

## Introduction

After she waved over an unmarked car on a Texas roadside, thirteen-year-old B.W., as she was called in court records, offered an undercover police officer oral sex for twenty dollars. The officer arrested B.W. and charged her as an adult with the crime of prostitution. When a background check revealed she was only thirteen, police refiled the charges in family court—juvenile delinquency for the offense of prostitution. During an interview with a state psychologist, B.W. revealed a history of sexual and physical abuse, including several sexually transmitted diseases, two abortions, and untreated substance abuse. She had run away from foster care repeatedly and at the time of her arrest had been living with her thirty-two-year-old “boyfriend,” as she described him, for a year and a half. Despite evidence that he had coerced her into prostitution, police did not investigate or attempt to apprehend this man, whom she identified by name. The trial court ruled that B.W. was delinquent and placed her on probation for eighteen months. Represented by Houston-based criminal defense attorney Michelle W. Bush with support from Karen Clark Harpold of the child advocacy organization Children at Risk, B.W. appealed her case.<sup>1</sup>

B.W.’s attorneys argued that prosecuting a thirteen-year-old girl for prostitution was inconsistent with the un rebuttable presumption in Texas’s statutory rape law that minors under the age of fourteen cannot consent to sex with an adult as a matter of law. Therefore, Texas’ prosecution of B.W. led to “the inherently inconsistent result that a child is at the same time both legally capable and legally incapable of consenting to sex.”<sup>2</sup> Furthermore, they argued that Texas violated B.W.’s due process rights by refusing to investigate whether an adult encouraged or compelled her to engage in prostitution. They contended that the state had an affirmative obligation to investigate facts indicating child abuse. Attorneys for the State of Texas responded that B.W.’s position “could arguably encourage enterprising, but amoral, juveniles to engage in

<sup>1</sup> *In re B.W.*, 313 S.W.3d 818 (Tex. 2010).

<sup>2</sup> Petitioner’s Brief on the Merits, *In the Matter of B.W.*, 7.

prostitution.”<sup>3</sup> Lock-down custody was necessary for the protection of youth engaged in prostitution, they asserted, and police had no obligation to investigate the man involved.

On June 18, 2010, the Texas Supreme Court issued a groundbreaking decision that Texas law did not allow the State to prosecute a thirteen-year-old child for prostitution because she could not consent to sex as a matter of law. In a 6–3 opinion, the majority ruled that the Texas statutory rape law and the recently enacted state anti-trafficking law that defined sex trafficking to include any commercial sex act involving a minor indicated the legislature’s belief in “the extreme importance of protecting children from sexual exploitation, and the awareness that children are more vulnerable to exploitation by others even in the absence of explicit threats or fraud.”<sup>4</sup> The Court recognized the developmental differences between adolescents and adults, particularly with regard to their capacity to appreciate the significance and consequences of agreeing to participate in prostitution, and that these differences affected culpability. The Court reasoned:

It is difficult to reconcile the Legislature’s recognition of the special vulnerability of children, and its passage of laws for their protection, with an intent to find that children under fourteen understand the nature and consequences of their conduct when they agree to commit a sex act for money, or to consider children quasi-criminal offenders guilty of an act that necessarily involves their own sexual exploitation.<sup>5</sup>

Sergeant Byron A. Fassett of the Dallas Police Department starkly described this paradox to a *New York Times* reporter: “If a 45-year-old man had sex with a 14-year-old girl and no money changed hands, she was likely to get counseling and he was likely to get jail time for statutory rape . . . If the same man left \$80 on the table after having sex with her, she would probably be locked up for prostitution and he would probably go home with a fine as a john.”<sup>6</sup> The case of B.W. inspired a statewide campaign in Texas to cease criminal prosecution of all minors for prostitution and to provide services to youth instead.

The Texas campaign was one of many that arose across the United States in the 2000s inspiring a shift away from treating youth engaged in the sex trade as delinquents and toward regarding them as victims of sexual abuse. For the last fifty years, many youth involved in prostitution have been arrested and prosecuted for prostitution or other crimes. With the expansion of the prison industrial complex, especially in the 1990s, they were likely to spend time in prison. But by 2015, youth in the sex trade came to be considered by many as victims of “domestic minor sex trafficking.” On February 12, 2015, the United States Senate passed a resolution stating that “there is no such thing as a ‘child

<sup>3</sup> State’s Response to Petitioner’s Brief on the Merits, *In the Matter of B.W.*, Supreme Court of Texas, No. 08–1044 (September 9, 2009), 13.

