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Alienation and Activism: Pursuing Justice in the Human Trafficking Cases of Cyntoia Brown and Jeffrey Epstein

At the age of 16, Cyntoia Brown was convicted of first-degree murder and sentenced to life in prison for killing a 43-year-old pedophile named Johnny Allen who paid to have sex with her when she was being sexually trafficked in Tennessee. At the time of encountering Allen in 2006, Cyntoia was being drugged and forced into prostitution by an adult pimp nicknamed Kutthroat. On the night prior to the killing, “Kut” had nearly strangled Cyntoia to death.¹ At the same time, the case of billionaire child sex trafficker, Jeffrey Epstein, began to emerge. Described by a state

* Faculty and Research Fellow at Stanford University, School of Humanities and Sciences, Global Studies – Center for Human Rights and International Justice, Human Rights in Trauma Mental Health Program. PhD, Sociology, London School of Economics; JD, Public Interest Law, Golden Gate University School of Law. I would very much like to thank Professor Maria Grahn-Farley for inviting my participation in this timely and historic symposium. It has been so enriching to discuss Professor Adam Gearey’s book *Poverty Law and Legal Activism* (2018), which helps contend with some of our most pressing social and legal issues. Apart from an appreciation for methodical rigor in conducting archival research and theoretical reflection highly relevant to our time of political urgencies, I also personally appreciate Gearey’s contribution given my background as a legal aid and civil rights lawyer in the areas of public benefits, the juvenile justice system, and refugees in the San Francisco Bay Area. It is a great honor to be included among such a stellar cast of legal scholars who have helped define the discipline in ways that are agenda-setting, and which insist on the place of social theory and critical approaches to the law within it.

¹ A. Goodman, ‘Sentenced to Life in Prison as a Teen, How Cyntoia Brown Survived Sex Trafficking & Won Her Freedom’ (2019) *Democracy Now*: <https://bit.ly/3tMA3XA>; B. Hargrove, ‘Life Begins at 16’ (2011) *Nashville Scene*: <https://bit.ly/3axp6RS>.

police chief as “the worst failure of the criminal justice system” in modern times, and in the media as “one of the most lenient deals for a serial child sex offender in history,” Epstein’s case is shocking, and unprecedented to many authorities and legal actors.² The billionaire businessman and registered sex offender has been accused of trafficking hundreds of girls and operating an international sex trafficking ring. Epstein’s case was characterized by a partnership between the government and the defendant against survivors of sexual and gender-based violence (SGBV). By allowing a wealthy child sex offender with powerful associates to thwart federal prosecution and a potential life sentence, authorities empowered sex traffickers, continually victimized survivors and increased opportunities for commercial-sexual exploitation.

Yet the luxuriating life of Epstein—who regularly deployed his vast resources to evade justice—ended abruptly and violently in a jail cell, whereas Cyntoia—an exploited child condemned to life in prison—ended up freed, in a loving marriage, and finding her calling and community. Through legal activism and social movements in both of these cases, history was made for survivors of sex crimes in general.

This chapter conceives of human trafficking and legal activism against exploitation through the lens of alienation theory. Law “as a source of alienation and oppression in contemporary society” is a core issue of critical legal studies and socio-legal theory.³ This contribution considers ways in which law alternately generates or undermines the conditions, prevalence and harms exploitation in its commercial and sexual dimensions through case studies of child sex trafficking.⁴ Wealth concentration is understood as engendering alienation and as a criminogenic condition permitting impunity—for both white-collar and organized crime, enabled by legal actors working to defend and personally benefit from their commission. These inevitably turn into enterprises of avoiding liability and exposure, often via illegal means. The two cases demonstrate the entanglement of

² S. Fitzpatrick, and R. Schapiro. 2019. “Ex-Florida police chief: Epstein case ‘the worst failure of the criminal justice system’ in modern times,” NBC News: <https://nbcnews.to/2Qo7QaY>; J. Brown, 2018. “Even from jail, sex abuser manipulated the system. His victims were kept in the dark,” *Miami Herald*: <https://www.miamiherald.com/news/local/article219494920.html>.

³ F. Munger and C. Seron, ‘Critical Legal Studies versus Critical Legal Theory: A Comment on Method’ (1984) 6 *Law & Policy*, 3, 257.

⁴ A. Gearey, *Poverty Law and Legal Activism: Lives That Slide Out of View* (London, 2018).

legal, economic and political components to what appear to be strictly legal determinations.

Cyntoia Brown's case exemplifies how intersecting structural inequalities render children and youth vulnerable to exploitation, while Jeffrey Epstein's case clarifies the nexus between the elite and the traffic in human beings for commercial and sexual exploitation through which the ownership of property and possession of bodies become co-constitutive. These same forces result in the concentration of survivors of SGBV and commercial-sexual exploitation in women's prisons. The work of lawyers, activists and journalists—notably, mostly women—were central in struggles for justice in both cases. Therefore, this chapter draws heavily from their work to recount case facts and timelines. In line with feminist socio-legal methods, interview transcripts and legal decisions are utilized as data and analyzed in an intersectional framework that centers childhood & youth in ways that “unravel” formal-legal egalitarianism.⁵

The concept of alienation is the subject of renewed interest in law, psychology and sociology. This analysis adopts a synthesized multidisciplinary view of alienation as a social-psychological process of detachment or estrangement from oneself, others, society and nature, in which law plays a key role and, therefore, legal activism can counteract. Alienation theory is applied to the topic of human trafficking and commercial-sexual exploitation of children (CSEC) through a comparative case analysis of child sex trafficking originating in the United States: the cases of Cyntoia Brown, a child survivor of sex trafficking condemned to life in prison, and Jeffrey Epstein, a wealthy child sex trafficker who actively eluded criminal justice for decades.⁶ My approach to alienation integrates the social-psychological and materialist strands of alienation theory that have historically been of interest to social science and critical psychology.⁷

⁵ K. Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 143 *University of Chicago Legal Forum* 143; A. Wing, 'Brief Reflections Toward a Multiplicative Theory and Praxis of Being' (1991) 6 *Berkeley Women's Law Journal* 181; P. Hill-Collins, *Intersectionality as Critical Social Theory* (Durham, 2019).

⁶ Case facts and timelines of both cases were compiled through interview transcripts of survivors of child sex trafficking and activists, supplemented by relevant news articles.

⁷ C. Fischer, 'Alienation: Trying to Bridge the Chasm' (1976) 27 *British Journal of Sociology* 35; M. Korczynski, 'The Mystery Customer: Continuing Absences in the Sociology of Service Work' (2009) 43 *Sociology* 952; D. Burston, 'Alienation', in T. Teo (ed.), *Encyclopedia of Critical Psychology* (New York, 2014).

Diverse fields of scholarship are revitalizing the alienation concept after “the linguistic turn,” which refers to stressing the primacy of language in human ontology and identity formation while turning away from class-based analyses that view labor as central to these processes. Alienation theory regarding labor has extended to the application of commercial-sexual exploitation.⁸

Human Trafficking, Inequalities and Alienation

Historically, activism against child sex trafficking helped galvanize movements against child labor and for social welfare, public education, and diversionary, rehabilitative juvenile justice. Although the fields of criminal law, psychology, social work and others have mainstreamed the issue of human trafficking and helped institutionalize responses to it, exploitation for labor and/or commercial sex must be understood as causes and consequences of structural social inequalities and systemic injustices. Globally and in the US, human trafficking for sexual exploitation ensnares women, girls and gender non-conforming persons disproportionately, particularly females and femmes of color, who are also disproportionately arrested in the enforcement of related laws.⁹ Underpinned by poverty, wealth concentration, and the polarization of these along lines of race, gender and age, the cases of Brown and Epstein represent broader socio-economic inequalities and injustices, and some of the worst systemic failures effectively contended with through the combined power of legal activism, social movements and investigative journalism.

Alienation, reification and exploitation are interrelated concepts in foundational social theories, including in the sociologies of Marx, Durkheim and Weber.¹⁰ Alienation and its cognates are fundamentally concerned with the degradation of social life and relations in modern capitalist societies.¹¹ Materialist perspectives focus on the social relations

⁸ R. Putnam-Tong, *Feminist Thought*, 2nd ed. (Boulder, Colorado, 1998).

⁹ P. Javidan, ‘Global Class and the Commercial-Sexual Exploitation of Children: A Multidimensional Understanding’ (2012) 1 *Columbia Journal of Race and Law* 365; Javidan, P. 2017 *American Legal Discourse on Child Trafficking: Reproduction of Inequalities and Persistence of Child Criminalization*, PhD Dissertation, London School of Economics: <https://bit.ly/3tc2LQm>, pp. 23–25.

¹⁰ J. Scott and G. Marshall, *Oxford Dictionary of Sociology* (Oxford, 2009), p. 22.

