



Judging Sexual Exploitation: A "Cultural" Crime?

Mathilde Darley

► To cite this version:

Mathilde Darley. Judging Sexual Exploitation: A "Cultural" Crime?. Routledge. Trafficking and Sex Work. Gender, Race and Public Order, Routledge, p. 261-274, 2022, 9781032037851. halshs-03894709

HAL Id: halshs-03894709

<https://shs.hal.science/halshs-03894709>

Submitted on 12 Dec 2022

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Chapter 16

Judging Sexual Exploitation: A “Cultural” Crime?

Mathilde Darley 0000-0003-4261-7183

Abstract

This contribution deals with criminal trials, an underexplored arena in studies on sex trafficking and exploitation. It starts from two observations: first, many of the defendants and victims in trafficking cases in France are foreigners, and secondly, legal professionals often tend to apprehend this crime through a “culturalist” lens. Based on observations conducted in criminal courts (*chambre correctionnelle*) and interviews with defense lawyers, prosecutors and judges, I aim at analyzing the role of the alleged “culture” of both offenders and victims in the production of a “judicial truth” justifying the sentence. By drawing on research on sentencing and gender and judging, this chapter develops the hypothesis that culturalist arguments in trials for sexual exploitation involving foreigners reinforce relationships of domination by extending, in a euphemized form, race and gender stereotypes that naturalize differences. In doing so, they contribute to preserving a national public order strongly relying on the perpetuation of a gendered and sexual moral order.

Keywords: human trafficking; prostitution; sexual exploitation; criminal court; culture

When trafficking reappeared on national and international agendas in the early 1990s, it was usually in terms that tended not only to emphasize the sexual dimension of exploitation, but also to reinforce the conflation of trafficking with migration issues. In France in particular, in the context of abolitionism, prostitution, although not illegal, is not recognized as a profession: while selling sexual services is (no longer) legally reprehensible, deriving profit from the prostitution of others is, and the purchase of sexual services has been prohibited since 2016. Hence, the policing of commercial sex activities tends

to focus on the most visible and “tangible” forms thereof: those that occur on the street and typically involve foreign female prostitutes. As a result, these women tend to be overrepresented at the other end of the penal chain, i.e., in court. Moreover, the approach of aggravated procuring and human trafficking cases by jurisdictions devoted to organized crime—which puts cases presenting international ramifications, more likely to involve foreigners, at the core of judicial work—has reinforced the tendency to associate the most serious forms of sexual exploitation with the foreign origin of defendants.

This context alone largely explains why the law professionals (defense and prosecution lawyers, as well as judges) who were interviewed as part of the ProsCrim¹ research project have tended to draw a parallel between the crime of human trafficking for sexual exploitation and the smuggling of people (usually women) into France, usually to derive profit from their prostitution—even though no accepted definition of trafficking, either nationally or internationally, makes the crime subject to border crossing. Additionally, these professionals routinely interpret the various forms of sexual exploitation encountered in terms of the actual or purported origin of the individuals concerned, and their “associated” culture(s). For instance, “Roma” pimping, posited by law professionals as an equivalent to “Romanian” pimping, will typically be described as “sordid and seedy”, operating in “clannish” and “conjugal” fashion because it is “culturally accepted”, and leading to the exploitation of women’s prostitution by their idle husbands, not to mention unparalleled levels of violence perpetrated by the latter against the former. Chinese procuring, on the other hand, is considered “cleaner” because of its “entrepreneurial” spirit and “horizontal” organizational structure, characterized by solidarity among consenting, “hard-working”, “regular folks”. Finally, Nigerian procuring is supposed to be characterized by the unshakeable hold of the (typically female) pimps over the victims. This ascendancy is understood to derive from the *juju* (Taliani 2012), the exotic nature of which is heavily emphasized, and which is used to force the victims to repay exorbitant debts contracted towards the “Madams” responsible for recruiting and exploiting them.

These categorizations, which amount to assigning immutable features to those who are perceived as members of supposedly homogeneous ethnic-based groups (Terrio 2009), are regularly invoked by the

various stakeholders to criticize the judicial institution's ignorance of cultural specificities—or, on the contrary, to downplay their importance as factors explaining these delinquent activities; to make a point about the “cultural differences” between the judges and those answerable to the law—or, on the contrary, to minimize those differences; and also more generally to justify the chronic difficulties in producing evidence of trafficking and procuring, as shown by Gilles Favarel-Garrigues and Lilian Mathieu in the present volume, and summarized as follows by a defense attorney:

“Why are we baffled? Well, because it's very, very, very complex, and also there are dimensions we have zero grasp of: there is a cultural problem that baffles us.”

