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Perspectives on Human Trafficking and Modern Forms of Slavery

Editor

Siddharth Kara

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Editorial

Perspectives on Human Trafficking and Modern Forms of Slavery

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Keywords

child labor; forced labor; human trafficking; slavery

Issue

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When I first began researching human trafficking and modern forms of slavery fifteen years ago, there was very limited awareness of these offences, and even less scholarship. While non-profit organizations, activists, and charitable foundations have worked assiduously to raise awareness of human trafficking and to tackle root causes, investment by the academic community to analyze the nature, scale, and functioning of the phenomena has been slower to evolve. Indeed, much of the confusion relating to basic terms and concepts on the topic of modern forms of slavery has been due, in large part, to the lack of scholarly analysis of the issues. Following on this gap has been a dearth of robust, first-hand field research that can guide scholarship, investment, and activism, and help frame the complex questions relating to law, economics, human rights, gender, poverty, corruption, migration, the rights of children and minorities, and many other issues that are fundamental to our understanding of human trafficking.

While extensive field research into human trafficking remains a challenge, I have been pleased to see a significant increase in analysis of the offence from the aca-

ademic community across the last several years. Scholars from around the world and from myriad disciplines have contributed significantly to our knowledge of various aspects of forced labor, child labor, debt bondage, human trafficking and related modes of servile labor exploitation. To that end, I am pleased to present this special edition of *Social Inclusion*, “Perspectives on Human Trafficking and Modern Forms of Slavery”. This edition includes an illuminating collection of scholarship from around the world. For example, Professor Stewart informs our understanding of contemporary slavery with a comparative look to slavery in the past. Kay and Hastie, along with Craig, analyze crucial legal challenges relating to human trafficking in Canada and the UK respectively. Acharya presents health consequences of sex trafficking in Mexico, and Reisen and Rijken outline new forms of trafficking in the Sinai Peninsula. LGBT issues are interrogated, along with the roles of corruption and issues of gender in human trafficking shelters. The authors have individually and collectively made vital contributions to our understanding of human trafficking, and I hope their scholarship will inspire additional analysis of these issues.

About the Author



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Siddharth Kara is the Director of the Program on Human Trafficking and Modern Slavery at the Harvard Kennedy School of Government, and a Visiting Scientist on Forced Labor at the Harvard School of Public Health. He is the author of several books and articles on modern slavery, including *Sex trafficking: Inside the business of modern slavery* and *Bonded labor: Tackling the system of slavery in South Asia*. Siddharth Kara currently advises the United Nations, the U.S. Government, and several other governments on anti-trafficking policy and law.

Article

Modeling for Determinants of Human Trafficking: An Empirical Analysis

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Abstract

This study aims to identify robust push and pull factors of human trafficking. I test for the robustness of 70 push and 63 pull factors suggested in the literature. In doing so, I employ an extreme bound analysis, running more than two million regressions with all possible combinations of variables for up to 153 countries during the period of 1995–2010. My results show that crime prevalence robustly explains human trafficking both in destination and origin countries. Income level also has a robust impact, suggesting that the cause of human trafficking shares that of economic migration. Law enforcement matters more in origin countries than destination countries. Interestingly, a very low level of gender equality may have constraining effects on human trafficking outflow, possibly because gender discrimination limits female mobility that is necessary for the occurrence of human trafficking.

Keywords

extreme bound analysis; human trafficking; push and pull factors; robustness

Issue

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1. Introduction

Human trafficking is an emerging problem that is rapidly growing today (Interpol, 2009). Income disparity between the affluent North and (relatively) impoverished South is still considerable, if not increasing, and people’s aspirations to seek better opportunities have become greater, as information on life in other parts of the world is now more readily available than ever before due to the development of mass media news outlets and the internet. Economic motivation explains the phenomenon of human trafficking to a great extent, given that most victims of human trafficking are initially migrants with economic reasons (International Organization for Migration [IOM], 2012).

However, as far as the causes of human trafficking are concerned, an important question is still to be answered. Why do some people attempting to migrate elsewhere fall victim to human trafficking, while others do not? Furthermore, why is this phenomenon increas-

ing? To the present, the outcome of investigations on these questions is inconclusive and there is little consensus on the prime factors determining human trafficking in the literature. Among many factors suggested in the literature, some factors are important determinants of human trafficking in some studies, while in others they do not have a significant impact and other factors are suggested as crucial causes, instead. Such discrepancy is mainly caused by several critical challenges that human trafficking researchers are currently facing.

First, as research on human trafficking is still in its infancy, there is no exemplary model identifying the determinants of human trafficking. Thus, the choice of variables for estimation tends to depend on heuristic approaches rather than systematic ones. Given this background, the results of empirical investigations on human trafficking are more likely to be susceptible to the choice of variables. Moreover, difficulties in identifying robust factors are exacerbated due to the poor quality of human trafficking data because human traf-

ficking is a clandestine, criminal activity of a complex nature, and therefore current discussions heavily depend on fragmented information that is available.

In this paper, I try to overcome the incompleteness of research on human trafficking and propose a baseline model by reviewing a comprehensive list of the literature and empirically assessing the robustness of all human trafficking factors suggested in the literature. My investigation aims to identify robust factors, while controlling for many other overlapping factors. To do so, I employ an extreme bound analysis (EBA) that identifies factors robust to the choice of other control variables. By using this method, we can single out variables which survive in some million regressions, with all possible combinations of other control variables (Leamer, 1983; Levine & Renelt, 1992; Sala-i-Martin, 1997). This method is particularly sensible if there is no consensus on the choice of explanatory variables in the literature, which is the case of human trafficking research (another exemplary study using the EBA in this respect is Hegre and Sambanis' (2006) sensitivity analysis on the determinants of civil wars). Moreover, in order to reduce potential estimation biases caused by measurement errors and selection biases in human trafficking data, I make a use of the three different global measurements on human trafficking in-/outflows—United Nations Office on Drugs and Crime (UNODC) (2006), United States Department of State (2011–2014), and International Labor Organization (ILO) (2005)—, and compare the results of these measurements.

From the literature consisting of 19 major empirical studies systematically analyzing the causes of human trafficking, I gather 70 factors pushing victims to be trafficked from origin countries, and 63 factors pulling victims trafficked into destination countries. The factors reflect diverse aspects of human trafficking, but can be categorized into four pillars—migration, crime, vulnerability, and policy and institutional efforts. The four prime pillars explain: (1) which groups of people take risky migration options and therefore likely fall victim to human trafficking (migration and vulnerability pillars); (2) and how/under which environments those vulnerable migrants are more easily trafficked (crime and policy/institutional efforts pillars).

My empirical analysis revisits and assesses the relevance of the four pillars on human trafficking. First, my findings suggest that the crime pillar of human trafficking is a robust factor pushing and pulling victims in origin and destination countries, respectively. Second, several factors facilitating migration closely explain human trafficking: income and globalization—in particular, exposure to information. Third, the institutional quality pillar matters in origin countries, while the factors of this pillar do not turn out to have a significant impact in destination countries. Last, empirical assessments on the vulnerability pillar indicate controversial findings. Interestingly, gender discrimination and low

development—indicators of the vulnerability of people to human trafficking—do not demonstrate robust effects, and some gender-related indicators such as high fertility rates have constraining effects that are contrary to expectations. It seems that gender discrimination does not have a straightforward relation with human trafficking. In other words, a very low level of gender equality also constrains human trafficking, possibly by discouraging female mobility.

My findings provide a baseline set of robust push and pull factors based on empirical investigation on the four pillars of human trafficking. By doing so, this paper suggests a reference for further studies closely looking into the specific circumstances of human trafficking, and offers policy relevance in terms of suggesting in which areas we should focus on in order to combat the problem.

2. Four Pillars of Human Trafficking

The literature puts forward a large set of push and pull factors of human trafficking, the first determining the supply of victims from countries of origin, and the latter determining demand for labor provided by victims in destination countries. The following four pillars provide a basic framework to explain the different factors of human trafficking in origin and destination countries. Each pillar is, of course, not exclusive and many push and pull factors can be included in more than one pillar.

2.1. Migration

IOM Counter Trafficking Module (CTM), a survey of about 25,000 victims, shows that most trafficking victims were initially recruited for migration through personal connections or professional agencies, while less than 5% in the sample of the survey were kidnapped. This observation indicates that, from the outset, the majority of trafficking victims voluntarily decide to migrate elsewhere. The literature also supports a linkage between migration and human trafficking. Mahmoud and Trebesch (2010) suggest that having a migrant in a family tends to motivate other family members to migrate and also increases the probability of being trafficked. Akee, Basu, Chau and Khamis (2010) and Akee, Bedi, Basu and Chau (2014) also show that migration between two countries induces human trafficking flows between them.

With this in mind, various factors promoting migration can likely explain human trafficking. Among them, income is a crucial factor suggested in the literature, given that migrants commonly come from lower-income countries to wealthier countries. The economic motivation of migrants is shared by victims of human trafficking who initially wanted to migrate for economic betterment (IOM, 2012). In relation to that, employment opportunities for the low-skilled in origin countries and

demand for cheap labor in destinations—particularly in prostitution, agricultural and informal industries where (potential) victims of human trafficking are typically employed—can shape certain migration patterns more prone to human trafficking. Additionally, factors facilitating migration and human mobility across borders—such as globalization and migration policy—can also provide a linkage to human trafficking flows.

2.2. Vulnerability

Above, I addressed the linkage between migration and human trafficking because most trafficking victims are initially migration seekers. Thus, it is reasonable to expect that migration factors can provide at least rudimentary indicators of human trafficking; therefore, determinants of migration are overlapped with push and pull factors of human trafficking to some extent. However, the pool of migrants is not identical to that of trafficking victims, and thus one needs to raise a further question in explaining human trafficking: *why do some migrants fall victim to human trafficking, while others do not?* In other words, what makes some migrants more vulnerable to human trafficking? In tackling this question, a vulnerability assessment is noteworthy (Akee, Basu, Chau, & Khamis, 2012).

The literature widely points out that the vulnerable position of women in society is a powerful push factor of human trafficking outflows (Bettio & Nandi, 2010; Clawson & Layne, 2007; Danailova-Trainor & Belser, 2006; Di Tommaso, Shima, Strøm, & Bettio, 2009). Human trafficking is apparently gender-based violence, the majority of victims being females exploited in the sex industry (UNODC, 2006; IOM, 2012). Among many types of gender discrimination, women's vulnerable position in employment likely pushes them to take risky migration options which may turn into human trafficking.

There are also other factors making people more vulnerable to human trafficking. As discussed above, income is both a push and pull factor of human trafficking. However, it might be perceived that income differences actually motivate people to undertake risky migration because such a difference can make people resentful towards their current situation, and raise expectations for a better life. In this regard, income inequality can be a strong factor pushing underprivileged people to be trafficked (Jac-Kucharski, 2012; Mo, 2011). Also, conflicts, human rights violations, and socioeconomic/political unrest lead people into desperately wanting to escape from their current living situation, therefore making people under such circumstances more vulnerable to human trafficking (Akee et al., 2010; Frank, 2011).

2.3. Crime

While human trafficking is associated with certain pat-

terns of migration, it is, at the same time, a crime involving the illegal transportation of people and exploitation of them (UN, 2000). In fact, human trafficking occurs only if there are perpetrators exploiting vulnerable migrants. According to Interpol (2009), human trafficking is the third largest transnational crime, bringing large profits for organized criminal groups. Much of the criminology literature documents the connection between human smuggling, human trafficking, and organized crime activities (Aronowitz, 2001). The studies show that organized criminal organizations—which are already involved in human smuggling and drug/arms trafficking—are now expanding their business into trading victims of human trafficking for exploitative labor. These studies point out that such involvement of criminal organizations enlarges the scope of human trafficking operation, with profits made through such business amounting to billions of dollars every year (Belser, 2005). In quantitative empirical studies, Akee et al. (2014) pioneered a study on traffickers' incentives to operate human trafficking business in different countries. Their study suggests that the level of law enforcement and corruption, as well as prostitution policy, can affect traffickers' incentives in selecting countries for their criminal operations.

Based on the discussions in the literature, the prevalence of human trafficking can be determined by profitability, which is related to market sizes and conditions in which trafficking victims are typically employed (e.g., prostitution, domestic servitude, agriculture and other informal sectors), the risk of being caught (law enforcement level), and the presence of already established criminal organizations with respect to operating costs and experience in trafficking businesses. Indeed, the crime aspect of human trafficking is something that has widely been neglected in the empirical literature, and thus linkages between human trafficking and the prevalence of crime are still empirically inconclusive.

2.4. Policy and Institutional Efforts

As human trafficking is a crime, institutional efforts in combating the crime play an important role. Human trafficking researchers discuss law enforcement and the level of corruption as important factors, both in origin and destination countries (Akee et al. 2010, 2014; Cho, Dreher, & Neumayer, 2013; 2014; Jakobsson & Kotsadam, 2013). Besides the general rule of law, specific anti-trafficking measures are also crucial to addressing the problem (Cho et al. 2014; Cho & Vadlamannati, 2012; Potrafke, 2013). The anti-trafficking measures include prosecution policy against traffickers, protection policy for victims, and prevention policy (UN, 2000). These measures are essential as human trafficking is a specific form of crime which cannot be fully addressed by other existing laws.

Furthermore, general developmental policies are

also important because the root causes of human trafficking are closely related to developmental problems such as poverty, inequality and gender discrimination bringing about risks for human security.

3. Data: Measuring Human Trafficking

One of the challenges of investigating human trafficking is the lack of reliable data (Kangaspunta, 2003). As human trafficking is a clandestine, illicit criminal activity, the true magnitude of the problem is still unknown. Furthermore, despite the international definition of human trafficking adopted by the United Nations (UN) Anti-trafficking Protocol (2000), it is hard to clearly distinguish this phenomenon from illegal migration and forced labor in practice, with many countries using different variations of the definition (for instance, including sex trafficking only, or applying the ‘forced labor’ concept). In fact, at present, there is no internationally comparable official statistics capturing the magnitude of human trafficking (van Dijk, 2008). The United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UNCTS) provide police statistics on the reported number of human trafficking cases for the period of 2005–2008, covering a maximum of 80 countries.¹ However, these statistics hardly reflect the true extent of the problem, with variations in statistics across countries and time instead capturing the level of law enforcement and differences in the definition of human trafficking between countries (Harrendorf, Heiskanen, & Malby, 2010).

Despite the problems of human trafficking data collection mentioned above, there are several international attempts to quantify the level of human trafficking by utilizing various sources, including media reports, expert judgments, and qualitative information from fieldwork. Among them, three datasets provide quantitative information on the magnitude of human trafficking which is comparable across countries. First, the United Nations Office on Drug and Crime (UNODC, 2006) proposes an incidence reporting index, grading the level of human trafficking in/outflows on a scale of 0 to 5 based on incidences coded in international reports and media. This index covers up to 161 countries and aggregates numbers over the period of 1996–2003. Second, the United States Department of State (2001–2014) categorizes countries into major destinations/origins based on the classification of whether a country experiences more than 100 reported cases of in/outflows in a given year. The US annual data is a dummy variable covering up to 190 countries from 2001 to 2013. Third, the International Labor Organization collected information on incidences through its

¹ Additionally, there are EU-wide statistics on human trafficking collected and published by the European Commission (2013), covering 34 member states from 2008 to 2010.

global reporting system and provides the aggregate number of cases during the period of 1995–2000, covering a maximum of 74 countries.²

These selected datasets have several advantages. First, they are gathered by a single collection body under a unified definition of human trafficking, minimizing noises caused by disparities in collection methods and definitions. Second, as they are not police statistics, these datasets are comparatively less susceptible to biases caused by law enforcement efforts. However, these data have some shortcomings as well. First, they are still subject to biases in data collection because they depend on reported incidences. Second, the UNODC and ILO data provide aggregate quantities without variations over time, while the panel data provided by the US Department of State is a dummy variable with few variations. With the constraints of the available data in mind, I employ each of the three datasets in my analysis and compare the results in order to reduce any biases and fragmentation each dataset has. Furthermore, I include control variables capturing as many reporting biases as possible in my estimation model. In doing so, the UNODC dataset serves as the main measurement and the other two as check for the robustness because the UNODC data follows the definition of human trafficking suggested by the UN Anti-trafficking Protocol (2000), and thus, the collected information reflects the internationally accepted scopes of human trafficking most precisely. The definitions of human trafficking adopted by the ILO and the United States are widely similar to that of the UNODC with minor variations—ILO not specifying forms of human trafficking and the US specifically mentioning commercial sex as a cause of human trafficking. The detailed definitions of human trafficking and information on the three datasets are provided in Appendix A.

4. Research Design

The aim of my study is to select robust push and pull factors of human trafficking. In order to pursue this goal, I follow two procedures. First, I review all major existing literature in the field of human trafficking, in particular empirical studies, and collect all factors suggested by these studies. Indeed, empirical studies are rare in this field mainly because of the lack of data. With the best of my knowledge, I identified and selected 19 studies³—to date—empirically investigating the

² The IOM CTM provides enriched information on the characteristics of victims; however, this dataset is not suitable for a macro-analysis given that it is micro-survey data without a reference to the magnitude of the problem at the country level.

³ Akee et al. (2010, 2012, 2014), Bales (2007), Belser (2005), Bettio and Nandi (2010), Cho (2013), Cho et al. (2013), Clawson and Layne (2007), Danailova-Trainor and Belser (2006), Di Tommaso et al. (2009), Frank (2011), Jac-Kucharski (2012), Jakobsson and Kotsadam (2013), Mahmoud and Trebesch (2010),

determinants of human trafficking by using systematic analyses. Through reviewing the currently available studies, I identify 70 (potential) push factors in countries of origin, and 63 (potential) pull factors in countries of destination. The full list of the push and pull factors suggested in these studies, can be found in Appendices B and C.

As mentioned earlier, it is a challenging task to distinguish between robust factors while controlling for many other factors with overlapping effects, in particular because there are no established findings in the human trafficking literature. With these challenges in mind, I try to identify robust factors of human trafficking by employing an extreme bound analysis. The extreme bounds analysis (EBA), proposed by Leamer (1983), Levine and Renelt (1992) and Sala-i-Martin (1997), is a method to check the statistical significance of the effect of a factor in all possible specifications, with different combinations of other factors.

The main advantage of this method is that it distinguishes factors robust to the choice of other control variables, and therefore enables to identify ‘true’ variables (Sala-i-Martin, 1997), which explain human trafficking. However, the EBA approach may still be unable to identify a full set of robust explanatory variables if most factors suggested in the literature are not correlated systematically with human trafficking at all. Such a potential problem may not be trivial in the literature of human trafficking because this is a new field with a thin volume of literature and furthermore the poor quality of data on human trafficking makes empirical research difficult. Acknowledging the limitation, I further check the credibility of the suggested factors with qualitative studies on human trafficking. Among them, Cameron and Newman (2008) list 32 structural and proximate factors of human trafficking based on numerous field reports of international organizations and expert opinions. The majority of the factors suggested in their study overlaps with the push and pull factors documented from the empirical studies I gathered. Moreover, the UNODC (2008) also addresses nine socio-economic, political conditions making people vulnerable to human trafficking, supporting the selection of the push and pull factors in the empirical literature. Due to this fact, the 70 push and 63 pull factors gathered in this paper likely represent determinants of human trafficking to at least a considerable degree.

In performing the EBA analysis I use the three different human trafficking datasets described in Section 3. In doing so, the UNODC data is used as the main measurement and the other two as for a robustness check. In the end, the results of the three measurements are compared in order to minimize any bias each dataset has—this procedure is described in more

Mo (2011), Rao and Presenti (2012), Smith and Smith (2010), and Zhang, Finch and Qin (2011).

detail in Section 5.

The following equation is estimated for the EBA analysis.

$$y_i = \delta_C C + \delta_E E + \delta_Z Z + \omega \quad (1)$$

In this equation y indicates the level of human trafficking in-/outflows, respectively, and vector C includes a “commonly accepted” explanatory variable that is widely suggested in the literature and therefore always included in every regression. In this study, income (logged GDP pc) is selected, because most studies examined here unanimously suggest “income” as both a pull and push factor of human trafficking (see Appendices B and C), given that most human trafficking victims are initially migrants seeking better economic opportunities in a more affluent world (see discussions in Section 2.1).

All other variables under investigation, except for “income”, enter the vector E one by one, with each variable being tested, while controlling for income and three other control variables in the vector Z (Levine and Renelt, 1992).⁴ The vector Z contains three control variables in each regression and all variables, except for ‘income’ and the variable currently being examined in E , enter into Z . The composition of explanatory variables in Z changes for each regression, as all possible combinations of control variables are being tested. δ denotes the coefficient of the respective variables and ω is the idiosyncratic error term.

As the UNODC and ILO data do not have time variations, I conduct a cross-sectional analysis by employing an ordered probit estimation method with the UNODC data, capturing the ordered structure of the dependent variable (score 0–5), and a negative binomial regression method with the ILO data, addressing the nature of the count variable. On the other hand, the US data contains annual variations (2000–2010), therefore I perform a panel analysis with a probit estimation method as follows.⁵

$$y_{it} = \delta_C C + \delta_E E + \delta_Z Z + \omega \quad (2)$$

Finally, I report each median coefficient and its standard error, the percentage of the regressions (i.e.,

⁴ For the UNODC and ILO datasets that are cross-sectional, I average the values of the explanatory variables for the periods of 1996–2003 and 1995–2000, respectively. For the US data with time variations, I first take the contemporary values of the explanatory variables, and one-year lagged values as for robustness check. The results are qualitatively identical.

⁵ In this panel analysis, the lagged dependent variable is not included as an explanatory variable because the inclusion of the lagged value will absorb much of variations and therefore may undermine the explanatory power of the variables, given the binary structure of the dependent variable.

% sign) in which the coefficient of the variable is statistically different from zero at the 5% level, as well as the proportion of the coefficient's cumulative distribution function that is greater or less than 0 (i.e., $CDF(0)$). Leamer (1983) originally proposed to deem a variable as "robust" if both the lower and upper extreme bounds⁶ for the coefficient of the variable in E have the same sign. However, Sala-i-Martin (1997) argues that this criterion is too strict, insofar that most variables would not survive such extreme bound tests. Instead, he recommends a procedure analyzing the entire distribution of the coefficient (for more detailed discussions on this method, see Sala-i-Martin (1997)). Following Sala-i-Martin, I take a $CDF(0)$ value of 0.90—significance at the 10% level—as the threshold for a variable to be considered as "robust".

To identify push factors in countries of origin, I ran 543,150 regressions, while 406,159 regressions are run to estimate pull factors in countries of destination. Following these steps, I then compare the robustness of push and pull factors in each of the three estimation models using the UNODC, ILO and US data, respectively. Finally, I test for the robustness of the findings through two different approaches. First, I re-run the regressions excluding Organisation for Economic Co-operation and Development (OECD) members in order to find out whether the main results are solely driven by developed countries. Second, I apply a regional jackknife method, omitting one continent in each regression, checking whether one specific continent drives all the results. In total, I test seven sub-group samples by running more than one million regressions additionally. The results show that the main findings—which are presented in Section 5 below—are neither driven by any specific continent, nor the developed world alone.⁷

5. Results

5.1. Push Factors

In order to identify push factors of human trafficking in countries of origin, I test for the robustness of each of the 70 variables suggested in the literature. Through the first step of employing the UNODC data as the dependent variable, 35 variables are identified as "robust", with a $CDF(0)$ value of 0.90 or higher—significance at

⁶ The lower extreme bound is defined as the lowest value for the coefficient minus two standard deviations, and the upper extreme bound is defined as the highest value for the coefficient plus two standard deviations (Sala-i-Martin, 1997).

⁷ The regression results of sub-group testing are not presented in this paper due to the limitation of space, but can be obtained by the author upon request.

the 10% level. In the second step of checking for robustness by using the ILO and US data, only six of the 35 variables are confirmed to be robust in all of the estimation models. Additionally, seven variables turn out to be robust in two out of the three models. This analysis covers up to 151 countries for the period of 1996–2003 (UNODC data, 151 countries), 1995–2000 (ILO data, 63 countries), and 2000–2010 (US data, 140 countries). Table 1 shows the results regarding these robust variables. Statistics provided in the table are based on results by ordered probit regressions using the UNODC data. In addition, marginal effects are estimated by OLS methods for the simplicity of interpretation.

The most robust push factors, which turn out to be significant in all of the three models are: (log) GDP per capita (negative); the share of the food, beverage, and tobacco industries in GDP (negative); fertility rates (negative); information flows (positive)—i.e., percentage of internet users, TV, and trade in newspapers; a dummy representing a transitional economy (positive); and percentage of Muslims in the total population (negative).

In line with the migration literature, poorer countries tend to send more human trafficking victims. The significant impact of income implies the migratory motivation of victims for economic reasons. Quantitatively, the marginal effects that are calculated by OLS estimation show that an increase in GDP pc by 10%-points reduces human trafficking outflows by 2% (i.e., 0.12 points on the 0–5 scale). The result also shows that an increase in information flows by 10 points (on the 0–100 scale) increases in human trafficking outflows by 3%. The positive impact of information flows⁸ indicates that more exposure to outside information tends to encourage people to migrate and therefore increases the pool of potential victims of human trafficking.⁹

The share of the food, beverage, and tobacco industries in GDP has a constraining effect on human trafficking outflows. This variable is associated with demand for low skill labor in a country; having a large industry in this field is likely to create more jobs for people who may have taken dubious migration opportunities, otherwise.

⁸ On the contrary, Mahmoud and Trebesch (2010) and Mo (2011) find a constraining impact of TV and phone usage on human trafficking outflows in five Eastern European countries and Nepal, respectively.

⁹ On the other hand, migration outflows, proxied with net migration and emigration rates of the tertiary educated, do not turn out to be significant. Noting that the two available indicators of migration outflows used here may not correctly reflect total migration outflows, a linkage between migration and human trafficking outflows needs to be further investigated by using more precise measurements once they become available.

Table 1. Robust push factors.

Variable	Average Beta	Ordered Probit			OLS
		Average Std. Error	% Sign	CDF-U	Marginal Effects
(log) GDP pc.	-2.138	0.379	0.990	0.999	-1.199
Information flows	0.039	0.014	0.724	0.964	0.023
Transition economy	1.675	6.029	0.953	0.987	1.571
Muslim share	-0.008	0.003	0.681	0.961	-0.011
Fertility rate	-0.610	0.138	0.979	0.998	-0.045
Food, beverage and tobacco industries	-0.033	0.011	0.975	0.996	-0.044
Rule of law	-0.381	0.247	0.398	0.916	-0.589
Control of corruption	-0.522	0.238	0.629	0.961	-0.238
Infant mortality rate	-0.016	0.008	0.617	0.922	-0.002
Share of age group 0-14 in population	-0.089	0.023	0.898	0.986	-0.065
Crime rate	0.042	0.039	0.190	0.901	0.025
Europe and Central Asia	0.865	6.023	0.760	0.955	0.465
North Africa and Middle East	-1.014	0.418	0.684	0.960	-0.364

Note: Statistics presented in this table are based on the ordered probit estimation results using the UNODC data. In addition to that, the marginal effects were calculated by OLS. The coefficients of the first three variables are significant in all of the three models (UNODC, ILO, and US). The coefficients of the latter ten variables are significant in two of the three models (i.e. UNODC and one additional model—either ILO or US). The base variable is (log) GDP pc. The threshold to consider a variable robust is 0.9.

Increasing the share of these industries in GDP by 10%-points decreases human trafficking outflows by 7.3% (i.e., 0.44 points on the 0–5 scale).¹⁰ Also, similar to Akee et al. (2010), being a transitional economy increases human trafficking by 26%. This finding is sensible given that countries under transition may not provide secure livelihoods for their citizens, and therefore people tend to seek migration options outside. This is particularly true for Eastern European countries which have experienced political and economic crises after the collapse of the communist regimes in the late 1980s, while, at the same time, having become more exposed to Western Europe—a popular destination of migration and human trafficking.

An interpretation of the negative sign for fertility rates is tricky, however. One may surmise that high fertility rates are usually associated with overpopulation and underdevelopment, pushing people to pursue risky migration options, therefore making it more likely to be victims of human trafficking. However, the result shows the opposite, indicating that higher fertility rates tend to decrease human trafficking in countries of origin (i.e. an increase in fertility rates by 10%-points reduces human trafficking by 8.3%). One possible interpretation is that higher fertility rates are associated with a more conservative attitude towards women's role in society, therefore decreasing women's mobility and aspiration for migration. This interpretation is plausible, given that many of the major origin countries are not necessarily

¹⁰ The data on the share of the food, beverage, and tobacco industries in GDP includes 112 countries, thus approximately 25% of the total observations (151 countries) is missing. About half of the missing values (19) come from Sub-Saharan African countries, while in other regions missing values are less than 10% of the total observations. Given that, one should interpret the result with caution for Africa.

the most oppressive countries towards women, and the level of female education and labor participation is not very low in many origin countries—for instance in Eastern European and several Latin American countries. Also, the negative impact of a high Muslim population supports this interpretation. The result implies that female mobility is discouraged in Islamic countries which have presumably more conservative attitudes towards women and very low female economic participation (Cooray & Potrafke, 2011). Quantitatively, an increase in the share of Muslims in population by 10%-points reduces human trafficking outflows by almost 1.7%.

Other factors which are significant in two of the three models are: rule of law (negative); control of corruption (negative); crime rates (positive); infant mortality rates (negative); the share of age group 0–14 in population (negative); being an Eastern European country (positive); being a Middle East/North African country (negative).

My results indicate that poor institutions are a push factor of human trafficking, while the previous literature shows mixed results with respect to the impact of institution (see Appendix B). Indeed, weak institutions and poor governance are detrimental to the well-being of people, and therefore push people to take risky migration options. Quantitatively, an increase in the rule of law by one point on the –2.69 to +2.12 scale decreases human trafficking outflows by almost 10%, while an increase in the control of corruption by one point on the –2.22 to +2.62 scale reduces human trafficking by 4%.

Also, the prevalence of general crimes is positively associated with human trafficking, i.e., an increase in total crime rates by 10%-points increases human trafficking by almost 4.2%.¹¹ This finding supports the

¹¹ The number of countries covered in the crime rates are 104, losing approximately 30% of the total observations (151 coun-

crime aspect of human trafficking, which the current literature has not empirically shown—except the study by Clawson and Layne (2007) on human trafficking flows into the United States.

The results also indicate that socio-economic environments also make people more vulnerable to human trafficking. As mentioned earlier, income, employment opportunities, and the stability of economy affect human trafficking outflows. However, the relationship between the vulnerability of people and the prevalence of human trafficking outflows is less clear. Women’s education and employment (or any other gender-related indicators used) do not have a significant effect in determining human trafficking outflows, similar to the mixed findings in the literature (see Appendix B). On the other hand, the percentage of people under 14 decreases human trafficking outflows, i.e., increasing the proportion of people in this age group by 10%-points reduces human trafficking outflows by 10.8%.¹² It is possibly because having many children restrains women’s migratory motives, similar to the negative effect of fertility rates above. These findings suggest that women’s rights have a complex relationship with human trafficking; i.e., gender discrimination does not necessarily increase human trafficking outflows, possibly because oppression against women also constraints women’s mobility. Additionally, infant mortality rates—a basic indicator measuring fundamental well-being—turn out to have negative impact (similar to the finding of Mahmoud and Trebesch (2010)) but the magnitude of the effect is not practically large—increasing the mortality rates by 10%-points reduces human trafficking by 0.3%.

In addition to this, economic inequality, measured by the GINI index, does not turn out to have a significant impact, although the literature (Clawson & Layne, 2007; Jac-Kucharski, 2012; Mo, 2011) emphasizes inequality as an important cause of human trafficking outflows. However, the CDF(0) lies between 0.85 and 0.88—marginally insignificant—and this result may have been driven by many missing observations (about the one third of observations are missing when including the GINI index in regressions). Thus, one should be cautious in interpreting this implication, with further investigation needed.

Lastly, the results also suggest that geographical locations influence human trafficking outflows. Being an Eastern European country, proximate to affluent Western Europe, increases the outward prevalence of human trafficking by 7.8%, while being in the Middle East/North Africa reduces human trafficking by 6%.

tries). Most missing values (28 countries) come from Sub-Saharan African countries and thus it might be possible that the result is driven by selection biases in this region. Except Africa, the data of other regions are mostly balanced with less than 10% of the total observations being lost.

¹² On the other hand, Bales (2007) and Mahmoud and Trebesch (2010) find a positive effect of young populations.

5.2. Pull Factors

Turning to pull factors determining human trafficking flows into destination countries, I test for the robustness of 63 potential factors suggested in the literature. This analysis covers up to 153 countries for the period of 1996–2003 (UNODC data, 153 countries), 1995–2000 (ILO data, 63 countries), and 2000–2010 (US data, 141 countries). In the first step of testing with the UNODC data, 26 variables are identified as “robust” with a CDF(0) value of 0.90 or higher—significance at the 10% level. In the second step of using the ILO and US data, only three factors turn out to be robust in all of the models: (log) GDP per capita (positive); language fraction (positive); and information flows (negative). Table 2 shows the results of these robust pull factors. Statistics presented in the table are provided by the results of ordered probit regressions employing the UNODC data, except the marginal effects calculated by OLS.

Alongside the migration literature, wealthier countries receive more human trafficking victims. Increasing income by 10%-points increases human trafficking inflows by 7.8% (i.e. 0.47 points on the 0–5 scale). Interestingly, information flows have a constraining effect in destination countries, opposite to a push effect found in origin countries. An increase in information flows by 10 points (on the 0–100 scale) reduces human trafficking by almost 2%. It could be possible that information increases public awareness towards human trafficking problems in destination countries, while exposure to information in origin countries has an opposite effect by motivating people to move elsewhere. In line with the findings of Akee et al. (2010), more linguistically divided countries tend to induce more human trafficking flows, possibly because having many minorities in a country may create markets for informal, exploitative, and low-paid labor, where victims of human trafficking are typically employed. Quantitatively, an increase in language fraction by 0.1 point (on the 0 to 1 scale) increases human trafficking by 2.3%.

In addition to the three factors above, 10 variables turn out to have significant effects in two of the three models; the percentage of the workforce employed in agriculture (positive); refugee inflows (positive); (log) population size (positive); international tourist inflows (positive); crime rates (positive); (log) amount of heroin seized (positive)¹³; OECD membership (positive); being an East Asian country (positive); being a land-locked country (negative); and the share of Catholics in population (negative).

¹³ The data on crime rates cover 105 countries, losing approximately 30% of the total observations, due to many missing values in Sub-Saharan African countries. However, the heroin data, another crime indicator, covers 145 countries and missing values are less than 10% in the African as well as the other regions. The positive impact of both variables indicates that the finding of the crime aspect of human trafficking is less likely driven by selection biases.

Table 2. Robust pull factors.

Variable	Ordered probit			OLS	
	Average Beta	Average Std. Error	% Sign	CDF-U	Marginal Effects
(log) GDP pc.	1.147	0.289	0.970	0.999	4.728
Information flows	-0.019	0.011	0.336	0.919	-0.011
Language fractionalization	1.281	0.436	0.949	0.994	1.378
% of workforce in agriculture	0.024	0.010	0.772	0.981	0.021
Refugees	8.763e-07	4.708e-07	0.608	0.941	2.110e-07
(log) Population	0.334	0.080	0.996	0.999	0.330
International tourism	3.094e-08	1.200e-08	0.801	0.975	1.664e-08
Crime rate	0.173	0.61	0.864	0.977	0.037
(log) Amount of heroin seized	0.001	0.00005	0.792	0.978	0.28
OECD membership	0.729	0.354	0.519	0.954	0.271
East Asia and Pacific	0.640	0.362	0.354	0.932	0.177
Landlocked country	-0.421	0.256	0.267	0.926	-0.616
Share of Catholic in population	-0.007	0.003	0.772	0.979	-0.007

Note: Statistics presented in this table are based on the ordered probit estimation results using the UNODC data. In addition to that, the marginal effects were calculated by OLS. The coefficients of the first three variables are significant in all of the three models (UNODC, ILO, and US). The coefficients of the latter ten variables are significant in two of the three models (i.e. UNODC and one additional model—either ILO or US). The base variable is (log) GDP pc. The threshold to consider a variable robust is 0.9.

The results show that the size of the agricultural sector, proxied by the percentage of the workforce employed in agriculture, turns out to increase human trafficking inflows. An increase in the size of the agricultural sector by 10%-points increases in human trafficking inflows by 3.3%. Given that a considerable portion of trafficking victims is exploited in agricultural fields in destination countries, this result indicates that demand for labor in agriculture determines the level of human trafficking inflows. On the other hand, other developmental indicators such as gender equality, and health and environmental quality measures, do not seem to have any significant impact on human trafficking in destination countries. In fact, it is more difficult to build a convincing hypothesis regarding relationship between gender discrimination and human trafficking in destination countries. Cho (2013) points out that, as the majority of trafficking victims are foreigners, a high level of women's rights in a destination country is at best irrelevant, or even induces more human trafficking flows. The reason for such a controversial argument is that victims of trafficking are usually exploited in sex industries or domestic labor markets where local women in destination countries are less willing to work once they have a high level of education and opportunities.

Interestingly, law enforcement and institutional quality do not play an important role in determining human trafficking flows into destination countries, different from the results of origin countries. From these results, one can surmise that anti-trafficking measures are still not well-grounded in general law and enforcement and/or anti-trafficking is not necessarily a policy priority in many destination countries—even in countries with a high level of rule and order.

Turning to the crime aspect, the results strongly suggest that the prevalence of crime in general and organized crime—the latter proxied by the amount of

heroin seized—affect the prevalence of human trafficking. An increase in total crime rates by 10%-points increases human trafficking inflows by almost 6.2%, while an increase in the amount of heroin seized (kg) by the same percentage increases human trafficking inflows by 0.5%. Distinguished from the literature so far, my study empirically shows that the crime aspect of human trafficking is evident both in origin and destination countries. This finding implies that human trafficking is not merely an accompanying phenomenon of human movements, but is caused by environments where criminal activities are prevailing.

As human trafficking is mainly a transnational human transaction between the developing and developed world, belonging to the developed world (OECD membership) increases human trafficking inflows by 4.5%. Similar to origin countries, geography and culture also matter in destination countries. East Asia tends to receive more human trafficking inflows, i.e. being in East Asia increases the inflows by 3%, while being a land-locked country reduces human trafficking by almost 10%. While the Muslim culture has a constraining effect in origin countries, the Catholicism reduces human trafficking in destination countries—i.e., an increase in the share of Catholics in population by 10%-points decreases human trafficking by about 1.2%. Additionally, certain types of human flows into countries—i.e. refugee and tourist inflows—, as well as population sizes, increase human trafficking inflows, but their magnitudes are rather trivial.

6. Conclusion

In this study, I empirically investigated robust push and pull factors of human trafficking by exploring a large set of variables suggested in the literature. Overall, my findings suggest that the crime pillar most robustly explains

human trafficking, among the four pillars discussed above. It signals to policy makers that human trafficking should not be overlooked just as a side effect of migration, and urges them to adopt criminal justice and crime prevention measures against human trafficking.

Also, several factors reflecting the other three pillars turn out to have significant effects on human trafficking. The robust impact of income level both in origin and destination countries indicates that human trafficking is largely a phenomenon related to economic migration. Institutional quality seems to matter more for countries of origin but not necessarily for destination countries. Vulnerability does not have a straightforward relationship with human trafficking. Indeed, a high level of gender inequality and underdevelopment may even reduce human trafficking, arguably by constraining human mobility. Rather than developmental indicators, employment structures and demand for certain types of labor seem to explain the prevalence of human trafficking. Also, the geographic and cultural characteristics of countries matter for human trafficking in-/outflows.

On the other hand, many factors suggested as plausible causes of human trafficking in the literature do not turn out to be robust determinants in my analysis. However, this does not necessarily lead to the conclusion that such factors do not influence human trafficking at all. While the factors found to be robust in my investigation tend to have exclusive explanatory power on the prevalence of human trafficking, other factors may affect human trafficking via indirect linkage or interacting with some other factors.

In fact, my study does not claim to provide a final conclusion on the determinants of human trafficking but rather acknowledges that human trafficking is a complex phenomenon in which many factors are interlinked. This observation calls for further studies in many different aspects, and, in particular, a complex relationship between gender discrimination and human trafficking warrants a closer look.

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Conflict of Interests

The author declares no conflict of interests.

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Appendices

Appendix A. Global datasets on human trafficking.

Data	Measurement	Countries covered	Years covered	Source
UNODC Incidence of Reporting Index (origin, transit, and destination)	6 scales: 0 (no reported flow)–5 (very high flow)	161 countries	1996–2003 (cross-sectional)	UNODC (2006)
ILO Global Report Data (in-/outflows)	Number of cases human trafficking in-/outflows reported in the ILO global dataset	74 countries	1995–2000 (cross-sectional)	Belser et al. (2005)
US Trafficking in Persons Data (origin and destination)	Dummy variable: 1 if the reported cases are 100 or higher in a given year in a given country; 0, otherwise	Max. 190 countries	2000–2010 (panel)	United States Department of State (2001–2014)

A.1. Definition of Human Trafficking

UNODC Incidence of Reporting Index

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or service, slavery or practices similar to slavery, servitude or the removal of organs.” (UN, 2000, article 3)

ILO Global Report Data

“Recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” (ILO, n.d.)

US Trafficking in Persons Data

“Trafficking in persons and human trafficking have been used as umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion.” (United States Department of State, 2014)

Appendix B. List of push factors examined

Push Factors	Suggested by	Effects	Data
GDP pc.	Akee et al. (2010, 2014, 2012), Bettio and Nandi (2010), Clawson and Layne (2007), Danailova-Trainor and Belser (2006), Di Tommaso et al. (2009), Frank (2011), Jac-Kucharski (2012), Mo (2011), Rao and Presenti (2012)	negative	World Bank (2011)
Population	Clawson and Layne (2007), Danailova-Trainor and Belser (2006), Frank (2011), Mo (2011), Rao and Presenti (2012)	positive	World Bank (2011)
Democracy	Frank (2011), Jac-Kucharski (2012)	positive/insignificant	Cheibub, Gandhi and Vreeland (2010), Marshall, Gurr, & Jagers (2014)
Control of corruption	Bales (2007), Clawson and Layne (2007), Jac-Kucharski (2012), Mahmoud and Trebesch (2010), Rao and Presenti (2012)	insignificant/negative	International Country Risk Guide (2009), Kaufmann, Kraay and Mastruzzi (2009), Transparency International (2010)
Rule of law	Akee et al. (2010, 2014, 2012), Mahmoud and Trebesch (2010)	negative/insignificant	International Country Risk Guide (2009), Kaufmann et al. (2009)
Political stability	Akee et al. (2014)	negative	Kaufmann et al. (2009)
Voice and accountability	Akee et al. (2014)	insignificant	Kaufmann et al. (2009)
External conflict	Akee et al. (2010), Bales (2007), Frank (2011), Mo (2011), Rao and Presenti (2012)	negative/insignificant	International Country Risk Guide (2009)
Internal conflict	Akee et al. (2010), Bales (2007), Frank (2011), Mo (2011), Rao and Presenti (2012)	negative/insignificant	International Country Risk Guide (2009)
Ethnic tension	Clawson and Layne (2007)	positive	International Country Risk Guide (2009)
Fractionalization: ethnic, religious, and language (3 variables)	Akee et al. (2010)	positive	Alesina et al. (2003)
Refugee and IDP populations	Akee et al. (2010)	positive	World Bank (2011)
Transition economy (dummy)	Akee et al. (2014), Rao and Presenti (2012)	positive	OECD (2011)
Landlocked country (dummy)	Akee et al. (2010, 2014, 2012)	negative	Mayer and Zignago (2011)
Female unemployment rate	Danailova-Trainor and Belser (2006)	positive	World Bank (2011)
Unemployment rate	Clawson and Layne (2007), Jac-Kucharski (2012)	positive/negative	World Bank (2011)
Labor force participation rate	Clawson and Layne (2007)	unclear	World Bank (2011)
Female labor force participation rate	Clawson and Layne (2007)	unclear	World Bank (2011)
Share of rural populations	Mahmoud and Trebesch (2010)	mostly insignificant	World Bank (2011)
Urbanization/capital	Mahmoud and Trebesch (2010)	insignificant	World Bank (2011)
Infant mortality rate	Bales (2007), Mahmoud and Trebesch (2010)	positive/negative	World Bank (2011)
Physicians (per 1,000 people)	Mahmoud and Trebesch (2010)	insignificant	World Bank (2011)
Crime rate	Bettio and Nandi (2010), Clawson and Layne (2007), Mahmoud and Trebesch (2010)	insignificant/positive	United Nations (2008)
GINI index	Clawson and Layne (2007), Jac-Kucharski (2012), Mo (2011)	positive	World Bank (2011)
Poverty measure (headcount)	Clawson and Layne (2007), Mo (2011)	positive/negative	World Bank (2011)

Prostitution law	Akee et al. (2010, 2014)	mostly insignificant	Cho et al. (2013)
Women's economic rights, social rights (2 variables)	Clawson and Layne (2007)	negative	Cingranelli and Richards (2010)
Female education: female literacy rate (% of female age 15 or above)	Bettio and Nandi (2010), Di Tommaso et al. (2009), Rao and Presenti (2012)	positive/negative/insignificant	World Bank (2011)
Female education: female literacy rate (% of female age 15–24)	Bettio and Nandi (2010), Di Tommaso et al. (2009)	positive/negative/insignificant	World Bank (2011)
Education : literacy rate (% of people age 15 or above)	Clawson and Layne (2007), Mahmoud and Trebesch (2010), Zhang et al. (2011)	negative/insignificant	World Bank (2011)
Education: literacy rate (% of people age 15–24)	Clawson and Layne (2007), Mahmoud and Trebesch (2010), Zhang et al. (2011)	negative/insignificant	World Bank (2011)
TV and phone usage/information flows	Mahmoud and Trebesch (2010), Mo (2011)	negative	Dreher (2006)
Visa restriction	Jac-Kucharski (2012)	insignificant	Neumayer (2006)
Number of UN peacekeepers sent abroad, normalized by populations	Smith and Smith (2010)	positive	Dreher (2006)
Number of UN peacekeepers residing in the country, normalized by populations	Smith and Smith (2010)	positive	Neumayer and Perkins (2008)
Food production index /Share of food, beverage and tobacco industries in GDP (2 var.)	Bales (2007)	positive	World Bank (2011)
Grant amnesty (Anti-trafficking protection policy)	Akee et al. (2014)	insignificant	Cho et al. (2014)
OECD membership (dummy)	Belser (2005)	negative	OECD (2011)
Regional dummy: East Asia and Pacific, Europe and Central Asia, Latin America and Caribbean, North Africa and Middle East, North America, South Asia, and Sub-Saharan Africa (7 variables)	Akee et al. (2014), Rao and Presenti (2012)	positive (the reference group: developed country-group)	World Bank (2011)
Share of Religion in populations: Muslim, Catholic, and Protestants (3 variables)	Clawson and Layne (2007)	unclear	Encyclopedia Britannica (2001)
Legal origin: British, socialist, French, and German dummy (4 variables)	Akee et al. (2014)	insignificant	La Porta, Lopez-de-Silanes, Shleifer, & Vishny (1998)
Major language: English, French, Spanish, Portuguese and German dummy (5 var.)	Zhang et al. (2011)	Spanish: positive (US case study)	Encyclopedia Britannica (2001)
Emigration rates	Clawson and Layne (2007)	positive	World Bank (2011)
Net migrants	Clawson and Layne (2007), Mahmoud and Trebesch (2010)	positive	World Bank (2011)

Fertility rate (number of children)	Di Tommaso et al. (2009)	insignificant	World Bank (2011)
Share of age group 0–14 in total population	Bales (2007), Mahmoud and Trebesch (2010)	positive	World Bank (2011)
Population density (people per square km of land area)	Bales (2007)	positive	World Bank (2011)
Consumer price index	Clawson and Layne (2007)	positive	World Bank (2011)
Amount of heroin seized	Clawson and Layne (2007)	positive	United Nations (2008)
Human rights index: physical integrity	Clawson and Layne (2007)	positive	Cingranelli and Richards (2010)
CO2 Emissions	Clawson and Layne (2007)	positive	World Bank (2011)

Appendix C. List of pull factors examined.

