

Trafficking as a Floating Signifier: The view from Brazil

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The fact that the United Nations (UN) Trafficking Protocol is not an autochthonous product of the Brazilian political system has resulted in its being brought into that system as a 'floating signifier': something that does not point to any actual object or agreed upon meaning.² People who wish to criminalise prostitution have attempted to bend the Protocol in that direction while prostitutes' rights groups have used it to critique current Brazilian laws, emphasising the need to distinguish migration for voluntary, consensual sex work from trafficking. Groups concerned with organ trafficking (a crime for which there are practically no proven cases in Brazil) have managed to push their banner to the fore in the trafficking debate. Meanwhile, Brazil's long-established and relatively successful anti-slave labour movement has been loath to 'change their brand', having already gained a considerable degree of institutionalisation prior to Brazil's ratification of the Protocol in 2004.

The rush to implement an official anti-trafficking policy in Brazil in response to the Protocol created a dynamic in which the perceived need to 'do something' about trafficking outstripped both the ability of the country's researchers to produce useful data regarding the phenomenon and its capacity to conduct legal reforms. The policies and programmes which the various municipal, State and federal governments have implemented in Brazil have thus tended to be based around prejudices, stereotypes and misinformation, privileging an overly formalised and legal reading of 'trafficking', which understands the phenomenon almost exclusively as the migration of sex workers (coerced or not), while largely leaving other forms of coerced migration and labour out of the picture.³

Because of this, Brazil's only law regarding trafficking continues to be Article 231 of the Penal Code, which was originally formulated in 1940. This defines the crime as the assisted migration of women across international borders for the purpose of prostitution. In 2005 (in part as a response to Brazil's ratification of the Trafficking Protocol), the law was changed to consider victims of all genders. It was also expanded by Article 231a, which criminalises the assisted migration of prostitutes within Brazilian territory.

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² C Lévi-Strauss, 'Introduction à l'oeuvre de Marcel Mauss' in Mauss, *Sociologie et Anthropologie*, Paris, 1950.

³ A Piscitelli, 'Entre as "mafias" e a "ajuda": a construção de conhecimento sobre tráfico de pessoas', *Cadernos Pagu*, no. 31, July-December 2008, pp. 29-62; T G Blanchette, A P Silva, A Bento, 'The Myth of Maria and the Imagining of Sexual Trafficking in Brazil', *Dialectical Anthropology*, vol. 37, issue 2, 2013, pp. 195-227.

In 2009, the Article 231 was modified once again, this time to specifically equate 'prostitution' with 'sexual exploitation'—an equivalence which had hitherto not appeared anywhere in the Brazilian legal code.

Although these changes were conducted against a background of widespread debate regarding the Trafficking Protocol and Brazil's need to conform to it, neither brought the country's trafficking laws in line with the UN treaty. Instead, the law was adjusted to make it more similar to the United States Mann Act⁴ in scope and intent. To date (February 2015), no changes have been promulgated in the Brazilian criminal or civil code to bring the country's laws into accordance with the Trafficking Protocol, even though national anti-trafficking policies and plans endlessly reference the Protocol as their inspiration and touchstone. A new bill (PL 7370/2014) currently being considered by the Brazilian Congress would redefine trafficking to bring Brazilian law more in line with the Protocol. The discussions surrounding PL 7370/2014, however, and particularly the report by House reviewer Deputy Arnaldo Jordy, have attempted to widen the bill's scope so that it would criminalise several non-coercive, non-trafficking-related practices common to both sex work and Brazil's transgender community.

In particular, Jordy's committee seeks to include in the definition of trafficking the 'clandestine modification of the body of another person', a practice which is not included in the Trafficking Protocol. It also would criminalise bodily modifications undertaken by non-licensed people or in unhealthy conditions. Given that body modifications of this sort are common among Brazil's trans population, this rider would open space for a back-door attack on stigmatised gender identities. Many similar riders and suggestions have come out of Jordy's committee, oftentimes at the behest of evangelical Christian congress people, and it is still an open question as to how these discussions will modify the final bill. Given that PL 7370/2014—like many anti-trafficking bills worldwide—raises allowed surveillance levels of people suspected of trafficking, and given the climate of increased political opposition to the rights of lesbian, gay, bisexual and transgender (LGBT) people and sex workers, which has recently taken hold of significant parts of the Brazilian State, these riders are particularly worrisome.⁵

As a result, while Brazil's National Anti-Trafficking Plan recognises migration for slave labour and the removal of organs as forms of trafficking, there is still no legal definition of these two crimes as such.⁶ Thus, while Brazil has almost five times as many slave labour cases on the books as trafficking for sexual exploitation cases, and fifteen times the number of slave labourers rescued as opposed to victims of sexual exploitation rescued,⁷ most awareness campaigns and the great majority of public and academic attention remain focused on sex work as a necessary and sufficient component of trafficking in persons. This state of affairs was heavily reinforced by Brazil's first anti-trafficking study,

⁴ The Mann Act, originally passed in 1910 and most recently amended in 1986, makes it illegal to transport people across State lines for the purpose of prostitution or illegal sexual activity. In its original formulation, it prohibited such transport for 'debauchery, or for any other immoral purpose', which—notoriously—included transracial sexual-affective relationships.