<sup>4</sup> *In re B.W.*, 313 S.W.3d 818 (Tex. 2010), 821.     <sup>5</sup> *Ibid.* 820.

<sup>6</sup> Ian Urbina, “For Runaways, Sex Buys Survival,” *New York Times* (October 27, 2009), A1.

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prostitute.” The resolution insisted that “children trafficked for sex in the United States should not be treated or regarded as child prostitutes” but rather as “victims or survivors of rape and sex trafficking.” The resolution emphatically concluded, “children in the United States are not for sale.”<sup>7</sup> This shift in understanding was accompanied by new public policies and increased services targeted to youth identified as at risk of or involved in the sex trade. As of fall 2015, thirty-four states had passed “safe harbor” laws intended to divert youth found engaging in prostitution into social services and away from delinquency proceedings.<sup>8</sup> By the end of 2015, there were at least seventy-four state and local task forces and working groups fighting against “domestic minor sex trafficking” around the country.<sup>9</sup>

In this book, I examine the social movement behind these shifts in perceptions and policy. Some of the questions explored are: When and why did activism against the involvement of youth in the sex trade emerge, and what were the roots of this activism? Who were the leaders of these campaigns, and what were their backgrounds? How did they frame the causes and solutions to the problem, and what strategies did they use to fight the youth sex trade? How did the movement leverage an anti-trafficking framework to advance their cause? What assumptions about childhood, especially girlhood, undergirded the legal treatment of minors, particularly those with experiences in the sex trade, and how did the movement against the youth sex trade challenge these assumptions, or not? How were gender, race and class mobilized implicitly or explicitly in the movement? How have public discourses and media portrayed youth in the sex trade over time? What have been the impacts of the movement and critiques of it?

Answers to these questions reveal how the movement against the youth sex trade in the 2000s convinced many lawmakers and members of the public that youth involved in the sex trade were worth helping rather than punishing. To achieve this change, there emerged an ideologically diverse social movement composed of survivors and social service providers, feminists and evangelical Christians, sex worker advocates and human rights activists, politicians, professionals, and celebrities. Building on the 1970s feminist anti-rape movement and the 1980s movements against child sexual abuse and pornography, activists challenged widespread attitudes and public policies that blamed youth for involvement in the sex trade, reframing them as victims rather than perpetrators of prostitution and portraying the issue as an urgent social problem warranting public attention and resources.

<sup>7</sup> Senate Resolution 81, Cong. Rec., Vol. 161, No. 24, S1009 (February 12, 2015).

<sup>8</sup> Polaris Project, *Human Trafficking Issue Brief: Safe Harbor* (Washington, DC: Polaris Project, 2015).

<sup>9</sup> FBI, Innocence Lost National Initiative, Statistics (September 30, 2016), at [www.fbi.gov/investigate/violent-crime/cac](http://www.fbi.gov/investigate/violent-crime/cac).

The ideological diversity of this movement encompassed opposing understandings of the problem and the most effective solutions. Some feminists framed the issue as a form of violence against women and girls rooted in a sexual double standard, male sexual entitlement, and the devaluation of females. Conservatives condemned the violation of girls' innocence and the moral bankruptcy of a sexualized American culture. Some activists focused on the sexual victimization of marginalized girls, especially girls from low-income communities and girls of color, and argued that racism and classism contributed to both their involvement in prostitution and to the way police and courts treated them as delinquents rather than victims. Some focused attention on the involvement of boys and LGBT youth in the sex trade. With regard to solutions, some urged expanding criminal prosecution of adult facilitators and buyers, while others pushed for increased government support for youth services. Some advocated for reforming the criminal justice system's treatment of youth in the sex trade, while others pushed for improving the social conditions that made youth vulnerable to sexual exploitation in the first place, like poverty, sexism, and homophobia. Despite their differences, activists were unified in their opposition to the criminalization of youth involved in prostitution. Appealing to different constituencies, activists in the movement collaborated across their different identities, ideologies, and strategic orientations to pursue this shared goal. In this way, they were able to generate widespread support for changing laws and providing services to youth. However, some frames resonated more widely than others and were more likely to be promoted by the media, and lawmakers pursued some of the proposed solutions while ignoring others. The following pages delve into how and why the issue resonated and policy developed so rapidly in the way that it did in the 2000s.