Pull Factors	Suggested by	Effects	Data sources
GDP pc.	Akee et al. (2010, 2012, 2014), Cho (2013), Cho et al. (2013), Frank (2011), Jakobsson and Kotsadam (2013)	positive	World Bank (2011)
Population	Cho (2013), Cho et al. (2013), Frank (2011), Jakobsson and Kotsadam (2013)	mostly positive (Frank 2011, insignificant)	World Bank (2011)
Democracy	Cho et al. (2013), Frank (2011)	negative/positive	Cheibub et al. (2010), Marshall et al. (2014)
Control of corruption	Bales (2007), Cho (2013)	negative	International Country Risk Guide (2009), Kaufmann et al. (2009), Transparency International (2010)
Rule of law	Akee et al. (2010, 2012, 2014), Cho et al. (2013), Jakobsson and Kotsadam (2013)	insignificant/negative	International Country Risk Guide (2009), Kaufmann et al. (2009)
Political stability	Akee et al. (2014)	negative	Kaufmann et al. (2009)
Voice and accountability	Akee et al. (2014)	insignificant	Kaufmann et al. (2009)
External conflict	Akee et al. (2010), Frank (2011)	positive	International Country Risk Guide (2009)
Internal conflict	Akee et al. (2010), Frank (2011)	positive	International Country Risk Guide (2009)
Ethnic tension	Akee et al. (2010)	positive	International Country Risk Guide (2009)
Fractionalization: ethnic, religious, and language (3 variables)	Akee et al. (2010)	positive	Alesina et al. (2003)
Leftwing executive	Cho et al. (2013)	insignificant	Beck et al. (2001)
Rightwing executive	Cho et al. (2013)	insignificant	Beck et al. (2001)
Media freedom	Cho et al. (2013)	insignificant	Freedom House (2010)
Prostitution law (legalization)	Akee et al. (2010, 2014), Cho et al. (2013), Jakobsson and Kotsadam (2013)	Insignificant/positive	Cho et al. (2013)
Amount of heroin seized	Jakobsson and Kotsadam (2013)	insignificant	United Nations (2008)
Women's economic rights, social rights (2 variables)	Cho (2013)	insignificant	Cingranelli and Richards (2010)
Social globalization (incl. information flows)	Cho (2013)	insignificant/mixed	Dreher (2006)
Unemployment rate	Cho et al. (2013)	insignificant	World Bank (2011)
% of workforce in agriculture	Cho et al. (2013)	insignificant	World Bank (2011)
Literacy rate	Cho et al. (2013)	insignificant	World Bank (2011)
Mortality rate under five	Cho et al. (2013)	insignificant	World Bank (2011)
Infant mortality rate	Bales (2007)	insignificant	World Bank (2011)
Refugees (countries of asylum)	Akee et al. (2010)	positive	World Bank (2011)
Share of migrants in population	Jakobsson and Kotsadam (2013)	insignificant	World Bank (2011)
Share of age group 65 or above in total populations	Bales (2007)	positive	World Bank (2011)
International tourism (number of departure)	Cho et al. (2013)	insignificant	World Bank (2011)
Urbanization	Cho et al. (2013)	insignificant	World Bank (2011)
Visa restriction	Cho et al. (2013)	insignificant	Neumayer (2006)
Trade (share in GDP)	Cho (2013), Danailova-Trainor and Belser (2006)	insignificant/positive	World Bank (2011)

FDI (share in GDP)	Cho (2013)	insignificant	World Bank (2011)
Share of food, beverage and tobacco industries in GDP	Bales (2007)	positive	World Bank (2011)
Energy use	Bales (2007)	positive	World Bank (2011)
Anti-trafficking Policy	Cho et al. (2013)	insignificant	Cho et al. (2014)
Grant amnesty (protection policy)	Akee et al. (2014)	positive	Cho et al. (2014)
Crime rate	Jakobsson and Kotsadam (2013)	insignificant	United Nations (2008)
Number of UN peacekeepers sent abroad, normalized by populations	Cho et al. (2013)	insignificant	Dreher (2006)
Number of UN peacekeepers residing in the country, normalized by populations	Cho et al. (2013), Smith and Smith (2010)	insignificant/positive	Neumayer and Perkins (2008)
OECD membership (dummy)	Belser (2005), Cho (2013)	positive	OECD (2011)
Regional dummy: East Asia and Pacific, Europe and Central Asia, Latin America and Caribbean, North Africa and Middle East, North America, South Asia, and Sub-Saharan Africa (7 variables)	Belser (2005), Cho et al. (2013)	negative/insignificant (reference group: developed country-group)	World Bank (2011)
Share of Religion in populations: Muslim, Catholic, and Protestants (3 variables)	Cho et al. (2013)	partly negative (Catholic)	Encyclopedia Britannica (2001)
Legal origin: British, socialist, French, and German dummy (4 variables)	Akee et al. (2014), Cho et al. (2013)	mostly insignificant	La Porta et al. (1998)
Major language: English, French, Spanish, Portuguese, and German dummy (5 variables)	Cho et al. (2013)	insignificant	Encyclopedia Britannica (2001)
Transition economy (dummy)	Akee et al. (2014)	negative	OECD (2011)
Landlocked country (dummy)	Akee et al. (2010, 2012, 2014)	negative	Mayer and Zignago (2011)

Appendix D. Human trafficking flows.
1. Inflows: Destination country list (source: UNODC, 2006).

Very High	High	Medium	Low	Very Low
Belgium	Australia	Albania	Aruba	Algeria
Germany	Austria	Argentina	Bangladesh	Bhutan
Greece	Bosnia and	Bahrain	Belize	Brazil
Israel	Herzegovina	Benin	Brunei Darussalam	Burundi
Italy	Cambodia	Bulgaria	Congo, Republic of	Chad
Japan	Canada	Burkina Faso	Costa Rica	Chile
Netherlands	China	Cameroon	Ecuador	Congo, Democratic
Thailand	Hong Kong, China	Cote d'Ivoire	Egypt	Republic of
Turkey	SAR	Croatia	Haiti	Djibouti
United States of	Taiwan Province of	Curacao	Indonesia	Dominica
America	China	Dominican Republic	Iraq	Ethiopia
	Cyprus	El Salvador	Ireland	Fiji
	Czech Republic	Equatorial Guinea	Kyrgyzstan	Gambia
	Denmark	Estonia	Lao People's	Georgia
	France	Finland	Democratic	Honduras
	India	Gabon	Republic	Jamaica
	Kosovo,	Ghana	Libyan Arab	Liberia
	(Serbia and	Guatemala	Jamahiriya	Malawi
	Montenegro)	Hungary	Luxembourg	Maldives
	Pakistan	Iceland	Mali	Morocco
	Poland	Iran	Niger	Mozambique
	Saudi Arabia	Kazakhstan	Oman	Republic of
	Spain	Kenya	Paraguay	Moldova
	Switzerland	Kuwait	Romania	Senegal
	United Arab	Latvia	Slovenia	Sierra Leone
	Emirates	Lebanon	Sri Lanka	Slovakia
	United Kingdom	Lithuania	Uganda	Sudan
		Macao, China SAR	United Republic of	Tajikistan
		Malaysia	Tanzania	Trinidad and
		Mexico	Uzbekistan	Tobago
		Myanmar	Yemen	Zambia
		New Zealand		Zimbabwe
		Nigeria		
		Norway		
		Panama		
		Philippines		
		Portugal		
		Qatar		
		Republic of Korea		
		Russian Federation		
		Serbia and		
		Montenegro		
		Singapore		
		South Africa		
		Sweden		
		Syrian Arab		
		Republic		
		The former Yugoslav		
		Macedonia		
		Togo		
		Ukraine		
		Venezuela		
		Vietnam		

2. Outflows: Origin country list (source: UNODC, 2006).

Very High	High	Medium	Low	Very Low
Albania	Armenia	Afghanistan	Argentina	Brunei
Belarus	Bangladesh	Algeria	Bhutan	Chad
Bulgaria	Benin	Angola	Botswana	Chile
China	Brazil	Azerbaijan	Burundi	Costa Rica
Lithuania	Cambodia	Bosnia	Canada	Egypt
Nigeria	Colombia	Burkina Faso	Cape Verde	Fiji
Moldova	Czech Republic	Cameroon	Congo, DR	Jamaica
Romania	Dominican	Congo	Djibouti	Macao
Russia	Estonia	Cote d'Ivoire	Eq. Guinea	Netherlands
Thailand	Georgia	Croatia	Eritrea	Paraguay
Ukraine	Ghana	Cuba	Gabon	Syria
	Guatemala	North Korea	Gambia	Uruguay
	Hungary	Ecuador	Guinea	Yemen
	India	El Salvador	Iran	
	Kazakhstan	Ethiopia	Iraq	
	Lao	Haiti	Jordan	
	Latvia	Honduras	Lebanon	
	Mexico	Hong Kong	Lesotho	
	Morocco	Indonesia	Madagascar	
	Myanmar	Kenya	Maldives	
	Nepal	Kosovo	Nicaragua	
	Pakistan	Kyrgyzstan	Panama	
	Philippines	Liberia	Rwanda	
	Poland	Malawi	South Korea	
	Slovakia	Malaysia	Somalia	
	Uzbekistan	Mali	Sudan	
	Vietnam	Mozambique	Swaziland	
		Niger	Tunisia	
		Peru	USA	
		Senegal	Zimbabwe	
		Serbia and Montenegro		
		Sierra Leone		
		Singapore		
		Slovenia		
		South Africa		
		Sri Lanka		
		Macedonia		
		Taiwan		
		Tajikistan		
		Togo		
		Turkey		
		Turkmenistan		
		Uganda		
		Tanzania		
		Venezuela		
		Zambia		

Note: Countries with no (reported) in-/outflows are not listed here.

Article

Assessing the Extent of Human Trafficking: Inherent Difficulties and Gradual Progress

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Abstract

This article explores some of the key current research and statistical evidence available on the global scale of trafficking in human beings, and considers the assumption that the occurrence of trafficking is increasing. The value and limitations of this statistical data is identified, as is the relationship between the research base and the resulting legal and policy responses. This allows an assessment of whether there is a connection between the perceived problem and the responses to trafficking victims' circumstances. It questions whether assumptions, generalisations and policies can be based around the available data and the responsibilities of individual countries, including the UK and the wider international community, in relation to the improvement of data collection. The article also considers signs of progress in terms of data collection and suggests further future improvements that need to be made to the approach taken.

Keywords

human trafficking; international; statistics; UK

Issue

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1. Introduction

This article considers the inherent difficulties of data collection and statistical information on human trafficking. This statistical information shapes and informs, in some part, legal and policy responses to this phenomenon and therefore it is vital that steps are taken to overcome these difficulties and ultimately improve the quality of the data collected. This is not a new problem and is one that has been recognised as being in need of attention. As the data has the potential to result in policies where there is little correlation between the perceived problem and the reality of trafficking victims' circumstances it is an issue that must stay high on the priorities of all countries throughout the world. An overview of the key statistical information gathered, both globally and within the UK will be provided with the aim of highlighting some of the

known problems with this data. The use and reliability of the available data is discussed and it is questioned whether assumptions, generalisations and policies can be based around this data with any confidence. The article also considers some of the progress made in the responses aimed at eradicating human trafficking and examines evidence of changing approaches and attempts taken to further improve this data and ultimately the international community's knowledge. The UK is used, as a case study, to demonstrate the difficulties and assess progress taken by one individual country in the attempt to deal with the problem.

2. The Extent of the Global Problem of Human Trafficking: Statistical Evidence

Human trafficking has been reported to be a major global problem, with the number of victims increasing

at a rapid rate. It is acknowledged however, that the precise global scale of human trafficking is uncertain as the nature of the phenomenon makes it notoriously difficult to quantify (Stoecker, 2000). With this reported increase in the occurrence of human trafficking came recognition that action had to be taken at an international level aimed at dealing with the problem. In 2000 the first international consensus was reached on the definition of human trafficking in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (United Nations, 2000b) which was attached to the Convention against Transnational Organised Crime (United Nations, 2000a). Article 3(a) of the Protocol states:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This definition has been adopted and used as the basis for defining trafficking by both the Council of Europe in the Trafficking Convention on Action against Trafficking in 2005 and EU Directive 2011/36 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. Article 19 of Directive 2011/36/EU stresses the importance of gathering statistics, stating that:

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Internationally, there have been attempts at collection of data and statistics aimed at increasing the international communities’ understanding and knowledge of human trafficking and to assist in the development of policies and legislation to deal with it. There are statistics from the US Department of State Annual Trafficking Reports that have often been cited within academic literature in an attempt to demonstrate the extent of the problem (for example, Bokhari, 2008; Garrard, 2006; Ray, 2006). These reports contain information

gathered from US embassies and consulates throughout the world. Each embassy report is compiled following discussions with the host government, local non-governmental organizations (NGOs), immigration officials, police, journalists, and victims, in addition to reviews of government, press, and NGO reports. Information is also gathered from the United Nations Children’s Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), Human Rights Watch, Amnesty International, the Protection Project, and media reports (US Report, 2001).

The first US human trafficking annual report in 2001 stated that at least 700,000 women and children were trafficked internationally each year. This figure was said to be based on “reliable estimates” but no further information regarding the source of the information was provided. In the 2004 report the figures quoted were between 600,000 and 800,000 people trafficked across international borders, in addition to an unknown number of people trafficked within their own country for the purpose of exploitation. These figures were restated in the 2008 report which also reported that out of the total number of people trafficked internationally 80% are female and up to 50% of the total are thought to be minors. The 2008 figures were based on US Government sponsored research which was published in 2006 (US Report, 2008).

The first EU level report on statistics in trafficking in human beings was published by Eurostat in 2013 with data covering the period 2008–2010 collected from 27 Member States. The EU Commission has recognised that the issue of collecting comparable and reliable statistics is a key part in the response to tackle human trafficking and it is this that the Eurostat report attempts to provide. However, there are still doubts as to the reliability of the data and warnings that the data contained within the Eurostat report should be used and interpreted with some care. This stems, it is argued, for a number of reasons including both the over-reporting of presumed cases of trafficking and the under-reporting of undetected cases (Vogel, 2014). This is in fact something that the report itself acknowledges. Although there are increases in the number of both presumed and identified victims over the 3 year period the report focuses on, it is recognised that this increase could be due to a number of factors, such as new legislation, improved identification processes or a higher priority of the problem within particular countries (Eurostat, 2013). Despite this, there is a strong statement within the report that claims that “the full implementation of the EU Directive, the EU Strategy and Action Orientated Paper provide the necessary legislative and policy tools to end trafficking in human beings”. This, it could be argued, is more an aspirational aim rather than a known fact.

The subsequent and most recent Eurostat Report in

2014 covers the period 2010–2012 with data being provided by all 28 Member States and a number of candidate countries and provides information on the number of victims, suspects, prosecutions and convictions recorded by the authorities in each Member State. Although it is claimed that there have been improvements in data collection, it is also acknowledged that this needs further attention due to the fact that not all Member States have provided information on all aspects of human trafficking requested by the EU. This results in data that is still not comparable between Member States and it is important that no generalisations about the extent of human trafficking within the EU are made. Any changes in the reported level of human trafficking remain questionable with varying identification procedures, new legislation and data collection processes still effecting the data collected (Eurostat, 2014). Despite the limitations of the data, the 2014 Eurostat report does provide some detail about victims' gender dependant on the type of exploitation, finding that a majority of women are being sexually exploited compared to men who were the majority of those exploited for their labour. However, Vogel (2014) commenting on the Eurostat 2013 report, finds that the level of under-reporting for male-dominated forms of exploitation is much higher than that where women are the dominate group within a particular form of exploitation.

In terms of the suspected traffickers, these were reported to be predominately male (Eurostat, 2014) a point that the UNODC Global Report (2014) also highlights. The UNODC 2014 report also claims that there has been a noticeable increase in the number of child victims of trafficking, although this is dependent on the region. For example in Africa and the Middle East children have been found to be the majority of victims that have been detected, whereas in Europe and Central Asia there are clearly more adult victims detected. There is little doubt, in the next UNODC Global Report in 2016, that there are going to be further increases in detected cases if, the 9 countries who currently have no legislation to criminalise trafficking and the 18 that only criminalise some forms of exploitation rectify this situation and introduce appropriate legislation to deal with the problem.

There are occasions where trafficking statistics are subsumed within figures of those who are in forced labour. For example, the US annual report of 2010 stated that globally there were 12.3 million adults and children in forced labour, bonded labour and prostitution. This figure was taken from the figures cited by the International Labour Organisation (2009) rather than being based on primary research. Similarly, all forms of modern slavery, which includes trafficking, are reported as one figure, as seen for example, by Australian Walk Free Foundation's 2014 Global Slavery Index. By dealing with the statistics and collating data in this

way, it hinders the assessment of the true extent of the trafficking problem because not all those in forced labour or modern slavery are there as a result of trafficking. The Global Slavery Index has been criticised for "a mysterious, inconsistently applied methodology, a raft of unverified assumptions and multiple, critical errors of fact and logic". Gallagher (2014) states that "Even the basic unit of measurement of 'modern slavery' is flawed: the definition is self-created and, bizarrely, changes from one year to the next". This she states "creates an almost irresistible temptation to make a silk purse out of a very tattered sow's ear: to harness the power of statistics and numbers to create an illusion of concreteness that masks the slipperiness of what we are counting". The criticisms highlight the importance of providing clear legal definitions of the various terms involved, for example there are legally defined differences between trafficking, forced labour, modern slavery and smuggling, yet data collected on one may often include another. There is also a problem with the inconsistent use of the definition of trafficking within national contexts which compounds the problem of comparable data collection.

Similar criticisms were made of the US Annual reports which gave details of the number of victims of trafficking who were identified worldwide as well as the number of successful trafficking prosecutions, although it is not entirely clear how these figures were arrived at.¹ In each of the US annual reports the figures were said to be based on "reliable estimates" (for example US Report, 2001). However, the US Government Accountability Office (2006) viewed these figures as "questionable" because of the methodology adopted as the basis of the research. This was due to the fact that the figures were based on one piece of research that was undocumented and unlikely to be capable of being replicated. The discrepancy between the high number of estimated victims and the number of victims officially recorded was also queried. Inaccurate reporting of data may, it is argued, lead to policies that fail to account for all victims in various type of exploitation experienced and policies which are over simplistic (Vogel, 2014).

¹ The actual numbers stated in the report were as follows: Adults and children in forced labour, bonded labour, and forced prostitution around the world: 12.3 million; Successful trafficking prosecutions in 2009: 4,166; Successful prosecutions related to forced labour: 335; Victims identified: 49,105; Ratio of convicted offenders to victims identified, as a percentage: 8.5; Ratio of victims identified to estimated victims, as a percentage: 0.4; Countries that have yet to convict a trafficker under laws in compliance with the Palermo Protocol: 62; Countries without laws, policies, or regulations to prevent victims' deportation: 104; Prevalence of trafficking victims in the world: 1.8 per 1,000 inhabitants; Prevalence of trafficking victims in Asia and the Pacific: 3 per 1,000 inhabitants.

2.1. Gathering the Data

The difficulty obtaining reliable statistics stems from the fact that human trafficking is predominantly a hidden phenomenon, coupled with the lack of consistent central point for the collection of data nationally, regionally and internationally (Bokhari, 2008). Data has been either unavailable or unreliable (Van Reisen & Stefanovic, 2004). O'Connell Davidson (2006) shared concerns over the discrepancy in relation to the perceived increase in human trafficking. She questioned the scale of the problem and referred, as an example, to the number of women who were discovered following raids in 2003 by the London Metropolitan Police in massage parlours. Out of 295 women, only four or five were identified as victims of trafficking, whilst the rest were found to be in breach of UK immigration law. This does not necessarily indicate that there is very little trafficking. It may instead be an indication that trafficking victims are not being discovered or are being incorrectly identified, which results in the statistics not showing these individuals as trafficking victims due to the wrongly recorded classification of their circumstances. The difficulty with small scale operations and research is the problem of extrapolating any generalisations from the findings. The discrepancies in the figures quoted above can only serve to illustrate the inability to make such generalisations, which do nothing to indicate the true severity of the global problem. Another issue exacerbating the collection of reliable data is the inconsistent use of definitions of trafficking *"from country to country and scholar to scholar"* (Aromaa, 2007). This results with incomparable data which does not assist in providing a true picture of the extent of the problem of trafficking.

Different bodies and organisations such as the US Government, the International Labour Organisation (ILO), the International Organisation for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) all collect information and research trafficking. However, each has a different lens through which to view human trafficking as well as a different geographical interest and this undoubtedly affects the statistics available and the research undertaken. For example, both the US Government and the IOM focus on estimating the global number of victims, whilst the UNODC focuses on tracing the international trafficking routes and the country patterns of international trafficking.

The different mandates of international organisations and national bodies determine what information is collected by each of these bodies. The ILO develops international labour standards which set out the minimum standards of basic labour rights through the use of Conventions and Recommendations (see Cullen, 2007). Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling

work-related issues (ILO). In relation to trafficking, the ILO has promulgated numerous Conventions which are relevant to both trafficking and forced labour, for example the ILO Worst Forms of Child Labour Convention 1999, The Forced Labour Convention 1930 and the Protocol of 2014 to the Forced Labour Convention 1930. The ILO is also concerned with children's rights in the context of employment and labour relationships. The ILO's International Programme on the Elimination of Child Labour (IPEC, 2013) aims to eradicate child labour with a priority given to the worst forms of child labour, which includes trafficking of children as contained in Article 3(a) WFCL Convention (ILO, 1999). There are several ways that IPEC aims to achieve this goal, including through the support of research, campaigning to raise awareness and change attitudes towards child labour. IPEC (2007) also provides encouragement and support to States to enable them to ratify ILO Conventions.

The focus of the International Organisation for Migration is the number of actual victims assisted by the organisation in the countries where they have a presence and concerns itself with trafficking as an issue of migration and migrants' rights. A comprehensive approach is taken to trafficking within the wider context of managing migration and IOM's activities are implemented in partnership with governmental institutions, NGOs and international organizations. Research has been funded by the IOM to examine different elements of trafficking in human beings. For example, Anderson and O'Connell Davidson (2003) conducted research on behalf of the IOM examining whether trafficking was being driven by demand in the sex and domestic work sectors with pilot studies in Sweden, Italy, Thailand and India. The emphasis of IOM's work is on the prevention of trafficking and the protection of victims, and the research specifically considers children within the broader context of migration (Touzenis, 2008).

In contrast, the United Nations Office on Drugs and Crime focuses on drugs, crime and terrorism and all transnational crime including trafficking in human beings. The Trafficking Protocol is directly relevant to the work of the UNODC. The UNODC Global Programme against Trafficking in Human Beings (GPAT) was set up in March 2007 in conjunction with the United Nations Interregional Crime and Justice Research Institute (UNICRI). The overall aims of GPAT are to assist States in understanding the causes and methods of both smuggling and human trafficking and to encourage effective responses. It was also set up with a view to raising awareness, increasing knowledge about trafficking in human beings and it collects and analyses data for this purpose. GPAT aims to strengthen existing partnerships and establish new ones in order to coordinate efforts across Member States (UNODC). In conjunction with this assistance GPAT provides support to States in anti-trafficking efforts, training and provision of improved victim support. They also assist countries in

their efforts to combat this crime (UNODC, 2011).

Each of the organisations above gathers data according to their mandate, and this may result in individuals being counted in more than one dataset. The extent of the data collected also varies according to the resources available to each organisation. It is claimed that these varying approaches are hampering the collection of reliable statistics, as Munro (2005) states:

Statistics vary widely between the various agencies involved (police, immigration, sex workers and abolitionists, human rights activists and social service providers), reflecting both a pervasive lack of reliable intelligence and a potentially divisive conflict of interests among relevant stakeholders.

The available statistics are therefore held by various organisations that have collected them in different ways, at different times and for different purposes. This means that the statistics are not generally comparable, either within the country the statistics have been gathered from, or between countries (Eurostat, 2014; Salt, 2000).

It may be argued that the reliability of any of the statistics discussed above is therefore dubious, and should be viewed with a degree of caution. Although there has been an increase in the literature on human trafficking, many of the studies undertaken to date lack an extensive research base, both in terms of the type of exploitation researched, the selected group of people (male, female, girls or boys) and the geographical area of interest (Laczko & Gramegna, 2003). Conversely however, it could be argued that the broad range of perspectives actually provides a more realistic view of the problem and assists in furthering current knowledge and understanding.

2.1.1. Examining the Data: Reliability, Methodologies and Mandates

Before considering signs of progress that are emerging in terms of data collection, it is useful to consider what the data discussed above actually tells us about human trafficking. At first glance these statistics suggest that trafficking in human beings is in fact an extensive global problem with the number of victims at alarmingly high levels. There is a general perception that trafficking in human beings has dramatically increased as observed by Javate de Dios (2002):

No one now disputes that trafficking today has reached alarming proportions, the magnitude of which affects many countries as countries of origin, transit and destination points.

This sentiment is shared by many academics and NGOs and the media has assisted in the creation of this perception of the phenomenon of trafficking in human be-

ings. Often the figures cited by the media are merely a reiteration of the statistics discussed above. Various concepts, such as trafficking, smuggling, forced labour and modern slavery are also often confused and inaccurately reported by the media which adds to the confusion of the number of victims involved (Dasgupta & Murthy, 2009). Vogel (2014) questions the media reports of “alarming trends and a predominance of women and children among the victims” and states that the claims being made, cannot in fact be supported by the data and that there is what he terms an “exaggeration presentation policy”. The media have been accused of sensationalising trafficking in their reports of various incidents:

In the field of human trafficking, sensationalism, stereotypes and assumptions on the profile of victims and circumstances of their exploitation unfortunately often prevail over in-depth investigative journalism. Journalists and editors often cannot tell the difference between illegal migration, prostitution and trafficking in women and are often not too concerned about accurate definitions. The linkages between issues such as globalization, migration policies, marginalization, discrimination as well as economic inequality and exploitation are rarely explored. (UN.GIFT, 2008)

On closer examination of the figures cited, there are actually no completely reliable, conclusive and comparable statistics. Even if it is accepted that human trafficking is increasing (Egan, 2008), the precise scale of the problem is still unclear with significant inconsistencies in the reported number of trafficking victims. There are reports of particular incidents of trafficking in human beings (for example, Duncan, 2014; Potts, 2003), although these cases are extremely important, they can only provide an indication rather than indisputable evidence that trafficking is increasing. Askola (2007) regards both estimates of human trafficking and suggestions that trafficking is increasing as nothing more than “guesstimates” due to the clandestine nature of trafficking which results in the lack of reliable data collected. The UNODC identify particular challenges to data collection such as the range of interpretation and approaches taken to the Trafficking Protocol, the result of which is:

that countries may not refer to some practices when referring to human trafficking cases, thereby limiting the scope and effectiveness of the response and hindering international cooperation.

This has an impact on data collection which prevents effective implementation of policies and strategies (UNODC, 2012). Similarly where countries have action plans in place to tackle human trafficking there is often

little evaluation of the effectiveness of these plans, which are then subsequently updated but without clear evidence to support the developments of these plans (IOM, 2008). Where countries are carrying out evaluations of research or projects, they are not consistently looking for long-term, significant and lasting impacts and are instead more likely to be looking at the more immediate output of each project. The longer term view needs to be developed to enable anti-trafficking projects to have a lasting effect and for any good practices to be shared and developed.

2.1.2. Can Any Conclusions Be Drawn from the Data?

The statistical data collected by the various organisations discussed above reveal some shared characteristics. For example, according to all the data collected more women are trafficked than men and sexual exploitation is the primary reason for which women are trafficked. There are however, some significant variations, notably the percentage of trafficking victims who are children with figures ranging from 13%–50% (US Accountability Office, 2006).

Some information can be drawn from these various pieces of research. The first is that countries throughout the world are affected by trafficking either as countries of origin, transit or destination, or as a combination of these (Melrose & Barrett, 2006). Secondly, there is some indication that trafficking in human beings is increasing, with some countries reporting an increase in the numbers of suspected cases of trafficking (Eurostat, 2014; Laczko & Gramegna (2003).² This does not mean that all trafficking in every country has necessarily increased or increased at the same rate and these reports are only statistically relevant for the individual country concerned. It may also mean that the effectiveness of reporting of trafficking has improved as awareness of the problem has increased.

The reported growth in trafficking in human beings has resulted in a higher priority on introducing policies to deal with the issue. As stated earlier, data relating to trafficking and smuggling are often combined (Laczko & Gramegna, 2003), despite the fact that these are separate concepts which require different legal responses. This contributes to the distortion of the true extent of the trafficking problem. It has been claimed that the difficulty in providing accurate reliable statistics has the potential to impact negatively on the policy response to trafficking in human beings. Dottridge (2003) argues that inaccurate estimates are likely to lead to the proposal of inappropriate remedies and responses. Responding to trafficking of an estimated 10,000 people

² The German Federal Criminal Office (*BundesKriminalamt*) in 2001 there were 987 victims of trafficking identified by police investigations of suspected cases of trafficking in contrast to 891 victims in 1999.

would require a very different response where the estimated number of victims is 100,000. This is a view supported by Tyldum and Brunovskis (2005) who suggest that the overestimation of the extent of the problem may have equally negative consequences as underestimation. They consider the uncritical use of research findings as potentially leading to mis-information which in turn would “...hinder the creation of relevant policies and appropriate programmes”. They argue for the need for research to be based on clear conceptual and practical identification of the target group, accompanied by indications of the appropriate end users of the data. They also regard misleading data as worse than no data at all. Encouraging and supporting a more robust system of data collection resulting in more clearly defined and “useable” data is understandable. It is however, questionable whether having no data at all would be preferable to misleading data.

3. An Example of Data Collection in the UK: Difficulties, Limitations and Progress

An example of the difficulties and limitations in data collection discussed above can be seen in the approach taken by the UK. Small scale operations on a national basis within particular geographical areas focusing on particular “types” of trafficking are often carried out and statistics are collected without any reference to other countries or even a consistent specific focus on all individual groups of victims. Even with the overall lack of reliable statistical information, it has been claimed that “...there is sufficient evidence to indicate that, at an absolute minimum, hundreds of people are being trafficked into the country [UK] for sexual or labour exploitation each year” (Skrivankova, 2006). This statement is not supported with reference to identifiable research and therefore its validity is still questionable.

In the UK, there has been a combination of police operations and an attempt at data collection in order to increase the knowledge of trafficking into and within the country. The United Kingdom Human Trafficking Centre (UKHTC), established in October 2006, is central to this aim and has been involved with police operations such as Pentameter 1 in 2006 and 2 in 2007. These were nationwide operations involving 55 police forces across the UK aimed at assessing the extent of trafficking, rescuing and protecting victims, and prosecuting traffickers. The ultimate aim was to tackle the problem of trafficking for the purpose of sexual exploitation. Pentameter 1 resulted in the discovery of 84 victims of trafficking who had been sexually exploited, including twelve children, with victims originating from twenty different countries. This operation involved visits to approximately 10% of the estimated number of sex establishments in the UK. As a result of this operation there were a total of 232 arrests, which led to 134 people being charged with a variety of offences

(Gloucestershire Constabulary, 2006). The following year Pentameter 2 resulted in 528 criminals being arrested with 164 victims of trafficking for sexual exploitation reportedly discovered, which again included thirteen children. Assets of over £500,000 were confiscated and over 822 premises were visited (Police Oracle, 2008). Although both these operations appear to be very successful in the number of criminals arrested and victims discovered, there has been some criticism of the reported success of the operations, compared with their actual success. For example, Gilbert and Moore (2010) identified that out of the initial reported 528 arrested during Pentameter 2, only 93 were arrested on suspicion of trafficking and, of those, only 67 were charged, resulting in fifteen individuals (ten males, five females) being convicted. The initial reports present the results of the operations in extremely positive terms which are misleading because they do not actually mirror the reality of the actual conviction rates for trafficking offences.

The UKHTC has also produced Statistical Quarterly Reports covering the period from 1st April 2008 to 31st March 2009 to assist in extending the existing knowledge of human trafficking into and within the UK (UKHTC, 2009a). The data provided on the number of identified victims is disaggregated, detailing victims' nationality, gender, age, number of victims of EU or non-EU origin and the type of exploitation for which they were trafficked. There is similar, but not as extensive disaggregation in relation to the defendants in prosecution of trafficking offences. Details include the number of defendants dealt with under sections 57–59 Sexual Offences Act 2003, which concerns the trafficking of individuals for the purpose of sexual exploitation, on the gender of the defendants and the eventual outcome of the cases. Due to the nature of the phenomenon, coupled with the fairly newly developed data gathering mechanism, the collection of this data from a number of different sources occurred in a fairly unsystematic manner.

The UK ratified the Council of Europe Convention against Trafficking in Human Beings 2005 and one of the practical effects of the UK's ratification was the introduction from 1st April 2009 of a National Referral Mechanism for the identification of victims in the UK, as required by Article 10 of the Convention (UKHTC, 2009b). Each party to the Convention is required to establish a "competent authority" with the responsibility for the identification of trafficking victims and to manage all the information relating to human trafficking. In the UK this responsibility is shared between the UKHTC, which deals with referrals from the police, local authorities and NGOs and the Home Office Immigration and Visas, dealing with referrals identified as part of the immigration process for example where trafficking may be an issue as part of an asylum claim. Information concerning confirmed victims of trafficking is

reported to UKHTC, resulting in a central point where more robust and systematic data is collected. From April 2009 this data was reported in National Referral Mechanism Reports (NRM) rather than the previous Statistical Quarterly Reports.

During the first year of data collection under the new NRM system there was more than a 200% increase in the number of potential victims identified when compared with the Statistical Quarterly Reports for the previous year. Of these 520 were female, compared to 186 males, and over three times as many individuals from non-EU countries as EU countries. The first annual NRM report in March 2010 also saw more than a four-fold increase in the number of referrals made for those exploited in domestic servitude (106) as compared to the total number for 2008–2009 (23). In the Annual NRM report in 2012 there was a reported 1186 potential victims referred which represented a 25% increase in the number referred in 2011. In the most recent annual NRM Report (2013) there was a reported sharp increase in the number with 1,746 potential victims referred to the NRM which represented a 47 per cent increase on 2012. The UK National Crime Agency also carries out a Strategic Assessment of the extent of human trafficking and found that there were 2744 potential victims during 2013,³ and Silverman (2014), attempting to estimate the extent of modern slavery in the UK in 2013, found there were between 10,000 and 13,000 potential victims. To obtain this figure he carried out an exploratory analysis of the Strategic Assessment data using a statistical technique of Multiple Systems Estimation, but does acknowledge the data should be viewed cautiously due to the limitations involved in the method used.

The apparent increases in the number of victims could be explained by the introduction of a more effective and robust referral system, with referrals being received from key bodies and agencies such as Police Services, Local Authorities and NGOs. Clarity over the responsibility for referrals and data collection will undoubtedly lead to increased reporting. It could therefore be argued that this is a fairly rapid practical effect of the ratification of the Council of Europe Convention, rather than an indisputable rise in trafficking into and within the UK. Longitudinal data collection should provide a more detailed picture, although it must be remembered that these are still only the cases where victims have been identified. There are undoubtedly many

³ To arrive at this figure, information was used from (1) information on the NRM database about Potential Victims of Trafficking who received a "positive" or "pending" conclusive decision that they were a victim of human trafficking. (2) Intelligence held by the NCA. (3) Responses to an intelligence requirement disseminated by the NCA to police forces, NGOs, Home Office agencies and local authorities. The Strategic Assessment is a measure of potential rather than confirmed victims.

more adults and children who remain undetected. This is particularly true due to the hidden nature of trafficking.

Data collected by the UKHTC specifically relating to child victims revealed some significant information. Child referrals increased from eighteen in 2008–2009 to 179 in 2009–2010 with children representing 25.4% of the total number of referrals. This increase may once again be the result of a clearer reporting and referral mechanism. Alternatively it may be due to an increased awareness of the various forms of child trafficking rather than an actual rise in the number of child victims. The division between male and female victims, as well as adults and children have been fairly consistent throughout the reporting periods 2010–2013 with approximately 67% of victims being female, 33% male and of the total number of victims, the percentage of children under the age of 18 ranged between 25% and 31%.

Prior to May 2009 and the introduction of the NRM, child victims were grouped into one category, of children aged between ten and seventeen, with a total of eighteen children being recorded as victims of trafficking between April 2008 and March 2009. In contrast in the first year under the NRM (April 2009 to March 2010) the age categories of children were disaggregated into sub-categories. There were 95 children identified aged 16–17, whilst 61 were aged between 12–15. There were six children aged between ten and eleven and seventeen under the age of ten. Of these children, 60% were female and 40% were male. Again in the 2013 NRM statistics, the majority of children referred were between the age of 16–17 (57) with 34 between 12–15 with a nearly identical split between the gender of girls (59%) and boys (41%) as the earlier reports. Similarities in the type of exploitation experienced by these children were also identifiable in the 2010 and 2013 NRM. This indicates that there are some patterns emerging and the disaggregation of the statistics is starting to provide a clearer picture of the extent of the problem for UK authorities.

In relation to the implementation of UK trafficking legislation, the statistics reveal that the Sexual Offences Act 2003 is used on a much more frequent basis than section 4, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 with more prosecutions for trafficking which results in individuals being sexually exploited than in forced labour. For the period 2009–2011, the UK Government Report (2012) stated that there had been 311 prosecutions and 41 convictions for trafficking for sexual exploitation, in comparison to only 78 prosecutions and 8 convictions for labour exploitation. This difference may be an indication that more attention is given to the prosecution of those involved in sexually exploiting victims. Alternatively it may be as a result of a lack of sufficient evidence or it being more difficult to prove that trafficking has taken place where the type of exploitation involves other

forms of exploitation. In these circumstances defendants may be charged with other offences, such as assisting unlawful immigration or holding someone in forced labour, which may not involve the same difficulty in establishing the necessary proof required as trafficking.

Although there is a clear disparity between the convictions for sexual exploitation and labour exploitation, there has been gradually more attention being given to trafficking which results in exploitation of an individual's labour. In November 2008, Operation Ruby, which involved the East Midlands Foreign National Crime Team, Northamptonshire Police, the UK Human Trafficking Centre, the UK Border Agency (since abolished), the Serious Organised Crime Agency (now part of the National Crime Agency) and the Gangmasters Licensing Authority, resulted in over 60 people aged 15–67 being found picking leeks in a field in Holbeach, Lincolnshire. Eight people were subsequently arrested on suspicion of trafficking (Williams, 2008). Similarly, a husband and wife were charged with trafficking adult workers into the UK and exploiting their labour working in two care homes in Worthing (Worthing Herald, 2009a). They were charged under section 4, Asylum and Immigration Act 2004 and sentenced in July 2009 to two years' imprisonment and ordered to pay £25,000 in legal costs (Worthing Herald, 2009b). The individuals exploited in the care homes were not permitted to see a doctor whilst working for the couple and their illegal status in the UK was employed as a deterrent for them to go to the police to report their exploitative situation.

Operation Ruby was clearly focused on organised crime. Similarly, the trafficking and exploitation of individuals in care homes involved an element of organised crime because employment agencies made the referrals. Although there is some progress being made in tackling labour exploitation and similar operations have taken place, the focus still remains primarily on organised crime. This is not only evident through Operation Ruby, but other Police Operations in the UK such as Operation Maxim (2008), Operation Glover (2009), Operation Acumen (2010), and Operation Pentameter 1 and 2. This results in the neglect of reporting in the statistics the more informal trafficking arrangements, where individuals who are not part of organised criminal groups are responsible for trafficking. The situations described above involved exploitation of individuals in public settings rather than private households or hidden environments and although the exploitation was still carried out in a clandestine way, did require individuals to be in public view whilst being exploited. This is not the case for all trafficking victims where they can be hidden out of sight of the public eye. This exacerbates the problem of obtaining an accurate perspective, of the various forms that trafficking takes, through statistics alone.

The collection of data by the UKHTC has provided

some insight into the various forms of trafficking. The National Referral Mechanism (SOCA, 2012) appears to be having a positive effect on the collection of data relating to trafficking victims within the UK. There are some elements that could further improve the data. The current categories of exploitation could benefit from further disaggregation, for example, the category of forced labour could detail the specific exploitation experienced such as agricultural, factory work or cannabis cultivation. Details of locations within the UK where victims are discovered would assist in targeting particular forms of trafficking in specific geographical areas. Data detailing the nationality of defendants could be collected in order to assess whether there is a direct link between nationalities of victims and traffickers. This in turn may provide opportunities to identify particular countries of origin and facilitate more opportunities than are currently available for effective co-operation in preventative measures. If given time to develop, the National Referral Mechanism and the corresponding reports have the potential to provide a much more detailed picture of the current trafficking problem in the UK and eventually identify more concrete trends, information and knowledge.

4. Signs of Progress and Future Steps to Improve Data Collection

Some attempts are being made to improve data collection such as the change of approach which is evident in the 2014 US Report. It moves away from providing generalised figures to focusing on individuals and their experiences and provides extensive useful insights that statistics alone cannot provide. Apart from the US annual reports, the International Labour Organisation's (ILO) figures are the other statistics frequently cited. In relation to trafficking, the ILO stated in 2005 that 12.3 million people are in forced labour throughout the world including, at a minimum, 2.45 million people trafficked into forced labour each year.⁴ In the latest ILO report (2012b) those in forced labour, which includes those trafficked into this situation was 20.9 million, however unlike the 2005 report there is no separate breakdown for those who are in forced labour as a result of trafficking. It is important to note at this point that the ILO 2005 and 2012 statistics are not comparable due to the difference in methodology used to collect the data, this is something the ILO themselves recognise. There is however, in some cases, more evidence of and attempts to collect data which is disaggregated in terms of both victims and traffickers by gender, age and form of exploitation as well as citizenship and in some cases the type of assistance and protection provided to victims (for example, Eurostat,

⁴ The figure of 2.45 million is the number of those in forced labour as a result of trafficking as reported by ILO (2005).

2014). This level of disaggregation does need to be consistently applied across all data collection in order for a more holistic picture of human trafficking to emerge.

The UNODC (2014) sought and received advice from a number of experts with the ultimate aim of creating "a methodologically sound estimate of the global number of trafficking victims", which it was concluded would require "significant resources and a long-term perspective". In addition, the experts encouraged UNODC to

...try to take advantage of existing data collection vehicles by making efforts to have relevant trafficking in persons-related questions included. This is particularly relevant for industrialized countries as these often carry out various national surveys with some regularity. There are also some United Nations-led surveys that could be used similarly.

The ILO also aims to produce the most up to date statistical information as part of the ILO strategy 2012–2015. This involves setting up a Global Slavery Observatory which would act as "a clearing house" for all data on forced labour, slavery and trafficking. In turn this could, argue the ILO (2012a), be used to "inform investment decisions and to measure the impact of action against forced labour by monitoring the change in prevalence across countries and regions" and would "...enable evidence-based policy making at country level".

In terms of signs of progress within the EU, this in some part can be seen with the Strategy towards the Eradication of Trafficking in Human Beings (2012) covering the period 2012–2016 which was adopted by the Commission 19 June 2012. A particular aim is for the development of an EU wide system for data collection and publication of this data with sufficient disaggregation. As highlighted in the Eurostat (2014) report, the EU Commission will work together with the Member States of the EU as well as national rapporteurs or equivalent mechanisms with the aim of the collection of comparable and reliable data.

In terms of the UK, the government have recently published the UK Modern Slavery Strategy (2014) which sets out the approach the UK will take over the coming years to ultimately significantly reduce the rate of modern slavery in the UK and to strengthen international collaboration. The Strategy has four main parts:

- (1) Prosecuting and disrupting individuals and groups responsible for modern slavery (Pursue);
- (2) Preventing people from engaging in modern slavery crime (Prevent);
- (3) Strengthening safeguards against modern slavery by protecting vulnerable people from exploitation and increasing awareness and resilience against this crime (Protect);
- (4) Reducing the harm caused by modern slavery

through improved victim identification and enhanced support and protection (Prepare).

In terms of data collection, the NRM remains the method the UK will continue to use and the UKHTC as a competent authority will coordinate the collection of the data available. As well as the Modern Slavery Strategy, the UK currently has the Modern Slavery Bill 2014–2015 progressing through Parliament which, if enacted, will consolidate the UK's current legislation relating to trafficking and slavery offences; create two new civil orders to prevent modern slavery and make provision for the protection of modern slavery victims.

All these indications of progress are promising signs that the issue of human trafficking will remain high on the political agenda; however it is not guaranteed to ultimately improve the quality and comparability of data collected. With the ILO, UNODC, the EU and national authorities all intending to collect data on the phenomenon, the disparate mandates and aims of this data collection still remain, as discussed earlier. If improvements are to take place and a concerted effort made to ultimately provide truly comparable data, there needs to be discussions taking place with all key actors at all levels. This discussion needs to find agreed parameters of what data is being collected, with consistently agreed and applied definitions of each of the terms involved as well as a uniform methodology being used at each level of data collection. Currently with each of these bodies intending to collect data in the future, there is still the problem that this could lead to sets of data which include instances of victims being double-counted or trafficking being still being subsumed into forced labour data, which will result in similarly flawed data as is currently available.

5. Conclusions

This article has illustrated that the generalisations made about the extent of human trafficking are unconvincing. There is no clear evidence that determines the extent of the problem, but this is unsurprising given the inherently hidden nature of trafficking in human beings. Despite the problems with data collection, there are attempts being made to improve the process, reliability and comparability of the data, however more needs to be done.

The definition contained within the Trafficking Protocol and the various terms contained within it need clarification and consistent application, as do the indicators used to collect data. There needs to be detailed descriptions of how the data is gathered and any limitations of the method employed needs to be acknowledged and clearly explained in order for more effective policies to be implemented. Key actors at all levels must work towards creating clear parameters and levels of disaggregation for data collection and only by

working together and being brutally honest about the limitations of the data can a more effective system be developed which is consistently applied in all countries throughout the world. Although it may take some time to reach a consensus and apply it in practice, it may eventually result in data which is internationally comparable, which in turn would allow more appropriate legal and policy responses to reflect the trends exposed within each country. If a system of data collection is implemented correctly this may also reveal a more diverse set of trafficking situations and implementation of policies that more accurately reflect the varied experience of all trafficking victims. Coupled with this, is the need to improve the monitoring and evaluation of both data collection and the impact of responses taken, to enable countries to know whether the policies and activities they are undertaking are actually effective. By working closely together to strive to develop one methodologically sound approach to data collection it may enhance the opportunities to share best practices within the international community. Any country that has not already done so should ensure that legislation is in place to deal with all variations of trafficking that can occur, as doing so will ultimately improve the possibility of collecting comparable data.

Each Member State of the EU should guarantee that the obligations under the Council of Europe Convention are being met to ensure a central monitoring unit exists to record all incidences of trafficking in human beings in each country. Collection of data at regional, national and international level needs to be systematically collected with one centralised body at each level taking responsibility. Without accurate statistics, disaggregated by age, gender, country of origin, nationality, type of exploitation, etc., policies are formed which are not necessarily going to most effectively deal with this problem and capture the full range of the experiences of trafficking victims. If managed effectively and sufficient disaggregation of the information is undertaken, this is an opportunity to provide in the longer-term, a more accurate picture of human trafficking. At UK level, the activities of the National Referral Mechanism and its data collection role has the potential to develop understanding of human trafficking, identifying trends and patterns which over time could assist in the creation of better informed policy-making. Human trafficking is such a complex phenomenon involving so many different elements and forms of exploitation that it is unrealistic to expect that statistics alone can ever completely and accurately inform policy responses. What is important is that data continues to be collected to assist in building the knowledge base and providing as detailed a picture as possible. Only when a consensus is reached, by the International community, in terms of exactly what data should be collected and the extent of disaggregation necessary, with each country taking the same unified and methodologically

sound approach to data collection, can a true comparison be made between the various countries throughout the world to develop a more targeted and cohesive international response to human trafficking.

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Conflict of Interests

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Article

Ungendering and Regendering Shelters for Survivors of Human Trafficking

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Abstract

This article is based on intensive fieldwork in the two Israeli shelters designated for victims of human trafficking and slavery. The shelters, one for women and one for men, are a refuge for survivors of sex trafficking; labor migrants subjected to severe exploitation by their employers; and asylum seekers who arrived in Israel after experiencing severe physical and emotional abuse at the hands of kidnappers and smugglers *en route* to Israel. The study included interviews with policy makers and professionals, and with women and men who resided at the shelters, as well as an analysis of the relevant legislation and official reports. The article explores the problematic gendered differentiations between the two shelters. Most significantly, while support for residents of the shelter for women is anchored by emotional and psychological rehabilitation, residents of the shelter for men do not receive any therapeutic support. At the same time, while staff in the shelter for men put significant effort into the reintegration of the men into the labor force, the women's employment prospects receive less attention. Based on these and other findings, the article cautions against gender-biased rehabilitation services for victims of human trafficking and slavery, and calls for a gender-sensitive rehabilitation theory and practice.