¹¹ S. Vaisey, ‘Structure, Culture, and Community: The Search for Belonging in 50 Urban Communes’ (2007) 72 *American Sociological Review* 851.

of production and reproduction, which create structural inequalities in labor and property, resulting in forms of domination that amplify alienation.¹² In this view, laborers are alienated from fulfillment of basic human needs through voluntary, spontaneous and creative means, and instead coerced to work for employers under threat of poverty and starvation. They are also alienated from other workers, from the production process, and the goods or services produced through their own labor because they are controlled or owned by capitalists.¹³ Durkheimian anomie describes a breakdown in societal norms or lawlessness, with psychological corollaries of disorder and meaninglessness, while Weber forebode the iron cage of rationalization and our entrapment in bureaucratic systems fixated on efficiency.¹⁴ Anomic breakdown was later theorized as the result of disconnection between goals and means, i.e., when social structures seriously limit the legitimate, legal means of attaining culturally-valued goals such as earning a living.¹⁵ Sociological alienation theory was elaborated to identify the root cause of alienation as dehumanizing social structures integral to the inequitable socio-economic relations of capitalism—the division of labor, development of private property relations, conflict of interest between economic classes, and foundational societal conflict in relations of production (economic relations) and reproduction (sexual relations)—which subordinate the family to the economy, despite families forming the bedrock of societies.¹⁶ While alienation references the dehumanization that individuals experience under these conditions, reification refers to the dehumanization of others, i.e., objectifying and manipulating others for profit-making.¹⁷

Psychological approaches to alienation are concerned with the mental distress caused by societal disparities in power and by inequity in the social order. Alienation and dissociation are similar psychological concepts.

¹² K. Marx, 'Economic and Philosophical Manuscripts of 1844', in *Karl Marx, Friedrich Engels: Collected Works (Volume 3)* (London, 1975 [1844]), pp. 229–347; J. Rhoads, *Critical Issues in Social Theory* (Pennsylvania, 1991), pp. 264–269.

¹³ Scott and Marshall 2009, *supra* note 10, at 14.

¹⁴ M. Weber, *The Protestant Ethic and the Spirit of Capitalism* (London, 1992 [1904–05]; E. Durkheim, *The Division of Labor in Society* (New York, 1983 [1893])).

¹⁵ R.K. Merton, *Social Theory and Social Structure* (New York, 1957).

¹⁶ I. Mészáros, *Marx's Theory of Alienation* (London, 2005); J. Torrance, *Estrangement, alienation, and exploitation: A Sociological Approach to Historical Materialism* (New York, 1977); Rhoads 1991, *supra* note 12: 263.

¹⁷ G. Lukács, *History and Class Consciousness* (London, 1971).

Dissociation is characterized by a sense of lacking cognitive or behavioral control and disconnecting from the body as a coping mechanism for the difficulty of experiencing intense emotions, or an adaptive and protective response to create cognitive and affective distance from trauma, which can become maladaptive in other contexts.¹⁸ Ranging in frequency intensity and duration, dissociative reactions disrupt subjective experiences of reality and consciousness, and include intrusive thoughts, feelings of detachment from one's body (depersonalization) or the external world (derealization), and memory difficulties (dissociative amnesia).¹⁹ Psychological findings regarding trauma and dissociation are cross-cultural. Reconnection with the body through trauma-informed therapies is a key method of recovery for human trafficking survivors, among whom complex traumatization is commonplace.²⁰

Applied to childhood and child socialization, alienation theory recognizes that, unless expressly prohibited by law, capitalist relations tend to reduce children to the abstraction of their "labor power" or potential for extraction of resources or profits from them.²¹ Social-psychological perspectives are concerned with the sexualization of children under consumer capitalism and the normalization of violence, sexism and racism in child socialization through mass media, the internet and commodities marketed for children.²² CSEC represents extreme or multilayered forms

¹⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed (Virginia, 2013); Polaris and Sanar Wellness (2015) 'Promising Practices: An Overview of Trauma-Informed Therapeutic Support for Victims of Human Trafficking': <https://bit.ly/3nTIGi1>; L.A. Tan, 'Surviving Shame: Engaging Art Therapy with Trafficked Survivors in South East Asia', in *Art Therapy in Asia: To the Bone or Wrapped in Silk* (London, 2012); E. Hopper, 'The Multimodal Social Ecological (MSE) Approach: A Trauma-Informed Framework for Supporting Trafficking Survivors' Psychosocial Health', in M. Chisolm-Straker and H. Stoklosa (eds.), *Human Trafficking is a Public Health Issue: A Paradigm Expansion in the United States* (Cham, Switzerland, 2017); J.J. Freyd, *Betrayal Trauma: The Logic of Forgetting Childhood Abuse* (Cambridge, Massachusetts, 1996); E.B. Carlson, C. Dalenberg and E. McDade-Montez, 'Dissociation in Posttraumatic Stress Disorder Part I: Definitions and Review of Research' (2012) 4 *Psychological Trauma: Theory, Research, Practice, and Policy* 479; J.A. Chu, 'Containment: Controlling Posttraumatic and Dissociative Symptoms', in J.A. Chu (ed.) *Rebuilding Shattered Lives: Treating Complex PTSD and Dissociative Disorders*, 2nd ed. (New Jersey, 2011).

¹⁹ J. Briere, C. Scott and F. Weathers, 'Peritraumatic and Persistent Dissociation in the Presumed Etiology of PTSD', 162 *American Journal of Psychiatry*, 2295.

²⁰ Polaris and Sanar Wellness 2015, and Tan 2012, *supra* note 18.

²¹ D. Burston 2014, *supra* note 6, at 79–80.

²² *Id.*

of alienation and reification in which children's bodies and affects are commodified for the profit imperative. Through CSEC, the characteristics of alienated labor intermesh with alienation of the self from the body on the sexual level. Affective, mental, manual/bodily labor and sexual commodification combine for a compounded and qualitatively different experience of alienation. For children in the modern global capitalist economy, this typically entails deprivation of culturally-valued childhood goals of education and play. The impacts of CSEC plunge deeper to the levels of child development and sexual development, which typically produce more profound or foundational physical and mental health effects. For example, children and youth survivors of sex trafficking are more likely to experience dissociation than adult women.²³ Early trauma/abuse exposure and developmental factors add to trauma complexity. Complex trauma and symptoms commonly lead to dissociation, fundamental changes in self-concept, emotional dysregulation, high risk-taking behaviors, self-harm, health problems, detachment from or involvement in conflictual relationships, and distorted perceptions of perpetrators. Child sex trafficking survivors' symptoms resemble those of torture victims.²⁴

Gearey explains that critical legal studies and its outgrowths have resisted alienation and reification through praxis and ethics.²⁵ His major aim being to revive these concepts in contemporary legal critique, Gearey examines the history and legacy of critical legal theory, constitutional scholarship, the American Left and US lawyering around anti-poverty activism to highlight the role of poverty lawyers as ethical actors who appreciate the potential and limits of law in the struggle against economic inequality. While law provides an important measure of protection from commercial and sexual exploitation, critical perspectives recognize that the law also normalizes coercive processes by securing favorable legal and regulatory climates and provides normative justifications for exploitation, e.g., by representing exploitive experiences as freely-entered contractual relations.²⁶ In such ways, law can play a retraumatizing, "gaslighting"

²³ D. Basson, et al. 'Psychotherapy for Commercially Sexually Exploited Children: A Guide for Community-Based Behavioral Health Practitioners and Agencies,' WestCoast Children's Clinic (Oakland, California, 2019).

²⁴ Id.

²⁵ Gearey 2018, *supra* note 4.

²⁶ K. Calavita, *Invitation to Law and Society: An Introduction to the Study of Real Law* (Chicago, 2010) p. 14.

role through the derealization of survivors' lived, material conditions.²⁷ The criminal justice system and societal perceptions of survivors (e.g., as victims or offenders) influence one another through minimizing or denying survivors' claims and shifting blame attribution to crime victims. Criminalization is an alienating experience disproportionately impacting people of color, including children & youth and CSEC survivors, and is positively associated with civic disengagement or political alienation.²⁸ Unjust criminalization decreases trust, social cohesion and bonding in mutually reinforcing ways, particularly in contexts of poverty and social disorganization, which engender harms and crimes committed by and against children and youth.²⁹

Taken together, alienation theories address macro-structural and interpersonal relations as well as individual psychological processes of cognition, emotion and behavior. Survivors in both cases discussed here experienced the gamut of these processes. Notably, Marx theorized that alienation and exploitation can be overcome through collective human agency. Through sustained effort and "being-with" survivors for many years, their legal teams and allied agents of social change resisted a most profound and complex form of alienation and exploitation.

"A door that started closing before she was born": The Case of Cyntoia Brown

The court in Cyntoia Brown's criminal case would never hear about the neglect and abuses she suffered as an infant, child, and adolescent. She would be presented as a dangerous young woman who makes bad choices, tried as an adult, and transferred to adult prison to serve her time. Cyntoia was placed in solitary confinement for the first two years of her sentence, from the time she was 16 until she reached age of majority. The solitary confinement of a child was rationalized as a measure to protect her from the adult population of the prison, a policy to which

²⁷ D. Knapp, 'Fanning the Flames: Gaslighting as a Tactic of Psychological Abuse and Criminal Prosecution' (2019) 83 *Albany Law Review* 313; P.L. Sweet, 'The Sociology of Gaslighting', 84 *American Sociological Review* 851.

²⁸ D.E. Barlow, 'Arresting Citizenship: The Democratic Consequences of American Crime,' 40 *Criminal Justice Review* 238.