Placing the contemporary movement against the US youth sex trade in a broader historical context helps to identify factors that likely contributed toward increased concern about this issue at particular historical moments. These factors include the sexual revolution, the expansion of the commercial sex industry, the development of technologies such as home video in the 1970s and the internet in the 1990s that facilitated the proliferation and increased visibility of pornography and prostitution, and the increasing media sexualization of women and, especially, girls. Furthermore, the vulnerability of youth to involvement in the sex trade increased with the rise of neoliberal economic policies that stressed families and communities by contributing to high child poverty rates, a shrinking welfare state, growing wealth inequality, and the explosion of mass incarceration. Politically, the challenges to white heterosexual male supremacy posed by the civil rights, women's rights, and gay liberation movements generated a backlash in the form of the growing political engagement of evangelical Christians who allied with the New Right beginning in the 1960s and who focused on social issues relating to sexuality, especially youth sexuality. Finally, shifting demographics, including immigration, racial integration, and rising rates of premarital sex and divorce, increased the

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likelihood of interracial and nonmarital sexual relations, which became an intense concern for “family values” conservatives. While all of these factors influenced the ebb and flow of activism related to youth involvement in the sex trade over the fifty-year period under study, I argue that societal changes related to sex, gender, sexuality, and race in particular fueled anxieties about this issue.

Capitalizing on these anxieties, many activists against the US youth sex trade as well as journalists covering the issue used gendered and racialized narratives about the commercial sexual exploitation of youth, which resonated with long-standing cultural narratives about race and sexual victimization. Despite dissenting voices and contradicting facts about how minors became involved in prostitution, these dominant discourses disproportionately shaped policy responses in the late twentieth century and the early twenty-first century. Across the decades, mainstream campaigns against youth involvement in the sex trade repeatedly framed the issue as an “urban” problem that was invading white middle-class communities – men of color luring young and naïve white girls from suburban and rural areas into the city and forcing them into prostitution. This framing echoed a deeply entrenched historical narrative of foreign and black men sexually exploiting and assaulting young white women – one that had fueled lynching in the nineteenth century and “white slavery” campaigns against prostitution in the early twentieth century. In both the 1970s and the 2000s, gendered and racialized rescue narratives shaped public discourse and policy regarding the US youth sex trade, which focused strongly on “protection and rescue” of girls and criminal prosecution of “pimps” and traffickers more than on addressing the social conditions that made youth vulnerable to entering the sex trade.

In the 2000s, criticism of campaigns against the US youth sex trade emerged from both inside and outside the movement. Critics argued that many activists and media portrayed the issue in simplistic, sensationalist, and inaccurate ways. They criticized the movement’s focus on young cisgender girls and called attention to the many boys and transgender youth involved in the sex trade. They also challenged the assumption that youth in the sex trade were always controlled by third party facilitators, arguing instead that many were engaging in commercial sex independently to support themselves because of the failures of families, schools, and child welfare systems. Critics condemned the movement for being too focused on criminal justice solutions that ignored the deeper causes of youth involvement in the sex trade like poverty, racism, sexism, homophobia, and transphobia. Others argued that funding to address the problem disproportionately went to law enforcement and criminal prosecution, thereby feeding the bloated prison industrial complex, while social support services for youth remained woefully inadequate. Furthermore, critics argued that legal reforms often still allowed for the arrest and detention of youth, and that they ignored the real needs of youth, like affordable housing and fair wage jobs. Sex worker rights activists argued that law-and-order responses to the youth sex trade had negative impacts on adult women in the

sex trade. Some even argued that youth have a right to engage in sex work in order to support themselves, especially in the absence of an adequate social safety net.