(Interview, Defense attorney, Feb. 2017²)

Based on an ethnographic corpus comprised of interviews with law professionals and observations of hearings at the *chambre correctionnelle* (Magistrates Court/ first instance criminal court), I hypothesize that this categorization process whereby people answerable to the law are assigned to social groups defined in terms of the purported geographic origin of their members constitutes, in the context of the relative legal limbo surrounding prostitution and procuring in France (Mathieu 2014: 54; Mainsant 2013), an extrajudicial framework that influences the elaboration of the penal judgement (Valverde 2003). More specifically, the scope of this culturalist framework, far from being restricted to a “descriptive” function, can only be apprehended in the light of the other forms of classification that derive from it: under the guise of cultural differences, what is being activated here are racializing assignments emphasizing that those answerable to the law are ill-adjusted to the gendered and sexual national order (Darley 2019) that the sentence is expected to reassert and reestablish. Constituting the dark side of public policies against trafficking, the tribunal is thus portrayed as the ultimate space where the boundary between good and evil is (re)produced and, most importantly, the dominant moral order is confirmed (Komter 1997).

“Here, it’s unbelievable, but in Nigeria, it’s commonplace”: Culture as a Defense Argument Among Attorneys

From the 1980s onwards, a research stream developed in Anglo-American literature around the concept of “cultural defense” (Coleman 1996), striving to apprehend how the origin of the defendants, and the associated “culture”, influenced proceedings, with a particular focus on the arguments put forward by the defense. In France however, academic literature and legal actors rarely explore the role played at hearings by the “cultural differences” ascribed to the defendants and considered to be anchored in a set of norms, values, and practices differing from those of the mainstream culture: in a “republican” system understood to be “color-blind” (Terrio 2009) or “difference-blind” (as evidenced, more generally, by the official discourse, which denies the existence of “ethnic” minorities), the few studies dealing with this issue usually conclude that law professionals tend to dismiss “culture” as a factor likely to explain behaviors, and therefore that the cultural argument is inefficient as a legal strategy, both for defense and prosecution (Wyvekens 2014).

A few authors, however, do argue that, while culture does not typically feature prominently at hearings, the cultural argument is nevertheless anything but ineffectual in the judicial arena (Bessière et al. 2018), where its legal effectiveness is primarily a function of who is wielding it: disqualified when put forward by defendants (“self-culturalization”, see D’hondt 2009: 807), it is perceived to be more legitimate when used by their lawyers (to explain why the defendant went through with the act). One way to invoke “cultural defense” is to explicitly stress the fundamental otherness that separates the defendants from local French behavioral norms, pleading that the crime could not—and, potentially, may not—be perceived as such, insofar as the incriminated behavior was inspired by, and assessed on the basis of, principles other than those of law professionals.

One attorney working for a “Roma” defendant pleaded, for instance, that his client belonged to a community “of gypsies who have business and family ties, come from the same village or the same area in Romania”, to stress that it was impossible for the defendant to emancipate himself from cultural patterns too powerfully ingrained to be cast aside of his own free will:

“Ever since the 13th century, this segregated community has been sidelined. Open borders have made it easier for them to come here, but they are not migrants: they come and go. Their story is self-contained, the case says nothing about them or their history. When we Westerners ask them a question, they are unable to answer, their mindset is different, we can’t hold their contradictions against them.”

(Defense attorney, Morariu Trial, March 2015³)

Here, the attorney introduces cultural difference in the proceedings by establishing a fundamental distinction between the defendant and himself, and more generally between the defendant and the community of law professionals who are to judge him, and by turning this person into an “impenetrable, mute, and unemancipated Cultural Other” (D’hondt 2010: 71). In the resulting perceptual system, the “majority”, represented by the attorney, embodies the universal, while the defendant, as the “minority”, incarnates the particular (Guillaumin 1995). Cultural differentiation, naturalized and established as the ultimate principle of explanation, is invoked to justify the inevitability of prostitution and pimping in this “very poor, little-educated community [...] that has no notion of victimhood”:

“In this community, every woman is into prostitution. Prostitution occurs within families without family members being under the impression that they are engaging in procuring.”