⁵ See the Special Committee Report at http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1270327&filename=Tramitacao-PL+7370/2014, especially pages 5-10. For information on anti-sex worker sentiment in the federal government, see <http://www1.folha.uol.com.br/cotidiano/2013/06/1289525-ministro-da-saude-recua-em-campanha-para-prostitutas.shtml>. For an example of recent anti-LGBT activity in Congress, see <http://noticias.uol.com.br/politica/ultimas-noticias/2013/03/07/comissao-de-direitos-humanos-elege-pastor-polemico-como-presidente.htm>. For an example of the sort of report which situates young men as victims of recruitment into 'travesti prostitution', see 'Jovens são aliciados para se transformarem em travestis', <http://paroutudo.com/2012/02/13/jovens-sao-aliciados-para-se-transformarem-em-travestis/> (all weblinks retrieved 6 March 2015).

⁶ Secretaria Nacional de Justiça/Ministério da Justiça (SNJ/MJ), 'Enfrentamento ao Tráfico de Pessoas: Relatório do Plano Nacional', SNJ/MJ, Brasília, 2010.

⁷ Between 2005 and 2011, 940 cases of slave labour with over 27,000 victims, and 200 cases of trafficking for sexual exploitation with around 1,800 victims were registered by the authorities. SNJ/MJ, 'Relatório Nacional sobre Tráfico de Pessoas: consolidação dos dados de 2005 a 2011', SNJ/MJ, Brasília, 2013, pp. 33-34, 42.

PESTRAF (Pesquisa sobre Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual Comercial no Brasil). Published in 2004, it continues to be the most cited source of information regarding trafficking by media, government and civil society anti-trafficking actors, even though the study promiscuously mixes non-coerced prostitute migration with forced migration for sexual exploitation in its mapping of Brazilian trafficking routes and its characterisation of trafficking victims.⁸

In this sense, then, the Trafficking Protocol has not done much to serve the struggle against human exploitation in Brazil. This struggle was already well underway in the 1990s and early 2000s in the Labour Ministry's increased repression of slave labour, resulting in more than 27,000 freed slaves between 1995 and 2009⁹. Brazil's ratification of the Trafficking Protocol pushed the government to 'do something' about the specific problem of 'trafficking', defined by Brazilian law as the assisted migration of prostitutes and conceived of as a separate (although related) problem to slave labour. As funds and political pressure flowed into Brazil around the trafficking issue, these became ever-more directed towards the repression of prostitute migration—the only thing legally understood as trafficking by the Brazilian criminal code.

Today, the non-coerced, voluntary migration of self-employed sex workers continues to be counted as trafficking and widely reported as such by the media, by government agencies and by NGOs engaged in 'awareness raising' in Brazil. The anti-trafficking efforts of the Federal Police (and many local and State police forces) continue to be directed by Article 231 and have focused almost entirely on the repression of prostitute migration, irrespective of whether this involves coercion or conditions similar to slavery. As has been documented elsewhere,¹⁰ this repression has led to much 'collateral damage', with the rights to migration of women, men and trans- people classified as 'prostitutes' being curtailed in arbitrary fashion and their supporting kinship and friendship networks often being criminalised as 'traffickers'.

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⁸ ML Leal & MF Leal, *Pesquisa Sobre Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual Comercial—PESTRAF*, Brasília: CECRIA, 2002. For PESTRAF's continued use as a touchstone for trafficking information, see the recently published Final Report of the Chamber of Deputy's Parliamentary Inquiry Committee (CPI da Camera dos Deputados) regarding trafficking in persons (Camera dos Deputados, *CPI—Tráfico de Pessoas no Brasil*, Brasília, 2014, p.8). For criticisms of PESTRAF, see A Piscitelli, 'Entre as "máfias" e a "ajuda": a construção de conhecimento sobre tráfico de pessoas', *Cadernos Pagu*, no. 31, 2008, p. 29-63; and T G Blanchette & A P Silva, 'On Bullshit and the Trafficking of Women: Moral entrepreneurs and the invention of trafficking of persons in Brazil', *Dialectical Anthropology*, vol.36, 2012, pp. 107-125.

⁹ SNJ/MJ, p.52.

¹⁰ F Nederstigt & L C R Almeida, 'Brazil', in GAATW, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, GAATW, Bangkok, 2007, p. 87-213; T G Blanchette and A P Silva, 'O Mito de Maria, uma traficada exemplar: Confrontando leituras mitológicas do tráfico com as experiências de migrantes brasileiros, trabalhadores do sexo', *Rev. Inter. Mob. Hum.*, vol. 37, pp. 79-105.