Keywords

asylum seekers; gender; human trafficking; Israel; labor migrants; rehabilitation; sex trafficking; shelter; slavery

Issue

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1. Introduction

Since the late 1990s, Israel has been a part of the global phenomenon of human trafficking (Cavaglioni, 2010; Ezioni, 2013; Levenkron & Dahan, 2004), defined by the United Nations as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving

of payments or benefits to achieve the consent of a person having control over another person, for the purpose of...the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (United Nations, 2000, article 3(a)).

The nature of human trafficking in Israel has changed significantly over the last few decades, and remains a dynamic phenomenon. For a period of about ten years and up until 2006, Israel was a prime destina-

tion for traffickers who smuggled thousands of women from the former USSR into Israel for the purpose of prostitution. While this phenomenon was stopped thanks to active measures taken by the Israeli authorities, there still remain tens, if not hundreds, of survivors of trafficking for the purpose of prostitution living in Israel, no longer trafficked, but still in need of rehabilitation (Haikin & Safran, 2011). Beyond this, over the last two decades Israel has become a destination country for tens of thousands of migrant workers, especially Asian men working in agriculture and Asian women employed as carers for the elderly (Immigration Authority, 2013). Some of these labor migrants are subjected to extreme exploitation at the hands of their Israeli employers (Nathan, 2009). Additionally, since 2006 about 65,000 people have crossed into Israel from the Sinai Desert in Egypt, seeking asylum as a consequence of war and poverty in their native countries in Africa (Immigration Authority, 2013). Some of these people were tortured by kidnappers, intermediaries and border smugglers in both their home countries and *en route* to Israel. Torture included forced labor, physical violence and rape, employed, in some cases, for the purpose of extracting ransoms from the victims and their families (Hotline for Migrant Workers, 2011).

In the face of these immigration-related abusive phenomena, Israeli authorities decided to take a firm stance against human trafficking. Their efforts were indeed recognized by the United States' Trafficking in Persons Reports (TIP), which have upgraded Israel from the lowest tier of compliance in 2001 to the highest in its last two reports (Hacker, 2015).

According to international norms, attempts to address human trafficking should incorporate three main spheres of activity: preemptive actions to prevent trafficking; the prosecution of traffickers; and the protection of victims and assistance in their rehabilitation (Gallagher & Chuang, 2012). This article focuses on the third sphere of activity. One of the objectives of the UN Convention against Transnational Organized Crime (the Palermo Protocol), signed by Israel in 2001 and ratified in 2008, is: "To protect and assist the victims of such trafficking, with full respect for their human rights" (United Nations, 2000, article 2(b)). The protocol also states that "each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons" (United Nations, 2000, article 6(3)). These measures relate, in particular, to the provision of appropriate housing; counseling and information regarding legal rights; medical, psychological and material assistance; and employment, educational and training opportunities. Signatory states are also required to take into account the age, gender and special needs of trafficking victims; to endeavor to provide for their physical safety while they are within their sovereign territory; to develop legal avenues for

the compensation of victims; and to consider adopting means to permit victims of trafficking to remain in their territory, temporarily or permanently, in appropriate cases (United Nations, 2000, part II).

The most significant step taken by the State of Israel to protect and assist in the rehabilitation of victims of trafficking and slavery who are not Israeli citizens is the establishment and operation of two shelters (Israeli Government, 2002, 2007). In 2004, the Israel Ministry of Welfare opened Ma'agan (in Hebrew: Harbor), a shelter for women trafficked for prostitution. The shelter is run by a Non-Governmental Organization (NGO), but is fully funded and supervised by the Ministry. In 2009, the Atlas Center was established, in similar manner, as a shelter for victims of slavery and of human trafficking for the purposes of slavery and forced labor. In practice, the two shelters operate according to the gender of the victims, rather than the types of offences committed against them. They are intended to assist "adult men and women and their children who are the victims of trafficking for prostitution, slavery and forced labor, and who require physical and psychological protection, therapeutic, legal and supportive treatment and accompaniment toward their rehabilitation and their return to an appropriate alternative circle of work, or ahead of their return to their country of origin" (Ministry of Welfare, 2008), (on the definitional uncertainty related to the question who is a victims eligible for rehabilitation, see Hacker & Cohen, 2012, pp. 58-68). Recently, and after the study reported here was concluded, a third shelter for women was opened, as well as a day center for victims of trafficking who do not live in the shelters (Hacker, 2015).

The establishment of special shelters for the victims of trafficking, with full state funding and supervision, is a pioneering step by the State of Israel, and is rare in the global context. As will be detailed in the next part of the article, in most other countries there are no special shelters for victims of human trafficking; where they do exist, they only serve victims of sex-trafficking, and are not necessarily supervised or funded by the state. Notwithstanding, other than public reports produced by the staff of the Israeli shelters (e.g., Davidovich, 2009; Goltsman, 2010), little was known about the assistance and services they provided for their residents, before research conducted by the first author and the late Prof. Orna Cohen, which yielded the findings reported in this article. The objectives of this research project, conducted in 2010 and 2011, were to examine the needs of the populations accommodated by these two shelters; to examine the care provided for them; and to make recommendations for improving policy regarding the rehabilitation of victims of human trafficking, in Israel and in other countries (Hacker & Cohen, 2012).

One of the most important findings of the study

was that there was disagreement and confusion as to what was meant by the “rehabilitation” of the victims of trafficking. Unfortunately, the discursive meaning of “rehabilitation” can be influenced by political interests and motivations. For example, the Israeli government supports short-term rehabilitation followed by deportation; NGOs working with victims, and many of the survivors themselves, support long-term rehabilitation and residency permits (Hacker, 2015). No less important is the lack of clarity concerning the meaning of rehabilitation among therapeutic professionals, caused by a lack of experience and know-how regarding the rehabilitation of victims of human trafficking and slavery. Indeed, the professional staff at the shelters interviewed for the study testified that without clear theory and rehabilitation models tailored for victims of trafficking, they were obliged to make attempts, through “small steps as we moved along”, to establish intervention tools, based on existing therapeutic models relating to other populations, such as battered women and soldiers suffering from Post-Traumatic Stress Disorder (PTSD).

In this article, we will focus and elaborate on the gendered dimensions of these attempts. We will argue that important practices conducted and services provided in the shelters are problematically gendered, and we will call for a gender-sensitive rather than a gender-biased rehabilitation theory for victims of trafficking.

In the next part of this article, we provide a literature review of the existing rehabilitation services for victims of trafficking around the world, and point to the lack of a rehabilitation theory and models designated for the different kinds of trafficking suffered by women and men. The third part of the article details the study's methodology, and the fourth part explores the findings related to the gendered practices employed in the two Israeli shelters for victims of trafficking. Finally, the concluding discussion connects the findings to theories on gender-sensitive therapy, and proposes basic guidelines for gender-sensitive rehabilitation theory and practice for victims of trafficking.

2. Literature Review

As noted in the Introduction, “rehabilitation”, is a vague, elusive and dynamic term that can be—and is—defined in different ways by different bodies in keeping with their worldviews and interests. Nevertheless, there is a general consensus among professionals that the process of rehabilitation can mitigate psychological damage and enable the victims to regain their lost rights (Armstrong, 2008). Moreover, trafficking victims who do not receive protection and rehabilitation find it difficult to free themselves from the vicious cycle of suffering and exploitation that they find themselves in due to their life circumstances. Without the opportunities afforded by rehabilitation, they are liable to return to situations which may leave them vulnerable to repeat

trafficking (Turner & Kelly, 2008).

The rehabilitation of victims of trafficking may range from attention to basic needs, such as housing, food, clothing and emergency medical treatment, to comprehensive and long-term assistance that may include psychological support, legal advice, medical treatment, education, vocational training, work placement and reintegration (Brunovskis & Surtees, 2007). As mentioned in the Introduction, international norms expect countries to work within the more holistic end of this rehabilitation spectrum.

Unlike in Israel, most rehabilitation services around the world designated specifically for victims of trafficking are intended only for women survivors of trafficking for the purpose of sexual exploitation. Rehabilitation services for other populations—such as women, men and children who are victims of trafficking for slavery or for forced labor—are less common (Hacker & Cohen, 2012), possibly because the current global phenomenon of human trafficking for slavery and forced labor has only been recognized internationally in recent years (Aronowitz, 2009). An additional factor may be the problem of self-identification as a victim: men who have been exploited in a way that correlates with the international definition of trafficking are, nevertheless, less likely to define themselves as victims (Aronowitz, 2009). Moreover, Blanchet (2002), who has examined gender-based aspects of the offense of human trafficking, argues that in conceptual terms, women are more easily identified as victims of trafficking because society is accustomed to perceiving women as victims subject to control by others.

Various types of rehabilitation solutions have been provided to victims of sex trafficking in different countries, including half-way houses, hostels, apartments, closed and open shelters, emergency short-stay shelters and independent homes for victims at the reintegration stage of rehabilitation (Bjerkkan, 2005). A high level of variance can be found between different shelters offered to sex trafficking women in terms of security levels, procedures, and the extent to which professional staff intervene in the victims' lives. As a report by the United States Agency for International Development (2007) has noted, each shelter is unique.

Since designated shelters for female and male survivors of human trafficking are not always available, survivors are sometimes referred to shelters and other frameworks intended for other disempowered populations, such as homeless persons, refugees or victims of domestic violence (for a further review of rehabilitation services in different parts of the world, see Levine-Fraiman in Hacker & Cohen, 2012, chap. 2; Locke, 2010; US State Department, 2014; United States Agency for International Development Report, 2007). It is important to note, however, that despite the presence of such services, only a small percentage of trafficking victims around the world actually receive assistance (Bales & Soodalter, 2009).

Different strategies are used to rehabilitate survivors of human trafficking. As will be detailed below, social workers in the Israeli shelter for female victims of trafficking have adopted Herman's model of trauma and recovery (Herman, 1997), and the concept of "therapeutic community" (De Leon, 2000). Other accepted models, such as Bronfenbrenner's (1979) ecological theory and the posttraumatic growth theory (Bhushan & Hussain, 2007) have also been used to assist victims of trafficking (Carter, 2012; Twigg, 2012).

Although there is a growing body of literature that focuses on therapy for victims of trafficking (Shigekane, 2007), this article specifically concentrates on the gendered aspects of rehabilitative practices and theory, which have so far been neglected. While it may be that shelters around the world assisting victims of trafficking are implementing gender-sensitive practices, this is neither documented nor conceptualized. The study reported here seeks to begin to address this lacuna.

3. Method

Due to the complex and dynamic nature of the research field governing rehabilitation services for victims of trafficking in Israel, the study employed qualitative research methods that allowed for the in-depth, holistic and naturalistic investigation of practices and justifications:

Interviews were conducted with two groups:

(1) Victims: 10 women staying in the shelter at the time of the interviews (four from the former USSR, two from the Philippines, two from Nigeria, and one each from Eritrea and India); five women who had previously stayed at the shelter (three from the former USSR and one each from China and Brazil); 11 men staying in the shelter at the time of the interviews (nine from Thailand and one each from China and Eritrea); and 4 men who had stayed at the shelter previously (two each from Thailand and Nepal).

The ages of the victims ranged from 19 to 46 (mean = 33 for men, 34 for women). Their period of residence in Israel ranged from between several months (for the asylum seekers from Africa) to more than 15 years (for some of the women trafficked for prostitution); their period of residence at the shelter ranged from several weeks (for the agricultural laborers) to more than two years (for a few of the women trafficked for the purposes of prostitution). Most of the interviewees were not fluent in either English or Hebrew, so in those cases the interviews were conducted with the assistance of a translator;

(2) Policy Makers and Professionals: 16 policy makers and professionals in official bodies ($n = 12$) and in Non-Governmental Organizations ($n = 4$), who participated in the development and execution of policy—or who challenged it—relating to the rehabilitation of victims of human trafficking in Israel. (For a full list of names and positions, see, Hacker & Cohen, 2012, pp. 14-15.)

In addition to the interviews, group discussions were held with the staff of the two shelters (the manager of the shelters, the chairman of the NGO running the shelters, the housemother of the shelters, 3 social workers [2 from Ma'agan and 1 from Atlas] and 2 coordinators—one from each shelter). Finally, extensive written material, including laws, Parliament protocols, governmental decisions, ministerial directives, court decisions, and official and NGO reports, were analyzed.

Forty of the forty-six interviews were recorded and transcribed, and were analyzed together with stenographs of the other interactions and with the legal documents and reports (the remaining six were not, due to the interviewees' reluctance to be recorded or due to technical failures).

In order to address the challenges of non-harmful research with victims of trafficking and of obtaining their trust (Bosworth, Hoyle, & Dempsey, 2011; Cwikel & Hoban, 2005), the present and previous residents of the shelters were provided with a detailed written explanation of the study, in their native language, before their informed consent was sought, and were not questioned about their past before admission to the shelter, in order to avoid emotional distress. With their permission, information about their trafficking and other abusive ordeals before admission to the shelter was obtained from social workers at the facility. Moreover, the trafficking victims interviewed are all referred to in this article by pseudonyms, in order to protect their privacy.

As noted above, the findings reported here were gathered mainly during the period 2010–2011. Since this research field is highly dynamic, it is possible that some of the aspects reported here have already changed, thus justifying additional and ongoing research.

4. Findings

The two studied shelters are situated next door to each other, in a middle-class neighborhood in a city in Israel's central region. They are both part of the same apartment complex, and have been converted to suit the needs of a structure that includes rooms for the residents, public space for assembly, cooking and eating, and offices for the staff. Each shelter has a small yard, and a high fence that both separates it from the other shelter—so female and male residents will not share the same space—and that distinguishes it from the street. Each shelter also has a guard at the entrance, to monitor the comings and goings of the residents and of visitors.

Interviews with the residents confirmed that in both shelters they were provided with a comprehensive spectrum of services, including adequate housing, a sufficient and varied diet, generous medical care and free legal aid covering a wide range of issues relating to

their presence in Israel. Consequently, in both shelters the residents enjoyed significant physical rehabilitation. Notwithstanding these important and impressive similarities, the study exposed the gendered aspects of the shelters' operation, which, we will argue, are problematic. These aspects—especially those related to emotional and employment rehabilitation—should be addressed locally, but should also serve as a warning sign to authorities and professionals in other countries striving to assist the victims of trafficking.

4.1. *The Shelters' Names*

The gendered aspects of the shelters' operation are symbolically manifested in the names chosen for them by those involved in their establishment. The governmental committee on human trafficking named the shelter for women *Ma'agan*—Hebrew for a harbor, anchorage. This name signifies the women's need for protected accommodation, a place of refuge from the tempestuous and dangerous world they have emerged from. Like boats steered into a harbor, the name *Ma'agan* symbolizes the need of the women to be secured to the shelter for protection and repair. The shelter for men, on the other hand, is not even titled a shelter, but rather a center—the *Atlas* center, a name chosen by the NGO responsible for its operation. According to Greek mythology, Atlas was one of the Titans who revolted against the Gods. His punishment was to carry the world on his shoulders. At the present time, Atlas symbolizes a man tasked with bearing a heavy burden, but who manages to do so thanks to his strength, diligence and resilience. Hence, the name *Atlas* acknowledges the heavy burden carried by the male residents due to the severe abuse they had suffered, but at the same time portrays them as strong enough to face their condition on their own, and able to endure this for lengthy periods.

Hence, the shelters' names—even if selected unconsciously—fall victim to the known patriarchal trap that portrays women as helpless and passive victims who need to be rescued by others, and men as strong and active agents who can survive on their own (Halley, 2013). The names also echo the gendered patterns of assistance request, documented in the literature, in which women feel more comfortable asking for help—as such asking correlates with the social perceptions of femininity—while men find it harder to ask for emotional assistance, as manifestations of neediness threaten patriarchal perceptions of masculinity (McCarthy & Holliday, 2004; Yousaf, Popat, & Hunter, 2014).

4.2. *Freedom of Movement*

When the shelter for women was first established, the police branch responsible for the fight against human

trafficking asked for it to be operated as a closed facility. The law-enforcement rationale behind the request was the need to protect the women from their pimps, and to ensure that they remained contactable in order to testify against their traffickers in court. However, the rehabilitation rationale—which objects to the reincarceration of the victims of trafficking, and emphasizes the importance of freedom of movement as an aspect of the victims' recovery of self-esteem (Herman, 1997) prevailed, and both shelters are now defined as open facilities.

However, the two shelters have different rules relating to their residents' freedom of movement. The rules for men are very simple—they are allowed to be out of the shelter during the day but must return by midnight, unless given permission to sleep outside the shelter. With the women, the rules are much more complicated. If they work outside the shelter, they are allowed to leave and return as their employment conditions dictate. But women who are not working are only allowed out of the shelter between 3 p.m. and midnight on weekdays. On Fridays, they may stay out until 5 a.m., and on Saturdays they are allowed out of the shelter from 10 a.m. through midnight. The women are also permitted to sleep away from the shelter twice a month; if they wish to stay away for additional nights, they must receive permission in advance. The guard and the coordinators maintain a list of women with permission to leave the shelter "after hours". The contracts signed by the residents include sanctions for the violation of these restrictions, including the temporary revocation of the right to leave the shelter and the right to pocket money.

Shelter staff justify the restrictions imposed on the unemployed women's freedom of movement as necessary for the establishment of a stable routine—including group meetings at fixed times—crucial, in the staff's opinion, for the process of rehabilitation. While the men are perceived as already possessing the life-skill qualifications of order, self-organization and self-discipline, the women are perceived as needing to be socialized with these qualifications through an imposed daily schedule within the shelter. As Ada Pliel-Trossman, who supervised the establishment of the shelters on behalf of the Ministry of Welfare, said, the goal of the contract drafted for the women in *Ma'agan*, was to establish "boundaries" for the "breached":

"We drafted a contract with 'do' and 'don't'..., boundaries are part of the rehabilitation process. We want to shape normative lives, and to help them place boundaries upon themselves. Indeed, their boundaries were completely breached, internally and externally. This is one of the ways to help them".

While this might be true for some of the women and for some of the men, such generalizations are extremely problematic as they discriminate against the women when compared to the male residents' greater autonomy; they are also potentially harmful both for those women who would benefit from greater autonomy, and those men who might benefit from a structured daily schedule.

4.3. *Pocket Money*

As part of the package of services provided by the shelters, women receive approximately \$38 a week in pocket money. Men receive only half of this sum. It is unclear whether the presumption is that women have more expenses, or that men have independent sources of income or savings. In fact, men are less likely than women to be employed while in the shelter, as most were brought to Israel to work in the agriculture sector, and would not be granted work permits for employment in the city or in another occupation.

As it is, for the unemployed residents—and certainly for the men—the pocket money is not sufficient for cell phone calls, local travel, cigarettes, and the purchase of products not provided by the shelter. One unemployed man complained in his interview, like several other male residents: "I am bored. There is not enough pocket money. This closes me in. I have no other money". Without substantial pocket money the male unemployed residents—even more so than the female unemployed residents—are confined to the shelter, and cannot afford to travel anywhere or to subscribe to any kind of leisure activity.

In our opinion, it would have been much more reasonable to provide generous pocket money for those unemployed residents of the shelters, both women and men, and not to give pocket money to those able to work for pay.

4.4. *Emotional Rehabilitation*

The most alarming difference between the shelters lies in the fact that the men do not enjoy the therapeutic services provided for the women, while the women do not enjoy the benefits of the emphasis placed on employment in the men's shelter. This difference strikingly echoes the modern cultural gendered biased division between the emotional female and the breadwinner male (Williams, 1999).

As for emotional therapy, it was evident from the interviews that the concept of rehabilitation relates mainly to women trafficked for the purposes of prostitution. It was evident that the therapeutic professionals were still at an early stage of developing a theory for the other groups of women, and that almost no effort had been put into conceptualizing a rehabilitation theory relevant to the men.

In Ma'agan, each woman is assigned to a social worker, who initiates individual therapeutic sessions to assist her with coping with her trauma. Not all women cooperate, and language and cultural barriers are significant challenges. In particular, the staff do not speak the languages of the newcomers from Africa, and must be assisted by a translator. Moreover, the unfamiliarity of African and Asian women with Western concepts of therapeutic intervention creates a challenge for the staff. This challenge calls for the employment of cultural-sensitive therapeutic tools, but these are yet to be developed in the shelter. Still, individual therapeutic sessions are perceived by the staff as an integral and necessary part of the rehabilitation process of the female residents.

The social workers in the women's shelter seem to have adopted Herman's three stage model of trauma and recovery (Herman, 1997). The first stage centers on bodily safety and emotional stability and control, which are secured through physical rehabilitation and daily routine in the shelter. The second stage includes processing bad memories and experiences in order to relive past traumas—the main source of difficulty for the victims who, in many cases, are afraid or reluctant to tell their stories. The third stage—which not all residents within the shelter reach—aims at relationships rehabilitation and creation. The staff members see their function as facilitating a warm and supportive environment for the women, and as developing the basis for trust and a genuine and positive human relationship without preconditions. The objective is to create the sense of a secure foundation in place of psychological disturbance and confusion—what one woman residing in the shelter referred to as a "mess".

The social workers describe the process of therapeutic intervention as long and uneven. In the early stages, it is often difficult to persuade the women to engage in personal conversations. Subsequent stages seek to connect the women to their own difficulties and fears, to strengthen their emotional state, and to integrate them in activities in the shelter and elsewhere. During the early meetings, the women are remote, frightened and suspicious. Each conversation in this stage lasts about five minutes, but, in some cases, the therapeutic meetings grow longer as time passes and trust is developed. If, indeed, this happens, more significant emotional content begins to emerge. Such progress is uncommon, however. In many cases, the women continue to present a simplistic stance, maintaining that "everything's okay". One of the women trafficked for prostitution, assisted by a social worker at the shelter and a social worker at a health clinic in which she was treated, described how hard it was for her to open up during therapeutic sessions, and how rewarding it was:

"When I first began the sessions, I felt bad about

letting it all out. It hurt, I cried a lot...It took me six months. But she [the social worker at the clinic] was so good; she understood that it was hard for me, so she moved at a very slow pace. Now, after therapy with both of them [the social workers at the clinic and at the shelter], things are much calmer. And I can even think more easily. It's better, and I think I am also a better mother to my child".

Another therapeutic concept employed by the staff at Ma'agan is the "therapeutic community". This concept aims to promote the future integration of the individual in society. Accordingly, the function of such a community—the shelter, for our purposes—is to provide the individual with the habits that will facilitate her or his integration into normative life. The emphasis is on norms and values like trust, concern for others, responsibility and honesty. These are basic norms and values that relate to any social framework in which the victims may find themselves. The community inculcates these values through daily activities emphasizing social learning. The difference between the community and the "outside" world is that the community promotes learning through a process of trial and error, offering a safe and accepting environment within which the individual can fail without repercussions. Thus the therapeutic method, in essence, is the community (De Leon, 2000).

In addition to daily routine, behavior rules and cooking and cleaning duty rosters, the concept of therapeutic community is manifested through group meetings, held in the women's shelter three times a week, on a fixed day and time. All the women in the shelter at the time are expected to attend the sessions, led alternately by the shelter's coordinator, the house mother or a social work student. The therapeutic importance of this framework lies in the ability to commit to a set schedule, to listen, and to give and receive feedback, though the content itself does not relate directly to emotional aspects. These sessions serve two practical purposes: they give staff the opportunity to update all the women about activities in the shelter, and they also enable the women to raise issues of concern relating to the daily routine in the shelter. The staff feel that this reduces tensions, releases pressure, and enables the women to talk respectfully to, and about, each other.

In addition to the general meeting, the group of women from Africa also meets separately, with the help of an interpreter. These meetings do not take place on a regular basis. According to the shelter's staff, this is so because these women find it difficult to get up in the morning (since they suffer from sleeping problems at night), and to follow a punctual timetable. They have to be brought individually and accompanied to the meeting. These sessions provide an opportunity for the group coordinator to explain, repeatedly, basic

technical matters and for the women to express their concerns.

Finally, in 2009 a voluntary empowerment group operated in the shelter, moderated by a Russian speaking woman who was also a recovering drug addict. The group operated according to the Twelve Steps method, and focused on diverse issues, such as insecurity, low self-esteem, intimacy, self-realization, sex work in the past, and changing behavioral patterns. According to the counselor, several difficulties emerged over the course of the work. These include the difficulty in encouraging ongoing and consistent participation; the difficulty in focusing on painful issues; and the reluctance of the women to "connect to their inner selves" (Davidovich, 2009). During the research period, efforts were made to find a counselor to run a new such group.

In the case of the men however, the professional staff at the shelter hold individual and group sessions only during the first few days of intake, with the help of interpreters. These sessions are mainly informational and organizational in content, and aim to help the new residents understand why they are at the shelter and what they can expect during their time there. Virtually no individual or group therapeutic conversations take place within the men's shelter. Indeed, though each shelter is designated for the same number of residents (35), the governmental tender for their operation requires that the NGO running them appoint two full-time social workers for Ma'agan, but only one full-time social worker for Atlas (Ministry of Welfare, 2008). Moreover, during the research period, the women's shelter staff indeed included two full-time female social workers, but there was no male social worker at the men's shelter, and its staff included only a solitary, part-time female social worker. No rationale was presented during the interviews or within the official documents as to why there were no therapeutic interventions in the men's shelter. After the fieldwork was concluded, a male social worker and a male instructor who spoke Amharic were added to the team at Atlas; this may have resulted in more attention being given to the men's therapeutic needs.

A case that demonstrates the problematic nature of the presumption that men do not require therapeutic intervention is that of Chen Gua Jie. Chen paid \$25,000 to what he believed was an agency that will help him get from China to Israel, to work in construction. However, he was cheated by human traffickers and was taken hostage in Egypt. He was kept prisoner for several months in the desert, in conditions of forced labor and physical abuse. During this period, the smugglers who held him hostage attempted, unsuccessfully, to smuggle him across the border several times. Chen escaped from the smugglers' camp and walked for 40 hours to reach the Israeli border. He was caught immediately after crossing the border and put

in a detention center. There, he tried to kill himself by swallowing a pair of scissors, out of desperation concerning his debts, his fear of imminent deportation to China and fears for the wellbeing of his family members. After the suicide attempt, he was moved to Atlas, the men's shelter, and had resided there for eight months at the time of interview. He did not receive any kind of psychological treatment, although his circumstances clearly demonstrate his need, and even though during the research interview he clearly stated his wish for therapeutic assistance.

Likewise, it was evident from the study that the men could have benefited from group meetings. During the research period, a violent fight broke out, between several residents from Thailand and one of the residents from Eritrea, over control of the remote control for the single television in the shelter. Not only were these men only interested in the TV channels transmitted in their different native languages, the lack of a common language makes it hard to resolve disputes verbally. Without routinized, mediated and translated group meetings to discuss such issues as how to divide TV time fairly among residents interested in watching different channels, it is impossible to address the male residents' practical needs emerging from the communal nature of the shelter. Moreover, an opportunity to create a "therapeutic community", which will address their emotional needs—caused by the abuse they suffered from before entering the shelter—is missed.

4.5. *Employment Rehabilitation*

While both shelters are aimed—among other targets—at assisting the residents in employment rehabilitation, the research findings point to a stronger emphasis on employment within the men's shelter. The staff at Atlas strive to find decent employers for the residents; support the men and help them maintain their jobs; and provide assistance if difficulties arise with the new employer, either because of language or cultural barriers, or due to problematic attitudes on the part of the employer. The staff perceive these functions as central to their role. Meir Hovav, chairman of the NGO running the shelters, observed during one of the group meetings we conducted with the staff of the shelters, during a discussion on the lack of emotional rehabilitation at Atlas: "At the moment we focus on alternative employment, finding them employment. Everything else is marginal".

Indeed, the staff's position is that once a work permit is issued and a decent employer located, the male residents should be integrated into the labor force. There was no indication that consideration had been given to the possibility that the victim might be in such a severe emotional state that employment could be emotionally harmful, and that rest and reha-

bilitation ought to be the immediate priority. Since most of the men at the shelter at the time of the study were labor migrants who came to Israel legally to work in agriculture, they left the shelter the minute a decent employer within the agriculture sector was located by the shelter's staff. Hence, only few of the men stayed at the shelter for more than a few weeks, regardless of the degree of abuse they suffered from previous employers and the degree of emotional distress they suffered as a result. Once in a new place of employment, they become obliged to work long and tiring hours, without emotional support.

It is important to note that all the men interviewed voiced a strong desire to go back to work, and were frustrated by the unemployment waiting period at the shelter. For example, one of the residents describes his feelings after being brought to the shelter by the police, after raiding his abusive employer:

A: I knew nothing. Later we asked the staff here, and they explained to us that we need to wait for police approval, and then they will help us with the visa and will send us to work outside. But it took a month or so before we received all the authorizations.

Q: And you consider this a long time?

A: Yes, a long time. I was scared...We spent a lot of time here [at the shelter], too much time, and all I had in my head was that I had no money to send home and no work, and I did not know what will happen, and when. Yes, it was a long time.

Many of the male residents had taken loans to come to Israel, and were desperate for sources of income to repay the loans, as well as to be able to send money home to their families. Notwithstanding, some may have been satisfied with jobs outside the agriculture sector, which would have allowed them to earn money while staying at the shelter and benefitting from rehabilitation services. Unfortunately, as mentioned earlier, the Israeli Minister of Interior, responsible for the issuance of residency and work permits, insists upon these labor immigrants remaining restricted to the agriculture sector.

For the asylum seekers in the shelters, securing a work permit and finding suitable employment is more difficult, as they were not officially allowed to enter Israel and come to the shelter without either residency or work permits. Thus, they tend to remain at the shelter for longer periods, and without income. Still, the freedom of movement they enjoy at the shelter allows them to take the risk of working illegally to earn money. This, of course, puts them at risk of deportation, and highlights the need for work permits—at least temporary ones—for all the residents of the shelters. Those who refuse to take the risk of working illegally

are in the same dire state as the unemployed labor migrants, as they also are desperate to earn money in order to pay their loans and to send money home.

For residents whose welfare might be at risk if re-integrated into the labor force, or who cannot work due to the lack of a valid work permit or other reasons, the clear need for an ongoing income source could be addressed by a temporary unemployment allowance, which would allow for a necessary period of physical and emotional recovery before reintegration into the labor force, and for the economic wellbeing so crucial in supporting emotional wellbeing.

This is also true for the women, as employment rehabilitation for many of them is even more complex than it is for the men. Many of the female residents have no occupation or profession, and may even lack basic employment skills. There is general agreement among policy makers and shelter staff that a key objective of rehabilitation is to provide the women with the work habits and vocation that will help them integrate into normative life after leaving the shelter, and particularly after their return to their countries of origin. Indeed, a vocation does not merely provide a livelihood, but also provides a sense of self-value, confidence and belonging (Rossoa, Dekas, & Wrzesniewski, 2010).

Since the opening of the shelter, reflection and resources have been invested in attempts to provide the women with courses meeting the needs of their countries of origin and commensurate with their wishes and abilities. Rinat Davidovich, the first manager of Ma'agan, describes these efforts:

"We consulted with organizations in the countries of origin: what did they think would be effective training for the women here, what could they learn here and do there? Because a woman can fantasize about something unrealistic, you see? I could teach the Thai women computers, but so what? What will they be able to do with these skills there? So, we wanted to do something effective, something worthwhile for them. So we traveled to meet women who had stayed with us and subsequently returned to their home countries, and learned from them what would help with reintegration".

These assessments resulted in courses in secretarial work, nail technology, cosmetics, cooking, sewing and hairdressing. Israeli Parliament Member Zehava Galon, head of the Parliamentary Committee for the Investigation of Trafficking in Women in 2000–2005, and the Parliamentary Committee for the Struggle against Trafficking in Women, which followed, in 2005–2008, recalled in her interview how critical she was of this choice of courses:

"I visited the shelter and I was told that they were

going to train the women in cosmetics and sewing, or something like that. And I said, 'What is this nonsense? They worked in prostitution, so they need to learn cosmetics? And, who is sewing these days?'"

Galon persuaded a leading bank to donate several computers to the shelters, and convinced the Ministry of Welfare to offer to the women a course in computer skills.

Vika Goltsman, director of the shelters at the time of fieldwork, emphasized the complex nature of the debate as to whether employment should come before training or vice versa, as well as the question as to whether the training should be adapted to employment opportunities in the women's countries of origin, or in Israel. These issues have been discussed since the establishment of Ma'agan without reaching any firm conclusions. The staff in the shelter focus its efforts on locating employers willing to train inexperienced women; locating and funding relevant vocational courses; and adapting vocational training to reflect the participant's level of spoken and written Hebrew.

Notwithstanding these efforts, and due to the heterogeneous nature of the population in the shelter in recent years, it is more difficult today than in the past to bring together a group of women who share a common language and are interested in studying a specific vocation. There is also a shortfall in funding for advanced diploma studies in fields such as baking or manicuring, for women interested in these fields. Most alarming is the finding that during the research's fieldwork period (a year and a half), no vocational courses were provided for the women in the shelter; and none of the women were sent to vocational courses outside the shelter, with the solitary exception of a basket-weaving course for residents from Africa, offered by an NGO assisting African asylum seekers. Moreover, since most of the women entered Israel without the requisite entry permits, the Ministry of Interior is hesitant and sometimes reluctant in issuing them work permits. Thus, there are several residents forced to stay at the shelter for months and even years, without the ability to work and earn money, at least legally. Even so, this acute situation did not lead to a decision to issue temporary work permits to all residents, or to give unemployment allowances for those not permitted to work.

Like the men, the women interviewed were preoccupied with their need for constant and sufficient income. In particular, they referred to the economic needs of family members in their home countries, and the financial demands they want—and are expected—to answer, such as school tuition or a sick mother's medical bills. For example, one of the women, who found work at a Sushi restaurant, said:

"I'm a single mom. I make sushi because my Mom is

very sick and needs an operation. She is already blind....That's why I send all my salary to my mother and my daughter".

In addition, it was clear from the interviews that an independent economic existence is crucial to safeguarding the women at the shelter from abusive relationships with Israeli spouses and from repeat trafficking, as will be discussed in Section 4.8 below.

4.6. Leisure Activities

The residents of Ma'agan and Atlas Shelters enjoy enrichment activities designed to help them adapt to life in the shelters, to fill their leisure time with meaningful content and to provide enjoyable experiences as part of the process of healing and rehabilitation. These activities include courses in Hebrew and English, cable television and the occasional organized tour outside the shelter. Interestingly, only the women's shelter is equipped with a library, and only the men's shelter has a courtyard big enough for ball games, and is equipped with a tennis table. Indeed, while the men organize group sporting activities, the women do not. This is but one example of the more individualistic nature of the women's experience in the shelter. Contrary to stereotypical perceptions of natural female bonding, the women do not participate in voluntary group activities, and usually bond—if at all—only with one other resident, usually of the same ethnic origin. Enmity between the different ethnic groups, which also correlates with the different kinds of abuses suffered by the residents, is evident in both shelters, creating an additional obstacle to rehabilitative and restorative residency in the shelters.

Notwithstanding the above mentioned and other leisure activities, the dominant atmosphere in both shelters is one of boredom and stagnation. The abundant free time, coupled with the absence of additional suitable activities—such as herb gardening, for example, or a television channel in Thai and latest newspapers from their countries of origin—all contribute to a negative impact on the residents of the shelters, particularly with those residents who are not permitted to work due to the lack of legal status. It is evident that the residents are not consulted about the activities that suit their needs and interests, including those due to their gendered preferences.

4.7. Motherhood, Fatherhood and Children

An obvious gendered aspect of the shelters is that Ma'agan is prepared to host residents' children, while no such provisions exist at Atlas. Indeed, between four and ten children have stayed in the women's shelter each year since its establishment. These children were born to women trafficked for prostitution, from rela-

tionships they had had with Israeli men. No child has ever stayed in Atlas. A common theme to both shelters is that the labor migrants and asylum seekers did not bear children in Israel. Notwithstanding, and as noted above, some of the residents belonging to the latter two groups do have children in their countries of origin. While some emphasis is put on the difficulties of long-distance motherhood and on maternal skills in the women's shelter, no reference to paternal responsibilities and sentiments was observed at the men's shelter.

4.8. Leaving the Shelter

Finally, the gendered differences between the shelters are also evident in relation to staff practice regarding residents who leave the shelter.

As mentioned above, at the time of the research, most of the residents in Atlas were labor migrants from Asia who came to Israel legally, to work in agriculture. In relation to this group, the staff members started, during the research period, to initiate visits to their employer's site. In the course of their visits, the staff members meet with past residents, ascertain that they are not being exploited, and provide a sympathetic ear if problems arise with the new employer. For example, the social worker at Atlas mentioned in her interview that one of the residents interviewed for the study was recently placed with a new employer, and that she had traveled to the south of the country to visit him and other former residents sent to the same employer. She reported that "everything is fine. They are very pleased".

Moreover, many of the men who leave the shelter continue to perceive it as a source of support and as a base to which they can return. They are grateful for this, maintain contact with the staff, and visit the shelter from time to time when they are in central Israel (in Israel, agricultural work is mainly in the north or south of the country). The staff at Atlas even allow former residents to sleep in the shelter and use its facilities occasionally, even after they have officially left to work with new employers.

The picture is very different in relation to past residents of Ma'agan. Women tend to leave the shelter for one of three main reasons: return to their country of origin; a relationship with an Israeli partner; or departure "without authorization", when women simply take their belongings and leave without giving notice. The research findings point to the absence of formal and consistent procedures for maintaining contact between the shelter staff and women who have left Ma'agan but who remain in Israel. Likewise, shelter staff do not always maintain direct contact with residents who return to their countries of origin. In many cases, if the woman who leaves the shelter does not initiate contact by means of telephone calls or letters, she becomes "lost" to the staff. However, in 2011 the

shelter staff sent a New Year's gift to the women with whom they had remained in contact.

These findings are troubling since victims of trafficking are invariably at risk of repeat abuse, whether in their country of origin or country of destination (Adams, 2011). In the first case, the lack of contact prevents staff from making sure that past residents have returned safely to their country of origin, and to provide assistance by contacting the relevant authorities and local NGOs if they suspect that she may be in danger. In the latter case, the fact that the women who remain in Israel do not perceive the shelter as a haven in times of need—unlike their male counterparts—can put them at risk if and when such a need occurs.

5. Concluding Discussion

The research findings show that while Israel is a rare example of a country that offers state supervised and funded shelters for survivors of trafficking and slavery, these shelters are problematically gendered. The women's shelter is centered on the notion that its residents are in need of emotional and basic life-skills rescue, less so of economic independence; the men, on the other hand, are perceived as fit for re-fulfilling their roles as breadwinners, regardless of the severity of the abuse they may have suffered from and its emotional consequences. As detailed above, this dramatic difference is compounded by other unjustified gendered differences related to freedom of movement, pocket money, leisure activities, parenthood, and follow-up upon departure of the shelter.

The starting point for the discussion of the findings presented above is the distinction between gender-biased therapy and gender-sensitive therapy. The American Psychological Association identified four general areas of gender bias in therapy: (1) Fostering traditional sex roles; (2) Bias in expectations and devaluation of women; (3) Sexist use of psychoanalytic concepts; (4) Responding to women as sex objects, including the seduction of female clients (APA, 1975, in Good, Gilbert, & Scher, 1990). The research findings indicate the existence of the first and second biases within the studied shelters. These biases include the tendency to reinforce the women's victimization rather than empowering them through financial independence; providing limited employment training opportunities, which reinforces gender stereotypes; limiting the freedom of movement of the female residents of the shelter; and emphasizing the male role as the breadwinner, at the expense of their emotional rehabilitation. We claim that these findings should serve as a warning for policy makers and professionals seeking to assist victims of trafficking and slavery, and that the frameworks established to provide such assistance should be carefully tailored as to become gen-

der-sensitive rather than gender-biased.

Gender-sensitive therapy is referred here as a synthesis of feminist therapy and gender awareness (Good et al., 1990). Although feminist therapy seems to have been designed for women, there is a growing body of literature to support the view that male clients can equally benefit from it. Feminism is constituted from a wide range of points of view, but there are several shared themes that underline feminism and the principles of feminist therapy. Feminist theorists and practitioners developed principles for gender-sensitive therapy. For example, Good et al. (1990) suggest employing the following five principles of gender aware therapy: (a) Regard conceptions of gender as integral aspects of counseling and mental health; (b) Consider problems within their societal context; (c) Actively seek to change gender injustices experienced by women and men; (d) Emphasize the development of collaborative therapeutic relationships - in the therapeutic process, the therapist helps the clients to discover solutions for themselves; and (e) Respect the clients' freedom to choose what is right for them, despite gender conceptions, political correctness or dogma. Another example of the principles of gender-aware therapy is offered by Dominelli and Campling (2002), who leans on several feminist theoreticians including Kate Millet, bell hooks, Patricia Hill Collins and Nancy Adamson, to develop a gender sensitive therapeutic view, based on: (a) The integration of personal and political elements of life; (b) Respect for women's diversity; (c) Seeking egalitarian forms of social relationships; (d) Acknowledging that the patriarchal social order serves both men and women badly, and therefore should be transformed. All these feminist principles can be used as an infrastructure for practitioners, including in shelters for victims of trafficking.

A counselor employing a gender-sensitive approach should also be aware of his/her own biases, concepts, experiences and beliefs towards femininity and masculinity. The counselor must be aware of the influence of the gender context on patient behavior, including the gender of the therapist her/himself (Deering & Gannon, 2005; Good, Thomson, & Brathwaite, 2005). Moreover, gender-sensitive rehabilitation interventions must take into account knowledge about gender, including gender constructs and socialization, and in particular must be aware of gender power relations (Chantler, 2005; Mejía, 2005). Power relations in the context of rehabilitation services for victims of trafficking present multiple facets: gender, ethnicity, nationality and social class-based power imbalances are all present. Even the fact that the rehabilitation center itself may be a governmental arm that the residents are dependent on—and may be suspicious of, due to their immigration status or past traumatic experiences with governmental bodies—is part of the power imbalance that the counse-

lor at the shelter should be aware of and address.

As noted above, gender sensitive therapy—which might take place in shelters and in other rehabilitation settings for trafficking victims—is especially attuned to female stereotypes. Women are culturally considered passive, needy for protection, economically dependent on men, and emotionally vulnerable (Gilbert & Scher, 2009). As the findings demonstrate, while the residents of Ma'agan receive generous emotional rehabilitation, vocational rehabilitation is less emphasized. A gender-sensitive approach to rehabilitation should recognize that women's economic needs are not inferior to men's. Hence, occupational rehabilitation is as valid and important for women as it is for men. Programs, for women as well as for men, which fail to provide a response to the need for victims of trafficking to earn an independent living are bound to fail. Rehabilitation should, as much as possible, include vocational programs, business development, loans to open businesses, and employment networking between victims and public and private organizations (Rosenberg, 2008). As our research demonstrates, working permits and unemployment allowances are crucial, and interlinked to the emotional, not just the economic, rehabilitation of victims.

The findings also show that women, more than men, are subjected to restrictive rules related to their freedom of movement. Likewise, in other countries, rehabilitation approaches that were common in the past, but are no longer acceptable, imposed significant restrictions on the autonomy and freedom of movement of trafficking survivors during their stay in shelters. (At the time, most of the residents of shelters were women trafficked for prostitution.) In some cases, women attempted to escape from the shelters, since they were held there against their wishes and perceived this experience as re-victimization (Levine-Fraiman in Hacker & Cohen, 2012, chap. 2). This line of thought correlates with Lee (2014), who explores the gendered practices of protective custody for trafficking victims in Asia, and problematizes the intersections of gendered systems of power and discipline under a paternalistic state. Arguments for “rescuing” trafficked survivors are typically articulated in relation to women and girls who are perceived as “unruly”, vulnerable to sexual exploitation, or in need of reform (Lee, 2014). The behavior of some of the survivors in the shelters—such as attempting to escape, or resisting therapy—can be understood using Scott's (1985) concept of “everyday resistance”. Everyday resistance is a practice entangled with power and domination. Indeed, shelters can be considered, in Goffman's terms (1961), as “total institutions” (DeWard & Moe, 2010). Providing emotional rehabilitation is an inherent challenge in a total institution. A feminist approach will encourage enhancing the freedom of trafficking survivors to choose their everyday routine and

to gain control over their lives post-trafficking.

It is important to further emphasize that gender sensitive therapy is highly relevant for men and not only for women. For example, the Gender Role Conflict (GRC) theory is applicable when using gender sensitive therapy with men. O'Neil, Good & Holmes (1995) define GRC as “a psychological state in which socialized gender roles have negative consequences for the person or others. Gender role conflict occurs when rigid, sexist, or restrictive gender roles result in personal restriction, devaluation, or violation of others or self”. Therapy itself is often incongruent with masculine stereotypes. In order to help therapists make assessments of men and to improve clinical interventions, GRC researchers offer a diagnostic schema with seven GRC assessment domains, including: (a) The therapist's self-assessment; (b) Diversity and oppression related to race, class, age, religion, ethnicity, sexual orientation etc.; (c) Men's defenses; (d) Men's emotionality and restrictive emotionality; (e) Men's distorted cognitive schemas about masculinity ideology; (f) Men's patterns of GRC and gender role devaluations, restrictions, and violations; and (g) Men's need for information, psycho-education, and preventive programs (O'Neil, 2008).

Moreover, as mentioned above, men usually tend not to participate in emotional therapy, even in times of hardship or in the wake of traumatic events (McCarthy & Holliday, 2004). Seeking emotional help conflicts with masculine expectations, which demand that men are strong, tough and independent (Yousaf et al., 2014). These stereotypes are constituted by feelings like shame in admitting they need help (Krugman, 1995). In many cases, there is a contradiction between a therapist's expectations for emotional openness and the masculine socialization which encourages the suppression of one's emotions (Cochran, 2005). Such gender norms may ultimately render men vulnerable to developing severe emotional distress (Cochran & Rabinowitz, 2003; Lisak, 2000). Therefore, close attention should be paid to the male residents of shelters and rehabilitation centers like Atlas, and to their need for emotional assistance. Turning a blind eye to their emotional needs replicates the gender norms which class men as “tough”, equipped to deal with emotional turmoil by themselves. The fact that there are hardly any rehabilitation centers in other countries for the male victims of trafficking and slavery (Levine-Fraiman in Hacker & Cohen, 2012, chap. 2), is also worth mentioning, since it is a strong indication that the emotional needs of these victims are not addressed worldwide.

Gender is a major aspect of identity and is the focus of this article; however, feminist theories on intersectionality (Dill, McLaughlin, & Nieves, 2007), remind us that rehabilitation services must take into account other aspects of identity and identity intersections, and must be sensitive to the different ethnicities, languages and cultures of the victims. As the examples of

Ma'agan and Atlas demonstrate, the legal terms "trafficking victims" and "slavery victims" relate to a heterogeneous population, which call for highly sensitive and adaptive therapeutic interventions. Culturally-sensitive rehabilitative work requires considerable knowledge, particularly in sensitive interpersonal areas such as the perception of authority, ways of requesting and receiving help, perception of time, and emotional restrictions (Caldwell & White, 2000; Liu, 2005; Sue, 2000). For example, symptoms of emotional distress may manifest themselves in different ways, influenced by cultural background (Jenkins, 1996; Schubert & Punamäki, 2011). In addition, as Liu (2005) reviewed, the desire to seek emotional help could be hindered by the fear that the counselor may not understand the norms and values of the client, or a lack of knowledge concerning the mechanisms of therapy.

For those who are reluctant to receive therapeutic interventions, it is possible to implement other kinds of intervention such as psycho-education, in order to legitimate their experiences and provide necessary knowledge (Schaub & Williams, 2007). The literature exemplifies pathways of rehabilitation interventions that are sensitive to the intersection of gender and culture. Still, there is no coherent, multicultural approach to therapy with men which incorporates their diversity (O'Neil, 2008). A pathway for therapy sensitive to gender and culture includes less traditional and non-verbal therapeutic techniques such as using music and art, which are specifically recommended with regard to rehabilitation in African cultural settings (Caldwell & White, 2000).

Likewise, in light of men's possible difficulties in expressing emotions, and the encouragement in some non-Western cultures towards emotional repression, Cognitive Behavior Therapy (CBT) might offer a more accessible therapeutic option than traditional dynamic therapy (Mahalik, 2000). CBT focuses on changing the patterns of thinking and behavior that affect one's emotional state, and has been proven to be effective with asylum seekers and refugees (Grey & Young, 2008; Schulz, Resick, Huber, & Griffin, 2006), including victims of trafficking and slavery.