(Defense attorney, Pietru Trial, May 2016⁴)

In cases involving women pimps who are also prostitutes themselves, defense lawyers usually plead, as a source of alienation, the fact that defendants share the same gender and social conditions as those pitted against them, in the role of “victims”, by the judiciary. This common backdrop—and the fact that defendants and victims both belong to a prostitution community presented as vulnerable—is considered to be a direct function of their cultural affiliation, actively emphasizing the otherness of the defendants in order to mitigate the gravity of the crime. For instance, the transitioning of Nigerian

defendants from victims to perpetrators (still prostituting themselves, they bring in other women from Nigeria in order to pay off their own debt more quickly by deriving profit from the newcomers' prostitution) is often pleaded by defense lawyers as a specificity of Nigerian trafficking, a change in status that is "culturally" almost unavoidable.

"Mrs. A. was a victim of this prostitution ring. She swung to the other side by objectively becoming an accomplice of the ring. She agreed to buy a person. Here, it's unbelievable, but in Nigeria, it's commonplace. She was raised like this. That's the way life goes in Nigeria [...]. Mrs. A. is doing her utmost to cope and rehabilitate herself. The conviction should not be allowed to interfere with her willingness to get grips with how women are conceived of in the Western world." (Defense attorney, Onwudiwe Trial, October 2016⁵)

While, in this particular case, the point of constructing otherness by invoking a form of cultural differentialism separating Nigerian women from the Western world is to mitigate the moral condemnation and penal sentencing of the judges, it is also a reminder of the defendants' radical extraneousness to the dominant "Western" moral order, and how necessary it is for them to get to terms with it—with adequate support from the judiciary. This othering process is further reinforced here by recurrent, eminently exotic references to the *juju* rituals that are supposed to seal, in the country of origin, the motives of the exploitation that is to be deployed on French soil:

"In fact, that's the twist: you are a lawyer, and you are expected to step into the shoes of your client and you realize that there is a... a real cultural gap. Witch doctors, things like that..." (Interview, Defense attorney, Nov. 2018⁶)

Besides being considered a source of alienation, cultural affiliation is also used as an argument for pleading ignorance. For instance, the so-called "cultural" blurring of boundaries between the

“prostitute” and the “pimp” is often emphasized as proof of the “good faith” of those answerable to the law and their inability to get a grasp of the legal framework:

“When she’s being questioned about her role, it’s difficult for [her client] to say that Mrs. D. was the boss. She can’t simply incriminate Mrs. D. just like that. It’s cultural. A couple of weeks ago she was a prostitute, now she’s a pimp. There’s a pay slip for a masseuse. These are elements proving that this woman wasn’t trying to evade the law. Her goal is to find stable employment and raise her child. To her, masturbation is not a sexual act.”

(Defense attorney, Chen Trial, March 2015⁷)

Similarly, pleading that “manual finishing touches”, i.e. masturbation practices at the end of a massage, are not perceived as an integral part of sexuality in Chinese culture makes it possible for defense attorneys to minimize the prostitutional dimension of this activity, and therefore dispute that organizing it should qualify as procuring: when the masseuses being accused of pimping decided to engage in the activities of the massage parlor, they were unaware of the norms that make it illegal to derive profit from acts that they don’t even perceive as sexual themselves.

“It’s a massage, the way it’s done in China, where it is not reprehensible! When you tell a masseuse that she is a prostitute, that she is a whore, she says ‘no, we give massages’. What happens in the massage parlor is a hot topic for discussion. The 1996 ruling of the Court of Cassation on Chinese prostitution is something from another planet: “providing caresses leading to ejaculation!” Therefore, no ejaculation means no prostitution! Jurists are at a loss here: because a woman is naked, she is a prostitute? Reading the ruling, one is left perplexed.”

(Defense attorney, Yang Trial, May 2015⁸)

Alternatively, the “culture” of the defendants may also be invoked by defense lawyers (or the defendants themselves, for that matter) to distance themselves from the cultural particularism that

seems to be spontaneously associated with their country of origin—the point of the defense being to bridge the gap between the defendants’ culture and the normative patterns thought to be prevalent in the magistrates’ culture (white men and women from top socio-professional categories).