Based on this study of the history of activism against the US youth sex trade, I offer several arguments about the movement and its impact. Activism against the US youth sex trade has surged during times of social change related to gender, sexuality, race, economics, and immigration, which fueled adult concerns about the safety and sexuality of youth, especially girls. To generate interest and support for the issue, many movement advocates, journalists and policymakers exploited these concerns by using gendered and racialized narratives of victimization that have exaggerated and sensationalized the US youth sex trade, relied on and reinforced traditional gender, sexual, and racial ideologies, and obscured the heterogeneity of youth experiencing prostitution. Furthermore, the harsh effects of neoliberal economic policies in the United States, as well as the embedded racism and sexism of these policies, have increased the vulnerability of youth to involvement in the sex trade and exacerbated its harms to American youth. Nevertheless, rather than challenging these underlying economic and social conditions, many activists and policymakers have relied upon and reinforced neoliberal approaches to the problem by focusing on individual perpetrators and criminal justice solutions to the problem. These approaches have exacerbated the very conditions that create the problem by bolstering the racialized prison industrial complex that has harmed many communities and families rather than creating policies and programs that address the structural vulnerabilities of youth to involvement in the sex trade. While some activists against abuse of youth in the sex trade have challenged these systems, most have not, so overall the movement's impact has been limited.

#### METHODOLOGICAL CONSIDERATIONS

Sources for this interdisciplinary study include state and federal laws, legislative hearings and reports, case law, administrative actions and policies, activist organizations' records, interviews with activists, and books, films, media coverage, and research on youth involved in the sex trade from 1970 to 2015. Black feminist theory, as well as social movement theory, inform the analysis. Black feminist theory's concept of intersectionality, coined by Kimberlé Crenshaw in 1989, examines how the intersections of gender, race, class, sexuality, nationality, and other aspects of identity shape not only individual experience, but also social institutions, including politics, law, public policy, and the media.<sup>10</sup> These aspects of identity are not

<sup>10</sup> Kimberlé Crenshaw, "Demarginalizing the Intersections of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," *University of Chicago Legal Forum* 1 (1989), 139–167; Kimberlé Crenshaw, "Mapping the Margins:

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“unitary, mutually exclusive entities, but rather . . . reciprocally constructing phenomena” that interact on multiple levels.<sup>11</sup> Oppressive systems like racism, sexism, and classism do not function independently, but are interconnected, creating systems of oppression. Because laws and policies usually address only one form of oppression at a time, the intersections of oppressions are obscured and denied. Similarly, social movements have historically focused on singular forms of oppression – racism in the civil rights movement or sexism in the women’s movement – thereby ignoring intersecting oppressions experienced by women of color. Intersectionality is a dynamic analysis of structures, social processes, ideologies and representations used to understand the complex, multidimensional power hierarchies in society. These intersections have heavily influenced activism against the US youth sex trade as well as related political discourse and public policy since the 1970s.

In addition to Black feminist theory, I use social movement theory on how activists frame issues in order to gain support, how they leverage political and cultural opportunities, and how they mobilize resources to build a movement. Collective action frames are the “meaning work” of social movements, whereby activists develop and promulgate particular ways of understanding issues in order to gain support and mobilize constituents. “By simplifying and condensing aspects of the ‘world out there,’” movements seek to build a shared understanding of a social problem that identifies who is to blame, articulates a solution to the problem, proposes strategies for change, and motivates people to act collectively.<sup>12</sup> Movements construct individual and collective identities for their participants in order to generate support and mobilize people to their cause. Political opportunity theory focuses on how changes in the political structure, like the election of a new president or the appointment of an ally to a key position in government, can advance a social movement. Social movements can also take advantage of cultural opportunities – the “extant stock of meanings, beliefs, ideologies, practices, values, myths, narratives, and the like . . . which constitute the cultural resource base from which new cultural elements are fashioned.”<sup>13</sup> Finally, resource mobilization theory focuses on how successful movements mobilize resources, including people, money, and legitimacy, to achieve their goals. This social movement theory illuminates how the movement against youth involvement in the sex trade succeeded in gaining public attention and changing laws and policies.

Intersectionality, Identity Politics, and Violence Against Women of Color,” *Stanford Law Review*, 43.6 (July 1991), 1241–1299.

