking victim they see a 'white, cisgender girl from Eastern Europe, chained to a bed and forced into prostitution' (Egyes, 2017: 173). These cases highlight the institutional and cultural entrenchment of stereotypes surrounding the 'ideal victim', while they also represent a crucial example of 'victim blaming' and of the circumstances in which discrimination and biases may occur.

With important research suggesting that 'hundreds of LGBTQ survivors' exist in the US (Egyes, 2017: 171), there are several instances where the culpability-innocence dichotomy, which normally attaches to perpetrators of trafficking and to trafficking victims respectively, would appear to be reversed. LGBT trafficking victims are instead condemned and held responsible for their victimization. 'Hidden' from view (Davies *et al.*, 2014: 9), the discourses constructing LGBT victims of trafficking illuminate 'the power of victim hierarchy' (Walklate, 2011: 183). Where LGBT people, and especially young LGBT people, are more readily identified as offenders rather than victims (see also Phoenix, 2008; Muncie, 2009). Therefore, while the reports make explicit connections between vulnerability and criminalization (Department of State, 2016: 212), they do not go so far as to criticize criminalization measures or to acknowledge that discrimination practices are instrumental in becoming vulnerable. As a result, a further hierarchy emerges according to which LGBT victims' vulnerability to sex trafficking is overstated while that of other victims is understated (see e.g. in the UK context, Hales and Gelsthorpe, 2012).

Aside from this hierarchical nature of the blaming process, the other important dimension of these discourses relates to the complexities of the victim/offender divide concerning LGBT victims of sex trafficking. Within victim hierarchies, the question of victim precipitation also assumes the distinct and dichotomous nature of sexual victimization and offending. Within this, offenders and victims engage in a one-dimensional relationship, which rotates around victimizing events. While both criminalization and victim-centered approaches to anti-trafficking are heavily premised on the strict designation of 'victims' and 'perpetrators' (Boukli, 2016), such neat distinctions are not always possible (Schwarz and Britton, 2015: 66). For instance, marginalization by families and communities often results in the disproportionate representation of LGBT youth engag-

ing in 'survival sex' (Schwarz and Britton, 2015; Maccio and Ferguson, 2016). There-fore, the monochromatic relationship of victim-offender, may not be entirely perceived as such by victims and may 'ultimately deny justice to those who are seen to have been complicit in their own trafficking' victimization (Hoyle *et al.*, 2011: 326). For Schwarz and Britton (2015: 67), LGBT victims of trafficking develop survival skills and engage in diverse ways with their traffickers. This is then reflected in 'atypical' and 'non-linear' support that victims might need in order to escape their traffickers, often involv-ing 'multiple attempts at "success" before being able to fully escape' (Schwarz and Britton, 2015: 67).

The concept of 'escape' has also been rather problematic in this context, since LGBT victims of 'rejection, hate, violence' and abuse (Egyes, 2017: 174) in their home set-tings attempt to escape their guardians to external environments and public spaces, where they are then trafficked and further exploited. While research shows that there is some data supporting the idea of victims turned into perpetrators (UNODC, February 2009: 6), not all victims become offenders themselves. Nonetheless, it seems plausible that trafficking of LGBT victims will involve some LGBT people as traffickers. Within the context of survival sex, there is a range of examples that blur the boundaries be-tween these categories. In such instances LGBT youth may find themselves in a cycle of offences, by using and trading drugs and alcohol regularly and by 'recruiting' other young people into exploitative situations (Dank et al., 18 February 2016; Clayton et al., 2013; Egyes, 2017).