²⁹ F.M. Steven, P.B. Eric and R. Richard, 'Dimensions of Social Capital and Rates of Criminal Homicide', 69 *American Sociological Review*, 882.

all juveniles were subject.³⁰ Cyntoia was heavily medicated in her cell, which was the size of a common bathroom, and then locked in a kennel she described as “a fenced-in cage” when allowed to leave her cell for an hour each day.³¹

Cyntoia’s court testimony regarding self-defense was credible, but was dismissed. She testified that she had feared for her life on the night of killing Allen.³² Allen insisted on taking her to his house, where he behaved erratically and showed off his collection of guns and aggrandized his social status and importance in the local community, Cyntoia became fearful and feigned needing a nap. After Cyntoia rejected his aggressive sexual advances, he became agitated, incessantly leaving the room and returning to bed. Cyntoia pretended to sleep, but grew increasingly alarmed. She testified that the last time he got back into bed, he reached toward his night table. She believed he was reaching for his gun, and shot him in the back of his head with a gun from her purse that her pimp, Kut, had given to her for self-protection from dangerous johns. Fearing retaliation should she return to Kut empty-handed, she hastily stole Allen’s guns and car. Although no gun had been discovered near Allen’s body at first, it surfaced at trial that he had a fully loaded clip in his bedside table.

Had Cyntoia been allowed to speak about her life in court, her family history would have revealed an intergenerational pattern of mental illness, suicidality, alcohol abuse, prostitution, and incarceration, which predicted her neglect and abandonment during childhood and her repetition of this pattern later in life. Cyntoia’s mother, Georgina, was 16 when she became pregnant with her. As a White girl in the American South, she was carrying the baby of her Black boyfriend when her mother threw her out of their home in Georgia, wanting nothing to do with a mixed-race baby. Georgina took shelter out of state, at her sister’s house, and spent her days at the home of a substitute teacher named Ellenette, whose son she was likely pregnant by. Georgina drank liquor while pregnant nearly every night, and sold sex to support herself. After Cyntoia

³⁰ Goodman (2019), *supra* note 1.

³¹ *Id.*

³² The following facts are taken from a lengthy “deep dive” report from 2011 on Cyntoia’s case published in a local newspaper of Nashville, Tennessee, where the crimes took place, as well as from the transcript of an in-depth interview with Cyntoia Brown upon her release from prison and a documentary film based on her case (Hargrove 2011, *supra* note 1; Goodman, *supra* note 1 (hereinafter “Transcript 1”); “Murder to Mercy: The Cyntoia Brown Story” (2020), Netflix (hereinafter “Murder to Mercy”).

was born, with no father present, Georgina disappeared, then returned 6 months later to request that Ellenette take care of her baby. Ellenette became Cyntoia's ward, while Georgina remained in prostitution, drug addicted, and in and out of jail during Cyntoia's infancy. When Cyntoia was 18 months old, Georgina abducted her and disappeared again. Ellenette searched and eventually found Cyntoia abandoned to an elderly couple in a crime-stricken public housing development. Early experiences of unstable caregiving and neglect are known to have detrimental impacts on child development and mental health.³³ By the age of 2, Cyntoia had developed a severe fear of abandonment and clung to her adoptive mother at all times.

Despite Ellenette's nurturance and protective efforts, Cyntoia had endured and continued to suffer multiple adverse childhood experiences (ACEs). Cyntoia's adoptive father was an alcoholic veteran who verbally abused her. Cyntoia herself began exhibiting alcoholism by the age of 9. She witnessed domestic violence related to conflicts over her father's alcoholism, including his manual strangulation of Ellenette. At the age of 10, Cyntoia rediscovered her adoption, and became increasingly socially withdrawn and self-destructive. She was also being mocked by peers at school for her light-skinned appearance and exceptional academic achievement, while harshly disciplined by teachers for vocalizing her disdain for authority. Cyntoia was eventually placed in alternative school, which she has described as a prison-like facility for disposable or unwanted children. By the age of 12, Cyntoia was arrested for theft. While in custody she experienced a psychotic episode during which she threatened to kill her adoptive father for raping her. Ellenette believed

³³ "Toxic stress describes a disrupted brain architecture as a result of stressful experiences, which affects other organ systems, and leads to a 'prolonged activation of the body's stress-response systems.' These stresses are primarily related to exposure to extreme poverty, abuse, neglect, exposure to maternal depression, and substance abuse by the caregiver." M. Chilton and J. Rabinowich, 'Toxic Stress and Child Hunger over the Life Course: Three Case Studies' (2012) 3 *Journal of Applied Research on Children* 5; see also J. Greif-Green, et al. 'Childhood Adversities and Adult Psychiatric Disorders in the National Comorbidity Survey Replication I: Associations with First Onset of DSM-IV Disorders' (2010) 67 *Archives of General Psychiatry* 2, 114; D.J. Grasso, et al., 'Developmental Patterns of Adverse Childhood Experiences and Current Symptoms and Impairment in Youth Referred for Trauma-Specific Services' (2016) 44 *Journal of Abnormal Child Psychology*, 882, 884.

her husband capable of this, and decided to leave him. By pre-adolescence, Cyntoia had experienced several ACEs and family dissolution.

Cyntoia was confined to a long-term juvenile justice facility for 15 months and prescribed anti-psychotic medication. Detention escalated her behavioral problems and mistrust of others, yet she had a strong desire for social approval. When she was released at the age of 15, her parents were unable to pick her up from the facility due to work commitments. They sent a family friend for her, but Cyntoia distrusted the man because he had made sexual comments about her body when she was a child, and others had ignored her complaint. When she reported her discomfort and refusal to leave with him to facility staff, they threatened her with placement in state custody. Cyntoia recognized this as the harshest punishment known to system-involved children because it meant she could be detained until the age of 19. This pivotal but obscured moment in her life represented an intersecting of community and institutional betrayal in the development of a young girl. Institutional betrayal occurs when institutions, systems, or organizations “inflict harm on people who depend on them for safety and well-being.”³⁴

Post-incarceration, Cyntoia was unable to maintain family relationships. This included Ellenette, who was with a new man with whom Cyntoia could not get along. Cyntoia eventually ran away. At 15, she moved in with an older woman whose home served as a de facto residential care facility for abandoned or neglected children. Childhood poverty is a common experience of minors severed from their households without means of support, alongside criminal involvement and victimization, traumatization, and adverse consequences for mental health and well-being.³⁵ Much older men were ensnaring Cyntoia in sexual relationships and selling crack-cocaine, when a 24-year-old drug dealer she worked for (her eventual pimp, Kutthroat) abducted, drugged and raped her over the course of 2 days. As an indication of Cyntoia's traumatic mental state, she reacted to the shock of realizing the incident with inappropriate laughter. The reaction of laughter while experiencing or recounting horrific

³⁴ P. Carter, and A. Blanch, 'A Trauma Lens for Systems Change' (2019) 17 *Stanford Social Innovation Review*, 3, 50.

³⁵ M. Annitto, 'Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors' (2011) 30 *Yale Law & Policy Review* 1; W.J. Adelson, 'Child Prostitute or Victim of Trafficking' (2008) 6 *University of St. Thomas Law Journal* 1.

events typically indicates the trauma effect of dissociation where a person's thoughts, feelings and behaviors are incongruent.³⁶

Law and Legal Activism

The case of Cyntoia Brown illustrates how law can polarize power differences and entrench inequalities, including through lack of recognition of the repeated victimization of criminalized children and youth. Cyntoia's case demonstrates how prison and sexual exploitation relate to alienation and poverty; and how inequalities, human trafficking and childhood & youth fit into this rubric. Her case represents the outcome of problematic laws and policies that conceal multiple forms of structural inequality and personal circumstances, even those legally recognized as victimization through child abuse and rape. Cyntoia had been criminally victimized multiple times as a child by the time of her arrest for murder, and her mental health had suffered as a result. Since birth she was at elevated risk for betrayal trauma from primary caregivers and custodial institutions, and post-traumatic stress disorder, which alters threat perception, creates hypervigilance, and affects decision-making, particularly in children and adolescents, and especially when combined with the effects of illicit drugs such as cocaine.³⁷ Based on personal experience, Cyntoia anticipated violence from all men in sexually-charged situations.

However, these were not guiding considerations in her case nor figured prominently in media reports ahead of her trial. Cyntoia was not represented as a victim of serial crimes despite long-term interaction between Cyntoia and Kut. Their "relationship" began as exploitation of a minor for facilitation of illicit drug sales and a clustered series of violent felonies against Cyntoia for purposes of sexual exploitation. The sexual aspects of their interactions vacillated between rape (when abducted or unwanted) and statutory rape (when she complied or "consented" to sex). Kut subjected Cyntoia to physical violence such as strangulation and addicting her to cocaine, and long-winded verbal abuse such as hours-long lectures about her being a "slut" who should be grateful to him because no one else would want her. These acts escalated to commercial-sexual

³⁶ United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh (UNITAD) and Stanford Human Rights in Trauma Mental Health Program, *Trauma-Informed Investigations Field Guide* (United Nations, 2021), p. 20.

³⁷ Basson, et al. 2018, *supra* note 23.

exploitation. Cyntoia determined to run away from Kut as she had from her adoptive father, but was too afraid because Kut threatened to kill Ellenette if Cyntoia left him. This threat was objectively and subjectively credible given Kut's history of violence. At the time, Kut was wanted for attempted murder of a woman he had paralyzed by gunshot, and Cyntoia had personally and repeatedly suffered his violent behavior.