Another therapeutic model, which takes into account culture and gender, emphasizes three important dimensions: (a) Beliefs and attitudes (how counselors think and feel about clients outside the majority group, while also stressing the importance of recognizing how those beliefs might interfere with the therapeutic process); (b) Knowledge (referring to specific information about working with individuals outside the majority group who, in this case, experience gender-role-related issues); and (c) Skills (dealing with specific techniques aimed at serving people from minority cultures) (Liu, 2005; Sue, Arredondo, & McDavis, 1992).

A major question arises concerning the scope and nature of the emotional and vocational rehabilitation

that the shelters for human trafficking could—or should—provide. For instance, the Israeli government's aim in establishing Ma'agan and Atlas was to provide short-term rehabilitation of up to one year in the shelters. A common characteristic of survivors of trafficking is that they suffer high rates of emotional distress and psychiatric symptoms (Stenmark, Guzey, Elbert, & Hølen, 2014). Effective mental therapy may take years. In addition, processing the emotional implications of traumatic experiences requires stability and good timing (Herman, 1997). In practice, usually, the lives of the residents of rehabilitation centers and shelters for human trafficking are unstable and their legal status is uncertain, as most of them are not citizens of the country to which they were trafficked (Halili, in Hacker & Cohen, 2012, chap. 3.8). When defining the aim and the nature of emotional and vocational rehabilitation that should be provided by shelters, we must keep in mind the fact that the shelters are one step in the residents' rehabilitation process, and that shelters are not usually intended to supply the full recovery and integration process. Hence, long-term rehabilitation programs in the hosting country and country of origin must be developed and sustained beyond residential periods in sheltered.

Moreover, as experience is developed in the provision of rehabilitation services for the victims of trafficking and as intervention by international agencies increases, different approaches have emerged around the world regarding the best rehabilitation practices, with a critical perspective on the frameworks of shelters. These approaches prefer rehabilitation based on integration in the community, as opposed to secluded shelters. They also advocate cooperation between governmental and non-governmental bodies, and seek to strike a balance between psychological tools and social empowerment. These approaches emphasize human rights rather than charity (Locke, 2010). Finally, we found very little material—whether academic or activist in nature—proposing detailed criteria for evaluating the success of emotional rehabilitation with victims of trafficking (see, also, Lee, 2014).

While much more study and theorization is required in order to form a fully developed gender-sensitive rehabilitation theory for the victims of trafficking and slavery, the findings of our study, together with the theoretical insights and practical guidelines developed by feminist thinkers and practitioners, highlight the main vectors that should underline such a theory: Each survivor should enjoy a specially tailored rehabilitation plan, which takes into consideration the nature of abuse suffered and based on the presumption that each survivor is a specialist of his or her own life and needs, strengths and weaknesses. Gender-sensitive rehabilitation for victims of trafficking—whether in shelters or other frameworks—needs to take into account power relations, be aware of contex-

tual and professional gender biases, honor the human rights of victims including the freedom of movement, and provide emotional assistance for both women and men, and in ways that acknowledge and negotiate appropriately the gendered paths of asking for help and resisting it. The rehabilitation process should also secure vocational stability and income and adjusted development of everyday skills for both men and women, address the parenthood of the survivors with children, and safely integrate the survivors back into an accepting community in order to prevent re-trafficking. Lastly, gender-sensitive rehabilitation process in shelters, if adopted, should be perceived as only one component of the much broader and challenging endeavor of addressing both the social causes that enable trafficking and its outcomes.

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Conflict of Interests

The authors declare no conflict of interests.

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Article

Safe Harbor Policies for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice

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Abstract

Current social and political realities have focused attention on human trafficking in the United States. Although new mechanisms for criminalizing offenders and protecting victims are increasingly funded and implemented across the country, empirical exploration into the efficacy of these interventions is lacking. This article uses yearly count data on juvenile prostitution arrests aggregated at the state level to explore the criminalization of commercial sexually exploited children post safe harbor policy implementation. Preliminary data from four states suggests that the passage of safe harbor laws may not reduce the number of juveniles arrested for prostitution crimes. Implications for future research are discussed.

Keywords

commercial sexual exploitation of children; CSEC; human trafficking; prostitution; safe harbor; sex trafficking; Trafficking Victims Protection Act; TVPA

Issue

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1. Introduction

Following the passage of the Trafficking Victims Protection Act of 2000, lobbyists, practitioners, academics, legislators, and law enforcement agencies have all clamored to evaluate and address the issue of human trafficking in the United States. Human trafficking is defined as the recruitment, transportation, harboring or receipt of persons through the use of force, fraud, or coercion for the purpose of exploitation (United Nations, 2000). In the United States, this crime often involves the commercial sexual exploitation of women and minors. Sex trafficking is considered a severe form of trafficking and is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act” (Victims of Trafficking and Violence Protection Act of 2000, p. 1470). According to the National Center

for Missing and Exploited Children (NCMEC) (n.d.), commercial sexual exploitation of children (CSEC) “occurs when individuals buy, trade, or sell sexual acts with a child.” With estimates of 100,000 juvenile sex trafficking victims nationally (Office of Juvenile Justice and Delinquency Prevention [OJJDP], 2013), bipartisan social and political resources mobilized quickly to combat this heinous crime. Although the United States has lagged behind its European counterparts in its response to modern slavery (Wooditch, DuPont-Morales, & Hummer, 2009), with most interventions being implemented post-2000; legislators are making up for lost time with a flood of policy and funding in recent years. For example, in an attempt to curtail the crime of human trafficking locally, states have passed laws ranging from increased sentences for human traffickers and training for law enforcement to protective policies for victims and related services. However, despite

widespread speculation on behalf of human trafficking lobbyists and legislators, empirical research is infrequently used to evaluate the efficacy of these interventions (Van der Laan, Smit, Busschers, & Aarten, 2011; Wooditch, 2011b).

In an attempt to better inform the human trafficking discourse, the current study provides an exploratory investigation into the criminalization of commercial sexually exploited children post-safe harbor policy implementation. Safe harbor policies “recognize prostituted minors as victims instead of delinquents”, and are designed to provide commercial sexually exploited children with protection and services, instead of prosecution and detention (Geist, 2012, p. 71). Practitioners market safe harbor policies as serving four functions:

- (1) Decriminalizing prostitution for anyone under a specific age;
- (2) Diverting victim minors from delinquency proceedings toward supportive services;
- (3) Providing specialized services for minor victims;
- (4) Reclassifying prostituted minors as victims or sexually exploited children (American Bar Association [ABA], 2013).

The state of New York adopted the first safe harbor law in 2008 and since then 18 states have followed suit by legislating their own variation. One state, Texas, judicially produced the policy change with a state Supreme Court case, *In the Matter of B.W.* (2010). The case involved a thirteen-year-old juvenile who was arrested and prosecuted for soliciting an undercover police officer for oral sex in exchange for \$20. The Supreme Court of Texas later overturned the conviction, citing that the juvenile was a child victim of adult sexual exploitation and not a juvenile offender.

Despite a growing body of legislation and legal precedent for protecting juvenile victims of commercial sexual exploitation, it is unclear whether safe harbor policies reduce the number of prostituted juveniles being criminalized. While protection for commercial sexually exploited youth may be the letter of the law internationally (United Nations, 2000), federally (Victims of Trafficking and Violence Protection Act of 2000, 2000), and now in states with safe harbor statutes, legislative change is not necessarily akin to implementation change. Instead of treating juvenile sex trafficking survivors as victims, responding law enforcement agents are often inclined to arrest, detain, and hold human trafficking victims as a result of misidentification or to compel protection, cooperation, or service provision (Adelson, 2008; Drasin, 2012; Kittling, 2006; Office of Victims of Crime Training and Technical Assistance Center [OVCTTAC], n.d.; Reid & Jones, 2011; Wharton, 2010). This disconnection between policy and practice has highlighted a critical

need for a more victim-centered approach in responding to human trafficking incidents, especially for child victims of sex trafficking. In 2011, the Office of Juvenile Justice and Delinquency Prevention (2014) convened the National Research Council (NRC) and the Institute of Medicine (IOM) to create an interdisciplinary Committee on Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States. This committee identified three principles to guide the processing of commercial sexually exploited children in the United States:

- (1) Commercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against children and adolescents;
- (2) Minors who are commercially exploited or trafficked for sexual purposes should not be considered criminals;
- (3) Identification of victims and survivors and any intervention, above all, should do no further harm to any child or adolescent (OJJDP, 2014, p. 5).

Criminalization often further hampers the already damaged rapport between minor human trafficking victims and law enforcement (OVCTTAC, n.d.). It is important to better understand whether safe harbor laws are achieving their intended function by reducing the criminalization of juvenile sex trafficking survivors.

This paper begins by discussing anti-trafficking policy in the United States. This information is used to explain why juvenile victims need additional protections, and how safe harbor laws claim to provide these safeguards. While advancements in policy are considered victories in the advocacy community, I use organizational change theory to explain why these legislative advancements may not necessarily manifest into changes in practice. A discussion of organizational change concepts, such as coercive isomorphism and ceremonial change, is used to establish the need for the current empirical inquiry. Data, sampling, and analytic methods are discussed before exploring juvenile prostitution arrests, pre- and post-safe harbor implementation in four states. Although exploratory in nature, the results are used to establish the need for additional human trafficking intervention evaluation research.

2. Background

2.1. Commercial Sexual Exploitation of Minors

The Trafficking Victims Protection Act (TVPA) of 2000 served as a catalyst to anti-trafficking policies and practices in the United States (Victims of Trafficking and Violence Protection Act of 2000, 2000). The act, initially passed in 2000 and reauthorized in 2003, 2006, 2008, and 2013, defined human trafficking for the country, and set up formidable action items to combat it (U.S.

Department of State, n.d.). Section 106 of the act recognizes the need for more prevention efforts directed toward high-risk victim populations. Section 107 highlights a need for additional protections and services for victims, while sections 111 and 112 call for increased prosecution of offenders. However, despite increases in resources, knowledge, and political pressure, certain policy recommendations outlined in the TVPA failed to materialize in practice for some jurisdictions. For example, although the TVPA defines commercial sexually exploited children as victims of human trafficking, most jurisdictions continue to criminalize prostituted juveniles similarly to prostituted adults (Adelson, 2008).

According to Section 103, 8A of the Trafficking Victims Protection Act (TVPA) of 2000, children do not need to be forced, defrauded, nor coerced to be considered victims of sex trafficking. The definition of child sex trafficking implies that juveniles do not have the legal capacity to consent to exploitation and that illicit means are implicit when a juvenile is induced to commit a commercial sex act. Although juvenile status is defined by Section 103, 8A of the TVPA (2000) as anyone under the age of 18, the exploitation of minors under the age of 14 carries harsher punishment. Section 1591, b of the TVPA (2000) states that sex traffickers are subject to fines and life imprisonment if convicted of trafficking a minor under the age of 14, whereas sex trafficking of children between the ages of 14 and 17 only carries a maximum of 20 years in prison and/or fines. However, these punishments are infrequently imposed. Although there are an estimated 100,000 juvenile sex trafficking victims in the United States according to the Bureau of Justice Statistics, there were less than 150 juvenile sex trafficking cases prosecuted in 2011, with only 81 convictions in that same year (U.S. Department of Justice, 2013). To put this information into perspective, while other forms of crime have clearance rates that range from 11.9% for motor vehicle theft to 62.5% for murder (FBI, 2013), limited data on juvenile sex trafficking prevalence and prosecution suggests that less than 0.01% of estimated cases are identified and successfully prosecuted.

As victims of a severe form of human trafficking, commercial sexually exploited children are afforded numerous protections under Section 107, c1 of the TVPA (2000), namely sex trafficked juveniles shall:

- (1) Not be detained in facilities inappropriate to their status as crime victims;
- (2) Receive necessary medical care and other assistance;
- (3) Be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker (p. 1477).

The letter and spirit of these provisions are to generally

safeguard juvenile sex trafficking survivors. However, these protective directives can be difficult to effectuate in practice. Given the trauma bond that often accompanies human trafficking victimization, survivors may be initially unwilling to cooperate with law enforcement (National Center for Missing and Exploited Children [NCMEC], n.d.). In response, law enforcement agencies may utilize arrest, detention, and holding as measures to provide protection and coerce treatment for un-cooperating victims (OVCTTAC, n.d.). However, this may further exacerbate the already strained relationship between child survivors of sex trafficking and law enforcement; thus, leading to cyclical victim criminalization.

For example, in 2002 convicted human trafficker Carlos Curtis enticed a 12-year-old runaway girl to leave New York City and come with him to Washington D.C., where he took sexually explicit photographs of her, raped her, and forced her to prostitute herself on the streets (U.S. v. Curtis, 2006). Although the victim was eventually identified by law enforcement as a sex trafficking survivor, she was not protected from various forms of criminalization. Since the minor victim (A.P.) did not have any family who could retrieve her from D.C. and there was no social service worker to care for her, she was transferred to Oak Hill, a juvenile detention facility, where two inmates raped her with a toothpaste tube (U.S. v. Curtis, 2006). A.P. later returned to living and working on the streets in New York and began prostituting to support herself, where she was arrested and re-incarcerated. Given A.P.'s family situation and trauma, the prosecution justified holding A.P. in a detention facility as a material witness pending the trial of Carlos Curtis. Despite being afforded counseling and therapy, A.P. never availed herself to services and returned to the commercial sex industry post-trial (U.S. v. Curtis, 2006).

Unfortunately, despite their victim status, juvenile survivors of sex trafficking continue to be arrested and detained for crimes related to their victimization, namely involvement in the commercial sex industry. The Uniform Crime Report collects data on the total number of persons arrested, cited, or summoned for criminal acts. Demographic data, along with the most serious charge filed, are reported for each arrested person. According to aggregate level UCR data, between 1,000–1,800 juveniles are arrested for prostitution offenses yearly. Ultimately, a growing body of research identifies a gap between protections for juvenile victims of sex trafficking in law and in practice (Adelson, 2008; Drasin, 2012; Green, 2008; Kittling, 2006; Reid & Jones, 2011; Wharton, 2010).

It is important for commercial sexually exploited children (CSEC) to be protected from criminalization because these minors often suffer from multiple layers of trauma that are not easily recognizable (Geist, 2012). The emotional, physical, psychological abuse, and torture

CSEC experience often precedes their human trafficking victimization. Before becoming victims of human trafficking, these juveniles are considered high-risk on a number of fronts. For example, these prostituted kids typically grow up in dysfunctional environments, being “in-and-out of various parts of the social services system including private NGOs, foster homes, and runaway shelters” (Geist, 2012, pp. 74-75). Yet, despite having high risks and experiencing multiple forms of traumatic victimization, these juveniles often fail to receive directed services and are typically forced into a “revolving door of exploitation and arrest” (Geist, 2012, p. 74).

In a movement toward a more victim-centered approach to human trafficking response, anti-trafficking organizations like Polaris Project (2013) and Shared Hope International (2009) began publicly highlighting the gap between federal law and practice, denouncing the criminalization of child sex trafficking survivors. As a result of lobbying efforts, states recently began passing safe harbor laws. Safe harbor laws further clarify the distinction between prostitute and human trafficking victim at the state level. Similar to federal law (Victims of Trafficking and Violence Protection Act, 2000), safe harbor policies generally define prostituted juveniles¹ as severely trafficked persons in need of services (Drasin, 2012). However, it is unclear how these state-level policies manifest in practice and whether they have addressed the federal legal gap.

The spirit of the safe harbor policy can easily lead to the assumption that the number of juveniles arrested for the crime of prostitution would dissipate after the policies are implemented. However, this assumption is not yet empirically explored nor validated by evidence. Organizational change theory can be used to better understand the opportunities and barriers to effectuating these changes in practice.

2.2. Theory

Police organizations and courts must drastically change their methods of processing prostituted juveniles in order to fulfill the policy modifications outlined in state safe harbor laws and the federal Trafficking Victims Protection Act. Historically, the criminal justice system treated prostituted juveniles as criminals (Adelson, 2008; Drasin, 2012; Kittling, 2008; Reid & Jones, 2011; Wharton, 2010); however, the aforementioned anti-trafficking policies re-categorize commercial sexually exploited children as victims. Although CSEC decriminalization may seem simple in abstract, organizational and/or cultural barriers may inhibit this change in practice. According to Dimaggio and Powell (1983), there are three mechanisms of organizational change: (1) coercive isomorphism, which

stems from political influence; (2) mimetic isomorphism, which develops from uncertainty; and (3) normative isomorphism, a byproduct of professionalization. Theoretically, safe harbor laws may be best categorized as resulting from coercive isomorphism or pressures to change from the environment (e.g. social and political) (see Dimaggio and Powell, 1983). However, given the coercive nature, these changes may be largely ceremonial, as opposed to true adjustments (Dimaggio & Powell, 1983). For example, Wooditch (2011a) found that anti-trafficking laws passed at the national-level may be more symbolic, as legislators tend to be motivated by the general public’s perception or reaction to the passage of the law rather than the actual implementation or substance (Wooditch, 2011a). Without any accountability, police may relegate to processing commercial sexually exploited juveniles as prostitutes, which may be institutionally accepted as a normative practice.

Asking police agencies to treat girls and boys engaged in the crime of prostitution as victims may be counter to established police perceptions and experiences. Given the nature of the crime, child survivors of sex trafficking often develop a strained relationship with law enforcement (NCMEC, n.d.; OVCTTAC, n.d.; Reid, 2010; Reid & Jones, 2011). Human traffickers use psychological manipulation, violence, and drug dependency to create a trauma bond between the child victim and the offender (Clawson & Grace, 2007; Hopper & Hidalgo, 2006; NCMEC, n.d.; Reid & Jones, 2011). Victims are taught not to trust law enforcement and are instead manipulated into developing an emotional connection with their trafficker, which serves as a psychological survival mechanism (Hopper & Hidalgo, 2006; NCMEC, n.d.; Reid & Jones, 2011). As a result, commercial sexually exploited youth infrequently cooperate with law enforcement and may not even perceive themselves as victims (NCMEC, n.d.; OVCTTAC, n.d.; Reid, 2010; Reid and Jones, 2011). Given their lack of cooperation and involvement in criminal activity (prostitution, drugs, etc.), police may perceive commercial sexually exploited youth as criminals, regardless of the shifting paradigm away from criminalization and toward protection (Adelson, 2008; Drasin, 2012; Kittling, 2008; OVCTTAC, n.d.; Wharton, 2010). It is important to recognize that employee cultural modes of thought take time to adapt to new environments because they are complex and more difficult to change than the structure of an organization or a policy (Smircich, 1983).

Police culture modes of thought are bound by rationality, time, and available information, among other organizational constraints (Gigerenzer & Todd, 1999; Simon, 1956). In order to make sense of complex information, police use easily accessible knowledge,

¹ Qualifying juvenile age cut-off varies by state, ranging from 13 to 17.

heuristics, and structures to help make decisions (see Gigerenzer & Todd, 1999). While these methods of data processing facilitate quick assessments, limited accessible knowledge, problematic heuristics, and constrained organizational structures can lead to stereotypes (standardized and simplified concepts) or tunnel vision (filtering evidence through a prefabricated outcome lens), which can result in problematic policing (see Findley & Scott, 2006). Since bounded rationality affects police cultural modes of thought, it may be difficult for officers to perceive and treat commercial sexually exploited juveniles as victims if and when they do not behave like a stereotypical victim. Unlike other types of victims, CSEC often fail to cooperate with law enforcement, exhibit an emotional bond with their purported victimizer, and engage in what is perceived as consenting criminal activity. Stereotypically, these victims may behave more like offenders and/or co-conspirators, which could partially explain continued criminalization.

Ultimately, police organizations that do not comply with the Trafficking Victims Protection Act are not yet held accountable for deviation from proscribed practice. More importantly, failing to protect commercial sexually exploited youth from criminalization at the arrest level may not affect overall organizational legitimacy, and as such this deviation may be of little consequence to police organizational leaders. Without any organizational accountability and competing normative perceptions, it is unclear whether safe harbor laws have decreased the criminalization of commercial sexually exploited youth. The present study explores the effects of safe harbor policy change through descriptive data on juvenile prostitution arrests before and after safe harbor implementation.

3. Present Study

Using FBI Uniform Crime Report data, this study explores the rate of commercial sexually exploited juveniles arrested for the crime of prostitution pre and post-safe harbor implementation. While exploratory in nature, this analysis is unique in that prior research on the empirical effects of safe harbor laws is lacking in the United States, and there is little data to empirically evaluate the human trafficking phenomenon, much less anti-trafficking interventions (see Van der Laan et al., 2011). Establishing an evidence-base is imperative to improving the efficacy of anti-trafficking policy and practice. Since safe harbor policies are typically passed by state legislature, the unit of analysis for this study is the state level.

² As soon as imputations were completed, NCJRS provided the data to the author. However, at time of submission the data

3.1. Data

Data on the key variable of interest, juvenile arrests for prostitution, were obtained from the FBI's Uniform Crime Report. The FBI Uniform Crime Report synthesizes data collected from the National Incident Based Reporting System (NIBRS). NIBRS collects detailed information from police agencies on every crime occurrence recorded by police, including demographic characteristics of victims and offenders, crime location and type. FBI Uniform Crime Report data files were obtained through the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Easy Access to FBI Arrest Statistics (EZAUCR) database, which includes imputations for missing data. In the imputation algorithm, data for any law enforcement agency reporting 3 to 11 months is increased by a weight of twelve and divided by the number of months reported (Puzzanchera & Kang, 2013). For jurisdictions reporting 0 to 2 months, the counts are estimated using rates from jurisdictions with similar populations, which reported 12 months of data located within the same state (Puzzanchera & Kang, 2013).

According to the OJJDP website, the EZAUCR provides access to juvenile arrest statistics (under the age of 18) at the national, state, and county level. The data also include information on adult arrests separately or with all ages combined. The data archive includes information from 1994-2010. Data for the year 2011 was obtained separately for this project and directly from NCJRS². EZAUCR provides arrest statistics for 29 detailed offense categories including prostitution (Puzzanchera & Kang, 2013). Data on adult arrests for prostitution were also obtained from the EZAUCR for comparison.

Data for the intervention variable (safe harbor laws) were collected from Polaris Project (2013). Polaris Project is an anti-trafficking lobbying organization and service provider, which catalogs and tracks human trafficking legislation. According to Polaris Project, as of 2013, 18 states passed safe harbor laws: Arkansas, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Washington. The data collected from Polaris Project was corroborated by references to the original statutes.

3.2. Sampling

While 18 states passed safe harbor policies as of 2013, only five of these policies were passed prior to 2011, of

had not yet been uploaded to the OJJDP EZACR website. Years 2012 and 2013 have not yet been processed.

which only four had original data available for both pre- and post-intervention years (see Table 1). Only states with safe harbor laws passed before 2011 were included in the final analysis, to allow for post-policy data comparison³. The first safe harbor law was passed in 2008 by the state of New York. Four states passed safe harbor statutes in 2010: Connecticut, Illinois, Texas, and Washington. Statutes from Connecticut, Illinois, and Washington became immediately effective after being signed into law in 2010. The court decision from Texas also resulted in theoretically immediate policy by creating legal precedent. The safe harbor law from the state of New York, however, came into effect nearly two years after being signed into law in 2008, on April 1, 2010.

Annual arrest statistics for juveniles and adults were collected separately from the EZAUCR for years 1994 through 2011. Information was initially collected on all five of the states that passed safe harbor laws prior to 2011⁴. Data reported to the FBI were incomplete for several years and jurisdictions. Imputation procedures were performed by NCJRS to provide estimates for the missing data. States with coverage indicators less than 90%⁵ were considered as having large amounts of imputed data by OJJDP; however, given the exploratory nature of this study, this alone did not preclude the state or the year in question from inclusion. The state of Illinois, however, was precluded from the analysis for having over 50% imputed data. Between 1994 and 2011 over 77% of the data for Illinois was imputed: 1994 (82%) 1995–2009 (77%), and 2010–2011 (78%). As such, the final sample includes four states with 18 observations per state, for a total of $n = 72$ data points.

Included states had much less missing data. The highest proportions of imputations for Connecticut were: 1994–1995 (15%), 1996 (16%), 1997 (15%), and 1998 (14%). The highest proportions of imputations for New York were: 1999 (16% imputed), 2000 (17% imputed), and

2001 (16% imputed). Texas provided over 90% of data for all years 1994–2011. The highest proportions of imputations for Washington state were: 1994 (21%), 1995 (29%), 1996–1997 (28%), 1998 (26%), 1999 (16%), 2000 (26%), 2001 (21%), 2002 (16%), 2003 (25%), 2004 (14%), 2005–2006 (13%), 2007–2009 (21%), and 2010 (20%).

3.3. Analysis

Graphs of juvenile prostitution arrests are used to explore the criminalization of commercial sexually exploited children pre and post safe harbor policy implementation. The small sample size, few number of years post-safe harbor implementation, and generally small numbers of juvenile prostitution arrests per year preclude the use of more rigorous statistical testing at present. However, data on adult prostitution arrests are used as a comparison group within each state. Adding adults arrested for prostitution as a control group reduces the likelihood of Type I error. Type I error could occur if unexplained variance or noise affects the post safe harbor juvenile arrest rate, making it appear different from the pre safe harbor juvenile arrest rate, when it may not be a consequence of the safe harbor policy. Since adult prostitution arrests should not be affected by the safe harbor policy, but may be equally affected by unexplained variance or noise, this variable will create a non-equivalent comparison group. These data convey a first glance on the criminalization of commercial sexually exploited children pre-post safe harbor policy implementation, and provide a framework for developing more rigorous future evaluation. These descriptive statistics illustrate *prima facie* trends, which run counter to the letter and spirit of the policy. Juveniles continue to be arrested for the crime of prostitution after safe harbor policies are passed locally.

Table 1. Safe Harbor Laws by State.

State	Statute	Year	Description
Connecticut	S.B. 153, Feb. Sess.	2010	Prohibits prosecution of prostituted juveniles aged ≤ 15 ; for ages 16-17 there is a presumption of coercion.
New York	A.B. 5258–C, 2007 Leg., 231st Sess.	2008 ⁶	All prostituted juveniles aged <18 are deemed “sexually exploited children”, and presumed to meet the criteria for certification as a victim of a severe form of trafficking as defined in section 7105 of title 22 of the United States Code, Trafficking Victims Protection Act of 2000.
Texas	Texas Supreme Court, in the matter of B.W.	2010	Children under the age of 14 are legally incapable of consenting to sex. The case is interpreted to prohibit charges for prostituted juveniles under the age of 14.
Washington	S.B. 6476, 61st Leg., Reg. Sess.	2010	“Sexually exploited child” is defined as any person <18 who is a victim of commercial sex abuse. Presumption that prostituted juveniles meet the criteria for certification as a victim of a severe form of trafficking as defined in section 7105 of Title 22 of the United States Code.

³ FBI UCR data is available up to 2011 only at the time of analysis.

⁴ One state was later removed for having over 50% imputed data—Illinois.

⁵ Missing data for over 10% of jurisdictions within the state or more than 10% of months in a given year.

⁶ Year passed/year effective was only different for the state of New York, 2008/2010 respectively.

4. Results

Panel data are used to explore the rates of juvenile prostitution arrests post-safe harbor implementation. While exploratory in nature, these data suggest that juveniles continue to be criminalized through arrest post-safe harbor implementation. While some of the arrested juveniles may not be ultimately prosecuted for the crime of prostitution, the simple acts of being charged and detained may further traumatize these juvenile victims of sex trafficking, as evidenced in the literature and case law. Descriptive statistics illustrate negligible changes in the number of juveniles arrested for prostitution after safe harbor policies are passed, with small increases in Connecticut, New York, and Texas. Table 2 contains the descriptive statistics for the juvenile prostitution arrests per year, with post-safe harbor years highlighted.

Table 2. Juvenile prostitution arrests by State: 1994–AB2011.

Year	Connecticut	New York	Washington	Texas
1994	21	91	74	94
1995	7	92	46	104
1996	8	110	42	74
1997	9	128	27	96
1998	9	152	24	102
1999	2	207	24	110
2000	5	210	22	115
2001	5	227	35	92
2002	15	115	40	88
2003	2	45	61	103
2004	4	35	36	120
2005	1	56	42	92
2006	3	128	49	120
2007	1	25	64	126
2008	4	61	66	139
2009	0	25	70	124
2010	1	14	39	92
2011	2	136	24	108

Data from the state of New York are presented separately from other implementing states in the time series charts because the safe harbor law for this state was enacted two years prior to implementation. As such, the gap between the signing of the statute (September 25, 2008) and its implementation date (April 1, 2010) may provide a unique opportunity to illustrate changes post ratification versus post implementation.

New York’s safe harbor law states that “the term ‘sexually exploited child’ refers to any person under the age of eighteen who has been subject to sexual exploitation because he or she...engages in any act as defined in section 230.00...of the penal law” (Scarborough,

2008). Section 230 of the penal law includes all prostitution related offenses. Presumably, this implies that all prostituted juveniles under the age of 18 should be treated as victims instead of as offenders. However, this is not how the law is interpreted, which illustrates a disconnection between policy and practice. According to the Polaris Project (2013) the law only allows for the discretion to divert prostituted juveniles under the age of 16 into “Persons In Need of Services” (PINS) programs. Using data from the FBI Uniform Crime Report, trends outlined in Figure 1 suggest that the number of juveniles arrested for prostitution have not decreased post safe harbor law in the state of New York.

Juvenile prostitution arrests closely mirror that of adults in the state of New York (Figure 2). Although there was a small decrease in the number of juveniles arrested for prostitution after the bill was signed into law in 2008, there was also a reduction in the number of adults arrested for prostitution, which should be unaffected by the policy. More importantly, after the law actually became effective in 2010, there was a large increase in the number of both juveniles and adults arrested for prostitution in 2011. The fact that there was a small reduction in the number of juveniles arrested for prostitution after the law was signed, but not when the law was implemented is interesting. Given the legislative, media, law enforcement, and public attention culminating around the signing of the bill, there may be an *announcement effect*⁷ as opposed to a true change. This could be an illustration of the potential ceremonial nature of these types of laws. Alternatively, it could be indicative of a lack of implementation training or support. These data suggest that the letter of the safe harbor law, which states that all prostituted juveniles are sexually exploited children, may not decrease the criminalization of sex trafficked children at the arrest level.

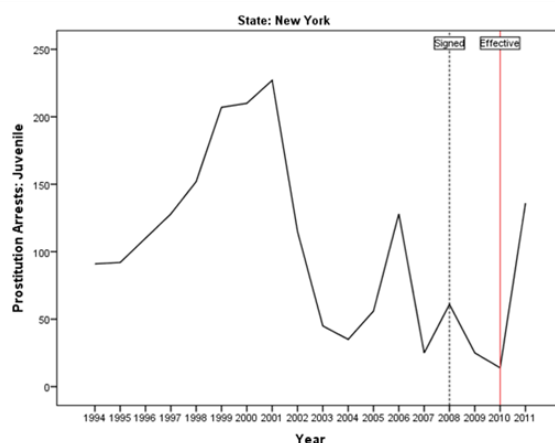


Figure 1. Juvenile prostitution arrests: New York.

⁷ Policy announcement effects are illustrated with other media focused, yet ineffective, legislation such as 287(g). (see Koper, Guterbock, Woods, Taylor, & Carter, 2013).

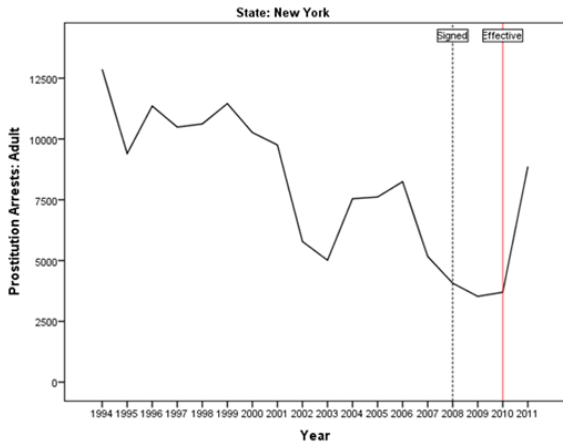


Figure 2. Adult prostitution arrests: New York.

Although there is less post-law data for comparison, findings from Connecticut, Texas, and Washington illustrate similar trends (Figure 3). The fluctuations in juvenile arrests for all three states often mirror trends in adult arrests for prostitution. Washington State evidenced a decrease in juvenile and adult prostitution arrests post safe harbor implementation. While the number of adults arrested for prostitution in Texas declined post Supreme Court decision, there was an increase in juvenile prostitution arrests. Connecticut also experienced a small increase in juvenile prostitution arrests post safe harbor implementation.

Across states and age groups, prostitution arrests appear to be declining in the United States. Although some may attempt to accredit these changes to advancements in policy, there has yet to be an empirical basis for that claim. In fact, these exploratory data suggest that safe harbor policies may not decrease the criminalization of juvenile sex trafficking survivors at the arrest level. The following section discusses the limitations of the present exploration and implications for future research.

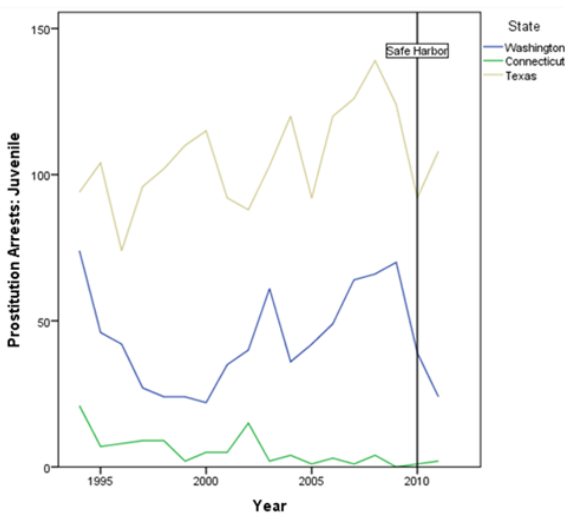


Figure 3. Juvenile prostitution arrests: Connecticut, Texas, and Washington.

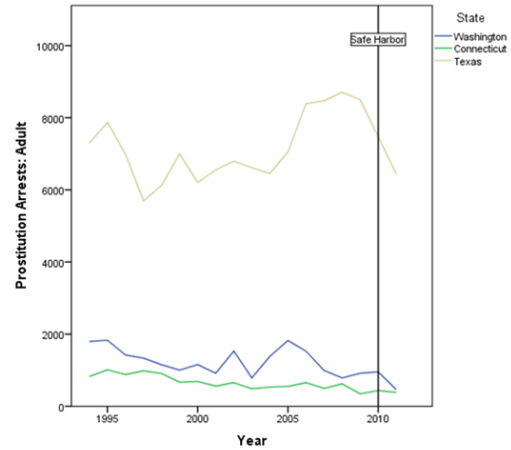


Figure 4. Adult prostitution arrests: Connecticut, Texas, and Washington.

5. Discussion and Conclusions

Recent legislative developments in the United States have further criminalized human traffickers and consumers, while increasing protections and service provision for victims. Yet, anti-trafficking lobbying organizations still continue to advocate for new policies, adding to the legislative arsenal at the disposal of practitioners and law enforcement. While some may focus on the need for new policies, it is equally as important to explore the utility of existing legislation. If practices are not fulfilling the spirit of the law by decriminalizing juvenile sex trafficking survivors, practitioners, legislators, and lobbyists need to understand why and adjust their efforts accordingly. While exploratory in nature, this study provides descriptive data to suggest that safe harbor policies may not be associated with a decrease in the number of juveniles arrested for the crime of prostitution. While these findings only apply to one form of criminalization, which may not be an important directive of all safe harbor policies, the criminalization of juvenile sex trafficking survivors through arrest should nevertheless be avoided, according to practitioner recommendations (NCMEC, n.d.; OJJDP, 2014; OVCTTAC, n.d.).

The results of the present study must be taken cautiously, however, given the extremely limited nature of the available data and analytic methods. A true evaluation of safe harbor policies should explore criminalization and decriminalization at each level of the justice process, including but not limited to: arrest, prosecution, conviction, and detention. While some safe harbor policies provide sweeping protections from all forms of criminalization for prostituted youth under the age of 18, such as Illinois’ safe harbor law, others may only divert at the prosecutorial level, such as New York’s safe harbor law. Ultimately, the present availability of data could only be utilized for an exploration into post-implementation arrest descriptive statistics. Given the small sample, lack of appropriate

control measures, and simplified nature of the analytic strategy, no conclusions could be appropriately drawn from the presented results other than a discernable need for additional data and future research.

Although the present study was bounded by data restrictions, the availability of new data in the near future will facilitate and afford more rigorous research on the efficacy of safe harbor laws and barriers to CSEC protection. As of January 1, 2013, the FBI Uniform Crime Report began collecting data on human trafficking crimes reported to police (FBI, n.d.). Once the 2014 UCR data are released, there will be a total of 18 states that have implemented safe harbor statutes with available post-intervention data for analysis. In concert, these additional data sources will provide the information needed for more rigorous policy evaluation. Future research should consider employing interrupted time-series analysis to provide a more rigorous evaluation on the policy effects. Such analysis would need to overcome a number of potential shortcomings, including the pooling of policies that employ disparate age cut-off levels for whom is considered a *de facto* victim of sex trafficking. Analytic models should also attempt to control for other potential explanatory factors and variations in prostitution processing, including local level law enforcement efforts, such as raids or stings. Additional data could provide more complete information on the effectiveness of the safe harbor policy in decriminalizing juvenile victims of sex trafficking.

Prostituted juveniles are identified as victims in need of services by international, federal, and some state laws; as such, there is a general consensus among practitioners that these sex trafficking survivors should *not* be criminalized (ABA, 2013; NCMEC, n.d.; OVCTTAC, n.d.). Although some law enforcement and victim service providers may see fit to arrest commercial sexually exploited children as a mechanism for compulsory service provision, these juveniles often face multiple forms of complex trauma and a simple arrest can further their fear or negative perceptions of law enforcement (OVCTTAC, n.d.). Instead of being criminalized through arrests, detentions, or holding, the Federal Office for Victims of Crime Training and Technical Assistance Center (OVCTTAC) (n.d.) recommends for human trafficking task forces to immediately identify and refer the victims to appropriate local services and start building rapport, coupled with surveillance. Inclination to arrest is highlighted as a critical challenge to law enforcement; yet, OVCTTAC (n.d.) among other organizations explicitly state, "individuals under the age of 18 who are involved in commercial sex acts are to be considered victims of human trafficking" (n.p.).

Ultimately, it is important to understand that passing policy is only the first step to effectuating change in practice. True change requires reconciliation between the spirit, letter, and practice of anti-trafficking policies. Decriminalization at each level of the criminal

justice process is imperative to achieving a victim-centered approach to human trafficking interventions. Assuming that safe harbor legislation decriminalizes prostituted juveniles *de facto* is a myopic view of the process. In order to be effective in protecting minor victims, it is essential to establish a stronger evidentiary basis for these anti-trafficking policies, as well as a method to monitor implementation. However, with that being said, the clandestine nature of the crime makes the acquisition of reliable data difficult, and true intervention evaluation near impossible (given the missing baseline data due to underreporting). To address these issues, legislators, practitioners, and lobbying organizations should work with researchers to establish mechanisms for reliable data collection and analysis.

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Conflict of Interests

The author declares no conflict of interests.

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Article

Queering the Support for Trafficked Persons: LGBTQ Communities and Human Trafficking in the Heartland

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Abstract

Human trafficking justice centers on the “Three Ps” model of prevention, protection, and prosecution. While protection and prosecution efforts have been moderately successful, prevention remains elusive, as “upstream” structural factors—class, gender, and sexuality inequalities—remain difficult to target. Individuals who are affected by these factors are not fully served within linear service frameworks. Based on a 12-month study in Kansas City, we find that service providers recognize the limitations of a “one-size-fits all” approach. Using a public health model, our research team conducted a public health surveillance, explored risk and protective factors, and facilitated organizational self-assessments of services. Our findings support a prevention approach that supports a survivor-centered model, which creates new, non-linear or queered avenues of agency and community for trafficking survivors. This model allows survivors to make use of services in moments of vulnerability and opt out of others in moments of resilience. Given the systematic cuts in funding that have affected service providers, this research contends that prevention is cheaper, more effective, and more ethical than relying on prosecutions to curb trafficking. Developing a model that fosters survivor empowerment is a key step toward individual justice and survivor resilience for vulnerable and marginalized populations.

Keywords

agency; human trafficking; LGBTQ; prevention; public health

Issue

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1. Introduction

Understanding the size, scope, and causes of human trafficking¹ remains a persistent challenge (Farrell et al.,

¹ As this project is based in the U. S., we used the Trafficking Victims Protection Act as our standard definition for trafficking, which we hope is expanded through this article to include a range of survivors and also a range of vulnerability and resilience that fall outside legal frameworks. We are also concerned with the range of trafficking: sex trafficking, child

2009; Farrell, McDevitt, & Fahy, 2010; Gozdziaik & Collett, 2005; Laczko & Gramegna, 2003; Tyldum & Brunovskis, 2005; United States Department of Justice, 2006; Weit-

sex trafficking, labor trafficking, forced labor, bonded labor or debt bondage, involuntary domestic servitude, forced child labor, and instances when smuggled persons may become exploited and trafficked. While it is outside the TVPA, we also are looking for instances of organ trafficking. At the date of writing, no cases of organ trafficking have been presented in the project.

zer, 2005). But trafficking is a hidden, illicit trade, and those who are currently trafficked may be unable to seek assistance because they may not identify as trafficked or because they are concerned about deportation, violence, retribution, or abuse (Icduygu & Toktas, 2002; Primrose, 2011; Zhang, 2012). Scholarship and advocacy in this area tends to concentrate on the protection of survivors² and the prosecution of perpetrators, but it often overlooks how to prevent the crime and exploitation (Annitto, 2011; Bales & Trodd, 2008; Brennan, 2005; Clawson & Dutch, 2008; Long, 2012; Primrose, 2011).

This project uses a different approach, taking the public health approach of looking “upstream” for the macro-level inequalities that perpetuate exploitation and trafficking “downstream” on the micro-level. We expand the focus to consider multiple vulnerable populations and systematically explore the individual and structural risk factors. We are interested in understanding the cycles of vulnerability individuals face as well as the ways services could be adapted to fit the unpredictable, non-linear needs of survivors. This project finds that in order to support someone exiting trafficking, it is crucial to challenge the latent notions of an “ideal” or “model” victim. Though the iconic victim is traditionally coded as young, white women trafficked domestically or women of color trafficked internationally, the population of survivors is much more diverse (Srikantiah, 2007). In particular, the ostensibly straight young women who must be rescued by (male) law enforcement through the prosecution process serves as a foil to the numerous queer³ bodies who are vulnerable,

² In this article, we are intentional about the use of the terms victim and survivor, as we are calling for a change in that language. We use the term “victim” when referring specifically to the idea of an “ideal victim” or in cases where our interview participants used the term themselves. We use the term “survivor” or “trafficked persons” in all other cases to reflect our belief that survivors have agency and often operate outside of the victim framework that is applied to them. Other scholars have made a different distinction, referring to someone currently trafficked as a victim and those who have exited as survivors. While we are supportive of that distinction, in this article we use the language of survivor or trafficked person in order to retain the idea of agency and self-definition we have seen within the survivor community. We are also aware of the vertical relationship implied by the terms survivor and provider. However, this relationship is not so hierarchically fixed, as the agencies we met with are working in partnership with trafficked persons, and several organizations are survivor-led, again disrupting the idea that there is some finite distinction between survivors and providers.

³ In the context of this paper, we will be specifically focusing on members of the LGBTQ community. We recognize that queer can describe a variety of non-normative bodies and that multiple, intertwined identities—race, citizenship, ability—can complicate sexual orientation and gender identity

exploited, and trafficked *and* require culturally competent resources.

Our research indicates that in order for trafficking prevention models to be successful, agencies and policy-makers should destabilize the typical service model that assumes a linear progression from risk-taking behavior or vulnerability toward a position of security and stability. Instead, social service providers and anti-trafficking advocates utilize a “client-first” approach, which recognizes that survivors move in and out of risk and security and that there is no single package of mechanisms for each survivor. What most frustrates and troubles policy makers and advocates is that every trafficking case is different (Brennan, 2005). Yet, what this teaches us is that there is no single model of risk or resilience for those exiting trafficking. An adaptable “survivor-first” model allows for survivors to opt in and out of services and resources as they need during times of vulnerability, while allowing them to build resilience skills during times of security and self-sufficiency.

This flexible, survivor-centered approach, focused on individual recovery and protection, needs to be combined with larger, structural investments into the framework of trafficking prevention. Our research finds that you cannot separate protection from prevention, given the cyclical nature of vulnerability among populations. Countries need ongoing, regular support for education, jobs training, housing and health care, etc.—the basic fundamentals for a strong, *trafficking-resistant* society. What is most troubling is that the very things needed to create trafficking-resistant societies are increasingly under threat in the “current and persistent economic crisis” and the “impending implosion of the welfare state” (Hedetoft, 2013, p. 2). Because of the international nature of trafficking economics, the pressures on survivors and their advocates are also increasing due to the growing anti-immigration policies and rhetoric *and* because of migration pressures from war, environmental changes, and economic marginalization. Prevention is more effective and less costly than assisting survivors after they have been trafficked or using prosecution-approaches to deter traffickers. Prevention also is arguably more ethical than waiting until after the exploitation has occurred to react.

The defunding of social services and the welfare state continues to distance the members of society most vulnerable to trafficking from the institutions and structure they most need. In particular, the bodies and lives that are the least legible then become even more

even further. However, we will be utilizing two terms throughout this paper: LGBTQ to name the larger community operating in Kansas City and trans* to specifically call attention to transgender men, transgender women, and all other self-identifying members of the transgender community, as trans* individuals were specifically mentioned as a vulnerable population throughout our interview process.

separated from the democracy that was intended to include them. Halberstam (2005), in discussing the work of James C. Scott, argues that:

Democracy is now riddled with pockets of intense and naked oppression that both shore up the attraction of democratic rule and fortify the myth of its totality. For those subjects—nonmetropolitan queers, prisoners, homeless people, undocumented laborers—who find themselves quite literally placed beyond the reach of federal protection, legal rights, or state subsidy, democracy is simply the name of their exclusion. (pp. 34-35)

As the anti-trafficking movement becomes more and more an anti-trafficking industry, it has also become linked to the criminal and carceral state⁴. While many hoped to find ways to expand spaces within democracy to protect these non-normative lives, the trafficking laws and policies are often operationalized as incarceration, deportation, or detention—rather than education, training, health care, and housing support that might prevent vulnerability.

Thus, the findings in this study present a case for both collective, structural responses to vulnerability combined with individual rehabilitation and recovery plans. Solely focusing on survivor-centered approaches to trafficking will not address the societal-level factors that push and pull persons into exploitation and vulnerability, such as war, gender inequality, discrimination, and social inequity (Britton & Dean, 2014; Goodey, 2008). Similarly, focusing only on national-level responses has led internationally to a focus on anti-immigration policies, crime, law enforcement, and prosecution at the cost of protecting survivors and advancing human rights (Goodey, 2008; Kaneti, 2011; Lindstrom, 2006; Smith, 2011). Countries need a comprehensive plan for making their communities trafficking-resistant by decreasing the systemic vulnerability of populations. Simultaneously, they need service providers who are nimble enough to ensure that protection services offered during survivor crisis are flexible and can adapt to cyclical, unexpected survivor needs. Focusing on prevention, rather than prosecution, is both more effective and less costly than prosecution approaches. A prevention approach also addresses the ethical costs of focusing only on prosecutions—which are inherently reactive and happen after exploitation has occurred.

2. Public Health Approaches to Trafficking Research

Building on the studies focusing on prosecution and protection of survivors (Annitto, 2011; Bales & Trodd,

⁴ Special thanks to the anonymous reviewers for this observation.

2008; Brennan, 2005; Clawson & Dutch, 2008; Farrell et al., 2009, 2012; Long, 2012; Primrose, 2011), our work takes a new direction and implements what Jonathan Todres (2011, 2012) has called a public health model to research human trafficking. In this study, the research team employed a public health prevention approach advocated by scholars (National Research Council of the National Academies & Institute of Medicine, 2013; Todres, 2011, 2012) to identify the risk and protective factors that may contribute to vulnerability and exploitation. This is not an attempt to medicalize trafficking or the health risks of survivors. Instead, the research team utilized the four-level ecological model of violence prevention (Center for Disease Control, 2013) that includes individual, relationship, community, and social factors in order to understand the interconnected patterns and forces that contribute to vulnerability.