When offending occurs, a criminalization approach to trafficking is used, in which both minors and adults 'often are arrested and treated as perpetrators under state criminal and juvenile delinquency laws that make a wide variety of sexual offences illegal' (Clayton *et al.*, 2013: 8). This criminalization trend has been described as a shift from 'the anti-trafficking movement' to the 'anti-trafficking industry', by operationalizing 'incarcera-

tion, deportation, or detention – rather than education, training, health care, and housing support' (Schwarz and Britton, 2015: 65). Within the anti-trafficking industry, services, when provided, are conditional upon the credibility of victims, further reflecting the notion of 'victim precipitation' discussed earlier. There are indeed a number of factors, which dilute the credibility of victims when victims are measured against stereotypical archetypes of victimhood and, to this end, the TIP reports frequently highlight the lack of protection offered in various jurisdictions (Department of State, 2015). Following Hoyle *et al.* (2011) in the context of sex trafficking there is an urgent need for a more nuanced and complex understanding, to account for the experiences of all people. Before returning to fleshing out this argument in the final section, the next section turns to harm.

LGBT Victims of Trafficking: Harm and Religion-Sexuality Tensions

While the literature establishes that there is a crucial 'hierarchy of victimhood' (Jefferson, 2014: 233) that uses 'imagined victims' (Walklate, 2006), there is also a related hierarchy of harms (Cain and Howe, 2008; Greenfield and Paoli, In Press). The 'ideal' or archetypal harms are the ones criminalized by criminal law and therefore come at the top of the harm hierarchy (Featherstone and Kaladelfos, 2014; Quinney, 1972). This hierarchy is predicated on the parallel notions of evil and defined through a notion of 'diffusion', according to which harm is diffused from a physical injury to an individual to a broader injury upon the social order (Quinney, 1972: 315).

In this sense, morality, ethics and diffusion make some harms more visible than others (Davies *et al.*, 2014: 13). This is matched with the codification of some harms (over others) involved in sex trafficking, as a 'barbaric evil' (stated by the British Prime

Minister Theresa May, BBC News, 31 July 2016) and a 'monstrous' crime (Skinner, 2008). This 'vocabulary of victimization' (Dunn, 2010: 6), is inherent in contemporary structural constructions of trafficking harm, and tells 'hyperemotional' and 'sexualized' (Presser, 2013: 12-13) stories by referencing specific cultural codes. By fostering transnational cooperation, decentralized mechanisms such as the International Organization for Migration's Inter-State Consultation Mechanisms on Migration (2017) contribute to an on-going dialogue between migration organizations at bilateral, regional and global levels, which disseminate these stories further.

Narrowly framed types of harm have also tapped into a potent force for understanding and reconfiguring victims in emotionally and culturally resonant ways (Dunn, 2010: 57). Following on from the previous section, the legitimate or deserving victim of trafficking is predicated on the veneration of the purity of youth that is sexually victimized by traffickers. Equally, constructions of traffickers' identities are conversely related to age, gender, ethnicity and predatory nature. That is, the adult man or woman of non-Western origin who had no prior relationship with the victim, who could be a 'patron', a 'master' (Brown *et al.*, 2011: 94) or a 'puller' (Zhang, 2011), and who matches the profile of 'demonized' (Green and Grewcock, 2002: 99) crime legends by committing random acts of violence. Even when official statistics are presented, vague statements on ethnicity reinforce these narratives by suggesting, for instance, that there are established patterns of 'suspected traffickers with non-EU citizenship' (European Commission, 2013: 64-65). These connections set up further false divisions and as a result any violence perpetrated outside of these parameters challenges this narrow framework.

This is matched with a hierarchical social arrangement that surrounds and permeates the condition of victimization and contributes to when and how events become recognised as 'problems of harm' (Walklate, 2018: 13). As part of this hierarchy, an im-

portant mechanism of silencing is in operation in the nature of available evidence that is being considered by the authorities, which contributes to when and how events become 'actionable in terms of policy intervention' (Walklate, 2011: 189). For instance, in November 2013 the media widely propagated a new draft regulation at the US state legislation level, which would change the operating procedures for Kansas' shelters for all (including LGBT) victims of human trafficking (McGinn, 14 January 2014). This draft regulation, for the first time, included sexual orientation as a protected category in its non-discrimination statement (Marso, 7 January 2014), and uniquely debated the concept of the LGBT victim of trafficking. Below we briefly highlight the importance of the Kansas failed draft regulation before we turn to disentangle the main opposing arguments that forced the draft regulation to capitulate.