Thus, whilst the prosecution sees in the idle, violent pimp associated to the “Roma” defendant nothing but the ideal type of “male domination”, lawyers, on the contrary, insist that labor is equally and consensually divided within couples, with men in fact nowadays accepting roles hitherto denied them by the gendered division of labor.

“You can see that the children are well fed, and this is the man’s responsibility! He is raising them as best he can!”

(Defense attorney, Tampiar Trial, March 2016⁹)

A far cry from the somewhat “backwards” stereotype (especially in terms of gender social relations) of “Roma” defendants presented in the culturalist arguments developed by the magistrates, the division of labor emphasized here, along with the “good father” role played by the male member of the couple, makes it possible to draw a parallel between how this family unit operates and the model prevailing in an enlightened Western society, cradle of the feminist emancipation.

By resorting to cultural differences as an argument—whilst retaining the possibility of shifting the boundaries of the normative system they invoke (and its resonance/dissonance for defendants) to suit the needs of their defense strategy—defense attorneys, and magistrates, reproduce the idea of a dividing line between “us” and “them”, reinforcing the hegemonic position of the culture they purport to represent (D’hondt 2010: 72). By positioning themselves above the fray, supposedly to enjoy an objective view of the situation, legal actors in fact consider themselves “non-racializable” (Mazouz 2020: 43), yet operate within an arena where culture and origin are invoked to hierarchize groups and formalize their social position, thereby ratifying the racialization processes it depends on.

The “Culture” of Court Users and the Construction of Penal Judgment

While judges and prosecutors tend to distance themselves from any culturalist interpretation of either the facts or the defendants by systematically arguing that the judicial system treats everyone equally, the typology of sexual exploitation they tend to spontaneously establish during interviews does in fact typify the crime in terms of the alleged origin of court users. As a result, whenever the cultural dimension of prostitution and/or trafficking was mentioned by the prosecutors we interviewed, it always coincided, at the hearings, with lengthy closing speeches that emphasized—like the defense pleas mentioned above—the necessary cultural expertise required to understand the crime. This expertise, however, was mentioned not to invoke “cultural defense”, but to highlight the unavoidability of exploitation and the necessity of punishing the perpetrators severely.

For example, even though she admitted having worked on few trafficking and/or pimping cases, a (female) presiding judge did emphasize, at the beginning of our interview, the specificity of Nigerian trafficking, which she considered (based on the only case she had ever judged) more serious than “Brazilian” or “Eastern-European” cases, since it involved more advanced forms of exploitation:

“Nigerian women, it’s a form of trafficking that is close to slavery in my mind because we are talking about girls that work on the streets, near railway stations, in such conditions.... at very low prices, who have to take many clients to repay their debt.”

(Interview, Judge, Dec. 2015¹⁰)

When asked more specifically about the weight of cultural variables in the judgment, while she did reject the idea that cases might be hierarchized based on the cultural affiliation of the defendants, she still confirmed the preponderance of “cultural elements” at the hearing and the need for judges to “hear” them, illustrating the fundamentally ambiguous position of legal actors: although anxious to adhere to the “republican injunction” to disregard individual particularisms, they nevertheless feel the need to take into account—albeit to better neutralize them—factors that are regarded as cultural markers.

“So, I believe that, at the hearing, we try to eschew stereotypes, right. Then again, in the judiciary, try as you might, things might turn subjective. For me... no, I have to admit I’m talking about Nigerians, Brazilians, Bulgarians here... Sincerely, in court, I think we work cases on an individual basis, we don’t make comparisons. Of course, we have to take culture into account somehow, to a certain extent—I’m thinking of my Brazilians who explained of their own accord, without being prompted, that they had chosen prostitution because they made better money like this than as cleaning ladies or waitresses. We have to hear that. With Nigerians, well, you have to hear that sometimes it’s the families who, quote/unquote, ‘more or less sold their daughters’ [...] All that stuff resurfaces at the hearing. In court, people mention their culture, of course they do. Besides, the Eastern-European pimps we keep talking about, that’s what they’ll say most of the time. They’ll say ‘At home, prostitution is normal’, that’s what they tell us.”

(Interview, Judge, Dec. 2015¹¹)

Not only does this interview excerpt provide a stark illustration of the “republican universalism” paradox that can be found among magistrates, “caught between a willingness to ‘understand’ the Other in all his/her differences and an egalitarian approach mandated by the institution” (Potot 2020: 55), it also emphasizes the centrality of court user categorization processes based on “cultural affiliation”. The operations of social classification performed on the basis of the purported cultural affiliation of defendants, which ultimately derive from their alleged place of origin, thus seem to be held as both routine and fundamental determiners of the interactions involving the courts and their users, and more broadly of the definition and interpretation of the situations described at the hearing.