A public health framework allows anti-trafficking advocates to move outside of the prosecution-centered models of intervention. As Zimmerman, Hossain and Watts (2011) explain, utilizing the judicial system “is a useful framework for law enforcement approaches, [but] it neglects the fundamental migratory nature of trafficking and minimises the health sector role” (p. 328). Early interventions to combat the “upstream” factors of trafficking can and should occur in health sectors—especially since up to 50% of survivors seek medical care during their exploitation (Konstantopoulos et al., 2013)—but require needed research before implementation. A public health approach that uses evidence-based research to promote trafficking prevention at micro- and macro-levels is crucial to balancing the “three Ps” in anti-trafficking efforts (Todres, 2011).

First, the research team used an institutional approach, collaborating with service providers (e.g., social welfare officers, homeless shelters, and schools) to gain a broad perspective of trafficking and vulnerability in the research area—the Kansas City metro area—with the understanding of the complexity and hidden nature of trafficking. Second, we conducted interviews with key service providers to map and delineate the wide range of survivors, their narratives, their histories and backgrounds, and their ongoing and unmet needs for survival and to exit of trafficking.

3. Using New Theoretical Frameworks to Address Vulnerability

While the range and substance of the interviews are expansive, for this article we are particularly interested in examining specific subsets of our sample that deal with LGBTQ populations, that describe non-normative survivors, or that talk in direct terms about survivor-centered and/or non-linear approaches to survivor services. Their experiences, their understanding of their own needs and strengths, and their articulation of a continuum of life experiences prompted us, first, to

look outside typical policy or program frameworks frequently used in trafficking work and, second, to look for more fluid understandings of identity, survival, and resilience. Though they seem initially very different, homeless youth, undocumented migrants, and trans* individuals are *all* targeted by traffickers who prey on their housing insecurity, economic insecurity, or personal vulnerability. In a prosecution-focused model of anti-trafficking work, these groups remain the most vulnerable through their relationship to the carceral state—all of these groups are vulnerable inside *and* outside of the system.

As often cited in the literature on homeless youth and transitional housing, LGBTQ populations are particularly vulnerable to exploitation, marginalization, and isolation. Housing insecurity is a significant issue, as LGBTQ youth are disproportionately represented in homeless youth populations (Gordon & Hunter, 2013). As Gordon and Hunter (2013) find, “because of their families’ reactions to their sexual orientation and the exploitation they sometimes experience in their communities”, (p. 37) queer homeless youth are often left without the safety nets afforded to many of their equally-vulnerable peers: homeless shelters might not open their doors to gender non-conforming youth, or foster care placements might not be accepting of openly LGBTQ youth in their homes. Without these safety nets, LGBTQ youth must negotiate their survival independently within a limited set of options, often turning to exploitative and dangerous practices. For example, in their study of LGBT runaway-homeless youth in New York City, Ferguson-Colvin and Maccio (2012) found that this population was subjected more frequently to sexual victimization than heterosexual runaway-homeless youth *and* more likely to engage in prostitution or survival sex for food, clothing, or shelter (p. 9).

Our findings about the particular vulnerability of LGBTQ persons to trafficking led us to think about how non-normative bodies and identities can be instructive in reshaping our understanding of prevention and protection, regardless of sexuality identity. The LGBTQ community in this project taught us that their particular sites of vulnerability led to new avenues of resilience. Those bodies and lives that are outside the norm are particularly vulnerable to discrimination, exclusion, and violence—and yet they are also highly resilient and able to create new ways of developing survival skills and new ways of conceptualizing services.

Queer theory, although rooted in the early movement politics of the LGBTQ community, has evolved to become synonymous with bodies, identities, politics, and subjectivities that occur outside the norm or that deviate from a “normal” vision of what a life should look like. Theorist Halberstam (2005) sees queer time and space in opposition to normative temporal and spatial tropes, which rely upon “respectability, and notions of the normal...upheld by a middle-class logic of

reproductive temporality” (p. 4). Time and place are defined by their proximity to heteronormative⁵ life stages or events—graduation from educational institutions, marriage, childbirth, the purchase of homes or cars. While these are not inherently oppressive or negative, taken together, these acts represent an ordered, linear life of reproduction and consumption with little room for deviation or agency. In contrast to this system, Halberstam (2005) sees queer time and place as providing different ways of being.

With its emphasis on blurring binaries and disrupting normative boundaries, queer theory can radically disrupt how we understand and use the institutions that structure our lives. The normative conceptions of linearity—a logical, forward movement from an origin story to an appropriate endpoint—that undergird these institutions gain new, subversive potential. While traditional conceptions of progress require a linear path from failure to success, from risk to resilience, the non-normative approach advocated by queer theory introduces gaps and loops as well as new definitions of progress.

It is important to note that the social service providers in the Kansas City metro are not exclusively providing queered services. Across the area, survivors could access legal aid for specific cases, GED programs, individual or group therapy, and housing and jobs assistance, all with normative “successful” outcomes. The difference is that many of these organizations and providers offer linear, traditional programs that are *informed* by their survivor-centered approaches. A domestic violence shelter offered transitional housing services for their clients, giving women case management and therapeutic services alongside apartment searches and financial assistance for rent. The ultimate goal of this program was to see women living independently in their own homes or apartments, an end goal that would fit with more normative approaches. However, they partnered this program with trauma-informed care. The shelter director explained:

Every single staff person...has completed 20 hours of trauma-informed care training to be able to understand what has happened to the people that, you know, precipitate the types of behavior that make them so vulnerable to domestic violence, but would also be the same factors that would make them vulnerable to trafficking (Interview by author, November 14, 2013).

Within this programming, staffers explored the larger factors that would inform the individual survivor’s experience, factors that create a cycle of violence that women might reenter even after completing rehabilita-

⁵ Heteronormative means to assume heterosexuality as the default, privileged, normative position for individuals in society.

tive services. By keeping tabs on the structural factors of domestic violence and interpersonal violence, this shelter acknowledged that their clients might need multiple attempts at “success” before being able to fully escape.

The new ideas of time, progress, and survival Halberstam presents give us important alternative ways of understanding the lives and experiences of trafficked persons—people who often have major interruptions or threats in their educational path, in their quest for family and security, and in their physical safety. These survivors may not respond to services that demand—either overtly or implicitly—that they follow a linear path toward success.

If both queer time/place and risk and resilience operate on a continuum, then the potential for subject-driven agency increases, disrupting the idea of one structured life path. Not all survivors can fit into a linear model of prevention and protection, especially those that live outside social norms either by choice or through duress and the fight for survival. Yet these practices are presented as the only options for social legibility: complete treatment, return home, live a productive life, and never return to these cycles of violence or exploitation again. Within this linear model, we cannot make sense of survivors who are addicts refusing to go through rehabilitation, survivors who are sex workers continuing to work as prostitutes, or survivors who are homeless returning to the streets—those survivors who exercise their agency in ways that contradict heteronormative success. Halberstam’s (2005) idea of non-normative time and place acknowledges that, “all kinds of people, especially in postmodernity, will and do opt to live outside of reproductive and familial time as well as on the edges of logics of labor and reproduction” (p. 10). The choice to operate as a subject outside of social norms for whatever reason—“deliberately, accidentally, or of necessity”—does not lead to erasure (Halberstam, 2005, p. 10). Rather, non-normative subjects—in our case youth, trans* individuals, undocumented persons—coexist on a continuum that recognizes the agency present in their disruption of their lives, their physical security, and their opportunities.

While the social service sector is a very specific institution, it is imprinted with the same normative concepts of time and place that structure how we move about the world. Halberstam (2005) writes:

In Western cultures, we chart the emergence of the adult from the dangerous and unruly period of adolescence as a desired process of maturation; and we create longevity as the most desirable future. We applaud the pursuit of long life (under any circumstances) and pathologize modes of living that show little or no concern for longevity. (p. 152)

Traditional social services follow this model, as survivors (ideally) move from a position of deviance and

risk—for example, addiction, homelessness, or financial instability—to a position of stability and success, usually meaning a position of heteronormative, middle-class production and reproduction. The “successful” survivor is not dependent upon social services to the same degree, moving to a position of self-reliance and autonomy.

Depending upon the sector, social service providers envision their survivors as gainfully employed, reunited with functioning families, sheltered in a home, and removed from addictive behaviors. While this is certainly not an inappropriate goal—we do not wish to criticize social service providers seeking an improved material existence for their vulnerable or exploited survivors—it limits the definition of “successful” survivors to those who align closest to a linear concept of progress. Survivors who do not normatively shift from instability to stability are rendered illegible within its framework because they do not fit the model of the “ideal victim” (Britton & Dean, 2014; Hoyle, Bosworth, & Dempsey, 2011; Lobasz, 2009; Munro, 2008; O’Brien, 2012; Oxman-Martinez et al., 2005): for example, those who repeatedly return to the service organization or those who refuse to modify certain risky behaviors and are inappropriately deemed culpable in their own exploitation.

Since Halberstam’s continuum links queer subjects through their agency—not their shared membership in a particular category—those inhabiting this space might not resemble each other in traditional ways of conceptualizing identity politics (i.e., by their race, class, gender, orientation, or ability). LGBTQ youth move in and out of social services next to undocumented laborers, domestic violence survivors, addicts, and homeless persons. Arguably, this collection of bodies is unintelligible, as their identification as vulnerable, exploited, or trafficked persons is not immediately recognizable—as many of the service providers we encountered explained, there is no “typical” survivor you can point out in a crowd. However, feminist theorists offer unique frameworks to create community amongst the disparate populations along this continuum, to bring othered persons into conversation with each other.

Ahmed’s (2000) concept of the strange encounter offers a first approach to forging community by producing “the figure of the ‘stranger’...not as that which we fail to recognize, but as that which we have already recognized as a ‘stranger’” (p. 3). All of the aforementioned groups can be deemed “strange” through their participation in survivor-centered services. We recognize them as unlike us—as non-normative—in their non-linear participation in services that seek to make them *not* “strange” through linear rehabilitation. Since Ahmed (2000) “examine[s] differentiation as something that happens at the level of the encounter rather than ‘in’ the body of an other” (p. 154), her theoretical framework is useful for reconceptualizing otherness as practices, not just bodily markers. Difference or other-

ness is not inherent within subjects; it can be linked to the way these subjects negotiate the world just as it can be linked to how their bodies are seen by the world. For example, youth who are trying to exit sex trafficking may feel it necessary to continue to be trafficked while they are getting the funds and resources to secure housing or a safe place to live. Because of inadequate housing options, they may feel it necessary to gather enough resources to survive before they seek more sustainable assistance.

Feminist theory asks us to move beyond boundaries of race, class, and gender identities to think about where our identities intersect and come into conversation or coalition (Ahmed, 2000; Anzaldúa, 1987; Crenshaw, 1989; Weir, 2008). If we use a feminist lens to understand new ways of working with lives that fall outside of the norm, we can start to shift “from a static to relational model” where we share “identification with others, identification with values and ideals, identification ourselves as individuals and as collectives” (Weir, 2008, p. 111). As survivors shift how they view their lives and experiences, as it is their agency to do, they can see themselves as participants and agents in their rehabilitation and survival.

4. Explanation of Study Site

This study examines trafficking in Kansas City, Missouri and Kansas City, Kansas, a major metropolitan city in the Midwest that is divided by a state line and surrounded immediately by rural areas. Leaders, advocates, and government officials in Kansas City are increasingly aware of the high levels of human trafficking—both labor and sex trafficking—in the region.⁶ Situated in the heartland of the U.S., Kansas City is on the crossroads of I-70 and I-35, major domestic traffic ways that bisect the country, with emblematic migration patterns for the domestic and international labor forces. Kansas City is often overlooked in US trafficking research, which focuses on the US coasts, border states, and larger major urban centers. Yet the patterns seen in Kansas City may be particularly instructive for anti-trafficking programs and policies in the heartland of the U.S.

Following the public health approach to preventing

⁶ Though quantitative data is notoriously difficult to attain, we are using proxy measures here. For example, we interviewed a lawyer who saw 170 victims during her tenure as a prosecutor. One lawyer estimates that the Western Missouri region moved from having no human trafficking prosecutions in 2003 to have the most prosecutions nationally by 2012. According to the Polaris Project, their human trafficking hotline received 371 phone calls from Missouri, ranking it as 19th out of all states, and 303 phone calls from Kansas, ranking it as 23rd out of all states in 2013. These numbers will continue to climb as the recognition and awareness of trafficking in the region is finally gaining attention.

trafficking outlined by Todres (2011), the research team first conducted an organizational scan of organizations and service providers working with vulnerable populations including women’s shelters, homeless shelters, LGBTQ youth organizations, faith-based organizations, migrant labor organizations, schools, English-language learner classes, members of the local government, law enforcement, and county-level officials such as sheriffs, public defenders, members of the judiciary, foster care services, social service providers, and medical facilities that may encounter vulnerable persons. Additional organizations were added based on a snowball identification technique, based on the chain of referrals from our initial contacts. The research team identified 70 such organizations in the Kansas City metro area.

Second, the research team conducted selected interviews with these agencies. This article represents what we consider to be Phase One of our research project—developing the research model and interviewing key service providers. Our next phases will focus on expanding this research to rural areas in the Midwest, will include interviewing trafficked persons, and will include a longitudinal component in which we interview these organizations over several years. While the interviews for this project are ongoing, at the time of this writing the team conducted 36 interviews with service providers, ranging from thirty minutes to two hours in length. The research team used semi-structured interviews based on a consistent interview guide that was developed by an interdisciplinary team of faculty and graduate students. Interviewers were allowed to ask follow up questions beyond the interview guide’s four sectors—general organizational questions, trafficking-specific questions, sector-specific questions, and public health outcome questions—depending on the nature of the organization or the types of information the interview was yielding.⁷

Part of the ethical framework that guided this research is that we are interested in working with organizations and populations that are vulnerable to a range of abuse, vulnerability, violence, and exploitation—not just trafficking. While it would be empirically expeditious to track trafficked persons through their relationships across service providers and over time, this presents several ethical challenges of privacy and confidentiality. We placed these ethical considerations at the heart of our research design and thus interviewed a range of organizations that deal with vulnerable populations, including but not limited to trafficking vulnerability.

⁷ All interviews were conducted in English and were transcribed by members of the research team. For this article, transcripts were analyzed using Computer-Assisted Qualitative Data Analysis Software (CAQDAS), specifically Atlas.ti 7.1.6. In this analysis, we were interested in identifying and understanding new ways of approaching trafficking, service provision, and survivor needs.

5. Findings

In the Kansas City metro area organizations we interviewed, we discovered that service providers see vulnerability, exploitation, and trafficking on the micro- and macro-levels. Change must occur at both the individual and structural level, as systems of inequality are not eradicated through one survivor's ability to leave and thrive. While the organizations we interviewed provided specific examples of how survivor-centered approaches work in practice, they also consistently mentioned the larger social norms that lead to this devaluation of certain bodies: rape culture, homophobia and transphobia, and "bootstrap" mentalities. The individual denigration of certain non-normative identities and the structural defunding of welfare state programs combine to leave certain survivors without necessary preventive or rehabilitative programs. Service providers were adamant that their survivor-centered approaches can and do work, but that we need massive social shifts to combat the continual cycles of violence and poverty that make so many people vulnerable in the first place. In the following section, we first discuss the micro-level approach to assisting survivors and then outline some of the macro-level policy adjustments that need to be made at the structural societal level.

5.1. *Reconceiving the Fluidity and Flexibility of Services*

The Kansas City metro area organizations interviewed for the ASHTI (Anti-Slavery and Human Trafficking Initiative) project provide a queerer approach to survivor services, one that transforms the social services sector from an institution reliant upon a linear approach to one that honors survivor agency on a less-direct path. Though these organizations do not name queer theories in describing their survivor-centered approaches, they certainly fit into Halberstam's flexible continuum: they provide a range of services that survivors can choose to accept or reject for whatever reason. A service provider from a sexual violence advocacy organization states:

I mean we are just there to provide the options to people. Sometimes they make decisions we recommend, and sometimes they don't, but that is okay, because that is what we are there for. We are there to help them make an empowered and informed decision (Interview by author, November 5, 2013).

A case manager from a state-level sexual violence advocacy organization echoes this, saying "It's up to the survivor to decide if they want to work with us or not, but they do get referred to us, and we do follow up with them. Then they make the decision about whether they want to work with us" (Interview by author, Oc-

tober 21, 2013). If survivors do not want to join individual or group therapy, enter the legal system, or completely disengage from their current situation, they simply do not have to and, more importantly, can return to these services later.

This model requires service providers to redefine progress or success on an individual level—one survivor's success might be simply hearing the options for making an empowered and informed decision while another's might be following through with this information. Survivors who seek services that might not fully diminish these risks have not failed; rather, they have exercised their agency to regain some kind of control over aspects of their lives that once seemed uncontrollable. As the service provider from a sexual violence advocacy organization explains:

Sometimes that means we make decisions that we wouldn't think are the best for them, and we can see that being, you know, being an issue with human trafficking situations where, they might be like, "Well, this is what I am going to do", and we may be looking around like, "Oh no, don't do that", but that is not up to us. It is up to them. And that I mean, that comes about in all kinds of ways. I mean, it's not up to us to say, "Oh you should press charges", or "You should do this or you should go seek counseling". I mean we are just there to provide the options to people (Interview by author, November 5, 2013).

The staffers are not experts dispensing a regimented program of rehabilitation; the lived experiences of the survivors propel the programs. A "good" survivor might go through all legal channels and all programs offered, but this is a very large burden upon an individual that does not acknowledge the real issues of retraumatization or exhaustion that accompany these processes. A survivor-centered approach queers this narrative, disrupting how individuals navigate the sometimes-overwhelming variety of services they can access upon entering the social service sector.

5.2. *Redefining the Ideal Victim*

These social service providers also actively work toward reducing the stigmas surrounding survivors of trafficking. Though Kansas City is increasingly recognized as a hub for human trafficking, it remains an issue many local residents understand only through very stereotypical contexts. Survivors of trafficking are called into being as the Stranger in ways that do not reflect their lived experiences. The general public, and oftentimes policymakers, want to craft trafficking survivors into the ideal victim—someone who has been abducted, brought from a foreign country, devoid of agency, intelligence, or social legibility. Otherwise, they

are constructed as complicit in their exploitation and, consequently, undeserving of assistance. A service provider from a domestic violence shelter sees connections with the limited perceptions of domestic violence survivors and trafficking survivors: “They must have done something; how could they be so..., why didn't they just deal with it, especially in sex trafficking. ‘Well, if they hadn't put themselves in that position’” (Interview by author, November 14, 2013). In working against the stigmas, social service providers seek to reduce this hierarchical distance between trafficking survivors and others in the community.

In our interviews, service providers see differences in the ways their survivors express their own agency and vulnerability based on a range of factors, including age, gender, sexual orientation, or rural or urban status. A service provider in the foster care system addressed communication more typical of rural survivors:

A lot of the language, you know, pertains more to urban teens and a lot of the relationship kinds of things...I think things look a little bit different, you know, in Emporia, Kansas, than they do in Brooklyn, New York, so, you know, not universally, but I think in a lot of ways....What I've seen is a lot more casual than that and a lot more matter of fact. It's more of like a...you know, “Yeah, I, my boyfriend, you know, asked me to sleep with his friend and then, you know, we stayed at these people's houses, and we were doing these drugs, and well, yeah, those other guys came over”....It's presented more as a lifestyle kind of thing. And a choice. Definitely a choice. These girls don't come in and say, “I'm a victim”. They come in and say, “Yeah, what's the problem? I like sex, and I wanted to do it and like...what's the big deal? It's fine” (Interview by author, May 6, 2014).

While this quote necessarily reflects the experiences of only one service provider, it suggests existing research has limited applicability for a range of survivors that fall outside the aforementioned “ideal” model of trafficking victims (Britton & Dean, 2014; Hoyle et al., 2011; Lobasz, 2009; Munro, 2008; O'Brien, 2012; Oxman-Martinez et al., 2005)—in this case rural youth. Just as trafficking survivors cannot be reduced to one race, gender, or orientation, they cannot be reduced to one geographic specificity (i.e., urban), and anti-trafficking prevention must recognize the important differences in the regional backgrounds, history, and experiences of trafficked persons in order to be effective.

5.3. *Redistributing Power Horizontally*

Many of the organizations emphasized a more horizontal distribution of power between survivors and service providers. Though the social service providers are arguably in a position of authority over the survivors,

they resist the patterns of domination that can manifest in these relationships, instead using a more affective framework. Weir (2008) writes, “[T]o identify with another is to love her; to ‘welcome her world’, to value her” (p. 123). An anti-trafficking non-profit emphasized the importance of valuing survivors. This service provider—herself a survivor of trafficking—gave her direct cell phone number to her survivors and visited them at their homes, a degree of intimacy divorced from many organizations' approaches. She also emphasized the importance of not judging their situations, positioning herself as an understanding friend or peer rather than a director of a non-profit organization. Instead of a more clinical, distanced relationship, one that requires the power of the social service authority to guide the survivor along a linear path, this kind of identification-with constructs community rather than hierarchy.

A coordinator for an ESL/GED program noted the importance of a teacher/student *and* student/student relationship within her program, as many of the students came from particularly vulnerable backgrounds. As their program does not require proof of citizenship, some enrolled students were undocumented, brought to the United States under suspicious circumstances: marriages that resembled “mail-order bride” set-ups, job programs with huge fees and fines for enrollment. At a minimum, their lack of English language training prohibited them from finding a larger community for support. Teachers offered advice on how to navigate various issues within their workplaces and family lives, often to extremes beyond their qualifications. However, she explained:

The biggest thing is the relationship they build, not only with their teachers but also with the cohort of the students as they move through the program together. They just really support each other. When they have successes, everybody celebrates together. A lot of that is just that they bring food and they eat at break together. They become sort of a family. It's really neat. I think that is sort of important. I also see like an age thing, where you'll sometimes see the older women mentoring along the younger women and men too (Interview by author, November 20, 2013).

For survivors made vulnerable through a lack of these supportive systems—LGBTQ youth whose families have rejected them, survivors of domestic violence whose partners isolated them from their communities, undocumented persons whose legal status requires secrecy and distance—a more egalitarian, communal structure within these social service organizations can be hugely important. Though teachers might have their students' best interests in mind, their primary role is still to teach English language and educational preparatory skills—they are not licensed social workers, law-

yers, or doctors, and thus cannot deal with the multiple issues many of their students face. However, they can create and foster a familial atmosphere among students, expanding the resources students can turn to in times of emotional trauma.

5.4. Survivor-Centered Approaches for LGBTQ Youth

The few Kansas City-area organizations that explicitly work with LGBTQ persons—trafficked or otherwise—were carefully attuned to the three areas of survivor-centered programming addressed above. One service provider, a staffer at a LGBTQ youth center, described his group as serving clients “more on a spectrum basis”, the most explicit connection to Halberstam’s continuum we saw. Youth can drop in to the center for programming or socializing as needed. The more secure youth who “aren’t really on their identity journey” on one side of the spectrum might not need to access the center for housing or food; rather, their concerns might be more emotional or psychological. Since the center operated with a more horizontal distribution of power, LGBTQ youth dropping in could easily “ask questions, both of our facilitators and mentors but also of their peers” (Interview by author, April 15, 2014).

For youth on the opposite ends of the spectrum—those most vulnerable to exploitation due to their particular circumstances—the LGBTQ youth shelter mobilized all their resources for youth to access if they so desired:

They are, they are in a situation where perhaps they came out and their parents or guardians or whomever they were living with is absolutely not supportive, and so they are just scrambling to find, “What’s the next meal?” “Where am I living?” And all that housing and shelter and food question marks to keep living. Um, and so we’ll absolutely help them and find them, you know, referrals to agencies in town that can provide that housing, we’ll leverage our food pantry and get them, um, a meal and a supply of foods for the next several days. And then access to our clothing donation items to make sure they’re, they’re comfortable (Interview by author, April 15, 2014).

An LGBTQ anti-violence group also operated in a similar way for their most vulnerable clients, using a coalition of LGBTQ-friendly—or at least not hostile—organizations throughout the Kansas City metro to provide legal, medical, or social services that her own group was not equipped to facilitate. Survivors could leave or return to this organization, as moments of stability opened opportunities and moments of vulnerability closed them. Though not tailored specifically for LGBTQ populations, these groups in the Kansas City metro area were able to successfully mobilize these

practices for the populations with which they worked, proving the necessity of these practices for marginalized persons. These interviews with LGBTQ organizations demonstrate that they are intentionally operating to “queer” their services and to apply the models of queer theory and activism within their service provision.

5.5. Implications for Policy: Structural Factors to Prevent Trafficking

Funding is a major issue for many of these social service providers. As survivor-centered approaches are less direct, they require more time, more staff, and more money. A director of a domestic violence shelter stated that “clients are staying longer and longer and longer” but “our economic situation is of course very difficult out there, more and more services that are cut so that they have less services” (Interview by author, November 14, 2013). The amount of money set aside for housing, therapy, job-training, and other important services does not reflect the number of survivors who need to access these programs. Survivors from marginalized positions become disproportionately affected by this reduction in services, increasing the violence they might experience and decreasing their ability to advocate for themselves (Aldridge, 2013).

Organizational coalition provides a temporary solution. Many organizations in the Kansas City metro area are connected at least informally, and a formal anti-trafficking coalition links the medical, legal, and social service sectors. If a trafficking survivor enters through a sting operation or an arrest, they are immediately connected to case managers, lawyers, and medical professionals who can help them navigate the multiple channels presented to them.

The informal coalitions can be useful, but limited funding opportunities can also create tension between groups. As a service provider from an LGBTQ anti-violence group explains, “I think that sometimes with organizations they don’t necessarily work together; it’s more of a competition, like funding competition instead of providing holistic services for folks” (Interview by author, October 16, 2013). In the face of reduced services, coalitions must form in order for organizations to survive, but they also must battle the inadvertent competition that also comes from limited economic opportunities. Arguably, social inclusion is the ultimate goal of all social service providers working with vulnerable, exploited, or trafficked persons—whether it be through traditional or queered approaches, all of these groups want their clients to move from victimization to survival. However, echoing Hedetoff’s (2013) claim that “social inclusion encounters powerful opposition”, the lack of equitable funding opportunities limits how these groups operate and what services they can provide (p. 1).

Funding issues also affect how social service pro-

viders attack larger, structural inequalities.⁸ As stated earlier, one of the major factors in queered practices is the importance of combatting the structural inequalities that make exploitation or trafficking possible: racism, sexism, classism, homophobia, transphobia, and xenophobia. For many organizations, these factors directly contribute to who accesses their services and how their services are received. A service provider from a sexual violence advocacy organization said, “I think the biggest barrier we face as an agency is that stigma against sexual violence. And I think that stigma is informed by different things like racism or classism or just different economic barriers” (Interview by author, November 5, 2013). If the stigma against sexual violence—or LGBTQ persons or homelessness or trafficking—persists, then these cycles of violence will also persist.

However, structural inequalities are also deeply embedded in our society—we usually learn at a very young age what it means to be normal, socially legible, worthy of attention. If social service organizations want to tackle these issues, they must start the process when community members are not yet completely indoctrinated into these ideologies. Nearly all of the organizations we interviewed emphasized the importance of early intervention, beginning as soon as children enter institutions like day care or elementary school. A case manager from a state-level sexual violence advocacy organization discussed her organization’s attempt to start the conversations amongst adolescents:

We have some groups that are focusing specifically on looking at issues like what does it mean to think of yourself as a man or a young man in society. What does masculinity mean? Things like that, we’re trying to redefine the idea of masculinity being associated with violence....We’re starting a group with young girls too. A similar aspect we’re trying to examine gender roles in society (Interview by author, October 21, 2013).

These groups require time, money, and staff presence for an extended amount of time, as structural inequalities cannot be eradicated in one year of programming.

⁸ For LGBTQ organizations, the recent shift towards a single-issue platform—marriage equality—has resulted in changing funding priorities. Groups working outside of the coastal hubs of gay activism or working outside of the marriage equality narrative are left with few funding opportunities, unable to provide resources or access the same positions of social legitimacy. As Warner (1999) writes, “Too many activists see marriage only as a way of overcoming the stigma on identity and are willing to ignore—or even celebrate—the way it reinforces all of the other damaging hierarchies of shame around sex” (p. 115). As activists focused on same-sex marriage gain more attention—and the accompanying funding and support—groups that work with homeless, queer youth or incarcerated trans* people remain underfunded.

Consistency is necessary to attack these larger issues, but the social welfare climate—reductions in funding, limited resources for staffing, high turnover in organizations—cannot facilitate these practices. Increasing funding allows organizations to move beyond the survivor-centered approaches that help on the individual level but, unfortunately, cannot address the structural inequalities that keep the systems in place.

6. Conclusions

Anti-trafficking and violence organizations in the ASHTI project demonstrated again and again that in order to assist survivors, they need the resources and capabilities to implement a survivor-centered model of service provision. They also asserted that they need the cooperation with policy makers, educational leaders, and community organizations to systematically begin to address the social and economic inequalities that foster discrimination, exploitation, and vulnerability. Addressing the larger structural issues are the key to preventing trafficking before it begins and the key to keeping survivors from cyclical vulnerability. As the organizations needs are growing, the funding environment is becoming more and more constrained through cuts to education, housing, anti-violence programs, social services, jobs training, and youth programs. Spending money on the front end for prevention will not only be more cost-effective but, more importantly, can stop crimes and violence before they occur.

Ultimately, these social service providers are seeking to empower their survivors with the abilities to access a livable life, regardless of how they individually define it. As Butler (2004) writes, “Certain humans are recognized as less than human, and that form of qualified recognition does not lead to a viable life. Certain humans are not recognized as human at all, and that leads to yet another order of unlivable life” (p. 2). The vulnerable, exploited, or trafficked survivors who operate within the institutional frameworks of social service organizations must first be recognized as capable of living a viable life, as human. Following the lead of organizations in this study, developing survivor-centered approaches that are fluid and flexible, that challenge the idea of an “ideal victim”, and that recognize the unique situations of LGBTQ persons, youth, and undocumented persons is key for the long-term battle to end trafficking and exploitation.

Our work with LGBTQ organizations also pointed to the importance of new frameworks for understanding agency. Queer theory can expand the concept of survivor possibility, resisting the “foreclos[ure] from possibility” that comes from the inability to recognize certain subjects as human (Butler, 2004, p. 31). By establishing a continuum—a more flexible approach, though certainly more convoluted and less predictable than linear models—the social service providers in the

ASHTI project present a new way of operating within therapeutic or rehabilitative institutions. In honoring the agency present in their survivors, these service providers enact social change on a relational level: they return control to subjects once perceived to be incapable of exercising their own choices or autonomous desires. By disrupting linear therapeutic approaches that constrain how subjects comfortably navigate institutional frameworks, queer theory expands which subjects are allowed to exercise their agency and which survivor-driven actions are considered valuable and valid to create livable lives.

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Conflict of Interests

The authors declare no conflict of interests.

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Article

Recognising Effective Legal Protection to People Smuggled at Sea, by Reviewing the EU Legal Framework on Human Trafficking and Solidarity between Member States

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Abstract

The death toll of migrants at sea is on the increase. The EU and its Member States are not addressing the situation by widening the EU legal framework on human trafficking to persons smuggled at sea. People smuggled at sea are extremely vulnerable at the hands of their smugglers and suffer serious abuse of their human rights from their journeys through the desert, on the boats and when they reach their final destination. They become victims of human trafficking and they should not be neglected anymore by the EU and its Member States. However, all EU proposals lack of concreteness as Member States do not want to support and host migrants at sea on their territories. They are reluctant to launch solidarity between each other as requested by the Lisbon Treaty and by doing this, they are indirectly responsible for the death of many migrants at sea and for the abuse of their human rights. This article proposes alternatives to explore that could change the situation if Member States show their willingness to cooperate with each other.

Keywords

economic migrants; human rights; human trafficking; slavery: smuggling by sea

Issue

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1. The Extent of Smuggling of Migrants by Sea

Smuggling of migrants by sea is a crime which is causing the death of many migrants. Migrants smuggled at sea are either genuine asylum seekers or unauthorized labour migrants (Fargues, 2014). Asylum seekers are eligible refugees whilst unauthorized labour migrants or economic migrants are not entitled to asylum unless they are victims of human trafficking. This article analyses international legislation and EU law on smuggling of migrants by sea and it argues that victims of smuggling of migrants by sea should be considered victims of human trafficking and granted the same legal protection as these victims. This is because victims of smuggling are vulnerable migrants who leave their countries of origin to avoid death because of famine,

disease and poverty. Consequently, although they are not forced by criminals to leave their countries of origin, they do this because the alternative would be living in extreme poor conditions in their countries of origin. Their exact number is unknown because there is no reliable data on the reasons why they leave their countries of origin (Fargues & Bonfanti, 2014).

International law and EU law have distinguished smuggling of migrants from human trafficking and, by doing this, they have allowed nations to prioritize border security rather than victims' protection. Consequently, all law addressing smuggling of migrants by sea at international, EU and national level, have concentrated on border controls when people smuggled by sea should have been legally protected as victims of human trafficking. This is because they are exposed to risk of death. It

was recently reported that around five-hundred migrants smuggled by sea, including infants (ANSA, 2014), have drowned in the Mediterranean sea and others are dying and will continue to die if the EU does not adopt appropriate legislation to protect people smuggled by sea.

This article will show that trafficking and smuggling are linked with each other because, often, people smuggled by sea cannot repay the price for their journey to smugglers and for this reason they eventually become victims of human trafficking. Traffickers take an advantage of their poor situation to recruit them in forced labour and sexual activities. This is why they should be granted legal protection. Returning economic migrants should be a last resort in the EU as alternatives to their return should be explored. The EU should reform law on smuggling of migrants by sea promptly because in the Mediterranean Sea the situation is increasingly dramatic. Many migrants coming from Africa, especially from the Horn of Africa are drowning while they are trying to reach the EU through Italy. The accident of October 2013 beside the Italian island of Lampedusa where 366 migrants died, have shown the extent of the problem. Frontex has published data on the number of people crossing the Mediterranean by sea. In 2012, the number of migrants arriving in Europe irregularly across the Mediterranean has dramatically decreased from 141,051 in 2011 to 72,437 (Frontex, 2013; Manrique Gil, Barna, Hakala, Rey, & Claros, 2014). However, in 2013, the number of irregular migrants crossing the Mediterranean sea from Africa, increased sharply and reached the number of 107,365 (Frontex, 2014a), because of the war in Syria, Iraq and the destabilizing situation in the Horn of Africa (Fargues, 2014).

When migrants at sea were interviewed, they stressed that they left their countries of origin because of insecurity and economic concerns (Frontex, 2014a). In addition, Somalis and Eritreans stated they used the route from Sudan and Ethiopia to reach the EU through the Central Mediterranean route, specifically Italy and Malta.¹ In between migrants detected in the Central Mediterranean route, there were also Syrians who were leaving their country because of war (Frontex, 2014a). According to Frontex, the Central Mediterranean route particularly from North Africa to Italy, has accounted for 38% of all detection of irregular migrants at EU level (Frontex, 2014b). People from Horn of Africa have used the route from Libya and Tunisia to reach Italy and this route has seen episodic surges in migrant flows during the past ten years (Manrique Gil et al., 2014, *supra* note 4, p. 6). These data have been confirmed by the UNHCR which stated, in their most recent report, that the Central Mediterranean route received the majority of sea arrivals in 2013 with a dramatic increase compared to the previous year (United Nations High Commissioner for Refugees [UNHCR], 2013). In addition, Frontex has

reported that most people coming from the Horn of Africa use dangerous routes across the Sahara to reach Libya, prior to embarkation to Italy (Frontex, 2014a). They cross the Saharan desert (Frontex, 2014a) and many of them die in the desert and the survivors often report that they have to cross the borders of different countries at night time and, during these journeys, they spend much time without food, water or a shelter.

Subsequently, criminal organizations recruit migrants in the desert and support them in their difficult journeys. These organizations are usually hierarchically structured. In the organizations, there are intermediaries and brokers and the latter might be the only contacts migrants have with smugglers. This fact makes migrants very vulnerable as they have no other choice than trusting brokers (United Nations Office on Drugs and Crime [UNODC], 2014). Brokers and other intermediaries might be of the same ethno-linguistic background of migrants or they can be people who have become affiliated to smugglers after an unsuccessful sea-crossing they want to attempt again by earning money to pay smugglers for their journeys. Therefore, they have to work for smugglers until they gain enough money to try crossing the Mediterranean Sea again (UNODC, 2014). Brokers can also be nationals of migrants who have developed a very profitable business and may have no interest in crossing the sea. They liaise with middlemen who subsequently create a contact between migrants and smugglers and may be guarantors of payments by keeping the money until the journeys have been completed (UNODC, 2014). Smugglers might also promote their services to migrants through people who act as recruiters. Usually, recruiters work independently as they are not stranded to smugglers. They come from countries of origin of migrants or from transit countries (UNODC, 2014). Other people involved with smuggling at sea are transporters who accompany migrants from one country to another until the point of embarkation. There are then, people who pilot the boat who might not be aware of migration or people smuggling issues, including the involvement of criminal organisations (UNODC, 2014). They are usually fishermen who, because of their skills, are recruited by smugglers to transport migrants from one coast to another. Spotters provide specific information on controls at the borders and, in some occasions, sailors of commercial boats in the world, have informed smugglers about possible surveillance at the borders (UNODC, 2014). Research has suggested that corrupted officials in States, even of very high level such as border officials, police, immigration officials, soldiers and employees of embassies can participate in the smuggling of migrants at sea. They can be involved as organizers or facilitators (UNODC, 2011a). Migrants take weeks, months and even years to reach the Italian coast as their money run out and they cannot pay the price for their trips to the smugglers to reach Italy or other EU Mediterranean countries. Therefore, whilst waiting for embarkation,

¹ See in particular Table 6 of Frontex (2014, p. 31).

migrants can be threatened by enforcers who use violence in order to keep them under control or to make sure they pay the price for their journey. Many smuggled migrants have testified in Lampedusa that in Libya they are abused, tortured and raped (De Bruycker, Di Bartolomeo, & Fargues, 2013). Testimonies of migrants have also reported that they work in Libya for sometimes in order to pay smugglers for their embarkation. Migrants at sea can pay their smugglers in different ways. One way is up front before departure; the second way is en route to the different smugglers involved or by credit. This latter method of payment often leads to human trafficking as the trip by boat is paid in advance by a third party but when migrants reach the countries of destination, they become victims of human trafficking because they are unable to repay the price for their trip (Papanicolopulu, 2013, p. 158; also, The Global Initiative, 2014; The International Organization for Migration and People Smuggling, 2011; United Nations Department of Economic and Social, 2013). These facts have also been confirmed by Interpol, which has published the result of evidence showing that smugglers continue to exploit migrants in the country of destination in order to obtain additional fees for their journeys (Interpol, n.d.). Furthermore, recent research undertaken by Italian journalists has found out that people smuggled by sea are often victims of traffic of organs since, when they cannot repay the price for their journey, they are left with no choice other than selling their kidneys and even corneas to smugglers (Attianese, 2014). Do migrants at sea make a free choice to leave their countries of origin and accept to be recruited by smugglers? They are tortured, raped and eventually become victims of human trafficking and removal of organs. Would they travel by the support of criminal organizations if they had other alternatives? It is thought that no people would travel in these conditions if they had other alternatives. Consequently, one can strongly affirm that they, as victims of human trafficking, are forced migrants and should be protected by the law which protects victims of trafficking.

For this purpose, international law and EU law on smuggling and trafficking should be reviewed. Finally, in the EU, smuggling of migrants by sea should be considered a form of human trafficking and the laws on these two crimes should belong to the same legal framework.

2. Legal Framework of Human Trafficking and People Smuggling and the Recognition of Some Forms of Protection up to People Smuggled by Sea

2.1. Legal Framework of Human Trafficking and People Smuggling in International Law and in the EU Law

At international level, assisting irregular migration is considered a crime by the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational

Organized Crime (UNTOC) (United Nations, 2001a) (from now on Smuggling Protocol). The Smuggling Protocol states that smuggling of migrants is the procurement of an illegal entry for a financial gain (United Nations, 2001a, art. 3). The Smuggling Protocol, although states that migrants shall not be prosecuted for having been the object of smuggling, does not recognize the fact that migrants can be coerced to leave their countries of origin because of their economic desperate conditions (United Nations, 2001a, art. 5). The Smuggling Protocol states that smuggled migrants have to be protected against violence of individuals and of criminal groups. Their rights to life and not to be subject to inhuman and degrading treatment must also be protected, although eventually smuggled migrants have to be returned to their countries of origin (United Nations, 2001a, art. 16 and 18). By comparing the UNTOC Smuggling Protocol with the UNTOC Trafficking Protocol, it could be noted that the differences between the two crimes are coercion and other forms of physical and psychological violence which are essential elements for the crime of trafficking in human beings but not for smuggling of migrants (United Nations, 2001b). The Smuggling Protocol focuses on the protection of fundamental rights of smuggled migrants (UNODC, 2011b) but not on the fact that they might be considered victims of poor circumstances and thus, deserving legal protection on the territory of the country of destination.

At European level, the situation is not different. Human trafficking and smuggling of migrants by sea do not belong to the same legal framework. Smuggling of migrants is considered a crime by the Facilitation Directive and its accompanying Framework Decision establishing effective, dissuasive and proportionate criminal penalties against people who assist irregular migration for financial gain (Council of the European Union, 2002a, 2002b). Some legal protection is granted to people smuggled by the Framework Decision which states that its provisions must be applied in compliance with the 1951 Refugee Convention and New York Protocol of 1967. In other terms, the Framework Decision has to take into consideration the right of non-refoulement granted to refugees and asylum seekers (Council of the European Union, 2002a, Art. 6). In addition, the fight against smuggling of migrants cannot jeopardize the rights of migrants in need of subsidiary protection. Specifically, the fight against smuggling of migrants have to take into consideration the recast Directive 2011 which has replaced Directive 2004/83/EC on the minimum standards for the qualification of subsidiary protection (European Parliament & Council of the European Union, 2011b).²

² The UK and Ireland are not bound by the recast Directive (see paragraph 50 of European Parliament, & Council of the European Union (2004)). Therefore, these two Member

Trafficking in human beings is dealt with the Council of Europe Convention on Action against Trafficking in Human Beings which regulates this crime (Council of Europe, 2005, Art. 4). The definition of human trafficking given by the Council of Europe Convention, is identical to the definition given by the UNTOC Trafficking Protocol. At EU level then, there is Directive 2011/36/EU which has replaced the Framework Decision 2002/629/JHA on human trafficking (European Parliament & Council of the European Union, 2011a). The Trafficking Directive defines the crime and it establishes a very detailed programme for the protection of human trafficking victims' (European Parliament & Council of the European Union, 2011a, Art. 1 and 11-16). The Directive, compared to the previous Framework Decision, is more specific in providing protection to victims of human trafficking. There are specific Articles in the Directive establishing the form of protection victims of human trafficking are entitled to and there is a particular attention given to children. Conversely, the Framework Decision had only one provision on the protection of victims as it prioritized the fighting against trafficking rather than the protection of victims (Council of the European Union, 2002c). Compared to the Council of Europe Convention, the Directive is more detailed as it defines the concept of vulnerability as "a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved" (European Parliament & Council of the European Union, 2011a, Art. 2(2)).

Although the EU legal framework on trafficking and smuggling is not the same, there are common provisions which apply to victims of these two crimes. These provisions can be found in Directive 2004/81/EC which entitles victims of these two crimes, to a residence permit (European Council, 2004). However, whilst granting a residence permit to victims of human trafficking is compulsory, it is discretionary, in the case of victims of people smuggling. This means that the application of the Directive to victims of people smuggling is not compulsory as the Directive leaves the decision on the protection of people smuggled to the hosting Member States (European Council, 2004, Art. 3). On the contrary, the people smuggled by sea should be recognized as vulnerable irregular migrants deserving legal protection because they leave their countries of origin forced by their economic situation. Unfortunately, economic and social poor situations are not considered enough elements to grant legal protection to victims of people smuggling by sea at the same level of victims of human trafficking (Bett, 2010).

2.2. Prohibition of Collective Expulsion

There are other rights recognised to smuggled migrants

States continue to be bound by European Parliament, & Council of the European Union (2004, para. 38 and 39).

by sea but their effectiveness is marginal because they do not contribute to reduce the death toll of migrants at sea. These rights are recognised by Article 4 Protocol 4 of the Convention for the Protection of Human Rights and Fundamental freedoms (ECHR) (Council of Europe, 1963, Art. 4, Protocol no. 4) and the related case-law of the European Court of Human Rights (ECtHR). On the basis of Article 4, the ECtHR has ruled in *Becker v. Denmark* (1975) that aliens cannot be pushed back without a "reasonable and objective examination of the particular cases of each individual alien of the group". This ruling has been confirmed by other cases such as *Conka v. Belgium* (2002) where the ECtHR ruled that there was a violation of Article 4 Protocol 4 of the ECHR (Council of Europe, 1963) (prohibition of collective expulsion) because the personal situation and circumstances of individuals concerned had not been fully examined. Indeed, migrants were all requested to attend the police station at the same time and they were all requested to leave the Belgian territory at the same time. These facts were considered by the ECtHR as collective expulsion because the individual situations had not been considered separately and on a case by case basis.

Recently, an important decision has also been taken in *Hirsi and others v. Italy* (2012) where, for the first time, the ECtHR ruled that irregular migrants rescued in the extraterritorial sea, are under the control of the rescuing State and for this reason the prohibition of collective expulsion, applies also in this situation. In this case, Italian authorities pushed back to Libya a group of Eritreans and Somali. The Italian government stated that the push-back was the result of an agreement with Libya on return policy of irregular migrants intercepted at the sea. They also argued that the interception of migrants was done in the high sea and not in the national jurisdiction. Consequently, the Italian government did not have the full and exclusive control of migrants, thus, there was not collective expulsion prohibited by Article 4 Protocol 4. However, the ECtHR ruled that the applicants had fallen within the jurisdiction of the Italian State because in between the period of boarding the ship with migrants rescued at the high sea and the period of handing them over the Libyan authorities, migrants had been under the continuous and exclusive control of the Italian authorities. The ECtHR ruled that the notions of expulsion and jurisdiction are territorial and therefore, Article 4 only prohibits collective expulsion committed on the national territory. Nevertheless, in this particular situation, the Italian government had exceptionally exercised extraterritorial jurisdiction and, thus, extraterritorial expulsion by sending migrants back to Libya whilst rescuing them at the high sea. Certainly, the ECtHR stated that States have the right to adopt a restrictive immigration policy with the aim to prevent irregular migration. However, this policy can be exercised only in respect of the Convention by not allowing collective expulsion and by giv-

ing migrants the right to appeal against the expulsion decision. They should also be recognised an effective remedy as established by Article 13 ECHR. These rules also include restrictive policy applied extraterritorially. Indeed, they must be respectful of the prohibition of collective expulsion and of the right to grant an effective remedy no matter if policy has been implemented outside the national territory. In this situation, the Italian government had transferred the applicants to Libya without carrying out any examination of each individual situation. Immigrants have been embarked on ships, sent to Libya and disembarked there without considering their situation and their right to an effective remedy. Therefore, this action amounted to collective expulsion which is prohibited by Article 4 Protocol 4 of the ECHR and it was also in breach of Article 13 ECHR.

2.3. Rights to Be Rescued and Disembarked

International law is not clear about the place of disembarkation as the International Convention on Maritime Search and Rescue (SAR) only states that a person must be disembarked to a “place of safety” but where is the place of safety in EU Member States? (International Maritime Organization, 1979, chapter 1.3.2; also, De Bruycker et al., 2013). The SAR Convention has been amended in 2004 but the issue has not been resolved as it establishes that States have to agree the place for disembarking distressed people at sea ((International Maritime Organization, 1979, chapter 3.1.6.4). At EU level, instead, the Council and the Parliament have adopted a Regulation (Regulation 656/2014) which establishes new rules on maritime surveillance and rescue operations coordinated by Frontex (Council of the European Union, 2014).³ The new Regulation clearly prohibits collective expulsion (Council of the European Union, 2014, art. 4 (3)).⁴ The Regulation emphasizes that EU immigration and asylum policies should be based on the principle of solidarity in respect of Article 80 of the Treaty on the Functioning of the European Union (TFEU) (Council of the European Union, 2014, para. 2). Principle of solidarity means that all Member States shall share responsibility in order to implement the EU policies, including policies on asylum and immigration. This is a very positive element of the Regulation as it prioritizes cooperation between EU Member States when facing smuggling of migrants by sea. The Regulation introduces new interception and rescuing rules in order to protect migrants at sea more effectively and gives them the opportunity to disembark while waiting on a decision on their particular case. The Regulation addresses smuggling of migrants by estab-

³ The UK and Ireland are not bound by this Regulation (para. 25 and 26).