Because Cyntoia understood her act of shooting Allen as self-defense, she informed authorities shortly after the killing. Police actively misled her into believing it would be to her benefit to speak to them without a lawyer or parent/guardian present. She was cooperative and forthcoming; she took full responsibility and did not implicate Kut. To Cyntoia's shock, police booked her for first-degree (premeditated) murder. She reacted with inappropriate laughter, followed by an explosive episode during which she attacked facility staff and was medicated with anti-psychotic drugs. Mental health counselors at the facility suspected that Cyntoia suffered from borderline personality disorder based on her history of childhood abuse and abandonment. Without knowledge of her legal rights, Cyntoia was unable to realize the gravity of her circumstances until too late in the criminal justice process.³⁸ The actions of exploiters but also authorities placed her in an increasingly precarious position. Both sets of actors abused the power imbalance of age difference and social position between adults and children—whether for monetary gain, sexual use, or prosecutorial motives. At the time of this writing, Illinois became the first and only state to outlaw police from lying to children during interrogations through false promises of leniency as in Cyntoia's case, or false claims regarding the existence of incriminating evidence against them, and other methods of deception. These common practices are particularly detrimental to minors, who are two to three times more likely to yield false confessions.

Through self-reflection and assistance from her attorney, Cyntoia eventually recognized the abuses she had suffered, in a continuity of unhealthy patriarchal dynamics ranging from her father to her pimp. They had attempted to erode her agency and resilience via repetitive attacks on her positive self-image. Prosecutors and media reporters added to this by characterizing Cyntoia's actions as cold-blooded murder, in racialized

³⁸ Cyntoia did not understand the meaning of Miranda Rights at the time of her arrest, which is typical of the vast majority of arrested juveniles. ("Murder to Mercy", *supra* note 32).

and gendered terms. In contrast, they portrayed Allen as a helpful local youth minister, despite his complete state of nudity in the presence of a minor leading up to his killing.³⁹ The prosecutor in Cyntoia's juvenile court hearing portrayed Allen as harmless and Cyntoia's fears as baseless because Allen bought her food, took her home, and she used his bathroom—despite these constituting criminal elements of grooming and solicitation of a minor.⁴⁰ During her criminal trial, Cyntoia and her attorney were shocked when the prosecutor revealed to the court a nude photo that Kut had taken of Cyntoia. This was not only retraumatizing but also repurposed the work of her pimp in eroding her positive self-image for similar ends in court.⁴¹ Cyntoia's own attorneys prevented her from testifying at her criminal trial, claiming it was not in her best interest. This move decontextualized her actions from her mental health diagnosis and trauma history. The judge also dismissed as "irrelevant" testimony regarding Allen's history of sexual harassment of wait staff, including minors, at a local restaurant. However, another witness was able to testify that Allen had abducted and raped her, and that she had remained silent due to shame and self-blame.

Such actions produce a corroborative synergy between exploiters and legal actors against survivors of CSEC. As Cyntoia's consciousness grew regarding the continuum of patriarchal dynamics across her life course, the court and media reinforced these through bias, re-traumatization, silencing, and the recirculation of a sexual image of a minor offered in court to deprive a child of liberty. At the same time, a combination of retributive criminal policy and austerity have worked to criminalize child survivors of sex trafficking like Cyntoia. In Tennessee, as in many states, juveniles charged with murder are most often "transferred" (tried as

³⁹ Hargrove 2011, *supra* note 1; Goodman, A. 2019. "Prison Abolitionist Mariame Kaba on Cyntoia Brown, the First Step Act and NYC Building 4 New Jails," *Democracy Now!*: <https://bit.ly/3avYHnJ>. (Hereinafter "Transcript 2").

⁴⁰ A. Goodman. 2019. "There Are Thousands of Cyntoia Browns: Mariame Kaba on Criminalization of Sexual Violence Survivors," *Democracy Now!*: <https://bit.ly/3gro51E>. (Hereinafter "Transcript 3"). See also "Murder to Mercy," *supra* note 32 (Although Cyntoia had been exploited for some time, men would typically take her to motel rooms, but Allen insisted on taking her to his house, where he continually talked about his collection of guns, being an army sharpshooter, and an important and powerful person in the community. She described her intimidation and his escalation to sexual assault and erratic behavior).

⁴¹ The following facts are recounted from Hargrove 2011, *supra* note 1 and Transcript 1, *supra* note 32.

adults) for at least three reasons: (1) legislation requiring mandatory minimum life sentences for first-degree murder regardless of age and without consideration of mitigating factors, (2) the perception of leniency against judges who place juveniles in the custody of the child welfare system instead of adult prison, and (3) faithlessness of justice officials in the rehabilitative capacity of child welfare institutions and the juvenile justice system, particularly for “multi-problem youth.”⁴²

Moreover austerity obstructs justice. Even when mandatory minimum sentences are eliminated and rehabilitation is reprioritized, transfers increase “as a consequence of repeated budget cuts to an already anemic state agency doing more and more with less and less.”⁴³ There are both legal and economic components to what appears a strictly legal determination. The first part of transfer hearings for juveniles requires determination of probable cause, but the second requires determination of whether the juvenile justice system has sufficient resources for the respondent’s treatment. Therefore, although determination of adult status is part of the hearing, resource allocation is ultimately decisive. The requirement of greater performance with diminishing resources due to cuts to social welfare is a hallmark of neoliberal policy that most detrimentally impacts children and youth, and is part of an entrenched discrimination in the US, where children receive only one-third of the national spending for senior citizens.⁴⁴ Divestment from social welfare tasks the criminal justice system with containing and managing the effects of socio-economic inequalities that generate perilous neighborhood contexts, disrupt families, and make children vulnerable to the criminogenic conditions of abuse and exploitation. The criminalization and adultification of children are corroborative processes that erode modern notions of childhood in order to justify punitive responses.

Tennessee was able to sentence Cyntoia particularly harshly despite a national move during exactly Cyntoia’s lifetime toward the rehabilitative mode of juvenile adjudication, supported by neuroscientific findings

⁴² Hargrove 2011, *supra* note 1.

⁴³ *Id.*

⁴⁴ W.A. Corsaro, *The Sociology of Childhood*. (Los Angeles, 2015), 308–314 (citing double the US government spending on social programs and benefits for elders than children, and better outcomes related to poverty rates, healthcare, and quality of life for elders compared to children).

regarding child and adolescent cognitive development.⁴⁵ Tennessee had refused to fund a policy recommendation of its former Governor for juvenile rehabilitation and combatting post-release recidivism. This would have provided juveniles judicial discretion regarding transfers, counseling and vocational training, and the opportunity for release and reintegration into society during youth if they achieved specified benchmarks.⁴⁶ However, once in prison, Cyntoia worked hard for admission into an education program introduced to fill gaps produced by federal law in 1994 that defunded inmate education despite the government's own research demonstrating its effectiveness in lowering recidivism.

The program's instructor, Professor Preston Shipp, was a former local prosecutor who identified Cyntoia as an exceptional student who could be "a gifted litigator" for her critical engagement. However, he was disconcerted by its impossibility given her life sentence. As Cyntoia was appealing this decision, Shipp was learning to appreciate her talent and life circumstances. Although Shipp's career had been based on argumentation against defendants whose case outcomes he believed were well-deserved, his experience teaching young, imprisoned women eager for redemption challenged his beliefs and transformed him. The significance of this experience exemplifies how educational resources counteract the alienating powers of retributivism. Shipp's experience of "being-with" youth in a supportive role in the program corresponded with positive psychological effects for Cyntoia. Her outstanding attainment allowed her to reinterpret and redeem her self-image as able-minded rather than "some dumb girl who made all these dumb choices," as she had internalized. Moreover, gaining literacy in criminal law provided Cyntoia access to the concept and discourse of sex trafficking, which allowed her to understand her survival of criminal victimization and to transcend self-blame. She discovered a pathway and sense of direction, felt motivated to achieve, live and strive, and to avoid trouble in prison.

In a dramatic twist, however, the court in Cyntoia's case simultaneously sent its decision denying her third (and final) appeal to her ... and the Professor. The "star student" and "the instructor nurturing her hopes" shockingly discovered that Shipp had been the prosecutor on her case. Both of them despondent, Cyntoia felt betrayed yet again, and this

⁴⁵ *Roper v. Simmons* (2005) 543 US 551; *Graham v. Florida* (2010) 560 US 48; *Miller v. Alabama* (2012), 132 S.Ct. 2455.

⁴⁶ The following facts are recounted from Transcript 1 and Hargrove 2011, *supra* note 32.

took a toll on her personality. After thoughtful deliberation, however, she concluded that Professor Shipp is her friend, and continued her exceptional educational attainment. In fact, the Professor would become one of many champions for Cyntoia's release after exhaustion of the formal process induced a decade of activism on her behalf. As a result of *being-with* Cyntoia—who had previously been anonymized by his prosecution work—Shipp commented on “such a drastic difference between what you read about in that trial transcript and the person I got to be friends with,” and how key occurrences in Cyntoia's life relevant to the case were outside his knowledge until he heard them from her personally. Highlighting the severe costs of discounting childhood experiences of survivors, he commented, “You don't hear about what her childhood was like.”