As Kansas does not have any state-level anti-discrimination protection for LGBT people, this draft regulation would have been a vital step in ensuring equal access to protection. Although other American states have had similar high profile debates about the needs of LGBT people and the 'undue burden' this creates for religious employers and service providers (see, e.g. North Carolina's amended House Bill 2, which prohibits anti-discrimination measures that would protect LGBT people (General Assembly of North Carolina, 2016)), Kansas is the only state where this debate occurred specifically in the context of anti-trafficking measures. The proposed change to the regulatory framework, therefore, renders the conceptualizations of LGBT victims of trafficking and the resulting official anxieties around this emblematic of wider political tensions in the field of anti-trafficking. While at first glance the debates may appear as regional and non-generalizable, the public debates triggered by these proposed changes, highlight recurring themes within the global sexuality, gender identity and anti-trafficking policy debates.

To unpack the intricacies of the debate, the draft regulation was part of the implementation of House Bill 2034, which was passed in Kansas in 2013 and introduced new punitive anti-trafficking measures. The Kansas Department of Health and Environment (KDHE) published a temporary and a permanent version of the draft regulation on 21 November 2013. Both versions included identical anti-discrimination provisions that prohibit discrimination against victims based on 'color, race, gender, religion, national origin, age, sexual preference, or disability' and would have provided new anti-discrimination categories that go beyond those currently existing under state law (K.A.R 28-4-1261, 14 November 2013). While the policing and criminalization elements of the initiative received little media attention, a voluminous 'emotive and sensational' (Mythen, 2007: 468) overrepresentation of the clash between those pro-LGBT-inclusion and those anti-inclusion monopolized the headlines (McGinn, 14 January 2014). The conflict became most apparent when sexuality was debated on the basis of evidence required to attest to its significance as a protected category. The consideration of the legal implications of the inclusion of sexuality drew on four pivotal concerns.

Firstly, it was maintained that there was an issue of repetition, as 'gender covers a lot of the sexual discrimination' (Marso, 7 January 2014). To criticize this metonymic use of gender, by which gender also denotes sexuality, feminist commentators have contended that gender has been used as a cultural mechanism when protection from harm is debated. The upshot of this is to show how physical capacities have been included in national orders of well-honed hierarchies of difference. Therefore feminist scholars have created a vocabulary to 'denaturalize' embodiment through the use of intersectional categories like, gender, class, sexuality and ethnicity (Hawkesworth, 2013). This is because, against the equation of gender with sexuality, intersectional analysis understands that individuals experience the complex interplay of numerous systems of oppression working concurrently in the world (Spencer and Walklate, 2016: xvii; Green, 2008). This

offers a more nuanced framework that considers, for instance, how victims are attributed more blame if their sexual orientation suggests potential attraction to the perpetrator (Wakelin and Long, 2003), and which uncovers a silencing attempt of the pre-existing victims' hierarchy of 'respectability' (Schwarz and Britton, 2015: 66). Secondly, the existence of *any* evidence of discrimination was denied by officials, who could not 'believe any human trafficking victims would be denied access to safe houses on that [sexual orientation] basis' (Marso, 7 January 2014). Thereby effectively denying any instances of 'secondary victimization' as well as any 'pre-existing bias' on the basis of sexual identity (Hall, 2013: 66; Chakraborti, 2016).

Thirdly, it was suggested that there was a potential clash between religious freedoms and LGBT rights, if sexual orientation was to be a protected characteristic. Thus, protection to LGBT victims of trafficking was dismissed as a 'cultural issue' and not a political-economic one that could engage and unify all people. Rather, it was argued that imposing an obligation on religious service providers to accept LGBT victims of trafficking would upset the 'balance' between competing characteristics (Marso, 7 January 2014). As Jeremy Waldron (2003) argues, the idea of balance has commonly been used in policy and legal debates, e.g. in the context of liberty against security (Zedner, 2009) and in the context of rights of victims against offenders (Mythen, 2007; Rock, 1998; 2002). The underlying suggestion there is that balance is bound to change as the threat to one becomes graver or more imminent. It might then seem that there is no violation of the trumping principle or of the idea of equality when some adjustment is made to the balance. Simultaneously, 'balance' has connotations of quantity and precision, as when we use it to 'describe the reconciliation of a set of accounts or the relative weight of two quantities of metal' (Waldron, 2003: 192).