“I never tell a defendant ‘you are lying’... except with Romanians. Romanians are actually flattered. For a Romanian, that’s a cultural thing: he’s lying, he’s flattered. That’s very surprising. [...] You have to adjust to the culture you are judging...”

(Interview, Judge, March 2015¹²)

The magistrates judging trafficking and procuring cases thus regularly reinscribe—both at hearings and during interviews—foreign defendants in a different cultural tradition to explain both the underlying logics of the crime and behaviors that may be considered incongruous in court (Terrio, *op. cit.*; Bessière et al., *op. cit.*).

“I think there is a cultural problem as well, I am personally quite fond of cartesian logic but when listening to their answers, it occurred to me that Chinese logic is not French cartesian logic.”

(Interview, Judge, Nov. 2014¹³)

“It’s not the same culture and therefore not the same form of pimping.”

(Interview, Judge, May 2016¹⁴)

While these excerpts from interviews illustrate the “banal, routine influence of social classifications based on national origins” (Jounin et al., *op. cit.*: 13) on the professional practices of judges, the fact that they are relied upon in court suggests that we should explore how they hinge upon other social relationships—particularly race and gender social relationships—and the forms of domination they contribute to.

Gendered culture

The magistrates’ narratives, insofar as they tend to distinguish among the different types of pimping in terms of the cultural affiliation of the defendants, appear to say more about the expectations—in particular the gendered expectations—of the culture perceived as predominant than about the alleged cultural particularisms of the defendants themselves. The “Roma culture”—described as imbued with alcohol, vulgarity, idleness, and violence, not to mention a complete lack of sexual taboos and ethical prohibitions, especially related to incest and intra-family sexual exploitation—thus leads, for example,

according to the magistrates, to “particularly shocking” forms of pimping (Tampiar Trial, March 2016¹⁵). More generally, what disrupts the norms of “proper conjugality”—defined, among other things, by sexual exclusivity, protective husbands, and a romantic lexicon when talking about the marital relationship (see chapter by G. Favarel-Garrigues and L. Mathieu in this volume)—is the fact that, in many of the trials we observed, women provided for the needs of the household through the prostitution exercised for their partner or spouse, breaking the taboo of spousal prostitution. Judges and prosecutors thus often concurred in contrasting pimping and sex work (presented as morally intolerable) on the one hand, and romantic feelings on the other: how could a man who is truly in love tolerate prostitution on the part of his spouse?

“I have read all the wiretaps, and I am yet to get to the point where the gentleman says [to his prostitute spouse]: ‘Stop it my love, I am going to protect you, come home now’!”

(Presiding judge, Tampiar Trial, March 2016¹⁶)

More broadly, what is also being challenged is a model of marriage that defense attorneys, as seen above, try to characterize as “progressive” while the judges consider, on the contrary, that it stands as an exception to the “classical” gendered division of labor: “Why—and without being sexist here—doesn’t [the defendant] let [his prostitute spouse] stay at home and take care of the kids while *he* goes to work?” (Presiding judge, Tampiar Trial, March 2016)

While pimping activities in and of themselves were only marginally mentioned in those discussions—which may be explained by a sense of awkwardness on the part of the magistrates when dealing with spousal forms of exploitation—it is in fact rather the social idiosyncrasies of how couples are discussed and seem to live their lives that tends to command the judges’ attention, giving away their ethnocentric approach. Judging by their own standards, they convey a vision of conjugality that clearly and definitely rejects defendants outside the realm of the magistrates’ culture, perceived as the “majority” culture. Their position here is reminiscent of that of the anti-trafficking activists studied by

Elizabeth Bernstein, who promote a vision of sexuality “kept within the confines of the romantic couple”, thereby implicitly condemning non-family forms of sexuality.

Another deviation from the gendered order is the “buying” of a woman by another woman aiming to repay her debt faster, a phenomenon presented by legal professionals as “typical” of the “Nigerian community”. This figure invalidates dominant representations of the “pure pimp” as a violent man exploiting the sexuality of women victims, whose behavior should therefore be understood through the lens of male domination (see Favarel-Garrigues and Mathieu in the present volume).