At nearly 30 years old, Cyntoia filed for clemency, but was denied a year later.⁴⁷ However, over the course of a year, persistent spotlighting of the injustice and punitive excess of her case escalated to a high-profile campaign generating outrage and public pressure.⁴⁸ The Tennessee Supreme Court's affirmation that a teenager of Cyntoia's circumstances must serve 51 years of her sentence—to the age of 67—before she could be eligible for parole was unacceptable to many. This became a turning point in her case, including for the Tennessee Governor who eventually granted Cyntoia clemency after a sustained campaign of law, community and media pushed for it.⁴⁹ Campaigners helped transform Cyntoia's characterization from the decontextualized and prejudicial narrative of a ruthless, criminal Black woman to a teenager forced into prostitution as a child and regularly drugged, beaten and raped by a pimp, then sentenced to life imprisonment for killing a man who purchased her for sex, assaulted her, and made her fear for her life. The social media hashtag #FreeCyntoiaBrown even garnered celebrity attention and recirculation. By 2019, after Cyntoia had served 15 years, Governor Haslam granted her clemency, largely basing his decision on Cyntoia's progress and rehabilitation in prison through the education program.⁵⁰

⁴⁷ Transcript 1, *supra* note 32.

⁴⁸ A. Goodman, 2018. “Outrage Over Tennessee Court Ruling in Cyntoia Brown Case,” *Democracy Now!*: <https://bit.ly/32DJQ6f>; Transcript 3, *supra* note 39; A. Goodman, 2017. “Campaign Calls for Release of Sex Trafficking Victim Who Killed Abuser,” *Democracy Now!*: <https://bit.ly/3axrx6S> (Hereinafter, “Transcript 4”).

⁴⁹ Transcript 1, *supra* note 32.

⁵⁰ *Id.*

However, the state remains unapologetic for its systemic failures, and irresponsible regarding socio-economic stabilization after imprisonment, even for children incarcerated during their formative years. Because Cyntoia was not pardoned, her freedom is severely limited by her criminal status and highly restrictive conditions of release, which prevents expungement of her record and renders her ineligible to vote.⁵¹ She must maintain employment, attend counseling and community service, and strictly adhere to terms of supervised parole, despite that her status presents a legal barrier to employment. Additionally, Cyntoia will likely be judged similar to other sexual trauma survivors. Just as ideal victimhood is required of survivors to secure prosecutions against perpetrators and to prevent their own criminalization, “good survivorhood” is required in its aftermath—the performance of respectability and demonstration of psychological recovery according to increasingly medicalized assessments.⁵² Good survivorhood pressures victims of sex crimes to present psychological narratives of “overcoming” through professional therapy in order to qualify for state resources, despite deterioration of the material conditions of their lives.⁵³ The imperative to narrativize one’s experiences contrary to personal knowledge under pressure of meeting one’s needs involves a process of alienation that disconnects self-cognition from lived reality.

Cyntoia’s resistance to alienation and reification has occurred through continued identification with similarly situated others, her purpose “to help other women and girls suffering abuse and exploitation.”⁵⁴ This ethos is precisely what secured her own freedom when activists, including from Black Lives Matter, coalesced nationally and strategized her case in the context of similar cases of girls criminalized for defending themselves against abusers.⁵⁵ Alongside a relentless social media campaign, they made a record 6,000 daily phone calls to the Governor’s office for her release.⁵⁶ Women of color led the campaign alongside White elder men such as Cyntoia’s attorney, Houston Gordon, who advocates for her case

⁵¹ Transcript 3, *supra* note 39; Transcript 2, *supra* note 39.

⁵² Javidan 2017, *supra* note 7; P.L. Sweet, (2019) ‘The Paradox of Legibility: Domestic Violence and Institutional Survivorhood’, 66 *Social Problems*, 3.

⁵³ P. Sweet, 2019, *supra* note 33.

⁵⁴ A. Goodman, 2019. “Cyntoia Brown Released from Prison After 15 Years, Vows to Fight for Other Sexual Abuse Survivors.” *Democracy Now!*: <https://bit.ly/3vaLHeR>.

⁵⁵ Transcript 2, *supra* note 38; Transcript 3, *supra* note 40.

⁵⁶ Transcript 3, *supra* note 39.

to catalyze national consciousness against retributivism and condemning children to adult prison.⁵⁷ Activists emphasize the efficacy of participatory legal defense campaigns and sustained struggles for criminalized survivors that take a long view of the matter.⁵⁸ Cyntoia's case shows that legal activism in a difficult case of intersecting inequalities requires an extremely dedicated team that includes highly supportive and proactive lawyers, family, community and organizational support, and the ability to mobilize people in positions of power, including in law and media.

Cyntoia's case is an exemplary representation of intersecting social inequalities and systemic injustices in advanced capitalist economies, clearly illuminated when childhood, exploitation through the traffic in human beings, and the criminal justice system intersect. An important task for legal and social movement activists is to understand these cases in historical context to be able to make an impact statement about to what extent the case outcome represents evidence of social change, and to assess whether children's circumstances today differ from those of pre-civil rights era children.⁵⁹ Legal scholar Wingfield-Smith perhaps best encapsulates how Cyntoia's case links directly to poverty and legal activism:

[Cyntoia's] clemency is a result of the political pressure of movement leaders, social media activists, clergy, entertainers, and others...Now that we know that we have what it takes to pull off 60s-like wins, despite the unfairness of the American judicial system, let's aim higher. There must be broader reaching plans to change the landscape of America, but there is no need to recreate the wheel. In the 60s, legal advocates played a leading role among strategists committed to dismantling systemic injustice. I believe this must be the case today...The strategic navigation of laws and policies is imperative in the current political climate; now is just the right time to come together in thoughtful contemplation of victories won. All of America knows that Cyntoia Brown's imprisonment is the mere reflection of greater economic, social, and legal challenges that still face Black people even until this very hour.⁶⁰

⁵⁷ Id.; see also M. Grahn-Farley, (2002) 'A Child Perspective on the Juvenile Justice System', 6 *Journal of Gender, Race and Justice*, 297 (for a robust discussion of this phenomenon and CSEC in adult prisons from a critical legal theory perspective).

⁵⁸ Transcript 2, *supra* note 39.

⁵⁹ D. Wingfield-Smith, (2019). 'Cyntoia Brown and the Justice System's Contempt for the Rights of Black People,' 35 *Harvard Black Letter Law Journal*, 85, 87–89.

⁶⁰ Id., at 89.

“These powerful people were my chains”: The Case of Jeffrey Epstein⁶¹

If Cyntoia Brown’s case exemplifies how intersecting inequalities render people vulnerable to exploitation and injustice, then resistance to alienation requires identification with victim-survivors and disidentification from the perspective of billionaires and the shielding of human traffickers, exemplified in the case of Jeffrey Epstein. The Epstein case clarifies the nexus between the elite and the traffic in human beings. Powerful men (and sometimes women) who participate, are complicit in, or benefit from corruption and white-collar crimes such as financial fraud and pyramid schemes, motivated by ever-greater power and property ownership, so often make sexual commodification and possession of others’ bodies an integral part of their estates, business dealings, network operations, and social and private lives.⁶² Systematic, organized crimes against the person become integral to these property-related transactions, in ways that compound alienation of body, affect, and sex, and commodification of age, gender, and race.

Importantly, Cyntoia’s and Epstein’s stories are also both rooted in women’s prisons—institutions of extreme alienation—where survivors of SGBV are concentrated. While Cyntoia was imprisoned, the pimp who had exploited her was killed, likely at the hands of another drug dealer. Epstein’s case began developing at the same time, involving a different profile of child sexual exploiter—much older, wealthier and well-connected to the elite. *Miami Herald* journalist Julie Brown uncovered the Epstein case while interviewing inmates of a women’s prison regarding conditions in the facility. Brown realized that inmates’ stories kept leading to Epstein. The criminalization of trafficking survivors and highly disparate impact of sex trafficking on women and girls means that key witnesses to these crimes are concentrated in carceral facilities for female offenders. Female inmates and sex trafficking survivors, including crimi-

⁶¹ M. Landler, 2019. “Prince Andrew’s Accuser Takes Her Case to the BBC,” *New York Times*: <https://nyti.ms/3na1d8f> (statement from complainant Virginia Giuffre against Jeffrey Epstein and alleged co-conspirators).

⁶² C. Norma, ‘Prostitution and the 1960s’ Origins of Corporate Entertaining in Japan’ (2011) 34 *Women’s Studies International Forum*, 6; K. Hoang, *Dealing in Desire: Asian Ascendancy, Western Decline, and the Hidden Currencies of Global Sex Work* (Oakland, 2015); A. Mears, *Very Important People: Status and Beauty in the Global Party Circuit* (Princeton, 2020).

nalized survivors, are disproportionately non-White and/or economically impoverished.⁶³ Sociological and psychiatric studies strongly indicate a “pipeline” from trauma/abuse to prison for women and girls, characterized as “the incarceration of trauma”; 71–95 percent of incarcerated women have endured intimate partner violence, and 60–100 percent report physical or sexual trauma or abuse in childhood or adulthood.⁶⁴ Additionally, studies show that the vast majority of persons who sell sex do not want to; they would rather not be involved in the commercial sex industry but are compelled to sell sex for economic reasons and survival needs.⁶⁵ Activists have highlighted the injustice of systematic criminalization and punishment of survivors of SGBV and commercial-sexual exploitation for self-defense against abusers and exploiters and the protection of their children in contexts of persistent instability and danger.