When applying this to LGBT victims' rights, it is suggested that the victim status may be overridden when the discussion involves LGBT people, as there we are balancing conflicts of rights – that is the rights of some victims against other victims. By extension, the balancing here implies that religious freedoms may be trumped or those relying on them may be persecuted by the requirement to care for LGBT trafficking victims, therefore becoming victims themselves. Problematically, this argument treats LGBT victims as victims differentiated by immutable characteristics. This line of thinking has been used in asylum cases with little success (Goldberg, 1993). Not least because it undermines the 'imputed gay identity' approach, based upon which individuals who do not identify as gay, but are perceived by those around them as gay and suffer discrimination, can still claim protections. This line of thinking is also closely tied to the idea of a so-called 'victimocracy' (Green, 2006) according to which a nation of victims fuels a 'victim-slanted' culture (Mythen, 2007: 477). Effectively, the image of balance has been used within wider mechanisms and processes of blame allocation, to both conceal the 'precarity' (Butler, 2004) of some people and dispense the term 'public' by replacing it with 'victim' (Mythen, 2007: 477).

Finally, it was sustained that trafficking victims may actually 'have been forced into […] the alternative lifestyle' (Marso, 7 January 2014). Therefore, sexual orientation 'was caused' by trafficking rather than being a pre-existing characteristic, as discussed in the previous section. As a consequence of the above arguments, in the final permanent version of this regulation, which is now in force, *all* references to anti-discrimination measures were removed (K.A.R. 28-4-1261, 13 March 2014). Although sexual orientation was not the only protected category to be removed, due to the fact that sexual orientation is not included in state anti-discrimination measures, there continues to be no barrier for staff of state secure facilities in Kansas to discriminate against victims of trafficking. This lack of anti-discrimination measures allows for 'secondary

victimization' and for 'hierarchies of victimhood' to occur (Condry, 2013). Ultimately, the debate over LGBT protection reflects discourses of rights potentially applicable and possibly denied to all (Landau, 2005). At the same time, harsher criminalization measures for traffickers were incontestably agreed, introducing harsher prison sentences for traffickers and smugglers, and strengthening the war on illegalized migration (Green and Grewcock, 2002: 96; Sullivan, 2017; Bleiker, 2012).

Similarly, the US Senate in 2014 debated the reform of existing anti-trafficking legislation. This included a bipartisan attempt to reauthorize the Runaway and Homeless Youth Act, by passing the Runaway and Homeless Youth and Trafficking Prevention Act S.262 (114th Congress (2015-2016), 2014). The Act was intended to provide funding for organizations supporting homeless youth. The most recent version of the Act included an amendment, which prohibited discrimination based on sexual orientation or gender identity (114th Congress (2015-2016), 2014). Supporters of the act (Leahy, March 10, 2015) highlighted that 'a growing number of homeless youth identify as LGBT, and it is estimated that they comprise up to 40% of the runaway & homeless youth population'. To advance the progress of this legislation a number of letters from activist groups supporting homeless youth were also submitted. Two of which explicitly focused on the need to provide services for LGBT youth (Congressional Record, March 12, 2015).

Despite these efforts, a moralizing and exclusionary legislative and political discourse, which echoed the state level case discussed above, triumphed. Ultimately the Act failed to pass in the Senate (Human Rights Campaign, 4 January 2017) due to concerns raised by Senators about the potential impact of the anti-discrimination provisions on religious service providers, who would face exclusion from funding unless they end discriminatory practices (Sneed, April 22, 2015). What left a residue, however, is the way that harm has been debated in these cases.