“The pure pimp, you know, the imposing one—well, pure... he is not exactly pure. Mean, shall we say. That’s it: the guy who turns the case into a squalid affair. [...] Some cases are utterly sordid because you have guys who do exactly nothing besides pressuring girls, not even leaving them half their money. Girls who can barely afford food.”

(Interview, Judge, Dec. 2015¹⁷)

Regarding Nigerian pimping and trafficking, the frequent mention of practices stemming from the *juju* and presented as occult, intrusive (such as blood or pubic hair sampling), and extremely exotic can be perceived as evidence of an inexorable cultural gap: the female defendants are presented as acting not only outside the magistrates’ cultural and gendered framework, but also, more generally, outside the normative reference systems the latter use to distinguish between good and evil.

“The defendants and the victims have endured similar hardships. Still, we need to distinguish, first between the defendants who have committed [something], chosen to reproduce the pattern and exploit human beings, and second, the victims who have spoken out. So, we need to not only bust up the ring, but also punish this turnaround.”

(Prosecutor, Onwudiwe Trial, October 2016¹⁸)

Whereas the French abolitionist context spontaneously associates the identity of “victim” with the condition of prostitute, thereby apparently justifying the fact that Nigerian sex workers are perceived first and foremost as victims (therefore unable to exercise their free will), here, it is actually their involvement in a crime that takes precedence. Worse still, it is in fact compounded by their status as “victims”—rejecting them once and for all outside the culture of legal professionals and the compassionate approach fostered by the national public policies in favor of women sex workers.

On another note, whereas the “pure” figure of the refugee (Malkki 1995) as a victim of political violence and/or fleeing a country at war is regularly invoked to legitimate compassionate policies (Fassin 2011), the figure of the woman who “chooses” prostitution on the streets of France rather than coping with economic hardships in her country of origin is more ambiguous: in fact, it emphasizes how highly significant gender and sexuality—considered in the context of the social-economic power relationships they are inseparable from—are when it comes to interpreting situations. Fluctuating between the stereotype of the venal woman who disrupts the public/moral order and that of the illegal alien, the foreign prostitute is a much murkier figure than that of the “ideal victim” (Jakšić 2016) which the magistrates seem to be looking for: an innocent, deceived, misused woman, whose interests are clearly distinct from those of the criminal pimp. In the French abolitionist framework, women’s willingness to engage in forms of paying sex remains a key marker of the offence and its severity—despite both national and international definitions of trafficking clearly stating that “consent” is irrelevant. However, this particular aspect is largely presented as correlating with the women’s origins and the particular relationship to money and the body allegedly induced thereby.

“The poor girl picked up in some dump in darkest Africa, bullshitted, threatened and brought to Europe, made to walk our streets in the Bois de Boulogne, exploited by pimps who attempt to exact as much as they can from her, treating these girls like meat, to me she’s the archetypal victim, no question; on the other hand, with these women, you have to wonder, they clearly have a relationship to money such that between making money and quote/unquote ‘debasement of their body’, they don’t hesitate! So that’s what I said a moment ago, the problem is one of de-

fi-ni-tion. That is in fact extremely important, since depending on your definition of the victim, the way you look at her perceived exploiter is not the same at all!”

(Interview, Judge, Feb. 2016¹⁹)

Thus, while the corpus used for this research does not allow us to offer a sentencing study statistically correlating the origins of defendants and the sentences served, their alleged cultural affiliation clearly appears, nevertheless, to fuel a pattern of moral hierarchization of the crime, its victims and its perpetrators. Both the legal interpretation of the facts and the relevant penal policy appear to largely hinge on a cultural explanation. As a result, African women are often considered “archetypal victims”, being supposedly less “consenting”, whereas other foreigners involved in sex work are usually considered to have a degraded, debased relationship to their body and sexuality, which somehow lessens the gravity of their exploiters’ crime. This cultural classification of defendants then serves as a basis, partially at least, for defining the crime (trafficking or procuring) and the sentence. In accordance with this pattern of interpretation, human trafficking charges, though systematically upheld in trials involving people originating from Africa, are typically absent—or dropped at the hearing, if not during the preliminary investigation—when the defendants and/or victims hail from elsewhere, particularly Romania and China. Borrowing from the imagery of slavery—which, it should be pointed out, is often resorted to in court—this interpretation, insofar as it is based on a cultural, ethnoracial division and hierarchization of the crime, also weighs in on the elaboration of national border policies.