Cyntoia’s conviction and Epstein’s leniency co-occurred as a result of these social and legal conditions. The criminalization of child survivors, particularly for defending themselves against abusers, alongside the retaliation and violence with which survivors are threatened results in a corroboration of law and society in racialized gender violence and the abuse or exploitation of children. Epstein’s evasion of justice through wrongdoing and illegalities involved a shocking and protracted series of actions by he and his legal team, detailed in a series of exposés by women journalists in the US and UK. Those details are intricate and run so afoul of any orderly administration of law and justice that they merit

⁶³ M. Kaba, *We Do This ‘til We Free Us: Abolitionist Organizing and Transforming Justice*, p. 51. (Chicago, 2021); Office of Juvenile Justice and Delinquency Prevention, ‘Statistical Briefing Book’: <https://bit.ly/3tIdmDN>; A. Nichols, *Sex Trafficking in the United States: Theory, Research, Policy, and Practice* (New York, 2016), p. 29.

⁶⁴ Id.; Transcript 3, *supra* note 40; B.E. Richie, ‘Jail or Justice - Violence against Women in Conflict with the Law’ (2002) 6 *Perspectives on Crime and Justice* 35; A. Browne, ‘Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women’ (1999) 22 *International Journal of Law and Psychiatry*; S. Ball, et al. ‘Interpersonal Trauma in Female Offenders: A New, Brief, Group Intervention Delivered in a Community Based Setting’ (2013) 24 *Journal of Forensic Psychiatry & Psychology*, 6; A.K. Fournier, et al. ‘Investigating Trauma History and Related Psychosocial Deficits of Women in Prison: Implications for Treatment and Rehabilitation’ (2011) 21 *Women and Criminal Justice*, 2; R. E. Liebman, et al. ‘Piloting a Psycho-Social Intervention for Incarcerated Women with Trauma Histories: Lessons Learned and Future Recommendations’ (2014) 58 *International Journal of Offender Therapy and Comparative Criminology*, 8.

⁶⁵ Nichols 2016, *supra* note 38, at 34 (reporting rates as high as 93 percent of persons selling sex not wanting to do so).

detailed recounting. Yet however disquieting the facts, they attest to the combined power of legal activism, social movements and investigative journalism to alter the course of expected outcomes of social inequalities and systemic injustices.

The unfolding of Epstein's case demonstrates the routine wrangling that occurs among different sets of local actors, their ethical commitments and the values they represent in a highly unequal society. Although Epstein's criminal dealings date back to at least the 1990s, from March 2005–2008, he and his legal team obstructed justice by violating federal law, specifically the Crime Victims' Rights Act (CVRA).⁶⁶ In March 2005 the parents of a 14-year-old girl reported Epstein to the police for molesting their daughter in his Florida mansion after her classmate took her to him for a massage in exchange for money.⁶⁷ Police began to uncover corroborating evidence that Epstein had also targeted other girls. When Epstein realized he was being investigated for child sexual abuse, he contacted his friend, high-profile attorney and Harvard Law professor Alan Dershowitz. Against the will of law enforcement and despite copious evidence mounting against the suspect, Epstein's case became increasingly removed from the realm of criminal justice and entered into a process more akin to the negotiation of contracts.

Contracting Injustice: Criminal Justice as Contract Negotiation for Elite Defendants

In stark contrast to Cyntoia's cooperation with authorities, lack of good representation at key junctures in her case, and conditions of child poverty, Epstein's money and power provided him an escape hatch. A police probe into allegations against Jeffrey Epstein was well underway by autumn 2005. More girls and members of Epstein's household staff revealed the frequent and daily traffic of girls at his residence. Even during police questioning, one of the girls received a call from Epstein's assistant. By May 2006, police signed a probable cause affidavit charging Epstein and

⁶⁶ 18 U.S.C. § 3771.

⁶⁷ J.K. Brown, (2018). 'For years, Jeffrey Epstein abused teen girls, police say. A timeline of his case', *Miami Herald*: <https://www.miamiherald.com/news/local/article221404845.html>. Unless otherwise cited, facts regarding Epstein's case throughout this section are detailed from this timeline.

two of his assistants with multiple counts of child sex abuse. However, the State Attorney instead referred the case to a (state) grand jury, and after hearing from only one girl, returned an indictment of one count of solicitation of prostitution that failed to include that the victim or others were minors. Epstein deployed his powerhouse legal team to negotiate deferred prosecution with the State Attorney, avoid serving jail time, and instead enter a pretrial intervention program. The Chief of Police was reportedly “very disturbed” by the likelihood of Epstein being let off and pressured for an investigation by the FBI, which documented allegations of “child prostitution” against Epstein. The Police Chief would spend years attempting to persuade state prosecutors to charge Epstein with serious crimes, to no avail. Despite the FBI investigation yielding “a sprawling network of victims and enough evidence to fill a 53-page indictment with federal sex crime charges,” including witness testimony supporting victims’ accusations, US Attorney for Florida, Alexander Acosta, and prosecutors claimed that the case was too weak to pursue.

Although the State Attorneys’ Office was still preparing its case, prosecutors granted Epstein and his lawyers’ request to initiate plea negotiations. The following month, when grand jury subpoenas were issued for Epstein’s computer, it was discovered that they had been removed from his home before the police search. Acosta entered direct discussions about Epstein’s plea agreement, after which a motion to compel production of Epstein’s computers was delayed. Remarkably, over the course of a year (June 2007-June 2008), Epstein and his attorneys negotiated his charges back and forth with prosecutors, which shockingly extended to their co-editing draft documents together.

Meanwhile, accumulated evidence expanded the evidentiary and geographic scope of Epstein’s crimes, pointing to his potentially running an international sex trafficking ring with overseas recruiters. However, Epstein hired high-profile lawyers from Acosta’s former law firm—a well-connected pipeline to powerful public offices. They were able to pressure and manipulate Acosta because his ability to contend for those political positions would implicitly require their support. Federal prosecutors drafted several plea agreements that Epstein rejected. He finally signed a non-prosecution agreement in September 2008, three years after the initial complaint against him to police. The agreement canceled all grand jury subpoenas, and stated that it will be sealed and victims will not be notified. Epstein then objected to the appointment of a special master to represent victims’ rights to civil compensation, so this pro-

vision was removed. Nonetheless, one of Epstein's attorneys, Kenneth Starr—conservative attorney famed for the impeachment of President Clinton—further delayed execution of the agreement.

Even after striking provisions and delayed execution, Epstein refused to honor the agreement because it required his registration as a sex offender. Therefore, the FBI investigation continued, leading to a new federal grand jury presentation, which contained documents showing that Epstein was harassing his victims, including a report from one victim's father of being run off the road while driving. Under pressure to avoid federal prosecution, Epstein reentered negotiations and plead guilty to state charges. He was "sentenced" to merely 18 months of jail and sex offender registration in Florida, under conditions tantamount to work release or furlough. His chauffeur drove him from the facility six days a week to his "luxury office," where he ordered "lavish lunches" and was able to receive visitors—"a parade of young females"—for 12 hours a day. Epstein only returned to the facility to sleep at night. Office visitation logs mysteriously disappeared as an investigator sought them. This arrangement was made possible by Epstein's intentionally cultivated relationship with local law enforcement in Palm Beach County, Florida, where he was an employer of some of the Sheriff's deputies for his own private details.⁶⁸ Only after the case ended did victims discover that the federal investigation had been terminated. They immediately filed an emergency petition demanding federal prosecutors' compliance with federal law, specifically the CVRA. They sought to unseal the non-prosecution agreement, but federal prosecutors argued against it, forcing victims into a yearlong legal battle.

Epstein's treatment contrasted greatly with the retributivism many sex-trafficking survivors face. Even under such incredibly lenient conditions, Epstein was released 5 months early to house arrest and probation. He frequently violated the terms of his release by flying to Manhattan and the Virgin Islands, and walking freely in public spaces—violations that were unpursued or excused for needing "physical exercise." The non-prosecution agreement was publicized a month later. Epstein had already accrued a dozen civil suits alleging child sex abuse against him. He began settling these out of court. A member of Epstein's household

⁶⁸ A. Goodman, 2019. "Perversion of Justice: The Shocking Story of a Serial Sex Abuser & Trump's Sec. of Labor, Who Helped Him." *Democracy Now!*: <https://bit.ly/3sFKZ7J> (Hereinafter, "Transcript 5").

staff came forth as a witness to child pornography on Epstein's personal computers, undressed underage girls at his house, and his knowledge that Epstein was having sex with them. However, the man was charged with obstruction of justice for attempting to sell Epstein's black book of girls to an undercover FBI agent, sentenced to federal prison, and died in 2015.