The cultural power of 'othering' (Becker, 1997) by means of exceptionality is manifested in legal and policy discourses of harm. A close examination of LGBT trafficking cases reflects a highly medicalized discourse concerning the need to protect LGBT 'homeless' people (both adults and youth) from 'vulnerability to depression, loneliness and psychosomatic illness' (Ray and Berger, 2007: 2) and from 'predatory' traffickers (Schwarz and Britton, 2015). For instance, the influential report by Martinez and Kelle (2013), referenced in his introduction of the Runaway and Homeless Youth and Trafficking Prevention Act by Senator Patrick Leahy (March 10, 2015), argues that LGBT people are 'at high risk of contracting sexually transmitted diseases, which increases the risk for contracting HIV' (Martinez and Kelle, 2013: 22).

Martinez and Kelle (2013: 22) also imply that LGBT victims of trafficking are at high risk of transmitting viruses, some in more dangerous form than before, as '[s]ex trafficking has additionally been associated with contributing to new strains of the virus that are resistant to treatment'. This essentially subverts the innocence-blame 'bifurcation' (McAlinden, 2014: 191). Moreover, similarly to the extant literature on HIV (Weait, 2016), a public health approach to LGBT trafficking is connecting an array of harms in relation to physical, sexual, mental and public health (Dank *et al.*, 18 February 2016, *passim*). This does not merely relocate the debate from trafficking victimization to the regulation of public health. Most importantly, it produces convivial readings by suggesting a permanently 'harmed', 'risky' and 'spoiled' victim identity (Yingling, 1991).

Further examples reveal a number of useful cases, which demonstrate the highly problematic ways in which official reports silence 'experiential victimization' by conflating inherent and structural victimization with structural vulnerability (Walklate, 2011: 183), and 'stigma' (Goffman, 1968). For instance, in policy debates a 'health surveillance'

(Schwarz and Britton, 2015: 63) mechanism has been deemed suitable to 'prevent vulnerability' (Schwarz and Britton, 2015: 65), after exploring 'individual and structural risk factors that render LGBT people amenable to "cycles of vulnerability"' (Schwarz and Britton, 2015: 64). As a response to this, a 'client-first' approach is suggested as an adaptable model that allows for victims to 'opt in and out of services and resources as they need during times of vulnerability, while allowing them to build resilience skills during times of security and self-sufficiency' (Schwarz and Britton, 2015: 64). This framework not only attempts to serve as a predictor of 'future victimisation' (Mythen, 2007: 474) but is also powered by neo-liberal, financial imperatives (Mythen, 2004).

Further, these narratives show a clear disconnection between actionable crimes and damaging (but non-criminalized and non-actionable) harms. For instance, the submission to the Congressional Record from the Human Rights Campaign (March 12, 2015) noted that LGBT youth were 'particularly vulnerable to trafficking' and were disproportionally likely to be homeless, as 'societal stigma' made it harder for them to access support or report crimes (see also, Holsinger and Hodge, 2016). The submission also highlighted that all LGBT people had an 'increased risk for victimization globally' (Congressional Record, March 12, 2015), by alluding to unspecified intangible harms that target LGBT people. Although the wider anti-trafficking legislation enforcing criminalization and border control measures have achieved policy acceptance (Green and Grewcock, 2002; Bernstein, 2010; Bernstein and Jakobsen, 2012), special protective provisions focusing on LGBT youth have failed. In this context, 'experiential' and 'structural' components are blurred resulting in the intractably risky, 'harmful' and 'exceptional' LGBT victims of trafficking who have fallen through the cracks, since they cannot otherwise be reconciled within 'culturally resonant ways' (Mythen, 2007: 466).

Conclusion

True and false, good and bad, innocence and guilt, victim and offender, smuggler and trafficking victim, trafficker and trafficking victim, LGBT victim and non-exceptional victim, these binaries forcefully impose monosemic assumptions about blame, responsibility and risk upon anti-trafficking law and policy. These 'oppositional conundrums' (McAlinden, 2014: 192) have informed hierarchies of victimhood and harm as well as policy priorities regarding LGBT victims of trafficking. Further, what is evident in the currently prevailing legal and policy approaches to LGBT victims discussed above is the specific role harm plays in this context. As Presser (2013: 4) has argued in relation to the concept of harm more broadly, 'harm makes central a subject who gets harmed, whereas crime makes central either a criminal or the state'. If 'crime' is prioritised, the victim of crime is frequently missing from the start, so instead authorities focus on defining and punishing crime. In contrast to this, a closer examination of and focus on harm privileges the 'vantage of victims' (Presser, 2013: 4); it detaches itself from crime control campaigns and is motivated by the need to stop harm.