⁴ The article 4 (3) states that the personal circumstances of people rescued in the sea, must be assessed.

lishing specific rules when one Member State suspects that one vessel is engaged in the smuggling of migrants by sea (Council of the European Union, 2014, art. 6-7). For this purpose, the Regulation introduces new rules on the interception of migrants in the territorial sea, on the high seas and in the contiguous zone (Council of the European Union, 2014, art. 6-10).

However, these legal measures which strengthen rules on rescue operations, are not sufficient to prevent the death of irregular migrants smuggled by sea. A wider policy should be adopted to prevent their death. Rescuing and then returning migrants who cannot be considered victims of human trafficking, will not prevent the death of migrants at sea. These people are vulnerable migrants and no legal measures will only be effective until the concept of vulnerable migrants will be widened to include migrants smuggled by sea. In order to achieve this objective, the current EU legal framework on human trafficking should be reformed.

3. Widening the Concepts of Vulnerability and Exploitation to Protect Migrants at Sea

In international law, “People seem to occupy a space so small that it can be compared to that of a rock or a small island...” (Papanicolopulu, 2013, p. 194). There are no provisions establishing that States are legally obliged to protect individuals and their rights at sea (p. 195). Certainly, as Papanicolopulu, points out, the UN-TOC Smuggling Protocol obliges States to criminalise and fight against people smuggling (p. 198). However, victims of this crime committed at sea, are not considered individuals deserving legal protection at the same level of refugees or victims of human trafficking. This is why EU law should widen the concepts of vulnerability and exploitation to include people smuggled at sea.

On the basis of what it has been explained above (see Section 1), migrants at sea are forced migrants and, thus, exploited by their smugglers and, for this reason, they should be considered presumed victims. According to Eurostat, presumed victims are those people who have met the criteria to be identified as victims on the basis of Directive 2011/36/EU but who have not been formally identified by relevant authorities or who have refused to be identified as such (Eurostat Statistical, 2014). Migrants at sea could be considered presumed victims as, they are forced to leave their countries of origin because of extreme poverty and eventually, they are abused and exploited by smugglers. These criminals take an advantage of their conditions of extreme poverty for a financial gain, by endangering the lives of migrants in the desert and during their journeys to the EU. Indeed, smugglers do not hesitate to organize dangerous trips or to carry migrants on unsafe boats which sink very often in the Mediterranean. However, migrants at sea are not recognised as victims by relevant authorities of EU Mem-

ber States because those authorities consider them irregular migrants with no rights of residence, apart from the right not to be collectively expelled and the right to be rescued at the sea. Directive 2011/36/EU does not expressly include smuggling of migrants at sea in its scope. It is strongly desirable, that Article 2 (1), (2) and (3) of the Directive is amended. Article 2 (1) states that trafficking in human beings is

“the recruitment, transportation, transfer, harbouring or reception of persons,...by means of the threat or use of force or other forms of coercion,...of a position of vulnerability...for the purpose of exploitation”.

Forms of coercion include the abuse of a position of vulnerability which, according to Article 2(2) “means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved”. It is thought that this is the position of people smuggled at sea as they are so desperate as not to have other alternative than accepting to be recruited by smugglers. It is desirable Article 2(1) specifies that the concept of vulnerability shall include vulnerable people recruited in the desert for the purpose of smuggling at sea. In this way the scope of the human trafficking’s definition will be widened without any mis-interpretation and Member States will be legally obliged to consider people smuggled by sea at the same level of victims of human trafficking.

However, human trafficking also includes the recruitment for the purpose of exploitation. Article 2(3) states that:

“Exploitation shall include, as a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs”.

Could migrants at sea be considered recruited for the purpose of exploitation? It is thought that they should be because migrants at sea suffer serious abuses of human rights when they are recruited by smugglers in the desert. They are abused, tortured and raped by smugglers in order to keep them under their control and ensure that they repay the price for their journey (see Section 1). These abuses can be compared to slavery or practices similar to slavery which are contemplated by Article 2 (3) of the Directive on human trafficking. According to the International Criminal Tribunal for the former Yugoslavia (ICTY), indications of enslavements could be the vulnerable position of a victim and other elements such as “psychological oppression or socio-economic conditions” (*Prosecutor v. Kunarac, Kovac and Vukovic*, 2001, para. 542). The ICTY was referring to the crime committed during a war (Pi-

otrowicz, 2012, p. 184). However, the same concepts could be extended to people smuggled by sea because of their vulnerable socio-economic conditions. Indeed, they are forced to suffer abuses of their human rights such as rape and torture which smugglers practice on them without any respect for their human dignity. From one side, migrants at sea cannot avoid these abuses as they depend on smugglers’ support without which, they would not be able to travel to the EU by sea. From the other side, smugglers exploit the vulnerability of migrants at sea and reduce them to a condition similar to slavery, in order to ensure they obtain a financial gain from the victims. This practice could be considered a form of slavery and within the scope of Article 2 (3) of Directive 2011/36/EU. This paragraph should be changed and it should state that slavery includes the abuses that smugglers at sea commit on migrants during their trips, before their embarkation and whilst their journey in the sea. This is because it has been reported that often migrants on the boats, are thrown into the sea by physical force by their smugglers.⁵ These amendments are very important to provide legal protection to people smuggled at sea.

4. Protection of People Smuggled by Sea by Considering Them Potential Victims of Human Trafficking

On the basis of the mid-term report on the EU strategy towards the eradication of human trafficking published by the European Commission (Commission), people smuggled by sea could also be considered potential victims (and not only presumed victims) of human trafficking and deserving the same legal protection of these victims. The Commission has highlighted that the defeat of human trafficking requires early identification of victims who “cannot be effectively assisted and protected if they are not properly identified” (European Commission, 2014b). For this purpose, the Commission called on Member States to establish appropriate mechanisms to ensure that victims are identified at an earlier stage and that they are provided with adequate protection, assistance including legal assistance in criminal proceedings. The Commission published Guidelines for the identification of victims which are particularly addressed to border guards and consular services (European Commission, 2013b). The Guidelines emphasize that the early identification of victims should be a priority. In order to achieve this outcome, not only victims but also potential victims of human trafficking should be identified at an early stage. In this way, victims will be protected and supported and police and prosecution authorities will be in a better position to investigate and detect traffickers. There are two

⁵ These news are reported nearly daily on Italian newspapers. See, for example, *Il Sole 24 Ore* (2013).

elements to be considered in these reports. The first one is that the crime can be better detected if victims are identified as they might start a programme of recovery and eventually report traffickers. The second element is that the Commission also considers as priorities the identification of potential victims and their legal protection. Indeed, the Commission in its mid-term report states that once victims, including potential victims as indicated by the Guidelines, are identified, they shall be entitled to residence permits, labour rights, access to justice and compensation on the basis of Directive 2011/36/EU and of Directive 2012/29/EU. Consequently, the Commission is widening the scope of the human trafficking legal framework as it states that victims are not only those people who have been identified as such, but also those people who can become victims because of their circumstances. On the basis of what explained above (see Section 1), people smuggled by sea can be considered potential victims of human trafficking as when they cannot repay the price for their journey they become victims of human trafficking, including removal of organs. The legal protection that should be granted to migrants at sea is a residence permit as established by Directive 2004/81/EC (European Council, 2004). However, Article 3 of Directive 2004/81/EC should be modified by establishing as compulsory the issue of a residence permit to victims of people smuggling by sea. At the moment, the Directive does not make it compulsory but it leaves the choice to Member States' discretion. Therefore, people smuggled by sea might (and not shall) be entitled to a reflection period and to the issue of a residence permit as established by Article 8 of the Directive. In this way, it will be difficult to identify potential victims and the crime of human trafficking will not be defeated. Instead, it is important to address the problem of trafficking and its roots because its eradication can be successfully achieved by defeating the connected crime of people smuggling by sea. Enlarging the concepts of vulnerability and exploitation, granting compulsory legal protection to migrants at sea, on the basis of Directive 2004/81/EC, are essential to make the global fight against trafficking in human beings, effective.

The Commission seems determined to address smuggling of migrants at sea. Indeed, in its recent Communication on the application of Directive 2004/81/EC, it identified the strict links between smuggling of migrants by sea and human trafficking (European Parliament & Council of the European Union, 2014). The Commission stated that it intends to implement "the actions identified by the Task Force Mediterranean, set up in October 2013 with the aim of preventing the loss of migrants' lives at sea by, inter alia, stepping up the fight against migrants trafficking and smuggling". Therefore, the Commission calls for a Global Approach to Migration and Mobility (GAMM) by concentrating on different actions (European Commis-

sion, 2013a). One action consists of cooperating with countries of transit and origin of migrants at sea in order to prevent them from attempting to enter the EU irregularly and by the support of criminal organizations. Another action should focus on resettlement as it is "an important mean by which persons in need of protection can arrive safely to the European Union without going on hazardous journeys over the Mediterranean" (European Commission, 2013b). In order to achieve this objective, it is important that the EU in cooperation with international organizations, facilitate voluntary return of migrants at sea to their countries of origin. In addition, EU Member States should resettle migrants and increase their quotas. The Commission encourages resettlement through the Union Resettlement Programme which will be supported by the EU funding available under the Asylum and Migration Fund and it could publish guidelines on a common approach to humanitarian permits/visas (European Commission, 2013b).

The Commission reports are full of good intentions. However, an effective policy on the protection of migrants at sea can be adopted only if Member States will collectively tackle the problem with responsibility. Unfortunately, the Commission has reported that Member States are issuing low numbers of residence permits in exchange for cooperation and, only in exceptional circumstances, the residence permit is issued beyond the willingness of victims to cooperate (European Commission, 2014b). The Commission is also concerned because it is unclear how Member States identify victims and potential victims and inform them of their rights "to initiate a recovery process and to reflect before deciding whether to cooperate with the authorities" (European Commission, 2014b). Indeed, in the legislation of Member States, it is not specified whether the information is provided to officially identified victims or also to presumed victims. It is thought that presumed victims should be given the information as it could be a way to give them the opportunity to escape from the traffickers and smugglers by starting a programme of recovery.

Are Member States willing to grant legal protection, residence permit and right related to it to people smuggled by sea? They could do that by implementing the principle of solidarity but they are not taking action in this direction.

5. The Need to Apply the Principle of Solidarity in the EU

The principle of solidarity is a legal obligation that Member States shall comply with as it is expressly established by the Treaty of Lisbon. Article 80 TFEU states that "the policies of the Union...shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the

Member States". The European Commission has emphasized in the Stockholm program that the principle of solidarity should lead the Union and its Member States to establish a common immigration and asylum policy (European Commission, 2010). However, at the moment the principle of solidarity has not been put in place and this fact is demonstrated by the recent actions of EU Member States. During the Arab Spring, which caused a surge in the number of migrants from North Africa to Italy where 20.000 Tunisians landed by sea, the Italian government, in order to respond to the emergency, issued a temporary visa to people in need of humanitarian protection. This visa entitled the holder to free movement in EU countries. Italy was aware that most of them would have moved to France because of historical links, common language and the presence of a diaspora (De Bruycker et al., 2013, supra note 22). As a result, the French government issued a Circular which stated that residence and temporary permits issued by EU Member States to third country nationals were not valid on the French territory unless notified to the European Commission by the issuing Member State (Nascimbeni & Di Pascale, 2011, p. 353). Furthermore, the other Member States proposed to re-introduce checks at the internal borders of the Schengen area (De Bruycker et al., 2013). These facts demonstrate that no solidarity exists between Member States. Solidarity established by Article 80, could lead to a more effective protection towards migrants at sea. Unfortunately, spite and revenge between EU Member States prevail rather than the protection of vulnerable migrants at sea which should have the priority in order to prevent their death in the sea. The fact that there is not solidarity within the EU has also been reported by the European Parliament (EP) which has revealed that the Dublin system has not facilitated more cooperation and solidarity between Member States. This system "is practically inoperative as a mechanism to govern the allocation of responsibility" (European Parliament, 2009). The EP's Reflection Note stated that

"Member States seem bent on minimizing their responsibilities under Dublin, and the evidentiary difficulties posed by the Dublin criteria provide them with good opportunity to do so, to the detriment of the systems' effectiveness. The Dublin III Proposal, which maintains those very same criteria, would do little to improve this situation".⁶

Indeed, the new Dublin III Regulation adopted in 2013 (Council of the European Union, 2013) did not address the EP's concerns because it made "no significant attempt to rethink the fundamentals of the Dublin system, even though it had led to significant human rights

abuses" (Peers, forthcoming). No Member States want to take responsibility of migrants at sea otherwise they would have implemented adequately the Dublin II and Dublin III Regulations. Conversely, Member States do not want to deal with the problem of migrants at sea. Italy in October 2013, after the drowning of 366 migrants beside the Italian island of Lampedusa, has launched the *Mare Nostrum* operation to respond to the humanitarian emergency caused by the exceptional surge of migrants from Africa (Fargues & Bonfanti, 2014). The *Mare Nostrum* operation aimed to rescue migrants at sea before the boat sank. However, despite the Italian government by this operation has saved many migrants, it has not complied with the Dublin III Regulation as civil servants have not registered the number of migrants entering the Italian territory (Fargues & Bonfanti, 2014; also Trincia, 2014). Research suggests that a number of migrants have moved to Northern Europe but many other migrants have become victims of human trafficking, as explained above (Fargues & Bonfanti, 2014; also Section 1 of this article). From one side, Italy by not registering migrants, has breached the Dublin III Regulation because Article 13 of this Regulation requires that Member States register asylum seekers entering their territory. From the other side, Italy has contested that it is unfair that the burden of rescuing migrants at sea and giving them asylum should only be of one Member State's responsibility (Fargues & Bonfanti, 2014). In any case, their concerns are not justified because research has shown that Member States which host more migrants and asylum seekers, are Germany, Sweden, the United Kingdom and Belgium. Mediterranean countries, except from France, do not host the migrants rescued at sea. Countries which host more asylum seekers, should be granted financial support by the EU. In this way they will be more able to host migrants at sea for longer periods and to apply the principle of solidarity (Fargues & Bonfanti, 2014). In fact, Northern European countries have asserted that solidarity should be increased by granting financial support to the Member States which host distressed migrants rescued on the high sea. Unfortunately, these issues have not been addressed and in October 2014, *Mare Nostrum* operation will be replaced by an operation called Joint Operation Triton and led by Frontex. Frontex is a small agency which can only be successful if supported by Member States (Fargues & Bonfanti, 2014; also European Commission, 2014a). However, their support will be difficult to achieve. Indeed, Northern European countries are skeptical about this Joint Operation as they are asserting that the *Mare Nostrum* operation has increased the number of irregular migrants at sea (Paci, 2014). Conversely, they believe that the prospect of being saved increases the departures. The Italian UNHCR spokeswoman Carlotta Sami, stated that there is no evidence that suggest this is happening. She also reported that rescue operations

⁶ See The European Parliament reflection Note on the Evaluation of the Dublin System and on the Dublin III Proposal, page 4.

are insufficient to save people and that it would be better the EU reviewed its legal migration policy to decrease irregular migration at sea (Paci, 2014).

This is an objective that will be even more difficult to achieve as Member States are not keen to adopt a more liberal migration policy despite they are in need of unskilled workers. Indeed, it has been reported that low skilled migration allows native workers to be recruited in jobs requiring higher skills (Fargues, 2014). In addition, low skilled migrants save industries from collapse or stagnation caused by shortage of native workers. The need of unskilled workers will increase in the next twenty years (Fargues, 2014). Migrants smuggled by sea could be employed as unskilled workers and not returned to their countries of origin. Finally, it should be considered whether people smuggled by sea could be returned voluntarily and only in this latter case, should they be returned to their countries of origin. This is because migrants by sea are trapped in vicious circles since, not having any economic alternatives in their countries of origin, they will always try to leave them regularly. Nevertheless, if this is not possible because of EU strict policies on immigration, they will leave irregularly. The Ministry of Foreign Affairs in Senegal stated that the EU common approach to migration prioritizes control of external borders. Instead, an effective way to prevent migration could be adopted by creating more wealth in African countries (Reslow, 2012). If wealth is not created, there will always be people trying to leave their countries of origin to avoid death because of famine. These policies will be effective when Member States will work together by applying the principle of solidarity which at the moment is not being launched and it does not seem it will be launched in the next future.

6. Conclusions

This article has shown that migrants at sea do not have the same legal status of victims of human trafficking. The only rights recognized to them are the right not to suffer collective expulsion and the right to be rescued in the sea. Their specific situations have to be evaluated individually by hosting Member States because collective and automatic expulsion is prohibited by Article 4 of Protocol 4 ECHR. In addition, Member States have the legal obligation to rescue them in their territorial waters and in the contiguous international waters. However, they are not eligible to refugee and if they are not recognised victims of human trafficking, they will not have the right to be legally protected within EU Member States. They should be granted a visa on the same conditions of human trafficking victims'. In addition, if neglected, they will eventually become victims of human trafficking to repay the price of their journey to smugglers. Their effective protection could be guaranteed by reviewing the EU legal framework on human

trafficking and by strengthening solidarity between Member States. However, the EU legal framework can only be reviewed if Member States cooperate with each other in rescuing and hosting migrants at sea. At the moment, there is not solidarity between Member States. They are blaming each other and are not showing concerns for migrants at sea. This is the reason why the situation is destined to further failure.

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Conflict of Interests

The author declares no conflict of interests.

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Article

The Canadian *Criminal Code* Offence of Trafficking in Persons: Challenges from the Field and within the Law

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Abstract

Despite early ratification of the United Nations Trafficking in Persons Protocol, the *Criminal Code* offence of trafficking in persons in Canada has received little analytical or interpretive attention to date. Adopted in 2005, this offence has resulted in successful convictions in a limited number of cases and criminal justice authorities have continued to rely on alternate or complementary charges in cases of human trafficking. In particular, prosecutions for cases involving non-sexual labour trafficking remain extremely low. This article provides a socio-legal examination of why the offence of trafficking in persons in Canada is under-utilized in labour trafficking cases. Based on an analysis of data generated from 56 one-on-one interviews gathered from a variety of actors involved in counter trafficking response mechanisms and a legal examination of the key components of the offence, we argue that definitional challenges have resulted in narrow understandings and problematic interpretations of the *Criminal Code* offence. Such narrow interpretations have resulted in restricted applicability, particularly in cases of labour trafficking. More broadly, the article points to the need to address the limitations of the *Criminal Code* while formulating responses to trafficking that are not dependent on criminal law.

Keywords

Canadian Criminal Code; criminal justice; human rights; human trafficking; labour trafficking; law

Issue

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1. Introduction

Highly politicized and polarized discussions leading to the adoption of the international definition of human trafficking has resulted in a contested framework for understanding human trafficking in national contexts (Doezema, 2010; Gallagher, 2010; Hua, 2011; Jordan, 2002a; Kempadoo, 2005). In particular, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereaf-

ter, the *Protocol*) has been co-opted to reinforce existing international debates regarding the disputed relationship between prostitution and the sexual exploitation of women and girls, with some groups engaged in the debates conflating human trafficking, sexual exploitation, and sex work (Doezema, 2002; Hua & Nigorizawa, 2010; Sanghera, 2005; Soderlund, 2005; Thorbek & Pattanaik, 2002). These debates, and the problematic discursive conflation between human trafficking and sex work, has impacted the resulting im-

plementation of laws at the domestic state level, limiting not only the advancement of provisions to protect the rights of individuals working in sex industries (Chapkis, 2004; Doezeema, 2010; Hua, 2011; Jordan, 2002b; Sanghera, 2005; Soderlund, 2005), but also the implementation of measures that address other forms of exploitation¹ falling within the broader rubric of human trafficking, including forced labour, debt bondage, and domestic servitude. While some states, including the United States (*William Wilberforce Trafficking Victims Protection Reauthorization Act 2008*), and more recently the United Kingdom (*Coroners and Justice Act 2009*) and Australia (*Crimes Legislation Amendment (Slavery, Slavery like Conditions and People Trafficking) Act 2013*), have identified and addressed forced labour as a specific criminal offence within, or outside of, broader anti-trafficking legislation, Canada relies on a “catch-all” trafficking offence that does not delineate specific forms of exploitation. As a result, this article reveals the language of the criminal offence of trafficking in persons in Canada is largely unattuned to the phenomenon of non-sexual forms of labour trafficking. In turn, criminal justice authorities perceive significant difficulty in applying the offence to situations of non-sexual labour trafficking. More broadly, the article underscores the limitations of using a criminal law framework to address trafficking in persons, in general, and labour exploitation, in particular.

The *Protocol* was ratified by Canada through the inclusion of human trafficking offences in the *Immigration and Refugee Protection Act [IRPA]* (s.118) in 2002 and the Canadian *Criminal Code* (ss.279.01-.04)² in 2005. Despite significant public attention to the issue of human trafficking, the *Criminal Code* offence has received little analytical or interpretive attention.³ To date, approximately a dozen convictions have

¹ While exploitation remains a contested term and language in general remains problematic in trafficking studies, we distinguish between sex trafficking and other forms of labour trafficking. Further, we recognize that not all forms of sexual labour are exploitative; however, human trafficking, by nature, requires exploitation to occur. Similarly, we also adopt the legal language of “victim” used in the criminal justice system for the purpose of situating this discussion within a criminal law framework. However, we recognize that “victim” and “exploited” labels have been used in anti-trafficking discourses to undermine the agency of individuals in a variety of areas, particularly sex trade industries where “victim status” is frequently rejected (Downe, 2006, p. 66; Sonderlund, 2005). Thus, our use of the term “victim” should not be understood as implicit support of enforcement-based approaches that deem voluntary forms of labour and migration as “exploitative” and operate to marginalize the voices and experiences of individual agency. Rather, we employ the label for practical purposes of examining the existing *Criminal Code* offence and its applicability to instances of non-sexual labour trafficking.

² Amended by SC 2005, c43; SC 2010, c3; SC 2012, c15.

³ For a critical examination of Canadian trafficking legislation

been obtained under sections 279.01 and 279.04 (Royal Canadian Mounted Police [RCMP], 2013; United Nations Office on Drugs and Crime [UNODC], 2013; US State Department, 2010; US State Department, 2011; US State Department, 2012);⁴ of the few cases that have proceeded to trial, only one has produced a written decision that included substantial judicial consideration of the wording of the offence (*R. v. Urizar*). All but one of the existing convictions involved sex trafficking, which points to a potential gap in the applicability of the legal framework to labour trafficking cases.⁵ Although it is possible this discrepancy can be accounted for by there simply being less labour-related cases,⁶ this article will demonstrate that law enforcement and social service providers in Canada perceive the *Criminal Code* to be less applicable in labour trafficking instances. This is especially problematic since there are few alternate charges available for cases of labour trafficking under the *Criminal Code*.⁷ As a result, the labour trafficking offence remains under-utilized.

Through an interdisciplinary analysis, this article provides a socio-legal examination of the *Criminal Code* trafficking in persons offence and how it is perceived by criminal justice and service provider representatives. Specifically, alongside a legal analysis of the key components of the *Criminal Code* offence, this article examines data generated from 56 one-on-one interviews (16 in Calgary, Alberta; 21 in Vancouver,

in relation to the procurement offence see Roots (2013).

⁴ Of the stated 50 cases where human trafficking or related convictions have been obtained (see RCMP, 2013), only 10 reported cases of specific convictions under s.279.01 of the *Criminal Code* are known: *R. v. Nakpangi* 2008 (guilty plea); *R. v. St Vil*, [2008] OJ No 6023 (QL) (guilty plea); *R. v. Urizar* 2010, (upheld on appeal, 2013 QCCA 46) (verdict by judge); *R. v. Estrella* 2011 (verdict by jury); *R. v. AA* 2012 (upheld on appeal, [2013] OJ No 3192 (QL)) (verdict by jury); *R. v. Byron* 2013 (verdict by judge); *R. v. Domotor* 2012 (guilty plea); Emerson (see RCMP, 2010, p.25, guilty plea); Vilutis (see RCMP 2010, p. 25, guilty plea); Lennox (see RCMP 2010, p. 26, guilty plea).

⁵ *R. v. Domotor* represents a case of labour trafficking in which several accused pled guilty to charges, including of human trafficking under s.279.01 of the *Criminal Code*. Despite other possible identified cases of labour trafficking (See, i.e., Alberta Police Report, 2012; Brazao, 2008; LaJoie, 2011; Sikka, 2013), criminal charges under either the *Criminal Code* or *IRPA* offences of human trafficking have been relatively rare.

⁶ Feingold (2005) argues that labour trafficking is likely more prevalent than trafficking for forced prostitution.

⁷ Complementary charges under the *Criminal Code* could include, for example: extortion (s.346); intimidation (s.423); or, kidnapping (s.279). No cases for labour trafficking prosecuted under alternate charges are known or available in official records. Conversely, in cases of sex trafficking, criminal justice authorities in Canada rely on alternate charges under the existing framework of offences in relation to prostitution: see *Criminal Code of Canada*, RSC 1985, c-C46, as amended by the *Protection of Communities and Exploited Persons Act*, SC 2014, c25.

British Columbia; and 19 in Winnipeg, Manitoba)⁸ with representatives involved in counter-trafficking related employment, including frontline workers, government officials, and law enforcement (see Appendix A for a list of selected government and nongovernment agencies represented by participants in one-on-one interviews).⁹ The interviews took the form of face-to-face or, when not possible, over-the-phone conversations and involved open-ended discussions (see Appendix B for a list of questions used to guide the interviews).¹⁰ Using content analysis, the interview data was examined for recurring and/or significant themes and compared these themes with the findings of the legal examination of the criminal offence.¹¹

⁸ These cities were selected because they have been identified as “hot spots” of human trafficking (Oxman-Martinez, Lacroix, & Hanley, 2005, p. 4). Further, Alberta and British Columbia represent two of three provinces where charges of labour trafficking have been laid in Canada (Public Safety Canada, 2012).

⁹ The participants in this study represent a variety of perceptions within the counter-trafficking field, such as harm reduction and intervention strategies as well as various locations within criminal justice responses (e.g., immigration and passport sections, labour standards, city police involved in trafficking cases, legal representatives, etc.). Since their participation was based on their position within an institution of employment, participants from a variety of agencies were contacted directly, provided information about the study, and requested to contact the researcher if they would like to participate. They were asked questions based on their occupational knowledge. All participants were 18 years of age or older and there was no remuneration or compensation offered to those who participated in the study. Consequently, potential participants did not feel coerced or obligated to participate. In order to maintain the confidentiality of participants, the particular occupational positions held by participants has been omitted; however, the names of the type of organizations they represent have been included, except when participants requested otherwise (see Appendix A).

¹⁰ The principle investigator in this study, Dr. Julie Kaye, conducted the qualitative interviews. The interviews occurred between October 2010 and February 2011. All the interviews were conducted in English and ranged from 30 minutes to 2 hours in duration, but the majority of the interviews were approximately an hour in length. In all but a few instances, the interviews were audio recorded, transcribed verbatim, and then analyzed. A few participants did not consent to having the interview audio-recorded. In these instances, detailed notes were taken and analyzed.

¹¹ An examination of recurrent and/or significant themes remains sensitive to both manifest content (e.g., assessing the frequency of specific recurring words, such as consent, victims, etc.) and latent content (e.g., assessing the overarching occurrence of themes, such as trafficked persons being portrayed in terms of their victimization, innocence, or resilience). However, rather than presupposing specific concepts or categories, this research approaches the data with an open, qualitative lens to uncover the thoughts, ideas, and meanings of the research participants (Strauss & Corbin, 1998). Since this project is concerned with the depth and nuances necessary to understand a

The following section provides an overview of known labour trafficking trends and cases in Canada to date, and establishes the problem of under-recognition and underrepresentation of labour trafficking in Canadian law and policy. The third section introduces the *Criminal Code* offence and outlines the challenges of implementation perceived by law enforcement authorities, alongside problems of interpretation, including the role of movement and the challenges associated with the definition of exploitation. In particular, this section provides a legal analysis of the “fear of safety” standard, which has proven to be a key impediment to advancing criminal charges of labour trafficking. The fourth section examines the evidentiary burdens that further limit the use of the legislation, focusing on the problems presented by an emphasis on victim cooperation and credibility. The article concludes with a discussion of the limitations of the existing legislation and the associated insecurities these limitations create for trafficked persons in Canada.

2. Labour Trafficking in Canada

Before discussing the evidence of labour trafficking in Canada, it is necessary to clarify the relationship between various legal definitions at both the international and domestic levels. The international *Protocol* defines human trafficking as including three primary elements: an *act* (recruitment, transportation, transfer, harbouring or receipt); a *means* (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits); and, a *purpose* of exploitation (the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs). The *Protocol* thus makes explicit room for non-sexual forms of exploitation, specifically for forced labour, slavery or practices similar to slavery, and servitude. Background documents further suggest that these concepts should be interpreted in light of their existing definitions under international law. While a full canvassing of the particular definitions and interpretations of these related concepts is beyond the scope of this article, it is helpful to note that the definition of forced labour, particularly, is very broad in nature and encompasses a wide range of non-violent or non-physical coercive tactics.¹² As such,

diverse range of experiences, such an approach uncovers how participants represent human trafficking and anti-trafficking initiatives and policies.

¹² The definition of forced labour is found under the *Convention Concerning Forced or Compulsory Labour* (International Labour Organization, 1932, art 2(1)): “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Although there are many links to be made between the

this article employs the term “labour trafficking” in a broad manner, consistent with possible interpretations at the international level. However, the manner in which domestic legislation accounts for the various elements under the *Protocol* ranges greatly and, as will be seen in section 3, the definition of human trafficking under Canadian criminal law is critiqued for its narrow interpretation in this regard.

In implementing the *Protocol* in domestic legislation, Canada adopted two primary offences under *IRPA* and the *Criminal Code*. The *IRPA* offence is focused on organizing entry into Canada, and does not explicitly include a requirement that an individual was exploited, only that their entry was facilitated through “abduction, fraud, deception or use or threat of force or coercion” (s.118, *IRPA*). Thus, where the *IRPA* offence is applicable, its elements are generally straightforward and clear in their interpretation (see *R v. Ng*, *R v. Ladha* which set out the elements of the offence and their interpretation). However, the *IRPA* offence is limited in its applicability to only one possible population of trafficked persons: foreign nationals who have been brought into Canada through unauthorized means. Where a foreign national was brought to Canada through legitimate means, and later exploited, such as individuals arriving under the Temporary Foreign Workers Program (where specific concerns have arisen in relation to labour trafficking, see RCMP, 2010; Sikka, 2013; Hastie, 2012), the *IRPA* offence will likely be of limited use. Unlike the offence under *IRPA*, the offence under the *Criminal Code* focuses most significantly on the presence of exploitation of an individual, and is not limited to the crossing of international borders, or to foreign nationals (as will be discussed in Section 3). Thus, while the *Criminal Code* may have broader application in respect of the geographic and relational boundaries of its application, its focus on exploitation, and how that is defined and interpreted, is much more onerous than the *IRPA* offence.

Despite the low number of identified and prosecuted cases of labour trafficking, as outlined in the Introduction, evidence establishes that this form of human trafficking does exist within Canada. The available data on the issuance of Temporary Resident Permits (TRPs) for trafficked persons provide strong evidence to counteract the assertion that labour trafficking is relatively rare in Canada. Available statistics establish that, for the period from May 2006 to De-

concepts of forced labour and human trafficking as interrelated, but independent phenomenon (see, i.e., Gallagher, 2010, p. 35, n. 95), discussions of this relationship are beyond the scope of this paper. Rather, this paper is focused on the legal definition of human trafficking and its operationalization in contexts of non-sexual forms of labour, as discussed in the introduction to this article. As such, it is the components and features of the legal definition of “human trafficking” at both international and domestic levels, and its interpretations, that are central to the arguments put forth in this article.

ember 2012, Citizenship and Immigration Canada (CIC) issued TRPs to 89 foreign nationals, 64 (72%) of which were identified as “victims of trafficking for labour exploitation” (Public Safety Canada, 2013). Thus, a significant majority of potentially trafficked persons, as determined by CIC, were subjected to labour trafficking, not sex trafficking, which is identified separately. Moreover, this occurs in a context where frontline workers identify that accessing TRPs for individuals victimized by labour trafficking has proven particularly challenging (see Kaye, Winterdyk, & Quarterman, 2013). In addition to CIC data, a recent study commissioned by Public Safety Canada identified 47 possible cases of trafficking for labour exploitation (Sikka, 2013, see Annex A at pp. 39-47).

However, despite this evidence, a pervasive belief concerning the dominant, if not singular, presence of human trafficking as sexual exploitation has relegated the issue of labour trafficking to the background of both policy and on-the-ground action. As one law enforcement representative in British Columbia describes:

We haven't here done any big [labour trafficking] investigations. I've got to be quite frank with you. I put a much greater value on the female victims of human trafficking in the sex trade. Twenty men from Mexico or Africa who are forced against their will to work under horrible conditions is very, very bad, but you know their lives probably aren't in danger, they're not going to get raped, they're not going to get beaten. So I don't want to minimize that because those are very valuable investigations, but we do focus more on female victims and there's some female victims in forced labour as well, but we do look at those, but it's not as high priority as female victims in the sex trade.

The beliefs and priority given to the issue of human trafficking for sexual exploitation thus contributes directly to lower action on labour trafficking by law enforcement authorities, which in turn propels forward the idea that labour trafficking constitutes a very small proportion of the overall trafficking problem (Feingold, 2010; Hastie, 2012; Thompson, 2006).

Despite such perceptions that labour trafficking represents a small proportion of the overall “trafficking problem” in Canada, a number of cases have surfaced that demonstrate the existence of labour trafficking and illustrate the challenges associated with applying the *Criminal Code* offence in this context. A small number of labour trafficking cases have proceeded through the criminal justice system in Canada. Recently, two cases of alleged domestic servitude were prosecuted under the *IRPA* offence of human trafficking; while one case resulted in a conviction by jury trial (*R v. Orr*), the other resulted in an acquittal (*R v. Ladha*). Under the *Crimi-*

nal Code, one case of labour trafficking has resulted in a successful conviction to date (*R. v. Domotor*). This case involved a large-scale organized crime operation, widespread criminal and fraud schemes, and use of significant violence. The accused persons in this case pled guilty to various charges, including, for some, charges of human trafficking (*R. v. Domotor*).

A number of other cases that have not proceeded to trial have also been identified.¹³ A 2008 case in Elmvalle, Ontario involved the deceptive recruitment of men from the Philippines who were forced to work and live in poor conditions, had their identity documents and wages withheld, and movement controlled (Brazao, 2008). This case presented numerous indicators of labour trafficking, as understood under international law; however, this case was not perceived to fall within the prescribed definition of exploitation under the *Criminal Code* because the men did not appear to fear for their safety (Brazao, 2008). In 2011, a group of labourers in the agricultural industry in Windsor, Ontario were recognized by Citizenship and Immigration Canada as trafficked persons, and allowed to remain in the country to pursue private legal remedies, despite the fact that no criminal charges were laid in that case (LaJoie, 2011). The case presented similar features to that of the Elmvalle case: poor living and working conditions; withholding of wages; and, the deduction from wage payment for inflated living costs as well as penalties (LaJoie, 2011). As will be explored further in the following sections, the non-physical and non-violent nature of the conditions have resulted in difficulty in determining whether the situation falls within the legal understanding of “human trafficking” under Canadian criminal law.

More recently, in 2012, a case involving 60 migrant workers from Poland and the Ukraine surfaced in St. Paul, Alberta. Three individuals were initially charged with human trafficking for allegedly exploiting the labour of 60 migrants working for their company, Kihew Energy Services Ltd (Alberta Police Report, 2012; Citizenship and Immigration Canada [CIC], 2012). In the end, the company pled guilty to lesser charges of human smuggling (*IRPA*, s.117) and the human trafficking charges against the individuals were dropped.¹⁴

¹³ While these cases are primarily found through newsmedia reports and supported by anecdotal accounts from interview participants, the TRP statistics above provide more concrete evidence of the existence of labour trafficking beyond what can be reported or found in the public domain. See also, Sikka (2013) for further documentation of labour trafficking cases in Canada.

¹⁴ Of note, Kihew Energy was fined a sentence of \$215,000. However, investigators in the case estimate the company profited approximately \$1,000,000 by recruiting the Polish workers who arrived on student visas to attend training at Lakeland College. Rather than attending courses, the company sub-contracted the worker's labour at high cost while pay-

The offence of human smuggling is very similar to that of human trafficking under *IRPA*, focusing on organizing entry into Canada in contravention of the Act (in other words, without legal authorization). The only difference between the offences of smuggling and trafficking under *IRPA* is the use of the means to organize that entry (with trafficking requiring the presence of the means of abduction, fraud, deception or use or threat of force or coercion). Thus, where a case involves a foreign national who entered Canada without proper legal authorization, the human smuggling charges may serve as a complement to trafficking charges where evidence in the case may not be sufficient to meet the burden of proof and elements of the offence. However, because *IRPA* focuses on unauthorized entry into Canada (both in relation to smuggling and trafficking offences), we contend that it is ultimately of limited value in addressing labour trafficking in Canada, and human trafficking more broadly, as it will remain contained to only one possible population of trafficked persons.

Despite the growing body of evidence of the existence of labour trafficking in Canada, criminal justice representatives suggest they are hesitant to move forward with criminal charges in these cases, and appear to perceive the *Criminal Code* legislation as particularly problematic in this regard. The following legal analysis explores the primary tensions experienced to date regarding the meaning and applicability of the *Criminal Code* offence of trafficking in persons, particularly for cases involving non-sexual forms of labour trafficking. This analysis points more broadly to the limitations of responses dominated by a criminal law framework.

3. Interpreting the *Criminal Code* Offence of Trafficking in Persons: Pitfalls and Possibilities

This section engages in a legal analysis of the *Criminal Code* offence of trafficking in persons, in order to better understand both current and possible future interpretations of its requisite elements. The offence of trafficking in persons is set out under sections 279.01 and 279.04 as follows:

279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the

ing the workers substantially lower rates. The workers were also allegedly instructed not to inform anyone about their low wages and that any breach of contract would result in deportation (Alberta Police Report, 2012).

commission of the offence; or to imprisonment for a term of not more than fourteen years in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service;

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused used or threatened to use force or another form of coercion; used deception; or abused a position of trust, power or authority.¹⁵

The wording of the offence poses two primary issues to be explored: first, the interpretation and understanding of the acts, under s.279.01, which constitute human trafficking, and specifically whether movement is required as a part of the offence; and, second, the interpretation of scope of the definition of “exploitation”, and specifically of the term “fear for safety”, under s.279.04.

The *Criminal Code* sets out the “basic” acts listed under the international *Protocol* (recruits, transports, transfers, receives, holds, conceals or harbours), as well as the additional acts of “exercising control, direction or influence over the movements of a person”. These form the *actus reus* element of the *Criminal Code* offence. The listed acts under the offence thus appear quite broad in nature. While the listed acts taken from the *Protocol* have not been subject to additional interpretation, the acts of “exercising control, direction or influence” were adopted from the language of the procurement offence under the *Criminal Code* and have been interpreted in case law in that regard. Control has been interpreted to refer to invasive behaviour which leaves little choice to the person controlled; direction has been interpreted to constitute the existence of rules or imposed behaviours; and, influence has been interpreted to include any action done with a view to aiding, abetting, or compelling a person (*R. v. Perrault*, considering s.212; see also, *Roots*, 2013). This interpretation of “exercising control, direc-

¹⁵ Subsection (2) to s.279.04 added by amendment: SC 2012, c15.

tion or influence” was adopted in the first trial decision interpreting s.279.01 of the *Criminal Code* (*R. v. Urizar*).

Despite the breadth and apparent clarity of the acts listed under s.279.01, their interpretation and application continue to confound criminal justice authorities grappling with cases of human trafficking. A key interpretational challenge expressed by criminal justice authorities and service providers is the question of whether movement of some kind is required as an element of the offence, mirroring similar confusion at the international level (Gallagher, 2010). Although the list of associated acts under s.279.01 is disjunctive, and thus implies that movement may not be required as an element of the crime, some criminal justice authorities interpret this as a mandatory element.¹⁶ As one legal representative commented:

I think if you read within the context of the of the definition there, the person who's charged doesn't have to be solely responsible for the movement; they can facilitate it, they can counsel it, they can assist, but ultimately there has to be a movement of a person and then the servitude of the exploitation.

Similarly, in applying the legislation, some law enforcement officials rely on the element of movement as the defining factor for determining whether to lay human trafficking charges. As one law enforcement representative indicates:

I had a file where someone thought she was just going to be working as like a stripper, or a dancer at bachelor parties and she got mentally forced into doing prostitution as well, which wasn't her main goal but then she just kept getting hounded and hounded and hounded so much that she definitely did stay in it because she felt forced to. However, that doesn't fall under human trafficking because *she wasn't taken anywhere* but she was forced to work in the sex trade, which is stuff we do prosecute and we see that more often (emphasis added).

As this excerpt suggests, movement is sometimes perceived in the field as the primary distinguishing factor used to determine whether a case falls under the trafficking in persons legislation versus pursuing charges under a related section of the *Criminal Code*. While there is greater availability of options for alternate

¹⁶ Of the dozen cases with convictions secured under s.279.01-.04 in Canada to date, 11 of these involved domestic sex trafficking, meaning that the trafficked persons were not moved across international borders. While some cases involved transport between cities, others appeared to be rooted within one area. See, generally, UNODC (2013); RCMP (2010). While the *Criminal Code* language appears not to require movement, clearly this is an interpretive issue which causes confusion and a hesitance to use the offence in practice.

charges in relation to a potential case of trafficking for sexual exploitation, as discussed in the Introduction, options of alternate charges in cases of labour trafficking are very limited.

In addition to the confusion surrounding movement, the wording of s.279.01 states that the accused must engage in conduct “for the purpose of exploiting them or facilitating their exploitation”, which forms the *mens rea* element of the offence. However, this component of the offence must be interpreted in light of the definition of exploitation found under s.279.04. In interpreting this element of the criminal offence, it may appear that the *Criminal Code* does not require a “means” element as found under the *Protocol*, and that this definition of “exploitation” correlates to the *purpose* of exploitation under the *Protocol*'s 3-pronged definition. However, as the subsequent analysis will demonstrate, the definition of exploitation under s.279.04 in fact imports an implicit *means* element in understanding what is meant by “fear for safety”, and the fact that this is not explicit and in line with the *Protocol* has only added to confusion at the interpretive and implementation levels.

Establishing exploitation requires that the accused engaged in conduct that “in all the circumstances, could reasonably be expected to cause the other person” to fear for their safety (*Criminal Code*, s.279.04, emphasis added). This language also appears in the *Criminal Code* offence of criminal harassment, which will thus be used as a starting point for analysis. In this context, reasonableness requires an objective foundation, based upon an ordinary reasonable person’s view; but can also account for the particularities of the victimized individual's circumstances, such as age, gender, and vulnerabilities (*R. v. Sillip*, paras. 25-27). The test, as it relates to criminal harassment, and applicable here, has been put as this: “[i]n order to determine whether her fear was reasonable we must look at the events as set out above objectively in the context of all the events and having regard to the person to whom the words were addressed” (*R. v. Haroon*, para. 66). Thus, the test requires both an objective (reasonable person) and subjective (particular circumstances of this case and this victim) element. It is not necessary to prove actual fear by this victim; the offence rather requires evidence that it would be reasonable for a person, with a similar background to and in similar circumstances as the victim, to be fearful. As regards the interpretation of “safety”, this language has been interpreted in criminal harassment case law to include not just physical harm, but also psychological safety (*R. v. Sillip*, 418-19, aff’d in *R. v. Ryback*, *R. v. Goodwin*).¹⁷

¹⁷ See also, *R v. Hau* (1996, para. 73); *R v. Gowing* (1994); *R v. McCraw* (1991) (interpreting “serious bodily harm” to include psychological integrity, health or well-being); *R v. Haroon* (2011); *R v. Bachmaier* (2009).

While it is concretely recognized that, in the context of criminal harassment, safety includes the concepts of psychological and emotional security, its translation beyond that context, and specifically to the concept of human trafficking, remains uncertain. Criminal harassment by its very nature connotes an understanding of activity that is deliberately used as a “tool of intimidation” (*R. v. Haroon*, 2011). While some of the requisite *means* of human trafficking under the *Protocol* also imply intimidation (such as coercion, threats, and abuse of a position of power), others do not (such as fraud, deception, and, in some circumstances, abuse of a position of vulnerability). Thus, human trafficking, at the international level, seeks to criminalize a broader range of conduct beyond “intimidation” as set out in the criminal harassment offence. The offence of criminal harassment also criminalizes conduct that rises to a particularly egregious level, such that the very consequence of the conduct is reasonably seen to be a fear for one's safety—whether physical, psychological, or emotional, whereas the concept of human trafficking, as outlined in the international *Protocol*, criminalizes conduct where the natural consequence of those *means* does not necessarily imply that a person will fear for his or her safety or security (*Protocol*, art.3(b); UNODC, 2009; UNODC, 2012). Particularly as concerns labour exploitation, common indicators put forth by the International Labour Organization establish many “targets” of coercive conduct that do not directly relate to the physical safety or security of a person, including restriction of movement, debt bondage, withholding wages, retention of identity documents, and threats of denunciation to authorities (International Labour Organization [ILO], 2005). Finally, although the criminal harassment case law has broadened the interpretation of safety, it could be argued that any psychological or emotional fear is predicated on a fear of the harassment activity rising to a level where bodily integrity or safety will be jeopardized. Thus, its value in advancing a broader understanding of “fear for safety” under the trafficking in persons offence is debatable.

Despite the broader interpretation of this standard outside the context of human trafficking cases, the use of the word “safety” creates a strong connotation that only conduct involving physical force or threats thereof will be considered sufficient to constitute human trafficking under the *Criminal Code* offence. This interpretation of the standard is supported by evidence from the legislature, law enforcement, and judicial authorities. In the records of the parliamentary committee reviewing the initial bill, the connection between “safety” and physical harm was noted, though not subject to substantial debate: “[b]asically, they fear for their *life or physical harm* to themselves, or, in the trafficking situation, threats against family members back home” (Senate of Cana-

da, 2005, emphasis added). In addition, as discussed earlier, in an early case of possible human trafficking known as the “Elmvale 11”, the RCMP has also interpreted the “fear for safety” requirement in a narrow manner (Brazao, 2008). The RCMP in that case declined to press charges of human trafficking because the group did not “fear for their safety”, despite the fact that the group was subjected to many control mechanisms, including confiscation of documents, isolation, and threats of economic penalties (Brazao, 2008). Finally, in a criminal case involving the trafficking and sexual exploitation of two minors, the accused avoided charges of human trafficking in relation to one of the alleged victims because she did not “fear for her safety”, despite the fact that the trafficker used psychological manipulation in order to gain compliance to exploitation (*R. v. Nakpangi*).

This interpretation and narrow understanding of what human trafficking “looks like” is also supported by evidence from the field. In a quote from a British Columbia law enforcement officer, set out in section 2 of this article, the importance placed on physical violence is extremely evident:

Twenty men from Mexico or Africa who are forced against their will to work under horrible conditions is very, very bad, but you know their lives probably aren't in danger, they're not going to get raped, they're not going to get beaten.

Beyond the gendered assumptions underlying this statement, legitimate confusion appears to exist about what kinds of means or control tactics are sufficient to fall within the scope of this offence. The following excerpt from a law enforcement representative discusses this challenge of applying the law to labour trafficking cases:

Every work related file that I have seen has elements of exploitation. Whether it goes to the code definition of trafficking, perhaps not....Like, are they exploited? They are not bound and gagged and locked in a room and not fed and no passport, etc.

As the above excerpt suggests, enforcement officials' uncertainty about the necessity of physical harm further limits the application of the offence in situations where fraud, withholding wages, or other forms of control or exploitation occur.

This narrow interpretation of directly connecting a “fear for safety” to physical violence or harm is especially restrictive for cases of non-sexual labour trafficking because the use of physical violence has been suggested as a “last resort” in these cases (Coster van Voorhout, 2007) with the availability of other coercive targets—namely economic penalties and

threats against administrative status (see also, Kim, 2011). Given the way in which the *Criminal Code* offence has been written, and is being interpreted, it is arguable, for example, that it would not capture a situation of debt bondage, which is widely accepted as indentured servitude and yet does not require the use or threat of physical violence.¹⁸ The current wording and interpretation of the “fear for safety” standard under the *Criminal Code* is too narrow, has resulted in significant confusion in practice about what kind of conduct gives rise to a charge of human trafficking, and potentially fails to capture any non-physical forms of coercion or force.