<sup>11</sup> Patricia Hill Collins, “Intersectionality’s Definitional Dilemmas,” *Annual Review of Sociology*, 41 (2015), 1–20.

<sup>12</sup> Robert D. Benford and David A. Snow, “Framing Processes and Social Movements: An Overview and Assessment,” *Annual Review of Sociology* 26 (2000), 615, 622.

<sup>13</sup> *Ibid.* 628.



Finally, I use sociologist Nancy Whittier's concept of a "collaborative adversarial movement" to analyze this ideologically diverse movement. Collaborative adversarial movements consist of social movement organizations that have differing collective action frames and identities and do not coordinate strategically, but who share specific or even long-term goals. Activism against the sex trade has often manifested as a collaborative adversarial movement. In the 1970s and 1980s, some feminists worked alongside conservatives to pass laws restricting the pornography and prostitution, while other feminists strenuously opposed these policies on free speech or right to work grounds.<sup>14</sup> In what was called the feminist "sex wars," "sex-positive" feminists fought bitterly with anti-prostitution feminists about the meaning of sex work/prostitution. Again, in the 1990s, some feminists worked alongside conservatives to pass the Trafficking Victims Protection Act of 2000 and then expand restrictions on trafficking in the 2000s, while other feminists and leftists vigorously criticized the anti-trafficking movement for conflating sex trafficking with sex work and ignoring labor trafficking as well as promoting policies that harmed sex workers, bolstered the prison industrial complex, and violated free speech. Critics, both scholars and activists, characterized the anti-trafficking movement as a "moral crusade" or a "sex panic" through which the Right was advancing its anti-sex and pro-criminal justice agendas.

Similar conflicts have influenced debates and policymaking relating to youth involvement in the sex trade. Feminists seeking to abolish the sex trade have worked side by side with conservatives and evangelical Christians to fight the US youth sex trade, although they have very different motivations and rarely directly collaborate. Conservatives use the issue to push a law-and-order agenda, calling for building up of the criminal justice system, whereas evangelical Christians frame the issue in terms of the moral breakdown of American culture and society. Feminists who believe that women are victimized by prostitution and seek to abolish the sex trade are able to garner broader support among feminists and the general public by focusing on girls' involvement in prostitution rather than that of adult women. Others, including sex workers, who advocate for the decriminalization of the sex trade, have supported some of the campaigns of the movement like laws to decriminalize youth or expunge the criminal history of trafficked people, but have opposed other efforts, like end demand campaigns and attacks against online websites advertising sex for sale. Scholars and journalists researching and writing on sex trafficking and youth involvement in the sex trade also often have strong investments in one side or the other, sometimes searingly critical of the movement and other times generating studies and resources to support

<sup>14</sup> Nancy Whittier, "Rethinking Coalitions: Anti-Pornography Feminists, Conservatives, and Relationships between Collaborative Adversarial Movements," *Social Problems* 61.2 (2014), 1–19.



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campaigns against the youth sex trade. In this book, I navigate this politically fraught terrain by attempting to fairly depict the movement against youth involvement in the sex trade and its critics, with attention to the historical, political, and economic context of this activism. As a scholar of feminist social movements and their impact on the law, I seek to understand the origins of this movement, what propelled it forward, its politics, and its effects on the lives of young people. I focus, in particular, on how the ideologies underlying these campaigns, the resulting laws and policies, and their implementation are shaped by the intersections of gender, race, and class. These are the questions at the heart of this study.