Law and Legal Activism

Despite the formidable deployment of finance, power, and violence against survivors, the tides of evidence and history would turn against Epstein and associates. Civil suits began to publicize the contents of Epstein's black book and private-jet flight logs, which revealed the identities of his powerful associates—heads of state, world leaders, political officials, academics and celebrities, including President Bill Clinton and his former National Security Adviser Sandy Burger, Harvard law professor Alan Dershowitz, and former President of Colombia Andrés Pastrana—taking flights to Epstein's private islands known for the sexual abuse of underage girls. Victims successfully motioned in federal court against the US government for violating the federal CVRA through deception and failure to notify victims and concealment of the non-prosecution agreement. Marking a victory for victims, federal judge Kenneth Marra rejected federal prosecutors' argument that they had no obligation to notify victims since no federal charges were filed. Epstein was required to register as a sex offender in New York and designated to its highest and most dangerous category, which indicates "high risk of repeat offense and a threat to public safety." Around the same time *Mail on Sunday* reporter Sharon Churcher exposed the association of Prince Andrew of Great Britain with Epstein, shortly after which the FBI reopened its investigation and attracted the attention of victims' attorneys.

From then on, between 2011–2016, Epstein embarked on a public relations campaign "to counter bad press about his sexual exploits," re-branding himself as a generous philanthropist and educational investor. Despite concerted effort to rehabilitate his image, survivors stepped forward and journalists stepped up. Survivor Virginia Giuffre filed an affidavit in 2015 attesting to Epstein selling her to other men for sexual abuse. Donald Trump's 2016 presidential candidacy proved pivotal. A woman named Katie Johnson came forth alleging that Trump raped her at the age of 13 at one of Epstein's parties in his Manhattan mansion, describ-

ing details consistent with those of other survivors regarding Epstein's modus operandi.⁶⁹ She agreed to a press conference a few days preceding Election Day in November 2016, but backed out, dropped the lawsuit, changed her contact details and disappeared, stating she had been threatened and felt too fearful to speak publicly.⁷⁰

After Trump's election, *Miami Herald* journalist Julie Brown released details of Epstein's non-prosecution agreement. This caused the case to be reopened, Epstein to be rearrested, renewed public scrutiny, and the Congressional probing and resignation of Acosta, whom Trump had appointed as Labor Secretary. Unlike during his confirmation hearings, Congressmembers grilled Acosta about the deal, referring to vast power differences between teenage SGBV victims and the "extremely powerful, wealthy and connected" perpetrators. Federal Judge Marra ruled that Acosta's actions as federal prosecutor to secure Epstein's plea deal were illegal. Departing office in July 2019, Acosta continued defending the illegal deal, while Epstein was being tried in New York on similar sex trafficking charges involving hundreds of girls. Epstein proposed a bail package of in-home detention pending trial, at his \$77 million Upper East Side mansion, one of the largest residences in Manhattan. Epstein's request was denied based on victims' credible testimony that they feared harassment.⁷¹

Although a defamation settlement against survivors' attorneys prevented some survivors from testifying in court, a series of events favorable to them started unfolding. Years of sustained social and legal activism culminated when New York passed landmark legislation—the Child Victims Act (2019)—providing a one-year window for survivors of child sex abuse to file suits whose statutes of limitations had otherwise expired. A few months later, Giuffre sued Epstein's attorney/friend Alan Dershowitz for defamation for accusing her of fabricating claims that when she was 16 Epstein trafficked her to him. Former Epstein employee Maria Farmer submitted an affidavit as a frequent witness to traffic in school-aged girls at Epstein's residence, and that she saw Dershowitz "go upstairs" with them on several occasions. Farmer also alleged that Epstein and his alleged procurer, Ghislaine Maxwell, sexually assaulted her and her sister

⁶⁹ Id.

⁷⁰ Id.

⁷¹ C. Devine, D. Griffin, and S. Glover, 2019. "Private investigator has spent a decade on Jeffrey Epstein's trail." *CNN Investigates*: <https://cnn.it/3nal5rT>.

in 1996, when her sister was 15. Journalist Connie Bruck published a story in the *New Yorker* detailing Dershowitz's role in the non-prosecution agreement and two women's allegations that Epstein ordered them to have sex with him.⁷² Dershowitz then posted a tirade against age of consent laws on Twitter.⁷³

At the same time, evidence and publicity unfavorable to Epstein and associates accrued, as he faced 45 years in prison. Attorneys managed to unseal voluminous court documents (2000+ pages) implicating high-profile politicians and figures, including Dershowitz, Prince Andrew and others. Less than 24 hours later, Epstein was found dead in jail with bodily signs of strangulation. Despite previous placement on suicide watch after being found unconscious with similar marks around his neck, a current mandate to guards for 30-minute watch intervals, and the absence of a mandatory cellmate, Epstein was left unsupervised. Guards had also falsified their time logs. The House Judiciary Committee investigated and declared Epstein's death a suicide by hanging. Two days prior to his death, Epstein had signed a will leaving an estate of \$577 million to unknown beneficiaries.⁷⁴ Without evidence, President Trump joined online conspiracy theorizing to suggest that his political rivals, the Clintons, were responsible for Epstein's death.⁷⁵

Survivors' reactions were mixed, ranging from relief that Epstein's death would end his abuses and retaliations to dismay that he would never face justice. Jennifer Araoz, who accused Epstein of raping her when she was 15, lamented a lifetime of pain from trauma for which Epstein will never face consequences, and insisted on pursuing justice and redressing survivors posthumously.⁷⁶ Rather than causing abandonment, Epstein's death further galvanized justice efforts against his co-conspirators and his estate, and survivors continued reaching historical milestones. Araoz's

⁷² C. Bruck, 2019. "Alan Dershowitz, Devil's Advocate," *New Yorker*: <https://bit.ly/3nc-SIXX>.

⁷³ E. Mazza, 2019. "'Creepy Dershowitz' Trends and You Really Don't Want to Know Why," *Huffington Post*: <https://bit.ly/3vcTI38>.

⁷⁴ E. Helmore, and agencies. 2019. "Jeffrey Epstein signed new will to shield \$577m fortune days before death," *The Guardian*: <https://bit.ly/3dSYpZZ>.

⁷⁵ M.K. Seung, and H. Knowles, 2019. "Trump retweets conspiracy theory tying the Clintons to Epstein's death," *Washington Post*: <https://wapo.st/32R2TtU>.

⁷⁶ T. McCarthy, and E. Helmore, 2019. "'We live with scars': accusers demand Epstein's death not derail investigations," *The Guardian*: <https://bit.ly/3xkAdre>.

civil suit against Epstein's estate was among the first to be filed under the new Child Victims Act.⁷⁷

Legal authorities continued to play key roles—both supportive and obstructive—such that the legal battle has persisted. The FBI raided Epstein's private Caribbean island as part of the investigation led by the US Attorney's Office for the Southern District of New York. Attorney General William Barr vowed continuation of Epstein's case, but allowed the Acting Director of the Bureau of Prisons, who had overseen Epstein's custody, to remain in the agency by merely reassigning him.⁷⁸ Although New York prosecutors formally dismissed the sex trafficking case against Epstein when he died, they, too, vowed to continue investigation of implicated co-conspirators.⁷⁹ In response, District Judge Richard Berman scheduled a hearing in late August 2019 to allow survivors and attorneys to formally testify against Epstein, while victims' attorneys spoke publicly on the historical significance of the event and their clients' courageousness.⁸⁰ The legal activism of survivors and lawyers, and being heard by sympathetic judges, has proven instrumental to the continuance of justice, particularly in the midst of disagreement between the key federal and state judges in the case. The state judge in Florida refused to unseal the non-prosecution agreement that rendered co-conspirators immune from prosecution, even after Judge Marra ruled it illegal.⁸¹

Just as evidence continued accruing during the previous decade's investigation and demonstrated the vast scope of Epstein's operation, undeterred survivors have steadily continued coming forth. As a result, more high-profile figures have been implicated such as Leslie Wexner, chairman and CEO of the parent company of Victoria's Secret, and alleged procurer Ghislaine Maxwell. Survivor Maria Farmer decided to speak publicly about the details of her previously submitted affidavit—that when she attempted to escape Wexner's home from an attack he coordinated

⁷⁷ S. Fitzpatrick, 2019. "Jeffrey Epstein accuser Jennifer Araoz sues Ghislaine Maxwell, 3 Epstein staffers," *NBC News*: <https://nbcnews.to/32NbBJJ>.

⁷⁸ A. Goodman, 2019. "Horror at MCC: 'Gulag' Conditions at NYC Jail Were Known for Decades Before Jeffrey Epstein's Death," *Democracy Now*: <https://bit.ly/2Pn9mcQ>.

⁷⁹ B. Pierson, 2019. "Case against Jeffrey Epstein dismissed following his death," *Reuters*: <https://reut.rs/3tUaovP>.

⁸⁰ T. Hays, and L. Neumeister, 2019. "One by one, Epstein accusers pour out their anger in court," *Tampa Bay Times*: <https://bit.ly/3gF5ZJv>.