Although the *Criminal Code* offence was recently amended to provide added detail to the conduct which can be captured by s.279.04, including: use or threat of use of force or another form of coercion; use of deception; or, abuse of a position of trust, power or authority (s.279.04(2), as amended by SC 2012, c15), these listed *means* will, too, require interpretation to determine the scope of their applicability. Further, these additional enumerated factors must still be read in light of the definition of “exploitation” and concept of “fear for safety” under s.279.04; thus, their utility in improving the wording and application of the *Criminal Code* offence is questionable.

4. Implementing the *Criminal Code* Offence of Trafficking in Persons: Evidentiary Burdens

Criminal justice authorities cite numerous obstacles to successful implementation of the *Criminal Code* offence, including evidentiary burdens and dependency on the cooperation of the trafficked persons. In addition to confusion surrounding the interpretation of the *Criminal Code* wording, the offence as structured under s.279.04 has created a situation where victim cooperation, testimony, and credibility are perceived as the core determinants of possible trial success. As one law enforcement representative has noted: “in a human trafficking investigation, law enforcement's strongest evidence is the victim, so that's a challenge, the biggest challenge”. Although this is a challenge common to criminal trials, for cases of human trafficking, victim cooperation and credibility can be additionally compounded by issues such as precarious immigration status, fear of authorities, and a lack of physical evidence, to name a few.¹⁹ Thus, while challenges surrounding victim cooperation and credibility

¹⁸ See the *UN Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery*, ESC 608(XXI), OHCHR, 1956, Art. 1(a) for the accepted international definition of “debt bondage”.

¹⁹ See also, Hanley, Oxman-Martinez, Lacroix, & Sigalit (2006); *R v. Ladha* where credibility of the alleged victim appeared central to the judicial reasoning and outcome of the case.

are not uncommon, they are often exacerbated in cases of human trafficking. This points to the importance of developing strategies to address trafficking that are not limited to or dependent on a criminal law framework alongside addressing the limitations of evidentiary burdens in the Canadian *Criminal Code*.

The evidentiary burden under the current trafficking in persons offence is significantly weighted towards evidence and proof that relies on the individual complainant (or, “victim” of crime). Although the wording of the *Criminal Code* maintains a link between the conduct of the accused and intent, the structure of the offence, and particularly the definition of exploitation, look primarily to the effects on the trafficked person to assess intent. Rather than looking to the conduct of the accused, and the intent behind that conduct, establishing the crime rests heavily on proof that the alleged victim did, or could have reasonably, feared for their safety. This is problematic in that it disproportionately weighs the evidence and credibility of the alleged victim to establish the crime. Further, focusing on the impact to the victim necessarily leaves open the possibility that some indicia of consent by the victim establishes a lack of fear for their safety. Where a victim may have appeared to provide consent, this could be interpreted as establishing a lack of fear for safety.

This confusion and tension regarding the role of consent in the definition of exploitation has been found to exist in practice, and has resulted in perceived difficulties in applying the offence:

You have to prove a fear, you have to prove that [trafficked persons] were entirely unwilling or there was no real consent component at any point, or maybe if there was consent it’s a clear delineation of when that consent stopped, and it’s just unbelievably onerous. And it may continue to be until we either get charges and the case law defines it, or Parliament realizes that and starts clipping at it. [F]or us, there’s two thresholds: one, do we have the grounds to charge and then the threshold to actually convict (as cited in Kaye et al., 2014, p. 13).

As the excerpt above suggests, some law enforcement authorities interpret the current *Criminal Code* wording as impliedly importing consent as an issue to be proved. This points to the significant weight attributed to indicia of consent in determining whether charges of human trafficking will be successful, substantiating the earlier claims regarding the overemphasis on the impact to the victim in establishing the crime.

Compounding the problematic connection made between consent and exploitation in interpreting the offence, the evidentiary burden for criminal justice authorities is perceived to be heavily reliant on victim cooperation and testimony. As one law enforcement representative suggests:

But essentially that evidence, when a victim testifies and *can testify to that brutality* and anything, nothing can beat that in terms of evidence. And once you don't have that and have to rely on other evidence then it's weaker. Unless you have a wiretap or whatever, have something like a conversation describing the control, the money, taking the money and all that. So there is various ways of gathering the evidence, it's not like seizing a kilo of coke, just put it evidence and bring a picture to court. You're dealing with a human being there, and that's what makes it a lot more challenging.

Issues of victim cooperation and testimony are not unique to cases of human trafficking; however, given the weight attributed to victim testimony, necessitated by the wording of the *Criminal Code* offence, the potential gravity of the experience of trafficked persons, and the additional contextual challenges which may exist, overcoming this obstacle does present unique challenges in these cases. In addition, given the nature of the crime of human trafficking, accompanying physical evidence would be rare, as the above excerpt mentions. Thus, trafficking cases may often rest solely on the issue of credibility and competing stories of a trafficked person and accused. Although, again, this is not an issue necessarily unique to human trafficking cases, it is nonetheless an important factor in understanding the problems associated with successful criminal justice responses to the issue, and in exploring the applicability of the offence in non-sexual labour cases.

Some trafficked persons will have been subjected to serious threats and coercion, and may have a fear of authorities instilled in them. Others consider the risks associated with reporting and cooperating with criminal justice authorities to outweigh the potential benefits: “So if they will complain, then the huge possibility of being out of a job is just so huge that they can’t have that...they don’t want to come out, no matter how much we tell them” (Frontline Service Provider). Fear of participating in criminal justice proceedings is particularly apparent in cases involving foreign nationals in situations of labour exploitation. In such cases, methods of exploitation can cause individuals to fall outside of regular immigration status, creating significant risks in reporting to criminal justice authorities. Describing this type manipulation, one law enforcement representative indicates, “they come for a job, the job doesn't exist. ‘Okay go here, you know you are now working without a permit, we are going to tell immigration if you stop’”.²⁰ As these excerpts suggest, fear of job loss, deportation, or retaliation are key obstacles for trafficked individuals (as well as individuals facing other forms of exploitation) to report their experiences to the authorities and to participate in criminal justice proceedings.

²⁰ See also, Hanley et al. (2006).

nal justice proceedings. In the words of another law enforcement representative:

So they are in violation, they are working without a permit, and they can be removed from the country. So they are working at [fast food restaurant] for longer hours and less pay than everybody else. And so it will be within the fast food industry: "I need a body here, don't tell immigration, we will get the paper work for you and get it sorted out, it's fine". So sort of the same [type of work] but within that industry itself. The exploitation happens and a lot of head offices don't know it's going on. [As soon as they are in violation of the Act] they can be deported and removed, just by working in some place you are not supposed to be working: "we'll tell immigration if you don't [comply]".

Alongside concerns of job security and immigration status, trafficked persons might also give up some available protections for the sake of anonymity. As one service provider explains:

[Fear] of being deported, fear of police and authority. I mean, they claim they would never deport anyone in that case, but we've heard lots of stories of people being deported. It just makes people nervous...[the person] could tell the whole story and then they could say, "oh we don't think that's trafficking", which is what we have had happen before...they were actively talking about what defines trafficking and they were saying, "well we don't know what the intent was...was there intent to sell [the person] before they crossed the border or did they decide after?" And that was their criteria for deciding if it was trafficking.

This excerpt further points to a perceived lack of clarity in criminal justice interpretations of the trafficking in persons offence. Similarly, a former law enforcement representative indicates: "I know personally for myself, I am responsible for removing dozens upon dozens of people that were victims of trafficking and we dealt with them as immigration violators and removed them." Yet even where authorities are able to connect with and provide protection to a trafficked person, obtaining agreement to testify creates additional barriers, given the adversarial nature of criminal proceedings, where the credibility of the trafficked person will likely be "attacked" in court:

And even then when the victim agrees to cooperate and testify, you know the defence, the biggest thing will be the credibility of the victim, the defence will go after their credibility so we have to deal with this. So it makes it challenging.

Given the nature of human trafficking, the very idea of relaying this experience in court and being challenged based on character, can prove a daunting obstacle to overcome.

The risks associated with challenges to credibility, particularly, relate back to the problematic emphasis placed on consent, both in doctrine and in practice. The current confusion and misunderstanding associated with this element of the crime and its interpretation can further undermine the testimony and credibility of a trafficked person where it should not be so. Discussing why human trafficking charges were dropped in an alleged case of trafficking for sexual exploitation, one Crown Prosecutor indicates:

It wouldn't be believed that these women didn't know what they were coming to do and while they were here, they were involved in the sex trade. It was strictly was a case where the charges for living on the avails, which is a case that's still before the courts, was the appropriate charge or really gravity of the offence that we're trying to capture and the human trafficking was an over charge...particularly the definition of exploitation under 279.04 where we wouldn't have realistically had a prospect of conviction based on that. So it wasn't that we were gun shy to do it, but the evidence has to be there.

Regardless of whether sex trafficking actually took place in this particular case, the excerpt points more broadly to the problematic notion of consent that continues to shape the national response. In particular, knowledge of the work or services to be performed (whether sexual and/or non-sexual) does not negate the possibility that the situation could be one of human trafficking.²¹ However, the authorities in this case did not proceed with trafficking charges given the alleged victims' prior knowledge of the type of services to be offered and the perceived credibility issues they would have at trial. Although this excerpt relates to a case concerning sex trafficking, many similar challenges potentially arise for persons trafficked for non-sexual labour exploitation, since, irrespective of the sector, labourers often have prior knowledge of the work or services to be performed. In many situations, it is the *conditions* of the work or services being performed which amount to exploitation, rather than the *nature* of the work or services. Thus, the

²¹ Although cases of human trafficking can arise through deception or fraud, such that the trafficked person would not have knowledge of the work or services to be performed, cases can also arise where the individual did have this knowledge, but did not have accurate knowledge of the conditions of work, or does not believe he/she has the freedom to leave or refuse the work.

practical obstacles to accessing the necessary testimony and cooperation from a trafficked person compound the limitations already present in the *Criminal Code* wording, which places significant weight on evidence that must come from the trafficked individual.

5. Conclusion

This article sought to investigate the current problems associated with the Canadian *Criminal Code* offence of trafficking in persons. Many of the doctrinal pitfalls are mirrored in current understanding and practice by justice authorities; yet, as demonstrated, the wording of the offence can be interpreted in a variety of manners. While the “fear for safety” requirement has, for example, proved narrow in its current interpretation and applicability, additional training and literature on this standard could advance an alternative understanding which is capable of encompassing the broad range of conduct that can be used to induce and maintain a person in a situation of human trafficking. Further, while issues relating to the understanding of consent in this context continue to shape criminal justice responses, more realistic understandings of the physical and/or psychological context of trafficked persons may assist authorities in evaluating cases of possible human trafficking. However, the greatest challenge is the fact that the *Criminal Code* framework remains largely untested. This is both a substantial cause and effect of the narrow understandings and interpretations of the crime. Caught in this cycle, the future of the *Criminal Code* framework remains uncertain and tenuous in its ability to effectively respond to human trafficking in Canada.

Given the limitations in the wording and interpretation of the *Criminal Code* offence and the evidentiary burdens associated with the offence, the trafficking in persons legislation has created a “catch-22” for law enforcement, but also for trafficked persons. For law enforcement, investigators rely on alternate or complementary charges rather than human trafficking charges under the *Criminal Code* definition. Such reliance on alternate measures occurs regardless of whether investigators perceive the cases as instances of human trafficking. In doing so, the *Criminal Code* definition remains relatively untested, particularly as it applies to labour trafficking cases, which further restricts its applicability to such cases. The existing trafficking in persons legislation has also created a “catch-22” for trafficked persons who not only experience various forms of exploitation, but also face substantial risks in reporting their experiences or cooperating with law enforcement officials, including possible disciplinary action, such as deportation. Where enforcement officials continue to rely on alternate charges, trafficked individuals may be left without any effective legal redress. This is especially evident in alleged cases of la-

bour trafficking because the availability of alternate *Criminal Code* charges are minimal in this context.

Moreover, in a context where enforcement officials are hesitant to pursue human trafficking charges, trafficked persons are further relied upon to assume an unduly burden in criminal proceedings, given both the weight attributed to their testimony, and the significant and numerous “attacks” which can be made against them in establishing their case. In the words of one law enforcement representative, “well I think the main concern tends to be that these are laws that were not written with the victim at the core”. The limitations of the *Criminal Code* offence underscores the need to evaluate the current legal framework and improve responses to human trafficking in Canada.

The article also points broadly to the limitations of relying on a criminal law framework to address trafficking. Thus, any suggestions to revise the legal framework should be considered alongside preventative and intervention strategies that fall outside the rubric of criminalization. For instance, the ILO 2014 Protocol on Forced Labour highlights the need to provide broader strategies of labour inspection and regulation alongside protection for individuals forced to provide labour, regardless of their legal status in the country. However, these considerations should be examined alongside concerns raised by migrant rights advocates that anti-trafficking responses are employed to restrict the migratory movements of individuals in a context of global economic inequality (see, for example, Kapur, 2003; Lee, 2011; Sassen, 2002). Nonetheless, the ILO Protocol also highlights the importance of criminal offences and ensuring the offences are adequate and enforced. Thus, broader models of response should be considered alongside addressing the limitations of the Canadian *Criminal Code*. In the meantime, for individuals subjected to labour trafficking, the current framework and its interpretation will continue to prove problematic.

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Conflict of Interests

The authors declare no conflict of interests.

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Dr. Julie Kaye is an Assistant Professor of Sociology and Director of Community Engaged Research at The King's University. Her research and current book project examines representations of human trafficking and anti-trafficking responses in Canada. She has led investigations into human trafficking in Alberta and published findings from this research in the *Canadian Journal of Criminology and Criminal Justice*. She has also published on conflict and peacebuilding in West Africa in journals such as the *Journal of Development Studies* and the *Journal of Contemporary African Studies*.

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Appendices

Appendix A. List of Selected Government and Nongovernment Organizations Represented by Participants in One-on-One Interviews.

National and International

Royal Canadian Mounted Police
Citizenship and Immigration Canada
Global Alliance against Trafficking in Women (GAATW) Canada
Canadian Council of Refugees (CCR)
United Nations High Commission for Refugees

Alberta

Action Coalition on Human Trafficking (ACT) Alberta
Street Level Consulting and Counseling
Calgary Catholic Immigration Services
Calgary Immigrant Women's Association
SHIFT Calgary
Calgary Police Services
Calgary Communities against Sexual Assault (CCASA)
Distress Center
Alberta Justice
Chrysalis Network

British Columbia

Covenant House
MOSAIC
No one is Illegal
British Columbia Office to Combat Trafficking in Persons (BCOCTIP)
Resist Exploitation, Embrace Dignity (REED)
Vancouver Rape Relief
British Columbia Coalition of Experiential Communities (BCCEC)
Providing Alternatives, Counseling and Education (PACE) Society
Vancouver Police Department
Salvation Army
The Future Group
Supporting Women's Alternatives Network (SWAN)
Aboriginal Women's Action Network (AWAN)
FIRST (decriminalize sex work)

Manitoba

Mamawichiatata Centre
Sage House
Transition, Education and Resources for Females (TERF)
Child and Family Services
Assembly of Manitoba Chiefs
Welcome Place
Winnipeg Police Service
Sexual Exploitation Unit, Province of Manitoba
9 Circles
Ka Ni Kanichihk
Mount Carmel Clinic
Street Connections

Appendix B. Open-Ended Guide for One-on-One Interviews.

Nongovernment organization employees

1. From your perspective, what are the experiences of trafficked persons?
2. How does your organization define human trafficking?
3. From your perspective, how does the general public understand the issue of human trafficking?
4. How does your organization address the experiences of trafficked persons?
5. From your perspective, what are the service provision needs of trafficked persons?
6. Are these needs being addressed by current anti-trafficking responses and policies?
7. What challenges have you faced in responding to the experiences of trafficked persons?
8. What successes have you had in addressing the issue of human trafficking?
9. Were trafficked persons consulted in designing your anti-trafficking programs?
10. How do you think Canadian anti-trafficking policies can better address the rights and experiences faced by trafficked persons?

Nongovernment organization employees, policymakers, immigration and law enforcement officials

1. How has the adoption of legal instruments, such as Section 279 of the Criminal Code and Section 118 of the Immigration and Refugee Protection Act, addressed or failed to address the issue of human trafficking in Canada?
2. How effective has the temporary resident permit (TRP) program been in addressing the experiences of trafficked women?
3. What are the strengths and limitations of the TRP program?
4. Have TRPs improved access to healthcare and basic social services for trafficked persons?
5. Do you think there is adequate cooperation at provincial and federal levels to address the issue of human trafficking in Canada?
6. From your perspective, what are the experiences of trafficked persons?
7. What service provision needs do trafficked individuals have?
8. Are Canadian policies effective in addressing the rights and experiences of trafficked persons?
9. Were you consulted in the development of a national strategy to address human trafficking?
10. What issues would you like to see included in a national strategy to address the issue of human trafficking in Canada?

Article

Trafficking of Women in Mexico and Their Health Risk: Issues and Problems

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Abstract

Trafficking in women is one of the most corrosive forms of human rights violation. It results in the gradual destruction of a woman's personal identity and her right to live as a free human. The victim is subjected to violence, humiliation and violation of her personal integrity, which may result in life threatening diseases like HIV/AIDS, STDs or lifelong trauma, drug addiction or personality disintegration. It can also be seen as denial of the right to liberty and security of the person, and the right to freedom from torture, violence, cruelty or degrading treatment. Over the last few decades, international trafficking of women has been given more attention by researchers. However at present internal trafficking is drawing more attention and concern from researchers. The complexity of obtaining visas and strict patrolling on international borders has caused a boom of internal trafficking around the world. Thus, the current paper aims to investigate trafficking of women for sexual exploitation including the recruitment process, methods of trafficking and working conditions of the victims; as well as to explore the determinants of sexual violence and its impact on the health of trafficked women in Monterrey, Mexico. For the present study a total of 60 women were interviewed using a snowball method between 2007 and 2013.

Keywords

femicide; life threatening diseases; Mexico; sexual exploitation; trafficking in women

Issue

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1. Introduction

Trafficking of persons for sexual exploitation or forced labour, both within a country and across international borders is one of the most lucrative and fastest growing types of organized crime (Ribando, 2005; United Nations Office on Drugs and Crime [UNODC], 2012). According to a U.S. State Department estimation, some 600,000–800,000 people worldwide are trafficked across borders for forced labour, domestic servitude, or sexual exploitation each year. This figure does not include victims who are trafficked domestically and, if included, this would raise to the total by 2 million to 4 million (U.S. State Department, 2014). The International Labour Organization (ILO) estimates that globally 2.4

million people have been trafficked for forced labour (ILO, 2008). Most observers concur that the majority of trafficking victims are women and children placed in commercial sexual exploitation.

Trafficking of persons affects almost every country and region in the world and has been the focus of world attention since 1990s. Regardless of international commitments to diminishing trafficking in women, studies show that the phenomenon is increasing as the disparity between wealth and poverty grows between and within the nations (Barner, Okech, & Meghan, 2014). According to Demir (2003), poverty disproportionately affects women. It is not surprising that, following trends in migration, women are pushed to migrate with a hope of acquiring economic security for

themselves and their families. Although the push and pull factors of migration are similar for men and women, their migration experience can differ greatly. For millions of women, this economic migration ends in sexual exploitation and debt bondage (ILO, 2012).

Today, in our globalized world, trafficking of women has increased and has become a major human rights, migration and gender concern (Heyzer, 2002). In the year 2000, the United Nations, in its Protocol to Prevent, Suppress and Punish Trafficking in Persons, adopted in Palermo, defines human trafficking in Article 3 as:

“the recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should include sexual exploitation, forced labour, slavery, servitude and removal of organs.” (United Nations General Assembly, 2000)

Trafficking of women is one of the most corrosive forms of human rights violations. It results in the gradual destruction of a woman’s personal identity, and her right to live as a free human. The victim is subjected to violence, humiliation and violation of personal integrity which may result in life threatening diseases like HIV/AIDS, STD or lifelong trauma, drug addiction or personality disintegration. It can also be seen as the denial of the right to liberty and security of the person, and the right to freedom from torture, violence, cruelty or degrading treatment.

According to the 2014 Trafficking in Persons Report, Mexico is an origin, transit and destination country for trafficking of women (U.S. State Department, 2014), is a social and public health problem in the country. Likewise, a study conducted on human trafficking by the National Citizen Observatory (ONC) over a period of four years in the 31 Mexican states and the Federal District, indicates that in just 16 states a total of 846 victims were reported, while the rest failed to provide information (ONC, 2014).

Most of the literature on trafficking of women in Mexico shows that the United States is a major destination (U.S. State Department, 2014; Walters & Davis, 2011). Women and girls migrate illegally and are then at the mercy of traffickers. Many are raped and murdered (O’Neill, 2010). Coyotes who transport people across Mexico-USA border are aware of the fact that neither the victims nor their families will report these crimes, since the victims themselves are at risk of felony charges for illegal entry into United States (O’Neill, 2010; Shahani, 2013). Pimps often work in concert with coyotes. In a scenario of brutal exploitation, coyotes transport vic-

tims from Mexico to the United States for reduced fees by sexually assaulting and prostituting the women as payment for passage (Farley, 2012). In 2003, Hernandez studied trafficking of Mexican girls to brothels near San Diego. Over a ten year period, hundreds of girls aged between 12 and 18 were either kidnapped or tricked from rural Mexico to the US border by traffickers or pimps.

Azaola’s (2000) study, *Infancia Robada* (Stolen Childhood), noted that 16,000 girls and boys in Mexico were sexually exploited through networks involving immigrants, military personnel, police, governmental officials and businessmen. According to Castillo, Rangel Gómez and Delgado (1999), women who fall into sex trafficking networks and prostitution are mostly from rural areas, and have suffered from extreme poverty and family violence. In his study, Jordan (2000) underlines that the subordination of women and male supremacy (macho culture) mean women are regarded as “sexual objects”. Hadden (2002) states that during 2000 and 2002, around 135,000 Mexican children were kidnapped and forced into prostitution and pornography in different Mexican cities.

Over the last decade, the international trafficking of women from Mexico to United States has declined due to the complexity of obtaining visas and strict patrolling on international borders, which has caused a boom in internal trafficking within Mexico (Hindman, 2009; Hughes & Denisova, 2003; Rusev, 2013). For example, Acharya and Stevanato’s (2005) study indicates that nearly 10,000 young girls and women are trafficked annually in Mexico to six cities: Cancun, Acapulco, Mexico City, Tijuana, Ciudad Juarez and Monterrey, for the purpose of sexual exploitation. The same study underlines that for every 10 trafficked women in Mexico, 7 are trafficked inside the country and 3 are taken out of the country to the USA and elsewhere.

In this regard, during the last few years Monterrey has become an important destination point for sex trafficking in Mexico. Though there are a few studies, for example those of Méndez (2006) and Cacho (2010), which indicate that every year large numbers of women are forced into prostitution through an organized trafficking networks, none of these studies has provided a detailed explanation of the dynamics and complexity of the problem. Thus, the current paper aims to: (1) investigate the trafficking of women for sexual exploitation, including the recruitment process, methods of trafficking and working conditions of the victims; (2) explore the determinants of sexual violence and its impact on the health of trafficked women in Monterrey city, Mexico.

2. Conceptual and Methodological Approaches to Trafficking of Women

Trafficking of women has been a feminist issue since the beginning of the 20th century, when advocates for

change like Josephine Butler¹ fought against the *white slave trade*. They recognized that women and girls form the majority of all victims of trafficking. Recently the problem has come onto the international agenda. This process has been assisted by a widening of the focus to encompass trafficking for bonded labour in sweatshops, domestic work, adoption and marriage, as well as prostitution (Wennerholm, 2002). Now, trafficking is considered to be the second largest source of profit for organized crime, behind only drugs and gun running, generating billion of dollars annually (U.S. State Department, 2014).

Trafficking occurs both within domestic borders and across countries, regions, and continents. Countries of origin, transit, and destination are intertwined and overlap, where a single country may export women, girls and boys abroad, it may also temporarily harbour arrivals from other countries and be the final destination for others. In America, women are mostly trafficked from Colombia, Venezuela, El Salvador, Honduras, Guatemala and Mexico to the United States and Canada, where Mexico acts as the main transitional node for the other Central and South American countries and as a destination node for the Central American countries (Timothy, 2001). The main purpose of trafficking is to sell women into the sex industry as sex workers, while they are also trafficked for domestic work and other forms of bonded labour (ILO, 2012).

The World Health Organization (WHO, 2012) and Marjan Wijers (1997) identified, that the trafficking of women is a type of violence against women, which involves recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position in debt bondage, deception and other forms of coercion. Yet the Budapest Group (1996) highlight that the trafficking of women does not necessarily involve direct coercion, but nonetheless it is a violation of human dignity and fundamental rights, and constitutes abuse of a woman's vulnerable situation, making them dependent and treating them as trade products rather than as human beings.

The Department of Foreign Affairs and International Trade (DFAIT) of Canada (2000), states that traffickers retain control over the migrant through force, fraud or coercion or, typically in the sex industry, through forced labour or other practices similar to slavery. Martin (2002) defines trafficking as giving a person the status of a slave; trafficking in human beings who are already slaves, including those who sell their own freedom or that of a dependent person or child; and the transfer of human beings who are in a relationship

of slavery or another similarly dependent relationship. Thus it is a form of slavery, where people are:

- forced to work through the threat or use of violence;
- owned or controlled by an 'employer' usually through mental, physical, or threatened abuse;
- dehumanized, treated as a commodity or even bought and sold as "property"; physically constrained or having restriction placed on their freedom of movement and freedom to change employment (Herzfeld, 2002).

UNODC (2012) defines three basic elements of trafficking: 1. the process, 2. the means and 3. the purpose (see Table 1). According to UNODC, trafficking takes place through a combination of these three constituent elements, rather than the individual components, although in some cases these individual elements will constitute criminal offences independently.

Table 1. Process, means and purpose of human trafficking.

Process	Means	Purpose
Recruitment Transportation Transfer Harbouring Receipt of persons	Threat, Force, Coercion, Abduction, Fraud, Deception, Abuse of power, Abuse of vulnerability, Giving and receiving of payments	Exploitation which includes: a) Prostitution and other forms of sexual exploitation b) Forced labour and services c) Slavery and similar practices d) Involuntary servitude e) Removal of organs

Source: elaborated by the author.

Therefore, trafficking is the movement and/or transportation of persons through the use of violence or the threat of violence, abuse of authority or dominant position, deception or other forms of coercion, for the purpose of exploiting them sexually or economically for the profit or advantage of other persons, such as recruiters, procurers, traffickers, intermediaries, brothel owners and other employers, customers, or crime syndicates, which can be considered according to following conditions:

- selling of a woman for material benefits,
- migration to an unfamiliar region where an international border is crossed (but not always),

¹ Josephine Butler (1828–1906) a strong religious convictions and the nineteenth-century feminist, who withstand the onslaught of abuse that she received from those both inside and outside of the woman's movement.

- an intermediary—the trafficker(s)—is involved in movements of the migrants,
- recruitment and transportation of migrants or disposition of such migrants on the way or after arrival is accomplished through illicit or abusive means, and profits of the traffickers from such activities in term of economic or other personal gain.

3. Methodology

Trafficked women are treated as a hidden population for whom it is extremely difficult to establish a reliable sampling frame. This tends to make randomized sampling strategies unsuitable. Thus, a snowball sampling technique was used during this fieldwork. Interviews with trafficked women were carried out in two steps. The first step involves obtaining contact with key informant and in the second step trafficked women were interviewed.

3.1. Step 1: Information from Key Informant

Zheng (2013) states that if a researcher is local and personally knows any of those working in the establishment, the mutual trust between them could make it far easier for the researcher to access the establishment. Taking this into consideration, first I contacted to a graduate degree student named “Olaf” at my own university (Autonomous University of Nuevo León) for collaboration with project. Olaf was also working as a part time barman in a brothel and had good knowledge of the area and business of the downtown region of Monterrey City. When I discussed about the project with Ola, he agreed to try to help, but as it is difficult for him to move from one place to another, he warned that might not be able to locate many trafficked women. After few months, Olaf contacted me by telephone and gave me information about a trafficked woman and the name of the brothel where she was working.

3.2. Step 2: Interviewing Trafficked Women

After obtaining the information, we (myself and Francisco Ontiveros, a postgraduate student at the Institute of Social Sciences of the Autonomous University of Nuevo León) went to the designated brothel and contacted the woman, informed her about our study and mentioned that Olaf had given us her name and location. After few minutes of conversation, we paid the agreed sum (200 pesos² for 30 minutes) in order to hide our identity in front of the brothel owner and traffickers and went to a private room to talk more freely. Only the trafficked woman had knowledge that we were researchers. After the termination of the inter-

view, we asked her to help us for finding other trafficked women who are working in the same or nearby brothels. At the beginning she declined to help, but after regular interaction she agreed to cooperate to locate other trafficked women. We also promised her to pay 100 pesos per woman in exchange. Whenever she located a woman, she arranged an interview and called us. In this way, applying the snowball technique we were able to gained access and interviewed trafficked women in Monterrey.

Before and during the interviews, we followed the World Health Organization (WHO) ethical and safety recommendations for interviewing trafficked women written by Zimmerman and Watts (2003), including the relevant ethical and methodological procedures such as protection of participant's confidentiality, anonymity, and safety.³ It is also necessary to mention here that, although they agreed to the interview via their friend, we always explained ourselves the sole purpose of our study, the subject to be discussed and its risks and benefits in order to gain consent.⁴ Moreover, we never asked any questions that may have caused any emotional reaction, and never questioned their sentiments or judged their decisions or character. In the cases of several women, when they became emotional and preferred not to continue with the interviews, we respected their decision and stopped immediately.

Moreover, at the beginning of the interview, we proposed that the trafficked women come to our house or to any other location of her preference, but they always responded with a “no”. They would tell us “...this is our area; it is not possible for us to go out of this place, because the *madrina* (madam) does not permit us to work in other places...” As the women were not allowed to leave the brothel, we acted as “clients” as this was the only way to gain access to the brothel. Interviews lasted for around 30 minutes and, using the snowball method, a total of 60 women⁵ were interviewed between 2007 and 2013 with a semi-structured questionnaire⁶ examining the causes and

³ The ethical issues of the present research was approved by *el Programa de Apoyo a la Investigación Científica y Tecnológica (PAICYT)* of Autonomous University of Nuevo León, Monterrey. The reference number are: DS1613-07 and CS478-10.

⁴ We also provided a local telephone number and name of a nongovernmental organization (NGO), where they can get assistance.

⁵ Till July 2013 we could interview only 60 women. The fieldwork could not continue because of drug cartel violence in the brothel area. So, for our own security, we stopped the fieldwork.

⁶ The questionnaire included topics such as: socio-economic and demographic information of victims, their family background information, mode of trafficking, causes of trafficking, current health problem, violence they suffered during transit and at their destination, information on clients, substances uses, any abortions they have had among others issues.

² \$16 USD.

consequences of trafficking. Interviews were conducted in Spanish on these topics and were audio-taped. All interviews were transcribed precisely and the information was uploaded to the SPSS program, which served to systematize demographic and socio-cultural information about the trafficked women. We also conducted a discourse analysis to induce a more qualitative sense, noting for example—among others—how age and skin colour are important for trafficking; how the women suffer from violence; how traffickers or the madam treats the; how they were trapped by the traffickers; and their relationship with clients.

4. Results

4.1. Causes and Modes of Trafficking of Women in Monterrey

Several reasons have been advanced for the incidence and upsurge of trafficking of women. These factors tend to exert pressures on victims that “push” them into migration and hence into the control of traffickers, but other factors that tend to “pull” potential victims can also be significant. The root causes of trafficking of women can also be divided into social, cultural and economic causes, and in this sense it is difficult to underline a specific cause. However, this study suggests that trafficking of women is the result of combination of multiple factors, for example, increasing levels of household poverty, unemployment, domestic violence, infidelity, desertion by a husband, family disintegration, ethnic conflict, intentions of migration to USA, and others (see Figure 1).

Once the trafficker brings out the woman from her place of origin, in most cases he houses her with different intermediaries and gives her training, for example how to establish sexual relation(s), how to negotiate with clients, kinds of dress to wear, and other rules and regulations of the brothel, like not to leave without the permission of the owner, not to talk or reveal any personal information or information regarding others working in the brothel.

From the field work it was found that traffickers use a variety of methods to create a vulnerable condition for the victim so that she cannot decline their offers. One common method is to promise employment and an exotic life in different Mexican cities such as Monterrey, Mexico, Cancun, or in the United States. When a victim gets to know the reality of her employment, she most often refuses to accept. When this happens, pimps and traffickers use various kinds of violence to force women to stay and work in the brothel. Many women describe that their life has become a “*life of violence*” since they left their home.

Studies reveal that nearly twenty percent (10 women) of trafficked women didn’t complete formal education and the rest of them were educated up to primary or above primary level education. In terms of their marital status, fifty three women said that they were unmarried and four women were single mothers but currently not living with their children, whereas only two women were married but separated because of family violence and only one woman was divorced.

Trafficked women in Monterrey were primarily younger; out of sixty women, 75 percent (45 women) were less than 15 years old, 10 women (17 percent) were in between 16 and 20 years old, and only 5 women (8 percent) were more than 20 years old. In this context, the question arises: *why there is a high preference for young women and teenage girls?* Some research indicates that this preference is largely shaped by socio-cultural factor of machismo, which leads men to seek to affirm certain masculine sexual identities of vitality and dominance (Bimbi, 2014; Durchslag & Goswami, 2008; ECPAT International, 2005). Additionally, during our conversions with trafficked victim women, it emerged that there is a significantly lower possibility that very young women have already been infected by sexually transmitted diseases, and also from the owner’s point of view, these women generate a higher income relative to others. Thus, traffickers are now targeting younger women and girls.

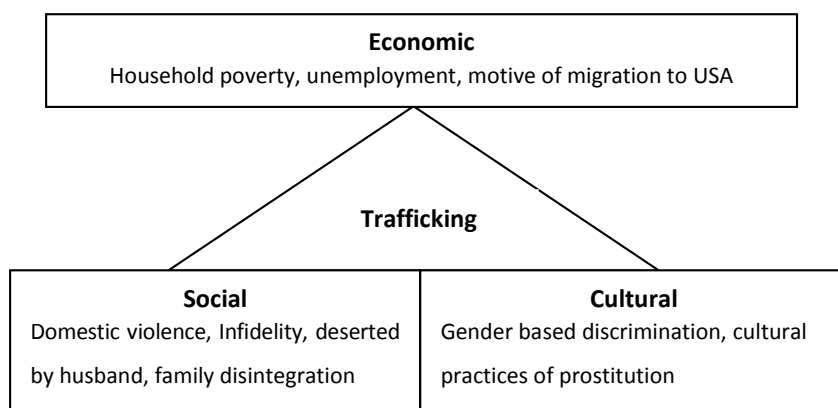


Figure 1. Components of trafficking of women in Monterrey.

Moreover, Anderson and Davidson (2003) explain the high demand for young women in the sex market as resulting from the fact that the men who seek these girls often do not regard sex with underage girls as “prohibited”, rather, they may view these girls and young women as capable of consent and believe that the commercial transaction legitimizes their right to have sexual relations with them. Another significant element that exerts a driving preference on young women is the establishment of consumer society in a patriarchal system. According to Bauman (2000), identities have become more unstable and fragmented and have also become an object of consumption and in the liquid modern consumer society according to neoliberal market principles. By our power to consume we are seduced with the promise that we can become “anybody we like” and this unidentified “anybody” can be purchased.

Since money (or other “benefits”) are exchanged, women are deemed to have sold their rights. In our neoliberal market culture, clients are portrayed as “simply” behaving like any other consumer and can ignore the questions of power, human suffering and hardship that form the backdrop to the sex industry. Thus, brothels are treated as a market, where victims are considered as a commodity, and in this place each aspect depends on loss and gain. For example, if a pimp buys a twenty year-old woman, married or divorced, she is less preferred by clients, which means that the pimp cannot obtain optimum earning from the woman. Also, this woman can work in the brothel for a maximum of 4 to 5 years (as women more than 25 years old considered old in this business). Whereas, if a pimp buys a girl of 15 years or less, he can easily make her work for at least 7 to 8 years. Also this young woman will be highly favored and will receive more clients, which will generate a higher profit for the pimp. So, all in all, a brothel owner will earn more money when he buys an unmarried young woman than an older married woman.

4.2. Violence against Trafficked Women: A New Form of Femicide

It is a common fact that the victims of violence and sexual violence are overwhelmingly female. Studies on violence against women point to social inequalities in distribution of power, authority and control between men and women as factors (Bimbi, 2014). Dobash and Dobash (1979, in Barnard, 1993) argue in a study of violence against women that the motivations for attacks are often centered on the notions of “*keeping a woman in her place*”. Male role socialization incorporates the notion that women are subordinate, hence men should have right to punish and discipline women (Scully, 1990; Sanday, 1986; Dobash et al., 1992, in Barnard, 1993). Thus, violence is a *medium* to dominate and suppress a woman, which we can clearly see in case of trafficked women. Studies indicates that trafficked

women and commercial sex workers experience high levels of violence, including, but not limited to, physical assaults, sexual assaults, verbal threats, abuse, and psychological abuse (Lowman, 2000; Raymond, 2004).

Information obtained from trafficked women indicates that they suffer both physical and sexual violence from traffickers, pimps and clients. This study has analyzed women who were exposed to physical and sexual violence in three different frequencies, (frequently, occasionally or rarely) in the six months preceding the interview. These levels are categorized as follows: frequent violence, that is aggression faced every day; occasional violence, aggression faced once in two weeks; and rare, violence faced once a month. In the case of frequent violence, it has been observed that women were verbally abused, locked inside a room without food for days, given death threats by pimps, forced to have sex with more than one client at a time, and slapped by pimps as well as by clients. Meanwhile, the study found that women reporting occasional violence were beaten with objects, burnt with cigarettes, raped by pimps, and sometimes pimps even put chili powder in a woman’s eyes and vagina. As for those reporting rare violence, pimps burned or stabbed women. Trafficking victims suffer from serious physical abuse and exhaustion, as well as starvation. Some of these serious injuries can cause lasting health problems and may require long-term treatment.

Women who are forced to enter to this profession remain in danger and these kinds of exploitation construct them as victims and, in many cases, they preferred to die rather than continuing there. One 14 year-old girl said: “*once I refused to have anal sex with a client due to severe stomach pain, but he didn’t respect my body and complained to the padrote (pimp) and asked for his money back. Once the client left the bar, the pimp took me to “el infierno”⁷ and I was locked in there for a week, and had access only to breakfast and a small bottle of water (500 ml) every day. After a week, when I came out from the room, he warned me not to repeat the same again, otherwise it would end worse. I can say, the day I left my home my life has become so miserable that “at this moment nothing could be sweeter than death”*”. Based on the above discussion, it can be said that trafficked women are treated as mere sexual objects and suffer many and varying abuses and violence from pimps and clients. Thus, looking at severe exploitation and violence, it can be concluded that trafficking is a *femicide*.

4.3. Forced Sex and Sexual Exploitation: A Threat to Women’s Body

In the earlier part of this paper, the “*objectification of trafficked women*”, where women are forced into sex

⁷ Referred to punishment room.

at any point of time, as well as being forced to accept any number of clients per day, has been discussed. In this study, sexual exploitation has been interpreted taking into consideration the number of clients received by a woman in a day and according to her typical sexual relations. Regarding the sexual behavior of trafficked women, some questions were asked during the interview. The information obtained indicates that trafficked women received around ten clients per day, although there were women who had sexual relations with more than ten clients in a day. It also shows that there is an inverse relationship between age and clients received by a woman, that is, the older a woman, the fewer clients she receives per day.

Regarding the sexual activity of trafficked women, some questions were asked including the following: how frequently do clients use condoms during the sexual relations with them and what kinds of sexual relations do clients demand? The study found that clients seldom use condoms because the pimp obligates women to have sex without in order to earn more money⁸ and it is therefore impossible for them to negotiate with client to use a condom. Moreover, women are obligated to practice a wide range of sexual activities at a time as per the client's demands. Some women frequently (everyday) practice vaginal and oral sex with clients, whereas there were women who indicated that they occasional practice anal sex with clients and—very rarely—some clients demand both anal and vaginal sex.

The sexual activity of trafficked woman is directly related to their health. It also encompasses diseases like HIV and STIs/RTIs, sexual dysfunction and problems of unintended pregnancy and abortion. Of the sixty women interviewed, 34 had been exposed to unwanted pregnancy and had an abortion; and twenty six reported having at least one abortion after being trafficked, while eight women had had two or more abortions. According to these women none of these abortions were performed at a clinic; in most cases they had been given some pills by the madam.

However, in addition to sexual activity, the precarious living environment, deficient nutrition, insufficient physical rest and intense physical and psychological violence also result in illness and suffering among trafficked women. The most common health problems among trafficked women are fever, backache, and sleeping disorders. Some women reported that they have irregular menstruation, stomach and back pain during menstruation; some have heavy bleeding during menstruation, pain during intercourse, bleeding after intercourse, lower abdominal pain, abnormal vaginal discharge and a burning sensation while passing urine. The majority of injuries and illnesses reported by women were the result of physical and sexual abuse.

⁸ When a woman has sex without condom, the client pays more money.

As discussed earlier, women were beaten, raped, and deprived of sleep, food, and other basic necessities, leading to fatigue and vulnerability to infection, as we can see from the case of Karla, a 23 year-old woman, who was trafficked from Oaxaca state when she was 14 years old. Karla said: for the *“last one and half years I have been suffering from severe stomach pain, I have mentioned it to the madam several times, and she always promises to consult with a doctor, but so many months have already passed and she is not paying attention. Last week, when I fell down the staircase, two of her bodyguards came and took me to a room and warned me to not to do that in public. I told them I have severe stomach pain, but they said I am pretending so I don't have to work. Later in the night the madam came and gave me same medicine (which tasted horrible) again and forced me to take it. I took it and after few minutes I felt relaxed. Even for the last few months, I have been having my period every two or three weeks. Though I have told the madam she always said: first I have to earn and deposit a handsome amount with her and then she will take me to the doctor for a checkup. My life has become hell here. For the madam, my pains and feelings are not important, for her I am just an object. I do not know how long I will stay alive. Each day, I feel that my body is degrading, but who can I tell or where can I go”*.

Meanwhile, when we analyzed the mental health status of the women, it was clearly observed that they are currently suffering complex mental health disorders due to physical and sexual abuse they deal with in their day to day life. In their studies, the International Organization for Migration (2008) and Zimmerman et al. (2008) found that victims of human trafficking, especially women, experience a series of psychological disorders such as recurrent thoughts, recurrent nightmares, feeling detached, trouble sleeping, feeling irritable among others due to the circumstance or condition they are exposed in their daily life. In this regard, we observed in our study that female victims of trafficking in Monterrey suffer from a series of mental health disorders. During the interviews, women cited frequently suffering from anxiety, mood disorders depression, loss of strength, lack of interest, crying, ideas of self-injury or suicide and feelings of guilt. As it discussed earlier, the physical and sexual abuses suffered by women are solely responsible for the development of these emotional disorders.

Moreover, it has been observed that the use of condoms is very rare and women are working in sub-human conditions. They do not have access to proper medical facilities and when women reported any health problems, the madam is the only person who would take them to *“consultorio patito”*⁹ (located near

⁹ Legitimized medical consulting room, but cheap and offering only poor quality service.

the brothel). There are numerous drug stores located close to brothel, where imitation or expired medicines are sold for a cheaper price. If a woman reports a health problem to the madam, she first provides some medicines and then, unless the woman complains again, she never takes her to medical consultation.

5. Discussion

Human trafficking has received increasing global attention over the past decade. Initially, the trafficking of women and girls for forced sex work and, to a lesser extent, domestic servitude, were the sole focus of advocacy and assistance. Today, there is more recognition that women, children and men are trafficked into many different forms of labour, and for sexual exploitation. In 1995 at the Beijing Platform for Action (BPFA), trafficking of women was defined as violence against women and, since then, it has been included by all countries in their development strategies. Much has been achieved in terms of clarity of the definition of trafficking, there is also a firm recognition that trafficking is a complex issue and has many ramifications in the related fields of migration, labour and human rights.

From the present study, it may be concluded that trafficking of women in Mexico is a severe human rights violation and is associated with various social, economic and cultural determinants that push young women and girls into human slavery. Results show that it is a complex and serious problem, where women not only run serious social risks of physical and sexual violence, but also have been stigmatized as carrying the main responsibility for the spreading of sexually transmitted diseases and HIV/AIDS. Simply, these women's ability to protect themselves from STDs and HIV/AIDS is drastically weakened by the threat of violence from pimps. Fear of violence exposes trafficked women to many risks such as unprotected sex, unwanted pregnancy, forced sexual relations, mental trauma and substance abuse. Their ability to negotiate regarding the use of condoms by their male partners is inversely related to the extent or degree of abuse in their relationship. Physical and sexual violence against trafficked women has larger consequences on physical, sexual and mental health conditions. It is important to mention that in 2012 Mexico formulated the new anti-trafficking law which was reformed by the Mexican senate in March, 2014. Though the present law has provided for severe penalties, incorporates new types of criminal behavior associated with human trafficking, extends the scope of aggravating circumstances of the crime, and increases penalties to up to 30 years imprisonment and fines of 60,000 days' worth of the minimum wage, there are still no concrete policies that have been formulated to combat human trafficking in the country. Thus it can be noted that the gravity of this situation has sent a strong message to the Mexican

government due to the nature of exploitation and slavery, which urgently needs to take a comprehensive policy approach, using a combination of the 3Ps: Prevention, Prosecution and Protection to assist victims of trafficking in the country.

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Conflict of Interests

The author declares no conflict of interests.

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Article

Sinai Trafficking: Origin and Definition of a New Form of Human Trafficking

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Abstract

The phenomenon that is coined “Sinai Trafficking” started in 2009 in the Sinai desert. It involves the abduction, extortion, sale, torture, sexual violation and killing of men, women and children. Migrants, of whom the vast majority are from Eritrean descent, are abducted and brought to the Sinai desert, where they are sold and resold, extorted for very high ransoms collected by mobile phone, while being brutally and “functionally” tortured to support the extortion. Many of them die in Sinai. Over the last five years broadcasting stations, human rights organisations and academics have reported on the practices in the Sinai and some of these reports have resulted in some confusion on the modus operandi. Based on empirical research by the authors and the analysis of data gathered in more than 200 recorded interviews with Sinai hostages and survivors on the practices, this article provides a definition of Sinai Trafficking. It argues that the term Sinai Trafficking can be used to differentiate a particular new set of criminal practices that have first been reported in the Sinai Peninsula. The article further examines how the new phenomenon of Sinai Trafficking can be framed into the legal human trafficking definition. The interconnectedness of Sinai Trafficking with slavery, torture, ransom collection, extortion, sexual violence and other severe crimes is presented to substantiate the use of the trafficking framework. The plight of Sinai survivors in Israel and Egypt is explained to illustrate the cyclical process of the trafficking practices especially endured by Eritreans, introduced as the Human Trafficking Cycle. The article concludes by setting out areas for further research.

Keywords

Egypt; Eritrea; human trafficking; Human Trafficking Cycle; international organized crime; Israel; refugees; Sinai

Issue

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1. Introduction

The Sinai desert is historically known as an area where human trafficking and the slave trade take place, with the intention to sell human beings to international markets of exploitative labour. In 2009 the nature of the trade in human beings in Sinai changed. The financial benefit of the human trafficking transformed into forced

begging under pressure of torture and threats of killing, in exchange for the release of the hostage itself. The availability of mobile phones played a crucial role in the ransom collection. In Europe, the phenomenon was first identified by father Zerai Mussie, a Rome-based catholic priest of Eritrean descent, who had been contacted by hostages in Sinai who were asking for help in the collection of ransom for their release. He addressed the prob-

lem at a hearing in the European Parliament in Brussels on 29 November 2010 (European Parliament, 2010). Hostages had contacted the priest by mobile phone to ask for his help. Radio-journalist Meron Estefanos, a Swedish Eritrean, contacted several hostages and recorded the interviews. With the consent of the hostages who were still in captivity, these interviews were broadcast in Tigrigna, the principal language of refugees from Eritrea, in early 2011 on the radio channel Voice of Meselna Delina (VoMD, 2011), which targeted Eritrean communities in Eritrea, refugee-camps and elsewhere. The first radio broadcast was posted on the Tigrigna/English website Asmarino on 3 March 2011. This website targets an audience of Eritreans in the diaspora. The comments sparked mostly negative messages from Eritrean pro-government supporters.