A final methodological consideration is language. Language related to the sex trade is highly politicized, carrying assumptions about the impact of commercial sex on participants, as well as about culpability for any harms that might result. “Prostitution” means engaging in a sex act with someone for payment. In 1978, women working in the sex trade coined the phrase “sex work” as an alternative to the stigmatizing term “prostitution” often used in criminal laws.<sup>15</sup> “Sex work,” which emphasizes that working in the sex trade is a form of labor, is sometimes understood to include a wide range of commercial sexual acts, including erotic dancing, pornography, phone sex, webcam sex, and live sex shows. The “sex trade” refers to this broader range of conduct. Whereas sex worker rights activists usually seek to decriminalize the selling and buying of sexual services, “abolitionists” oppose decriminalization and seek to abolish the sex trade. They also often use the word “slavery” to refer to sex trafficking and prostitution. Others have objected to the use of “abolition” and “slavery” in the context of prostitution/sex work as an “appropriation of black suffering.”<sup>16</sup> According to federal law, “sex trafficking” is defined as inducing a person to engage in a commercial sex act by force, fraud, or coercion, or when the person is under the age of eighteen.<sup>17</sup> Abolitionists equate prostitution and sex trafficking because they believe that all or most women involved in the sex trade are coerced and abused. They often use the passive voice – “prostituted women” – to highlight this abuse, or refer to people in the sex trade as “sex trafficking victims.” Many activists define themselves as survivors of prostitution and trafficking. Feminist anti-rape activists developed the term “survivor” in order to avoid defining people by their victimization and to avoid the negative connotations of victims as passive, helpless, and weak. Survivor language emphasizes strength, agency, resistance, and hope. When

<sup>15</sup> The phrase “sex work” was coined by Carol Leigh. Carol Leigh, “Inventing Sex Work,” in Jill Nagle (ed.), *Whores and Other Feminists* (New York, NY: Routledge, 1997), 225–231. Many people in the sex trade today describe themselves as “sex workers.”

<sup>16</sup> Robyn Maynard, “#Blacksexworkerslivesmatter: White-Washed ‘Anti-Slavery’ and the Appropriation of Black Suffering,” *The Feminist Wire* (September 9, 2015).

<sup>17</sup> 22 USC § 7102 (9)(A) (2015).

discussing particular organizations or people, I reflect the language that they use, but I also examine controversies around language throughout the book.

Youth involvement in the sex trade has been called child prostitution, teen prostitution, juvenile prostitution, commercial sexual exploitation of children (CSEC), domestic minor sex trafficking, and child sex work. This language has both an historical and political registrar. For example, “child prostitute,” which was used commonly in the 1970s but is today relatively rare, describes an identity that defined the child as inherently at fault. “Commercial sexual exploitation of children,” on the other hand, which came into widespread use in the 1990s after the First World Congress on the Commercial Sexual Exploitation of Children, frames youth involved in the sex trade as victims of exploitation.<sup>18</sup> “Domestic minor sex trafficking,” coined by anti-trafficking advocates in 2009, leverages the language of federal anti-trafficking law to frame youth in the sex trade as victims rather than perpetrators of prostitution. Other advocates use the language “prostituted youth” to emphasize the purported coercion and lack of agency of young people involved in the sex trade. In contrast, some refer to youth in the sex trade as “child sex workers” to emphasize youth agency.<sup>19</sup> In this book, I reflect the language of the time period, organization, or advocate that I’m discussing. In the movement, the term “children” is often used to refer to anyone under the age of eighteen, although others reserve the term “children” for preadolescents and use “youth” for adolescents from puberty to legal adulthood or even up to age twenty-one or older. I use “youth” to refer to people under the age of legal majority (eighteen). Until recently, most advocates against the youth sex trade focused on cisgender girls and boys. I identify the youth targeted as cisgender for programs and policies that do not attend to the particular needs of transgender youth.

Language for buyers and facilitators of people in the sex trade is also varied and politicized. Buyers have been referred to as johns, tricks, clients, customers, consumers, or “the demand.” When minors are involved, buyers have also been referred to as pedophiles, child abusers, child rapists, and sex traffickers. Many have criticized the term “john” for normalizing buying sex and obscuring the harm caused to women and particularly youth, while others have criticized this gendered term for erasing the existence of female buyers of sex. People who facilitate others’ involvement in the sex trade have been called pimps, sex traffickers, and third-party facilitators. The term “pimp” often collapses a range of behavior from economic dependence on someone else’s prostitution, to helping someone voluntarily engage in prostitution or

<sup>18</sup> Penelope Saunders, “How ‘Child Prostitution’ Became ‘CSEC,’” in Elizabeth Bernstein and Laurie Schaffner (eds.), *Regulating Sex: The Politics of Intimacy and Identity* (London, England; Routledge, 2005), 167–188, at 183.

<sup>19</sup> See, for example, Noah Berlatsky, “Child Sex Workers’ Biggest Threat: The Police,” *The New Republic* (January 20, 2016).