Conclusion

In France, the dominant conception of the republican system as “difference-blind” has largely contributed to the silence of academic literature and legal actors regarding the place of culture in court, which is often presented as marginal (Wyvekens 2014). In trials for trafficking and/or pimping, however, both the defendants and the victims are regularly reminded of their purported culture, which tends both towards generalization and singularization: on the one hand, the fact that the legal

profession tends to think in terms of alleged cultural groups (“the Nigerians”, “the Chinese”, “the Roma”) *de facto* turns those groups into “generalized others” (Massari 2009); on the other hand, in the eyes of the very same legal profession, the very same people become “emblematic figures of singularity” (Giordano 2014; Jacobsen, Skilbrei 2010), particularly because of the prostitution activity that brought them to court in the first place, and the associated cultural particularisms. Both in the interviews and in court, this contributes to turning the offence into a cultural construct whose causes and effects reach much farther than the mere description and classification of the cases and populations involved. Whether invoked to support a defense or a prosecution strategy, the culture of both the defendants and the victims, and the fact that it is routinely used by the legal profession, also supports the existence of some “cultural” togetherness uniting professionals—lawyers and judges—who are otherwise supposed to be adversaries in court. In other words, along with the other forms of assignation, gender-based in particular, that it nurtures, it offers a stable foundation for building consensus—connivance, even—among legal actors. Additionally, by reifying social trajectories, it confers some “semblance of information stability” (Jounin *et al.*, *op. cit.*) on a crime that is difficult to apprehend by the legal profession because of its international nature and its awkward status in the context of French law. Not only do the stereotypes—used by lawyers and magistrates alike—contribute to actually producing difference while pretending to merely work at understanding it better, but they also, *de facto*, constitute a significant part of the empirical knowledge which serves as a basis for the act of judging, insofar as they provide for the immediate, circumstantial understanding of facts and situations that are otherwise plagued by a vague, somewhat ambiguous legal definition.

Reinforced by the dialectics of the trial, which sees magistrates and lawyers jousting verbally, this culturalist “pragmatics” (Fassin 2013) allows, crucially, for other forms of assignation to unfold surreptitiously, so much so that the order which the legal profession is tasked with reinstating ultimately appears to be shaped largely by the gendered and sexualized representations associated with the figures of the foreigner, which prostitution seems to be particularly prone to. The crimes of trafficking and/or procuring discussed here allow the legal professionals in charge of judging to reassert not only the hegemonic nature of the “culture” they represent, but also the centrality of

sexuality in the moral and cultural superiority of the republican order (Stoler 2013) they intend to embody.

Bibliography

- Bernstein, E. (2012). Carceral politics as gender justice? The “traffic in women” and neoliberal circuits of crime, sex, and rights. *Theory and Society*, 41, pp. 233–259
- Bessière, C., Biland, E., Bourguignon, A., Gollac, S., Mille, M., Steinmetz, H. (2018). “Faut s’adapter aux cultures, Maître !” La racialisation des publics de la justice familiale en France métropolitaine. *Ethnologie française*, 1, pp. 131–140.
- Coleman, D. L. (1996). Individualizing justice through multiculturalism: The liberals’ dilemma. *Columbia Law Review*, 96(5), pp. 1093–1167.
- D’hondt, S. (2009). Others on trial: The construction of cultural otherness in Belgian first instance criminal hearings. *Journal of Pragmatics*, 41, pp. 806–828.
- D’hondt, S. (2010). The Cultural Defense as Courtroom Drama: The Enactment of Identity, Sameness, and Difference in Criminal Trial Discourse. *Law & Social Inquiry*, 35 (1), pp. 67–98.
- Darley, M. (2019). Le proxénétisme en procès : la réaffirmation d’un ordre sexuel national?. In: G. Girard, I. Perreault and N. Sallée, eds., *Sexualité, savoirs et pouvoirs*. Montréal: Presses Universitaires de Montréal, pp. 155–165.
- Fassin, D. (2013), *Enforcing Order: An Ethnography of Urban Policing*. Cambridge: Polity Press.
- Fassin, D. (2011). *Humanitarian Reason: A Moral History of the Present*. Berkeley: University of California Press.
- Giordano, C. (2014). *Migrants in Translation Caring and the Logics of Difference in Contemporary Italy*. Berkeley: University of California Press.
- Guillaumin, C. (1995). *Racism, Sexism, Power and Ideology*. London, New York: Routledge.
- Jacobsen, C. M. and Skilbrei, M.-L. (2010). ‘Reproachable victims’? Representations and self-representations of Russian women involved in transnational prostitution. *Ethnos*, 75(2), pp. 190–212
- Jakšić, M. (2016). *De la victime idéale à la victime coupable*. Paris: CNRS Editions.
- Jounin, N., Palomarès, E. and Rabaud, A. (2008). Ethnicisations ordinaires, voix minoritaires. *Sociétés contemporaines*, 2(70), pp. 7–23.
- Komter, M. L. (1997). Remorse, Redress, and Reform: Blame-taking in the courtroom. In: M. Travers and J.F. Manzo, eds., *Law in action: Ethnomethodological and conversation analytic approaches to law*. Ashgate: Dartmouth Publishing Co, pp. 239–264
- Malkki, L. H. (1995). *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania*. Chicago: The University of Chicago Press.