⁸¹ P. Mazzei, and M. Baker, 2019. "Florida Judge Denies Bid by Epstein Victims to Nullify Non-Prosecution Deal," *New York Times*: <https://nyti.ms/3dQhs7c>.

with Epstein, Wexner instructed security guards to impede her. Virginia Giuffre additionally alleged that Epstein trafficked her to Prince Andrew when she was 17 and produced photographic evidence in support, which Andrew merely denied in a remorseless public statement. Although this resulted in Andrew's forced withdrawal from all public duties, victims' attorney Gloria Allred and multiple accusers have demanded that Andrew disclose his connections and appear in US court as a witness to child sex trafficking in Epstein's home. A survivor self-identified as "Jane Doe" publicly announced her civil suit alleging that Epstein raped her when she was 15, while another survivor, Teala Davis, reported repeated rapes and sexual assaults she suffered from Epstein when she was 17, stating, "I was a little girl. It took me a long time to break free from his mind control and abuse."⁸² Giuffre commented, "I couldn't comprehend how the highest levels of government and powerful people were allowing this to happen; not only allowing it to happen, but participating in it."⁸³

Suspicious activity and evidence of obstruction of justice continued growing. Ghislaine Maxwell disappeared, and it surfaced that, upon arrest, Epstein wrote two large checks to two people who appear in the non-prosecution agreement, which the senior investigations editor of *Miami Herald* suspects was "for the purpose of buying their silence."⁸⁴ One of several women journalists who actively pursued the case, Amy Goodman, highlighted strategic legal obstruction and shielding by high-powered people that enabled the traffic in girls, while journalist Julie Brown exposed the "scorched-earth effort" of bullying, intimidation and illegal actions deployed by Epstein and his associates towards anyone protecting or seeking justice for impacted girls, including the police chief and lead detective on Epstein's case.⁸⁵ They attempted to mar the reputation of attorney Brad Edwards, one of the earliest (pro-bono) defenders of survivors. Edwards had to sue Epstein for defamation, which Epstein prolonged for years using his financial resources.⁸⁶ Prosecutors considered charging Epstein with witness tampering and obstruction of justice, but did not. However, Julie Brown's exposé prevented Epstein

⁸² A. Goodman, 2019. "More Women Accuse Jeffrey Epstein of Rape, Sex Trafficking," *Democracy Now*: <https://bit.ly/3tLSXxK>.

⁸³ Landler 2019, *supra* note 61.

⁸⁴ A. Goodman, 2019. "Jeffrey Epstein Is Dead, But Victims Call for Probes of His Sex Trafficking Ring to Continue": <https://bit.ly/3gAzZWU>.

⁸⁵ Transcript 5, *supra* note 68.

⁸⁶ *Id.*

from continuing his tactics indefinitely because it threatened to produce countless witnesses against him. This pressured him to settle the defamation case and admit to his bullying in the process. The senior editor of *Miami Herald* affirmed that victims' fears of retaliation prevented their speaking about Epstein for years, especially on the record or on camera.⁸⁷ A non-prosecution agreement for a child sex trafficker combined with survivors' commonly-shared fears of victim-blaming, shame, retaliation and re-traumatization violate and betray the purpose of the federal Crime Victims' Rights Act to correct decades of erasure and exclusion of victims from the justice process, specifically requiring prosecutors' notification of and responsiveness to accusers.⁸⁸

Conclusion: Determination in the Face of Indeterminacy

The child sex trafficking cases of Cyntoia Brown as a criminalized survivor and Jeffrey Epstein as an unaccountable exploiter illustrate the interconnectedness of different forms of alienation related to the trafficking, devaluation and disposability of human beings based on inequalities of race, class, gender and generational order. Despite great improbabilities of justice for survivors due to intersecting inequalities, these cases demonstrate that expected negative outcomes can be reversed through resistance to alienation via legal activism, social movements, and identification with survivors' experiences. However, such routine negative outcomes should not be expected in a system of justice. Initially, in both cases, law functioned not merely to maintain the status quo, but to further polarize existing power differences between survivors and exploiters. This function was powerful enough to neutralize law enforcement and prosecutorial efforts to serve survivors. Decades of struggle and enduring intimidation, threats and retaliation on the part of survivors, lawyers and journalists turned the tide in these cases. They contended with a legal system capable of producing scandalous levels of retribution and leniency, and which should not require their level of effort and suffering simply to make the system work as it is supposed to. The extraction of such tolls from survivors and claimants suggests the presence of dysfunction and/or

⁸⁷ A. Goodman, 2019, *supra* note 78.

⁸⁸ 18 U.S.C. § 3771; Transcript 5, *supra* note 68.

corruption in a justice system. The conception of justice for populations rendered vulnerable by socio-economic inequalities entails restitution to an “original position” of the legal imaginary when survivors’ victories are much costlier in terms of time, resources, health and psychology than what the law typically affords.

Furthermore, Cyntoia’s conviction and Epstein’s leniency relied on the adultification of child survivors. The rigidity around trying 16-year-old Cyntoia as an adult contrasts starkly with the blurring of age boundaries in media reports and by lawyers defending Epstein to represent victims as “young women” rather than children or girls.⁸⁹ Moreover, survivors contend with a legacy of statutory rape laws that have done little to protect children, especially children of color, while influential legal authorities like Dershowitz argue for further decreasing their protection. Due to historically disproportionate input from male legislators, particularly White male lawmakers of the American South, statutory rape laws—which are part of the legal nexus of sexual assault, sex trafficking and child sex abuse—are overly protective of elite men accused of these crimes.⁹⁰ In both instances legal actors disfavoring survivors and/or favoring abusers deployed the longstanding trope that has shaped these laws from their inception: deceptive “young women” attempting to extract money from wealthy men through falsified sexual allegations.⁹¹ Similar tactics of bad characterization have been used against child sex abuse survivors and child victims of police violence, alongside claims of victimhood and discrimination against wealthy White males.⁹²

The cases reveal a striking ethical and moral chasm between Cyntoia and Epstein & associates. Cyntoia’s immediate admission of her crimes, contrition and empathy for persons harmed, and demonstrable desire for self-change, redemption and to help similarly situated others—particularly “young people, young kids,”⁹³ stating “their lives are as valuable as mine”⁹⁴—highlights the opposite tendencies of Epstein and his enablers:

⁸⁹ L. Francis, “Stop Calling Epstein’s Victims Young Women. They’re Children,” *Fatherly*: <https://bit.ly/3nal873>.

⁹⁰ Javidan 2017, *supra* note 8, 132; see also Dijkstra, B. *Evil Sisters: The Threat of Female Sexuality and the Cult of Manhood* (New York, 1996), for a cultural analysis of the historical era that produced such laws about females.

⁹¹ Bruck, 2019, *supra* note 72.

⁹² *Id.*

⁹³ Transcript 3, *supra* note 40.

⁹⁴ Transcript 1, *supra* note 32.

remorselessness, denialism, and complete lack of concern for survivors, many of whom they have actively tormented. When pressed about his involvement, Prince Andrew conveyed that his friendship with Epstein was too valuable to discard even in light of sexual crimes against children.⁹⁵ As with sentencing Cyntoia, the state also remained unapologetic regarding its non-prosecution of Epstein. Acosta defended his handling of the case, claiming, “We believe that we proceeded appropriately.”⁹⁶

In both cases, too, perpetrators of sex crimes against girls had histories that had never been reckoned with legally or through social control, even though such histories so often indicate the ability and willingness to violate a multitude of boundaries—spanning from the realm of finance and property to crimes against the person—including against lawful authorities. Whereas elites can have a “customer service” relationship with law enforcement and prosecution, survivors experience criminal justice as lawlessness when cases against exploiters are processed on a VIP track.⁹⁷

In an inequitable society, although law can work more intricately than as a mirror of politics, and politics as a mere reflection of economics, the closer to this formulation the law operates, the closer its functions and outcomes resemble the title of Ian Millhiser’s book on the history of injustices inflicted by the Supreme Court of the United States, “...Comforting the Comfortable and Afflicting the Afflicted.” The level of difficulty for survivors in seeking justice is determined by the extent to which there is a correlative relationship between law, politics, and economy in reasserting inequities. When this correlation was at its strongest, it allowed for Epstein’s illegal non-prosecution agreement, while sentencing a child survivor to life imprisonment. The alienation inherent to the “custodial citizenship” of many survivors and its psychosocial effects, especially political alienation, strengthens this correlation, which social and legal activism attempt to remedy. Alienation borne of social inequities, complex traumatization and systemic injustice come to a sharp point in the under-protection and criminalization of survivors of SGBV and CSEC, which is undergirded by the political over-representation of economic elites, and values of hegemonic masculinity, White supremacy

⁹⁵ S. Mansoor, and S. Haynes, 2019. “Prince Andrew Says He Doesn’t Regret His ‘Very Useful’ Relationship With Jeffrey Epstein,” *Time*: <https://bit.ly/2PdJZKt>.

⁹⁶ J. Colvin, and R. Lardner, 2019. “Acosta defends Epstein deal amid calls for his resignation,” *Associated Press*: <https://bit.ly/32GokO5>.

⁹⁷ D. N. Magliozzi, 2018. *Securing the Suburbs: How Elites Use Policing to Protect their Advantages*, PhD Dissertation, Stanford University: <https://stanford.io/3gSRSQU>.

and hostility to the rights of children and youth. When understood in social, psychological and legal context, the human trafficking cases of Cyntoia Brown and Jeffrey Epstein become interconnected and clearly illustrate these processes at work and their profound societal implications beyond discrete legal adjudications.

The cases of Cyntoia Brown and Jeffrey Epstein expose structural biases favoring and vulnerable to elite pressure and notoriously difficult for survivors of SGBV and CSEC, especially when committed by elite perpetrators. They illustrate how the legal system is animated by a constant struggle between structural inequities versus forces for justice, rather than functioning as a unified system against criminal actors. This is part of the indeterminacy of law that critical legal theory expounds, and the determination that poverty law and legal activism requires.⁹⁸

⁹⁸ Gearey 2018, *supra* note 4.

