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KAY WARREN ON GENDER, CLASS, AND THE UNWILLING VICTIMS OF HUMAN TRAFFICKING LAW

by Janell Rothenberg

OVER THE LAST DECADE, human trafficking has emerged as a legal category of prosecutable criminal behavior. The 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, adopted by the United Nations General Assembly, created international guidelines for the identification and prosecution of human trafficking under the auspices of the UN Office on

Drugs and Crime. More than 110 UN member states are signatories to this protocol while actual attempts to translate it into practice continue to face major obstacles.

In a recent talk, Kay Warren, Tillinghast Professor of International Studies and Anthropology at Brown University, traced the framing of trafficking victims and perpetrators from the discourse of the UN protocol to the

particular practices of prosecution. Speaking at the Department of Anthropology's Culture, Power and Social Change Group on May 7, Warren demonstrated contestation over the category of trafficking victim through an ethnographic account of one particular human trafficking case in Colombia. Under external, international pressure, the case began in 2003 as a trial over human trafficking

between Colombia and Singapore. By 2006, it had become a case of prostitution and collaboration in criminal enterprises. During this period, Warren also witnessed the Colombian legal system change. In 2003, the country's courts were still an inquisitorial system, marked by lengthy judicial interrogation and document proliferation. All of this was changed by 2005 into an adversarial system

emphasizing plea bargains and efficiency, adopted under pressure from the US.

The UN protocol was designed to clearly distinguish between the trafficking victim and perpetrator. Resulting from the strong influence of anti-prostitution activists in the drafting of the protocol, the definition of human trafficking was given the distinctive quality of sexual exploitation. In the UN protocol, trafficking victims are framed as innocent, duped, non-consenting women and children, while perpetrators are described as wielding coercion and violence to exploit their victims transnationally. In the 2003-2006 Colombian case, Warren found a more ambiguous drama. Some women identified as trafficked were unwilling to play the role of duped victims. They gave the impression of having been labor migrants, consenting to leave and earn money to support their families. Poor men, who started

as accused traffickers, gained innocence via their class position. These local recruiters were characterized by the defense as too poor to have benefited from human trafficking. Therefore, Warren argued, “victimhood was shifted, partially and momentarily, onto an unexpected category of protagonists.” The “real” perpetrators became those men with the capital and mobility to utilize transnational economic networks. The lack of suitable victims required to pursue a case of human trafficking forced the prosecution to reframe the crime. The shift in prosecution from being “victim-centered” to “criminal enterprise centered” resulted from the complicated ways that globally circulated legal discourse interacted with the local realities of prosecution in Colombia. Following the process of “writing the victim” from the text of the UN protocol to the changing arguments in a Colombian courtroom, Warren put into question international

norms and practices surrounding human trafficking.

Kay Warren’s current book project is entitled *Human Trafficking, Global Solutions, and Local Realities Across the Pacific Rim*. Her other books include *Indigenous Movements and Their Critics: Pan-Maya Activism in Guatemala* (Princeton Universi-

ty, 1998) and *Women of the Andes: Patriarchy and Social Change in Two Peruvian Towns*, co-authored with Susan Bourque (University of Michigan, 1981).

Janell Rothenberg is a doctoral candidate in the Department of Anthropology at UCLA.

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, adopted and opened for signature, ratification, and accession by General Assembly resolution 55/25 of 15 November 2000