- Massari, M. (2009). The other and her body: Migrant prostitution, gender relations and ethnicity. *Cahiers de l'Urmis*, 12.
- Mazouz, S. (2020). *Race*. Paris: Anamosa.
- Potot, S. (2020). Accueillir des enfants dits "Roms roumains" dans l'école républicaine. Le système éducatif français face à la catégorisation socioculturelle. *Agora débats/jeunesse*, 1(84), pp. 53-66.
- Stoler, A.L. (2002). *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule*. Berkeley: University of California Press.
- Taliani, S. (2012). Coercion, Fetishes and Suffering in the Daily Lives of Young Nigerian Women in Italy. *Africa*, 82, pp. 579-608.
- Terrio, S. J. (2009). *Judging Mohammed. Juvenile Delinquency, Immigration, and Exclusion at the Paris Palace of Justice*. Stanford: Stanford University Press.
- Valverde, M. (2003). Pragmatist and Non-Pragmatists Knowledge Practices in American Law. *PoLAR*, 26(2), pp. 86-108.
- Wyvekens, A. (2014). La justice et la "diversité culturelle" : "les yeux grands fermés" ? *Archives de politique criminelle*, 1(36), pp. 123-146.

¹ This research is part of the French-German project *ProsCrim: Institutionalizing Trafficking*, supported by ANR in France (ANR-13-FRAL-0014-01) and DFG (*Deutsche Forschungsgemeinschaft*) in Germany, carried out from 2014 to 2018, and coordinated by Mathilde Darley (France) and Rebecca Pates (Germany). The French team was comprised of Mathilde Darley, Gilles Favarel-Garrigues, Alban Jacquemart, Milena Jaksic, Nadège Ragaru, Gwénaëlle Mainsant, Lilian Mathieu et Muriel Mille.

The present chapter is based on the observation of thirty-five aggravated procuring and/or human trafficking trials in the *chambres correctionnelles* (criminal courts) of various major French cities—113 days of hearings observed, about 900 hours in total. In additions to observations, interviews were conducted with various law professionals, including twenty-seven defense lawyers, five civil party attorneys, eight judges, and eleven public prosecutors. The observations and interviews were carried out by the various members of the ProsCrim project, and then presented to and discussed with the others. While this chapter reflect the sole views of the author, it obviously draws on the contributions of the other team members, as well as the groups discussions that occurred regularly along the way

² Conducted by M. Darley.

³ Observed by L. Mathieu.

⁴ Observed by M. Mille and A. Jacquemart.

⁵ Observed by M. Darley.

-
- ⁶ Conducted by M. Darley.
⁷ Observed by G. Mainsant.
⁸ Observed by G. Mainsant.
⁹ Observed by M. Darley.
¹⁰ Conducted by L. Mathieu.
¹¹ *Ibid.*
¹² Conducted by G. Mainsant.
¹³ Conducted by M. Darley and G. Mainsant.
¹⁴ Conducted by M. Darley and M. Mille.
¹⁵ Observed by M. Darley.
¹⁶ Observed by A. Jacquemart and M. Mille.
¹⁷ Conducted by L. Mathieu.
¹⁸ Observed by M. Darley.
¹⁹ Conducted by M. Darley and G. Favarel-Garrigues