Our analysis points out two areas within anti-trafficking that require urgent reform. Firstly, populist rhetoric informed by hierarchies of victimhood and religion-sexuality tensions has so far shaped official priorities concerning human trafficking. When 'deviant' victims are being re-victimized by ever expanding punitive measures, the cycle of punitiveness triumphs. We counter-pose an evidence-based discussion of trafficking that may actually reduce harm by pointing to areas that require better legal protection to prevent victimisation, better access to resources, and better support to survive and overcome harm. Secondly, we oppose sweeping punitive policy responses to trafficking and we counter-pose anti-discrimination measures that engage with rights, communities, education, freedom of movement and citizenship, opportunities and the exploration of

social justice measures to address vulnerability on a broader societal level that is not limited to the human trafficking context.

This article discerned the rhetorics channelled in narratives about LGBT trafficking victims and their underlying policies. These narratives are crucial for 'constructing who we are and what we intend to do' (Presser, 2013: 15) as societies. For policymaking, these narratives connect with general moral codes about victims and LGBT people in telling stories, and 'provide social approval by aligning events with normative cultural codes' (Smith, 2005: 18). For instance, even when the rationale for a new policy is essentially financial, as examined in the previous section, the actual discourse may be 'entirely dominated by grievance' (Collier, 2000: 92).

This final section of the article briefly considers what it takes to move beyond narrow perceptions of victims and to reframe hierarchies of harm accordingly. This endeavour is twofold. Firstly, a 'new' discourse is needed beyond 'blaming' dispossession and 'abjectification' (Lazaridis and Konsta, 2011) of the victim-offender dialectic. The problem with imposing *absolutist* positions (Brisman and South, 2018, passim), such as that 'victims are completely pure and offenders are completely evil' is that few would fit these expectations. Secondly, this 'new' framework could be based on what commentators have called 'inter-relational' harm and 'interdependence' (Brisman and South, 2018). For instance, statements like 'the movement of some people across states is bad *because* it is illegal' add little value to our understanding of harm in relation to the people involved. Ultimately, this article argues for a recalibrated focus that would shift the emphasis from criminalization-oriented approaches to incorporate the inter-relationship between victims, offenders, community and the environment in relation to our means and capacity to act due to structural conditions and the 'uneven distribution of power' (Tombs, 2007: 545).

Returning to the policy discussion, real rather than rhetorical 'victims' needs' (Simmonds, 2009) need to be at the forefront of harm-based interventions either within international human rights law or through civil rights entitlements. It has been demonstrated that the exercise of victims' voice has been achieved solely through revolving 'blame' discourses and often the punishment of both offenders and victims (Egyes, 2017). In the context of anti-trafficking, policy implementation and enforcement should further scrutinize how the victim is 'politically assembled and symbolically deployed' (Mythen, 2007: 467). The proliferation of punitive penal measures is perpetuating the notion of offender 'irredeemability' (Maruna and King, 2009), whilst also incriminating victims, compromising their safety and further lowering trust in police fairness (Jackson *et al.*, 2013: 142). As happens in the United States, this model also contains a 'looking-glass element' (Maruna and LeBel, 2010: 76). People start to believe that the perpetuation of harm, either as direct violence perpetrated by family, schools, communities, gangs or indirect violence through disbelief and misrecognition by the authorities reflects their own *in*capacity to change their lives (Egyes, 2017). Rather than utilizing potentially harmful and inherently exclusionary criminalization measures, stigmatizing public health inquiries, and war projects, we argue for an approach in which the key orienting concepts are not 'blame', 'exceptionality' and LGBT trafficking victims, but the harmful workings of systemic discrimination and inequality that operate, pre-exist and past-exist trafficking.

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