This article aims to give a clear definition of Sinai Trafficking. It begins with a description of the original confusion in the media of what constitutes the problem of Sinai Trafficking. It sets out the research conducted by the authors and describes the *modus operandi*, which emerged from the data-analysis in Section 2. It then interprets the *modus operandi* and defines a new form of human trafficking, coined Sinai Trafficking. It is argued that this is a new and specific form of trafficking, which has not been earlier described in extant academic literature. The combination of severe forms of crimes and new forms of trafficking, namely, trafficking for forced begging and ransom makes Sinai Trafficking distinct from other trafficking practices anywhere in the world (Section 3). The article describes the cyclical nature of the Sinai Trafficking and briefly analyses the plight of Sinai survivors in Egypt and Israel (Section 4). The article will finally address the definition of Sinai Trafficking and the ramifications of the findings for future research.

2. The Initial Contradictions in the Definition of “Sinai Trafficking”

This section sets out when and where Sinai Trafficking was discovered as a phenomenon and how it was initially described (Carr, 2011). The aim of this description is to trace the origin and to explain the confusion that originally arose on these new practices that emerged from 2009 onwards in Sinai. It describes how the issue was identified, when and how it was linked to a targeted group (Eritreans) and it describes how it was initially linked in the media to organ trafficking. The link to organ sales reported in the media has not been confirmed by research findings. This description forms the background against which the need for a clear evidence-based definition of the trafficking in the Sinai is argued.

2.1. Origin of a New Practice of Trafficking in Sinai

The first to describe the problem was Tel Aviv based

Physicians for Human Rights (PHR) also referred to as PHR-Israel (2010a). PHR-Israel provides free medical assistance to refugees, and its staff had observed a vast increase in refugees coming through the Sinai, with particular patterns of torture and among whom were many women who seemed in need of abortion. The organisation started to systematically interview the patients and between 12 October and 7 December 2010, PHR-Israel interviewed a total of 167 individuals from Eritrea and Ethiopia, Sudan and six other countries, including 108 men and 59 women, ranging in age from 19 to 66. It found that Eritreans (and Ethiopians) were particularly subjected to torture. On 28 November 2010, PHR-Israel (2010b) communicated publicly that they were dealing with a new challenge: “According to repeated accounts, groups of approximately 200-300 Eritreans are brought to Sinai where they are held in metal containers or compounds. Captives undergo torture by burning or beating, as smugglers call their relatives demanding the immediate transfer of funds to be guaranteed transit to the Israeli border. A consequence of the high ransom price is that it often takes weeks or even months for refugees to be taken to the border. It is during this time that women are separated from the group, detained in secluded rooms and subjected to repeated sexual acts, abuse, and rape at the hands of their captors”.

On 3 December 2010, PHR reported that the ransoms were going up. In a subsequent report there was no differentiation between Eritreans and Ethiopians, the number of the survey report stated that out of 284 patient interviews with disproportionate torture, 80% originated from Eritrea. From the documentation it is clear that the disproportionate presence of Eritreans in the population was not yet “noted” despite the significance of Eritrean presence appearing in the data (Physicians for Human Rights, 2011). In April 2012 PHR-Israel published a report together with the Israel-based Hotline for Migrant Workers in which findings of data analysis of 682 patient interviews were presented (Hotline for Migrant Workers, 2012). The briefing paper drew attention to the inadequate response by Egyptian and Israeli authorities to provide protection, and reported that 178 out of 682 survivors had stated that they had been shot at on the Israeli–Egyptian border.

2.2. Linking Sinai Trafficking to Eritrea and the Abduction of Human Beings as Commodities

Mekonnen and Estefanos (2012) and Humphris (2012) described a link between the deplorable human rights situation in Eritrea and the proportion of Eritreans among Sinai Trafficking victims. Van Reisen, Estefanos, & Rijken (2012) reported that victims were predominantly of Eritrean origin (95% of all hostages). In 2014, Human Rights Watch made an even more specific connection to Eritreans as victims of the Sinai Trafficking,

entitling their report “I wanted to lie down and die. Trafficking and Torture of Eritreans in Sudan and Egypt”. Human Rights organisations have increasingly pointed to the forced military conscription in Eritrea combined with the severe conditions with regards to rule of law, human rights and governance as well as the lack of economic opportunities, rampant poverty and lack of freedom as a lethal cocktail which produces vast numbers of refugees. Van Reisen et al. (2012) linked the origin to the crisis in Sinai of Eritrean refugees to the increasing vulnerability of Eritrean refugees in countries neighbouring Eritrea and the agreement between the Italian and Libyan governments to return refugees, leading to fear of deportation from Libya by Eritrean refugees. Looking for alternative routes, Israel came in sight as a destination, reachable through the Sinai. The effective payment of originally relatively low ransom increased the “business” potential of human commodification and resulted in an increasing “investment” by organized criminal organisations in order to develop the structure of the “business”. This led to a new model in which the abduction of human beings as commodities became a feature. The UN High Commissioner for Refugees pointed to the lack of security in refugee camps in Sudan as early as 2012 in relation to the increasing number of abductions from the camps. The extent to which the abduction of human beings as commodities has penetrated Eritrea remains a question for further research. Van Reisen, Estefanos, & Rijken (2014) describe the abduction from within Eritrea and the UN Monitoring on Somalia and Eritrea Report (2012, 2013) and Human Rights Watch (2014) discovered that Eritrean military are engaged in the smuggling and trafficking of Eritrean citizens. The exact nature of the relationship between smuggling, trafficking and abduction from within Eritrea needs to be further examined in order to understand the scale and the responsibility of the Eritrean military and government in the trafficking.

2.3. *The Disputed Dimension of Organ Trafficking*

Meanwhile, the broadcast of a documentary on trafficking in the Sinai by the Egyptian TV channel, YOUM7-TV on 31 October 2011 included graphic photos and suggested that human trafficking was connected to organ trafficking. An English reference to this report appeared in the *Egypt Independent* in December 2011. In a translation of the Youm7 report in English cited by Mekonnen and Estefanos (2012) the report claimed that “Those who are unable to pay the ransom face a number of horrendous violations such as torture, electrocution, rape and other forms of violations. Some have suffered removal of organs to settle the ransom. As revealed by the Egyptian daily newspaper Youm7 the traffickers are equipped with sophisticated techniques of organ harvesting which implies that they

have the support of medical personnel involved in this illicit activity. Once organs are extracted from victims they are injected with anaesthesia and preserved in a refrigerator to help prolong their viability. According to Youm7, evidence in this regard was collected from a car crash, which involved the death of a doctor (possibly also a trafficker) who was travelling with mini refrigerators containing human organs”. On 3 November 2011 CNN published an article by Pleitgen (2011) reporting human trafficking in Sinai being linked to organ trafficking based on reports of The New Generation Foundation for Human Rights and the EveryOne Group from Italy. The article was based on “evidence that the bodies of African refugees have been found in the Sinai desert with organs missing”. The article claimed that Al-Azazy, director of the New Generation Foundation, had stated that the organs are taken from refugees while they are still alive: “The organs are not useful if they're dead. They drug them first and remove their organs, then leave them to die and dump them in a deep dry well along with hundreds of bodies”. According to the CNN article, Al-Azazy claimed that “Mobile clinics using advanced technology come from a private hospital in Cairo to an area in the deserts of Mid-Sinai and conduct physical examinations on the Africans before they choose those who are suitable, then they conduct the operation”. In Pleitgen’s report details of the organization of the organ-removal were provided, based on similar evidence as the Youm7 report. During a closed meeting in the European Parliament, the same photographs showing corpses with cuts in the lower body—used as evidence in the TV documentaries of Youm7 and CNN—were shown by Alganesh Fessaha, alias Dr. Alganesh, from the Gandhi Foundation. On 19 November 2011, CNN broadcasted the documentary *Death in the Desert*, which was based on the same evidence (CNN, 2011). This documentary was later awarded the Tom Renner Award for its “investigative coverage of organized crime”. Another CNN documentary followed in September 2012; *A Stand in the Sinai* maintained that “These traffickers then tortured the refugees, and in some cases harvested their organs for sale on the black market, leaving many of their victims to die” (CNN, 2012).

The European Parliament adopted a “European Parliament resolution on Human trafficking in Sinai, in particular the case of Solomon W.” on 13 March 2012. The resolution also refers to “human organ traffickers” (F). The resolution had been initiated through advocacy by the EveryOne Group. While the version initially tabled referred to organ trafficking, the final version adopted refers only to the statement of Solomon W. that “one of the jailers showed him a plastic bag containing human organs of a refugee who did not pay the ransom” (E). It should be noted that the identity of Solomon W. presented as a victim in the resolution was disputed by some experts on Sinai Trafficking (van Reisen et al., 2012).

In March 2012 a coalition of organisations issued a report. The group included Israel based organisations: Physicians for Human Rights-Israel, the Hotline for Migrant Workers and several groups and individuals organized to address problems related to Eritrean refugees, among them Agenzia Habeshia, the International Commission on Eritrean Refugees, The America Team for Displaced Eritreans, Eritrean Movement for Democracy and Human Rights, and Release Eritrea (van Reisen et al., 2012). This report (Physicians for Human Rights-Israel et al., 2012) does not elaborate on the earlier mentioned alleged connection to organ trafficking and it also did not specifically identify the hostages as Eritreans. However, the report cited several cases that were filed by Eritreans with the police related to extortion, torture and kidnapping. The publication by van Reisen et al. stated that “the threat of organ harvesting and death is part of the pattern of torture regularly described in the interviews” (van Reisen et al., 2012, p. 4), but it did not link Sinai Trafficking to forced removal of organs or any commercial organ trade. With regards to the issue of the practice of organ trade and trafficking for the removal of organs, no research has been published that provides any evidence of the presumed link made by some media that links the commodification of human beings in Sinai to trafficking for the removal of organs and commercial organ trade. Van Reisen et al. (2012) only confirmed through their research that there was the *threat* of organ removal for sale but found no evidence of *actual* organ sale.

3. Modus Operandi and Definition of “Sinai Trafficking”

In this section we present the empirical data collected for the research on modus operandi of the traffickers in the Sinai, resulting in a definition of the specificity of Sinai Trafficking. The section is concluded with the legal framing of the practice into the definitions of Trafficking in Persons and Slavery.

3.1. The Set-Up of the Research

Research on which this article is based was carried out in two phases. The first analysis was based on 123 interview recordings carried out between 2010 and 2012 (analysis published in 2012). Interviews with Sinai hostages were conducted mostly through skype to mobile phones and these interviews were recorded. The second study was based on a total of 115 interview recordings of which 77 contain information directly related to the modus operandi of the traffickers in the Sinai. Interviews from the second research were carried out with hostages while they were held in the Sinai and afterwards in their various situations: escaped in the Sinai, in detention in the Sinai, released in the Sinai and released in Cairo. In addition, Sinai survivors who

had been able to enter Israel (before the fence was completed on the Egypt-Israel border) were interviewed in Tel Aviv in face-to-face interviews. These interviews were conducted in Tigrigna. The interviews were transcribed and translated into English. The original contact was usually established by the researchers following approaches from victims or families of hostages. Once contact was established a snow-balling technique was used to record the stories of victims held within the same group. The interview transcripts were analysed by coding the information and comparing these. Two different methods for coding—counts and comparisons—were used by two different research-coding groups. The information of the two groups were compared. Interviews with resource people were held to provide context for the interpretation of the interviews and to detail the code-headings. Results of the analyses were compared with other research sources, especially analysis of interviews carried out by PHR-Israel and by the Hotline for Migrant Workers.

3.2. Results of the Research

The purpose of the analysis of the interviews was to establish a clear understanding of the new form of trafficking in the Sinai. The modus operandi of the traffickers include four main elements: (1) Involvement of officials in the smuggling, abduction and trafficking during the route to Sinai; (2) the captivity, torture and extortion in Sinai; (3) the killing of hostages in Sinai; and (4) the organization of the Sinai Trafficking. These elements are discussed below where the first element is also addressed in the section on the organization of the Sinai Trafficking. We start with a section on the involvement of officials in Sinai Trafficking

3.2.1. Involvement of Officials in Sinai Trafficking

The involvement of Eritrean, Sudanese and Egyptian military and security personnel in the smuggling, abduction and trafficking has been described in several reports. In its reports the UN Monitoring Group on Somalia and Eritrea (2011, 2012, 2013) has pointed to the role of Eritrean military leaders in the organization of smuggling and trafficking of Eritrean citizens. In van Reisen et al. (2012, 2014) the involvement of military and security personnel of these three countries is described. Van Reisen et al. also describe the violent pushbacks from the Israeli military and hand-over of Sinai Trafficking victims to Egyptian military (2014, pp. 99-102). Human Rights Watch concluded that “In some cases, these crimes are facilitated by collusion between traffickers and Sudanese and Egyptian police and the military who hand victims over to traffickers in police stations, turn a blind eye at checkpoints, and return escaped trafficking victims to traffickers” (2014, p. 4). Van Reisen et al. (2014) and Human Rights Watch

(2014) describe the collusion of soldiers, police and security forces in Eritrea, Sudan and Egypt and their collusion with the traffickers. The collusion includes reports of victims of trafficking being detained and traffickers set free (Human Rights Watch, 2014; van Reisen et al., 2014).

3.2.2. Captivity, Torture and Extortion in Sinai

Based on the analysis of the interviews, “Sinai Trafficking” is defined as a new form of commoditisation of human beings “which is particularly brutal and is characterised by abduction, displacement, captivity, extortion, torture, sexual violence and humiliation, serial selling and killing. The ‘trafficking’ aspect of the phenomenon involves the taking of people against their will or by misleading them and holding them as hostages for ransom or further sale. The torture undertaken as part of the Sinai Trafficking is cruel and frequent and is used to force the hostages to initiate contact with relatives or friends in order to collect the ransom. Contact takes place using mobile phones. The torture is often applied while the telephone conversations are taking place to pressure contacts into paying the ransom. The torture is functional, but also gratuitous and sadistic. Sexual violence, rape and group rape—humiliating acts of violence that undermine the dignity and self-esteem of the hostages and leave them with lifelong emotional and physical injuries—are frequent. Women and young girls are especially targeted for sexual-based violence. These acts of violence contribute to the commoditisation of the hostages by denuding them of human qualities” (van Reisen et al., 2014, pp. 23-24). The sexual violence is not limited to women and girls only and also involves men and boys.

In research published by van Reisen et al. (2012, 2014), Amnesty International (AI) (2013) and Human Rights Watch (2014) the elements of the modus operandi in Sinai were described. Amnesty International published an overview of the methods applied in the torture in Sinai: “Most commonly reported methods of violent treatment include beatings with various objects such as metal chains, sticks and whips; burning with cigarette butts or heated rubber and metal objects; suspension from the ceiling and suspension in contorted positions for prolonged periods of time; pouring gasoline over the body and setting it on fire; and being forced to stand for extended periods of time in desert heat. Some victims have reported that they were given electric shocks, or had seen others held captive with them subjected to electric shocks. Others reported being urinated on and having fingernails pulled out. Rape of men and women, and other forms of sexual violence have been frequently reported” (AI, 2013, p. 12). The description contains similar elements as the one provided in van Reisen et al. (2012) and the more detailed summary list of torture practices in van Reisen et al.

(2014, pp. 74-75), which also includes forced use of drugs. The trauma is severe, and the rape and sexual violence, the loss of body parts, burns and electrocution and mental abuse and torture, result in life-long physical and psychological trauma.

3.2.3. Killing of Hostages in Sinai

The frequent death of hostages held in captivity in Sinai has been documented on the basis of interviews with victims in Sinai by van Reisen et al. (2012, 2014) and by Human Rights Watch (2014) based on interviews with survivors. Death can result from the severity of the torture. There are also reports of direct killing by beating, cutting, shooting or setting hostages to fire. The death of hostages does not stop kidnappers from collecting ransoms. This results in ransoms being paid for hostages who have already died or who have disappeared, perhaps due to unsafe release (van Reisen et al., 2014). Threats to remove and sell organs add to the stress exercised over hostages. The dumping of bodies in the desert, where they are not buried and where they are left to rot or to be taken by animals, and the lack of dignity resulting from this, adds to the torture of Sinai victims.

3.2.4. Organization of the Sinai Trafficking

The practices of Sinai Trafficking can be described as slavery. After being abducted or recruited otherwise in Eritrea or Sudan and transported to Sinai by car, the hostages arrive in a “warehouse”, where the sales price is set based on a number of parameters. The price of Eritrean nationals is higher than the price of other nationalities and Ethiopians are forced to say that they are Eritrean, so that their selling price is increased. Bedouin traffickers select the hostages and take them to different locations. In terms of the ransom collection and the negotiations with family members, relatives and hostages, different patterns occur with the different trafficking groups. Also the cruelty of torture varies. The setting of prices is also different between the groups. Once ransom has been paid, hostages are regularly sold on to another group, where they have to collect ransom again (van Reisen et al., 2012, 2014). Hostages are also forced to participate in forced labour (Human Rights Watch, 2014). Ransom is collected through phone calls with family members, relatives or others; when phone calls are made, the hostages are tortured to add pressure to the extortion. Torture may follow certain patterns and schedules. Sexual violence, rape and gang rape are regular and conducted with severe cruelty and many women become pregnant from rape, even resulting in birth (forced pregnancy). The birth of babies increases and sometimes doubles the price of ransoms. The hostages are of all ages, including the elderly, minors, young

children and babies. All persons held hostage, including pregnant women and all other vulnerable persons, such as mentally or physically seriously ill people, could be subject to severe torture without distinction. There is no medical support.

Part of the structure of the organization of the Sinai Trafficking is the impunity of the traffickers, especially those who organise the trade. Instead, there have been published reports of victims of trafficking being detained by police officers, who let the traffickers go free (van Reisen et al., 2014; Human Rights Watch, 2014). Even though the anti-terrorism activities in North Sinai led to actions close to the encampments of the kidnapers, no effective actions were taken to free the hostages (until the fourth quarter of 2014, when so-called “torture-houses” in the Rafa area in North Sinai were destroyed). According to Human Rights Watch (2014) senior Egyptian officials are involved in the trafficking. During two hearings held in the European Parliament in the presence of the present authors—meetings which were attended by Egyptian official representatives—it was found that responsibility was denied. Human Rights Watch found that to the extent that the reality in Sinai is acknowledged, the official position is that there is not enough evidence to investigate. Human Rights Watch (2014) concluded that only one person was prosecuted for Sinai Trafficking (an accomplice) in December 2013. This impunity should be seen in light of the widespread public knowledge of the Sinai Trafficking, the severity of the abuses, and the fact that these problems were raised at high diplomatic levels.

3.3. Framing Sinai Trafficking in the Legal Framework of Trafficking in Persons

The modus operandi of the traffickers and definition of Sinai Trafficking are distinct and deviate from the understanding of the notion of trafficking hitherto. This has profound implications for a legal understanding of the problem in two ways; first the combination of trafficking practices already known, e.g., trafficking for the purpose of slavery, and new forms of trafficking, namely trafficking for forced begging and ransom. Second, the interconnection between various serious crimes, including smuggling, abduction, extortion, slavery, torture, systematic sexual violence and killing. Like other forms of trafficking, Sinai Trafficking often starts as a process of human smuggling in which migrants willingly enter into an agreement with a smuggler to be moved from one place to another. Research has shown that migrants on the African continent only rarely have a clearly pre-established plan for the journey and the final destination is often determined by incidents during the migration process (Global Initiative against Transnational Organized Crime [GIATOC], 2014; Schapendonk, 2012; Terlinge & Schramm, 2014). The migration journey can take several years with irregular

intervals of traveling and temporary settlement to collect money for the next step in the migration process. Because these migrants are in dire need for money and lack a social network in the cities *en route* they are vulnerable to abusive and exploitative practices such as trafficking (GIATOC, 2014; Schapendonk, 2012). This is the junction where smuggling turns into a situation of trafficking. In the case of Sinai Trafficking the abusive and exploitative practices are of an extreme and unprecedentedly severe nature. Additionally, human trafficking generally takes place to exploit a person in labour or sexual services, which is not the case in Sinai Trafficking where the trafficking and torture takes place to extort people and to enforce the payment of ransom. This is not an obstacle to frame Sinai Trafficking into the trafficking framework as is argued below. Although trafficking is a crime often related to other crimes, the interconnectedness of the Sinai Trafficking with torture and other cruel and inhumane practices including sexual violence seems more ingrained in the way hostages and Eritreans specifically are treated in Sinai. The systematic torture, the severity and range of human rights violations and the aim of the whole process (the payment of ransom through abduction and extortion) makes Sinai Trafficking a specific form of trafficking not noted on a similar scale anywhere else in the world. At the same time, the overlaps that exist with other crimes, begs for a justification of it being framed as human trafficking.

3.3.1. The Aim of Exploitation

Internationally trafficking has been defined in the Palermo Protocol as: “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

This definition includes the three elements of trafficking; recruitment, force and aim of exploitation. Given the modus operandi described above, the elements of recruitment and force (including abduction) are easily established in the context of Sinai Trafficking. This seems to be more complicated for the third element; the aim of exploitation. In the Palermo Protocol exploitation is described but not defined, and shall “include at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. As substantiated above, the continuing claims that the removal of organs is one of the aims of Sinai Trafficking has not been convincingly proven so far. The modus operandi and

the different forms of human rights abuse of Sinai Trafficking combined with the lack of internationally defined criteria to define exploitation make it hard to determine to what extent these practices qualify as exploitation in the context of trafficking. Exploitation of persons seems to include some form of involuntariness and the practices mentioned above that “at a minimum” could be considered as exploitation seems to include a form of force or coercion. However, in relation to Sinai Trafficking the torturing and inhumane treatment is not related to work, sex work or provision of services but pressures family and relatives to pay the ransom. Extortion, beating and rape as a means to enforce payment of debts have anecdotally been reported in relation to Nigerian women trafficked for sexual exploitation and smuggling by Chinese snakeheads (Carling, 2005, pp. 41-53; Chu, 2011; Keefe, 2009) and forced extortion is for instance included in the description of “exploitation” in the Thai anti-trafficking law, more specifically, section 4 of the 2008 Anti-Trafficking in Persons Act, but, have never been considered an explicit element of the trafficking process internationally.

A first way of framing these practices into the trafficking legal framework is through the qualification of slavery. International law including human rights law, has defined and interpreted some of the forms of exploitation listed above. In the Slavery Convention of 1926 slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. It has long been advocated that this definition solely referred to the *de jure* ownership over a person, a practice that no longer exists in any country. Increasingly, the condition of ownership is understood to refer to *de facto* ownership addressing the actual situation of ownership which is present in many trafficking cases including in Sinai Trafficking where people are sold and resold as if they were the trafficker’s property (Allain, 2009; van Reisen et al., 2014). In favour of this interpretation, Bales and Soodalter have defined ownership as “the complete control of one person by another, through the use of violence, both physical and psychological” (Bales & Soodalter, 2009). In addition Allain and Bales, relying on the fundamentals of property law, find grounds to focus on the factual situation in which a person is deprived of individual liberty to establish slavery (Allain & Bales, 2012). Although this interpretation is not settled practice yet, it is gaining ground and the described practices of Sinai Trafficking where persons are treated as one’s property and not as human beings justifying the use of the term slavery to fulfil the element of “aim of exploitation” in relation to Sinai Trafficking. In (rare) interviews or transcripts of negotiations recorded with hostage-owners, the language reveals the sense of commodity ownership they have and how their human “assets” are treated as tradable commodities.

A second way of framing the Sinai practices within

the trafficking legal discourse is by qualifying the practices as forced labour or services. Taking the definition in the ILO convention on forced labour (Convention 29, 1930; “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”) it is not obvious that these practices do qualify as such because work is generally not performed at the places in Sinai where people are held hostage. The new protocol to the ILO forced labour convention, adopted 11 June 2014 reconfirms that forced labour shall include trafficking in persons for the purpose of forced or compulsory labour without altering the definition. With the adoption of directive 2011/36 on Trafficking of Human Beings (THB), the EU has included begging as a form of forced labour or services. Without a generally accepted definition of what characterises a situation as exploitative, Cherneva refers to a number of influential scholars, international organisations and experts who do consider forced begging as a form of exploitation in the realm of THB (Cherneva, 2011, p. 40). Cherneva is in favour of including forced begging as a separate category of trafficking in person, independent from labour trafficking. She argues that “begging could be discussed as a slavery-like practice” although it is more often subsumed “under the larger umbrella of forced labour” (Cherneva, 2011, pp. 42-43). In her study, begging is defined as the activity of asking for money as charity on the street. These are the practices the EU mentioned as well when it adopted begging as a form of forced labour or services as an exploitative practice, which are different from the practices of begging in Sinai Trafficking described above. However, the extortion of money combined with the forced begging for money for the release from the torture camps can be seen as a specific form of begging.

A third argument to apply the trafficking legal discourse to the situation of Sinai Trafficking is the situation of debt bondage in which many of the refugees find themselves. In the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, debt bondage is considered a practice similar to slavery, and it falls within the scope of the description of exploitation within the Palermo Protocol.

A fourth reason why the practices in Sinai qualify as trafficking is that the description of forms of exploitation in the Palermo Protocol includes the phrase “at the minimum”. Consequently, other exploitative practices than indicated in art. 1(3) can be relevant in the context of human trafficking. No further criteria have been given for further definition as such, exploitation remains undefined. Many scholars have convincingly argued that a diverse range of forms of exploitation can be accommodated under exploitation, and that it can be an aim for which the forced recruitment or transfer (the first element in the trafficking definition)

is undertaken. In the context of Sinai Trafficking the extortion of hostages with the ultimate aim of the payment of ransom emerges as a new form of trafficking.

Summarizing the above, the argumentation to apply the trafficking legal framework is built on two lines of reasoning. First, Sinai Trafficking includes forms of exploitation that are explicitly described in the Palermo protocol, namely, slavery and in some cases debt-bondage. Secondly, Sinai Trafficking has revealed new forms of exploitation as ultimate aims of the trafficking process, namely, the payment of ransom and forced begging. The latter has been recognised as an exploitative practice in the trafficking context at the European continent, but due to the torturing practices invigorating the forced begging it is of a different nature in the context of Sinai Trafficking.

3.3.2. Interrelatedness with Other Severe Crimes

The sexual abuse of women and men in Sinai Trafficking raises the questions of whether this can be qualified as sexual exploitation as described in the list of exploitative practices at which the trafficking process is aimed. Gallagher acknowledges that the failure to define sexual exploitation by the committee drafting the Palermo Protocol is problematic especially because of the complex and emotional dichotomy between those who consider prostitution as inherently exploitative, and those who consider voluntary prostitution an option (Gallagher, 2010, p. 38). However, this leaves us with a lack of parameters to define sexual exploitation, which complicates the framing of Sinai Trafficking. In the specific context of humanitarian law, practices of sexual violence and sexual exploitation have been considered an international crime. More specifically, it has been defined as a crime against humanity under enslavement in the *Kunarac* judgement of the ICTY. A similar situation would likely be qualified as a war crime under sexual slavery (Gallagher, 2010, p. 209). However, such qualifications require either a situation of war (in cases of war crimes) or they need to be part of a widespread or systematic attack against a civilian population (in cases of crimes against humanity), which is not per se present in the context of Sinai Trafficking.

Sinai Trafficking has many different faces and, unfortunately, it is not merely limited to the crime of trafficking. Torture, smuggling, rape and killing are just some of the crimes that are associated with Sinai Trafficking. The crime of trafficking is often committed together with other severe crimes (Organization for Security and Co-operation in Europe [OSCE], 2013), but in the case of Sinai Trafficking the purpose of the trafficking is slavery and extortion through severe torture. The kidnapping, locking up and the severe and extreme forms of violence and torture define the lives of the refugees in Sinai. In the case of Sinai Trafficking the severe violence amounts to torture and seems to be en-

demically and part of the modus operandi with the ultimate aim of the collection of ransom, although torture without such aim and employed by sadistic individuals is reported as well (van Reisen et al., 2012, p. 81). Without going into the elements of torture, the relatedness between torture and trafficking will be briefly discussed here (OSCE, 2013). The use of force in the context of human trafficking easily turns into a form of torture or of ill and degrading treatment. Imagine practices in which people are locked up, have to work for more than 14 hours a day and live in unhealthy circumstances without running water. Cases in which women are forced into prostitution are even considered more easily as torture or as ill and degrading treatment because their physical integrity is at stake (OSCE, 2013). Torture in Sinai Trafficking is used to increase the pressure on refugees to collect the ransom and to pay off the debt *and* it is also a separate crime committed together with the crime of trafficking. The *jus cogens* character of the prohibition of torture makes it binding for all states irrespective of whether they have ratified relevant treaties. In international law one of the elements of the definition of torture is that it is performed by a state official. The violence and torture in case of Sinai Trafficking is generally committed by private individuals and not by state officials. Situations in which torture occurs with the acquiescence of a state official are covered by the definition and they trigger positive obligations based on due diligence for a state, which makes the state responsible for the torture (OSCE, 2013). The involvement of and systematic negligence of the situation by state officials as repeatedly reported by the authors (van Reisen et al., 2012; van Reisen et al., 2014) and others (AI, 2013; HRW, 2014) qualify the situation as torture, and the states involved bear responsibility. The traffickers involved are accountable for the violence incurred and for the trafficking practices to the extent they are covered by national laws prohibiting THB.

The organization and planning of Sinai Trafficking needs to be further investigated in the context of international humanitarian law and especially as a crime against humanities. The negligence of state parties to act in the domains of prevention, prosecution and protection must also be further examined as well as the participation of state parties in the organisation of elements of the Sinai Trafficking. The policy implications of the combat of trafficking and its ramifications for international cooperation are profound. Finally more research is needed to understand the potential “development” of this “business model” as a profitable industry and the possibility for it to extend to other places. This is especially relevant in light of its collusion with other areas of organized crime. This could potentially have profound consequences for stability and governance in other countries in the region and further afield, where international organized crime networks linked to this profitable model have a presence.

4. The Concept of the Human Trafficking Cycle

Another aspect that is related to the Sinai Trafficking as it currently exists is the way in which victims become locked in a vicious cycle of trafficking. For those who originate from Eritrea the practice of forced labour in Eritrea is the first stage of the trafficking cycle. In Eritrea, people are recruited and obliged to serve in national service, sometimes for an indefinite period of time without any payment and without the option to refuse or leave national service (Kibreab, 2009). These recruits are forced to work on the land or in construction, for instance. If people flee Eritrea, they are likely to end up in refugee camps in neighbouring countries where they run the risk of being kidnapped, recruited or lured by smugglers or traffickers. The aim of the smuggling and trafficking is financial gain, which is achieved by forcing people to beg for money from their relatives, extended family or other people or by selling and re-selling people as if they were commodities. As argued above these practices are considered a second form of trafficking and a second stage of the trafficking cycle. If people manage to survive the Sinai and escape to another country or a safer place in Egypt, they run the risk of being subjected to yet another form of human trafficking. Sinai survivors are often detained by the Egyptian authorities and forced to beg for money in order to be released from prison and deported from Egypt. In Israel, Sinai survivors are also put in detention centres or left illegally on the streets without any means of income or support. In Egypt and other countries, Sinai survivors are often destined to live a life in illegality without any future perspective and without their stay ever being regularised. It is well recognised that people in such situations either in Israel, EU countries or other countries of destination easily fall victim to exploitative practices, which in many cases also qualify as human trafficking (European Agency for Fundamental Rights, 2011). These refugees then find themselves in the third stage of the trafficking cycle. The concept of the Human Trafficking Cycle provides an alternative to push and pull theories of migration, which appear inadequate to explain the (almost) infinite circular nature of Sinai Trafficking.

The analysis of the routes of survivors of Sinai Trafficking have highlighted the phenomenon of circles closing in on survivors and further reducing their future options. The fence constructed between Israel and Egypt in 2012 has stopped survivors seeking refuge in Israel, despite the proximity of the locations where the refugees are held captive and despite the knowledge of the Israeli government of the location of these so-called “torture houses”. The interviews show clear signs of extremely violent push backs of survivors of Sinai Trafficking, even in humanitarian cases of pregnant women, children or generally physically exhausted and wounded survivors. The interviews demonstrate without doubt the collusion of Israeli military with Egyptian

military around the border area. This practice is referred to as “coordinated returns” by the Israeli government (Hotline for Migrant Workers, 2012).

4.1. Israel

The situation in Israel is dominated by the “Anti-Infiltration Law”, amended in 2012 to include African migrants, which defines “all irregular border-crossers as ‘infiltrators’” (Human Rights Watch, 2012). The law makes all irregular border crossings illegal and punishable by detention. This also affects Sinai Trafficking survivors, asylum-seekers and children (Kritzman-Amir & Spijkerboer, 2013). Those charged with irregular border-crossing can be kept in detention for a period of three years or more, which can be followed by deportation; the law even allows for indefinite detention, even in the face of potential persecution if they would be returning to their home-country (van Reisen et al., 2014). Being coined as “infiltrators” by media, politics and law, the Sinai survivors are held in locations subject to dispute by the highest legal authorities in Israel. In these detention centres and “open” facilities there is a high level of deep despair among the refugees. There is a lack of basic facilities, no access to trauma treatment for survivors of torture, and lack of access to protection under national law. This desperate situation results in a high degree of suicide attempts and hunger strikes seen as the only way of dignity for survivors who try to define their own fate (van Reisen et al., 2014). The Hotline for Refugee and Migrant Workers (2014) is the only organization with access to these facilities and it has reported widely on the draconian situation in which these survivors of Sinai Trafficking find themselves. The citations of interviews printed by the Hotline to illustrate the severity of the situation are all of Eritrean refugees, pointing once more to the specific vulnerability of Eritrean refugees to be trapped in a cycle of despair in the current circumstances of their country and regional realities. These interview excerpts point to the abuse by Israeli authorities of refugees (among whom there were Sinai Trafficking survivors): “On Sunday around 6pm we were encircled by police and immigration officers. They had horses, water cannon trucks, many cars and over seven buses. One of the officers told us by megaphone that we had five minutes to go peacefully to the buses. We told them that we had questions that need to be addressed, so we requested them to give us time and a responsible person who could answer our demand. They refused to listen to us and they started to take people by force....It became difficult for us to stay strong when they started to spray our eyes....Even though I was not beaten I saw the police attacking people, kicking and punching them. Especially after it became dark or in places where there were no cameras, they beat many people very badly. I saw people becoming unconscious, falling on the ground and taken to the ambulance”. (7 August 2014).

4.2. Egypt

Egypt has a good legal framework with Law 64 adopted in 2010 to combat Human Trafficking. The legal framework on human trafficking defines measures for prevention, protection and prosecution. However, there is a serious lack of implementation of this legal framework in all of these areas. The survivors of Sinai Trafficking are put in prison in Egypt in detention centres, without charge and access to legal process. Survivors, who are often traumatized due to the torture, rape and abuse they suffered during their captivity, do not receive physical or psychological support or healing treatment, nor do they receive access to legal aid. In order to be able to leave the detention centres, the Sinai survivors are obligated to collect money to pay a return flight for their deportation to Eritrea—the country from which they fled—or Ethiopia.

The situation in Israel and Egypt is described as examples of the situation in which the Sinai Trafficking survivors find themselves trapped. Despite the UNHCR providing clear guidelines on the obligation of the international community to protect Eritrean refugees, the situation in the countries where they look for protection does not offer them a secure situation. The survivors of Sinai Trafficking find themselves in a vicious circle. The research concludes that the concept of the “Sinai Trafficking cycle” offers a way of examining and understanding “the circular and closed system in which the refugees are trapped” (van Reisen et al., 2014, p. 147). The Sinai Trafficking cycle, in the context of the majority of survivors being of Eritrean origin, is described from a perspective of the refugee as follows: “Once in the trafficking cycle, there is no way out for these refugees. Persecuted and enslaved in their own country, they flee to refugee camps where they risk being recruited or abducted for trafficking and torture in Sinai. If they survive the Sinai, they face detention or refoulement to the country they tried to escape from, or are forced to take even greater risks to try to reach safety. They have little chance of being granted asylum—if this option is even available. They also find themselves with little options for regularizing their irregular status in the host country and live on the fringes of society, which again leaves them vulnerable to exploitation and trafficking” (van Reisen et al., 2014). The legal consequences and policy ramifications of this understanding need to be further examined. There is also a need to further increase the understanding of whether other countries in the region and further afield, including those in the EU, are part of the Human Trafficking cycle, or not and if so, how.

5. Conclusions

In this article the phenomenon coined “Sinai Trafficking” has been further contextualised by discussing the

background of the phenomenon, the trafficking legal framework and the role of other countries. As is clear from this discussion and analysis, further research is required to enhance the understanding of the various implications of Sinai Trafficking. Follow-up on the modus operandi will need to be continued because the traffickers adjust their activities to increase profits. Policies in surrounding countries have direct implications for the modus operandi of the traffickers and directly affect the situation of the refugees as has been illustrated by the example of the fence on the Israeli-Egyptian border. Further research on the responsibility and policies of countries of destination, including countries in the EU as well as the EU itself, needs to address these consequences.

The practices described in this article dehumanize the victims, intentionally causing great suffering and serious bodily and mental injury and the physical and psychological effects of the violence, torture and trafficking endured will be something Sinai survivors carry for the rest of their lives. Victims are subject to extreme sexual violence, rape and forced pregnancy (in case of women). The victims are ethnically selected, with the vast majority being of Eritrean origin. So far the justice-systems have failed in putting an end to these practices and in persecution of the main perpetrators of these crimes. In order to better understand the chain of responsibility for these crimes, further research is needed. Moreover, to ensure that destination countries will take due account of the trauma and other consequences of these horrendous practices, further research on the trauma and situation of Sinai survivors is required, especially in light of the established cycle of trafficking that is described in this article as associated with Sinai Trafficking.

To conclude, Sinai Trafficking is a specific form of trafficking characterised by a combination of different forms of trafficking such as trafficking for slavery, and forced begging and in which the use of severe violence and torture is utilized to invigorate the extortion of ransom, which can be labelled a new form of trafficking, namely, trafficking for the payment of ransom. Moreover, the relation with other forms of crime, e.g., smuggling, torture and sexual violence is another distinctive element of Sinai Trafficking. It is called Sinai Trafficking because these practices have first been detected on a large scale in Sinai but unfortunately they are not limited to the Sinai desert. First indications that the same modus operandi is employed in areas outside Sinai have been communicated in some of the interviews. Research on the extent to which these practices occur in other countries or regions is needed, preferably before it becomes a large scale established practice as was the case in Sinai.

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Conflict of Interests

The authors declare no conflict of interests.

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Article

“Using History to Make Slavery History”: The African American Past and the Challenge of Contemporary Slavery

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Abstract

This article argues that contemporary antislavery activism in the United States is programmatically undermined and ethically compromised unless it is firmly grounded in a deep understanding of the African American past. Far too frequently those who claim to be “the new abolitionists” evince no interest in what the original abolitionist movement might have to teach them and seem entirely detached from a U.S. history in which the mass, systematic enslavement of African Americans and its consequences are dominating themes. As a result contemporary antislavery activism too often marginalizes the struggle for racial justice in the United States and even indulges in racist ideology. In an effort to overcome these problems, this article seeks to demonstrate in specific detail how knowledge of the African American past can empower opposition to slavery as we encounter it today.

Keywords

convict lease system; debt peonage; historical perspective; legacies of chattel slavery; prison industrial complex; slaving; white racism

Issue

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1. What This Essay Is and Is Not

American political culture presents antislavery activists with three substantial challenges when they attempt to develop public understanding and support. The first involves the vast number of Americans from all walks of life who believe, deep down, that the Civil War put an end to human bondage a century and a half ago—end of story. The second involves politically engaged African Americans who regard the modern antislavery movement with deep (and often highly justifiable) suspicion as a project that automatically marginalizes their ongoing struggles against the legacies of their forebears’ enslavement. The third involves the low level of historical discernment among proponents of modern antislavery themselves. Today, throughout the United States, antislavery activists frequently describe themselves and their work as literal extensions of the na-

tion’s abolitionist past. While some of this historical appropriation gets put to very good uses, much of it involves today’s abolitionists repurposing for public consumption some of the original abolitionists’ most negative images and ideas about the enslaved and how to represent them. The results, mildly put, are deeply damaging. Then there are politicized partisans of antislavery today who declare in chauvinistic accents that since the nation permanently eliminated its own system of human bondage in favor of universal freedom it is uniquely positioned to lead in the world-wide abolition of slavery everywhere. (All this goes far to explain “problem two”, above). Finally we come to the majority of today’s antislavery activists who seem to operate in the absence of historical knowledge and perspective, living exclusively in a socially engaged “now” rather than pursuing such questions as: “Where did this problem come from? Who was responsible for creating it?—How

comparable is it, historically, to others that can be identified?—Are there historical precedents or cautionaries to think about when combating it?”—And so forth.

This essay, written by a student of the American abolitionist movement, suggests how these difficult problems can be addressed by “using history to make slavery history”, that is, by applying reliable knowledge and perspectives drawn from the American past, particularly the African American past, to the problem of slavery today. When doing so it also argues that informed perspectives on the past make possible much deeper grass-roots understanding of and support for contemporary antislavery activism than is currently the case. This essay, in other words, offers a historical users’ guide for contemporary antislavery activists as well as a challenge to American historians to make their work speak directly to problems of contemporary slavery while emphasizing, not marginalizing, the central importance of the African American experience. It makes no pretense to original primary scholarship, only to offering fresh approaches to understanding the past. It also develops few transnational perspectives, save those in a concluding section that examines the American history of slavery and antislavery in a global context. In sum, this essay seeks to present a considerable amount of familiar historical information bearing on the United States in presumably new, more accurate, more accessible, more accurate antislavery perspectives.

2. Inviting American Historians to Address Contemporary Slavery

“Using History to Make Slavery History” is the tagline that describes the mission of Historians Against Slavery (HAS), an organization of close to 800 scholars, teachers, graduate students and campus activists located in colleges and universities throughout the United States, Canada and the British Isles. It was founded in 2011 by a group of distinguished historians of pre-Civil War slavery and antislavery movements in the United States after discovering that many current activists in the struggle against the “new slavery” were claiming to be “modern-day abolitionists”. These scholars quickly realized that today’s would-be heirs to the original abolitionist movement were often uninformed of what earlier abolitionists actually believed and said, what they were up against, and what actions had contributed to their success. In addition, these historians also realized that today’s activists had little if any sense of how profoundly the legacies of antebellum slavery and antislavery in the United States have shaped how most Americans respond to (or fail to respond to) the challenges of today’s global slavery. To HAS’s founders it seemed obvious that specialists in the history of slavery and antislavery in the American past had much of value to offer to “modern-day” abolitionists.

But by the same token, historians also realized, con-

temporary antislavery activists have much to teach to them about slavery and antislavery today. Slavery and human trafficking in our time, as historians well know, assumes forms that are as often radically different from as they are similar to the “plantation models” familiar to American and other Western Hemisphere historians. The roles played by law, the state, the media, non-governmental organizations, “race”, and the economy in either promoting or impeding slavery today often depart dramatically from what was commonplace in the pre-Civil War era. If scholars of the history of slavery and antislavery (such as the founders of HAS) expect their work to have currency in the age of the “new slavery” they have a great deal to learn from today’s activists. Given all this, these historians decided, what was required was a vehicle for productive conversations and direct collaborations between historians of slavery and abolitionism and contemporary activists that would make college and university campuses become centers of historically informed antislavery study and activism. Thus was created Historians Against Slavery, an organization dedicated to “using history to make slavery history” that has much in common with the Wilberforce Institute for the Study of Slavery and Emancipation, Hull University, UK and with Canadian York University’s Alliance Against Modern Slavery.

The founders of Historians Against Slavery see themselves as being supported by ample scholarly precedents as well as by these counterpart organizations. Back in the 1960s outstanding scholars of American slavery and antislavery who deeply influenced by the Civil Rights Movement such as Kenneth Stampp, John Hope Franklin, Winthrop Jordan, Benjamin Quarles, and Gerda Lerner initiated a major re-writing of U.S. history that placed the problem of chattel slavery and its legacies where we find them today—as central components of the American experience. “Back then” those esteemed historians were responding directly to the moral challenges of segregation and white supremacy (all legacies of southern chattel slavery) put before them by Martin Luther King, James Baldwin, Malcolm X, Fanny Lou Hamer, Nikki Giovanni, Maya Angelou, Angela Davis and so many others. Should not historians today be doing likewise in response to the exceptional work being undertaken by today’s antislavery activists? The parallels and contradictions between slavery and antislavery “then” and slavery “now” are far too revealing to allow any conclusion other than an affirmation.

It goes without saying that Historians Against Slavery sees little value in scholarship “for its own sake”. Instead, their work reaffirms a well-known provocation issued by the eminent abolitionist and historian Wendell Phillips in his famous 1881 Harvard University Phi Beta Kappa address, *The Scholar in a Republic*: “Timid scholarship either shrinks from sharing in these agitations, or denounces them as vulgar and dangerous”, he warned. “I urge on college bred men” to set aside “cold moonlight reflection on older civilizations” and instead

“lead in the agitation of the great social questions which stir and educate the age” (Wendell, 1881, pp. 17, 18, 22). Historians Against Slavery responds to Phillips’s challenge with an agenda designed explicitly to multiply public support for antislavery activism today. It counts chapters on twenty campuses (thus far) and offers financial support for their activities. It has established an ongoing partnership with the National Underground Railroad Freedom Center through which it collaborates not only in holding conferences but also in website development, supporting campus activities, documentary film consultation, the design of short antislavery web videos, and building partnerships with other activist organizations. It is directly involved in developing an Andrew W. Mellon Foundation supported Center on Modern Slavery and Antislavery at Tougaloo College, a historically black college in Jackson, Mississippi. Its website features The FREE Project, a user-friendly tool for establishing campus-based antislavery societies and linking them into networks that offers practical answers to the most important abolitionist question of all: “What can I do to make a real difference?”

Historians Against Slavery’s short answer is “study the past”. For this reason, its Speakers Bureau offers colleges and universities outstanding exponents of antislavery scholarship and pedagogy. These are widely published historians some of whose books have garnered national prizes and all of whom have won accolades for their teaching. Sessions organized by Historians Against Slavery have filled rooms at recent meetings of professional historians. Its biennial conferences at Cincinnati’s National Underground Railroad Freedom Center foster collaboration between socially engaged historians and antislavery activists. Its new book series with Cambridge University Press, “Slavery since Emancipation”, is designed explicitly to act on the imperative for historical reinterpretation discussed above.

3. Varieties of Historical Blindness

Why insist on the necessity of historical perspectives? A fair and absolutely justifiable question, particularly if it is being posed by activists today, many of whom consider themselves heirs of the original American abolitionist movement. Are we not finally gaining traction against today’s slavery? Here are the points one might wish to cite to document the progress being made against slavery and trafficking today in the United States and all over the globe:

- Major non-governmental organizations continue to extend their reach while smaller ones continue proliferating;
- Notable antislavery successes have been achieved in negotiations with governments and private enterprises;

- Since 2000 no fewer than thirty new antislavery books and a profusion of research articles have been published, two dozen antislavery documentary films produced, and an exceptional array of informative digital resources made available on line to publicize the challenges of slavery around the world;
- Federal and state governments have committed increasing resources to address human trafficking;
- Talented journalists and media celebrities have repeatedly highlighted the global problem;¹
- Thanks to sensational headlines, the public has become aware that police and prosecutors target sex-trafficking rings and enslavers of immigrant laborers.

These developments surely indicate growing public awareness. But the organizers of Historians Against Slavery worry whether “awareness” uninformed by historical understanding can amount to more than hand-wringing, sending money, and mistaking “clicking and joining” for sustained personal engagement. Answers emerge once we consider, *as historians*, the deficiencies in how activists present contemporary slavery and their efforts to combat it to the American public, how historians themselves are implicated in creating these deficiencies, and what historians can do to enhance the power of activists’ appeals.

Access any webpage for the leading antislavery non-governmental organizations (Free the Slaves (n.d.), the Polaris Project (n.d.), Not For Sale (n.d.), the International Justice Mission (n.d.)) and television networks (Al Jeezera and CNN) and look hard for historical perspectives. Search the books and films just mentioned and one can find little historical perspective. These organizations, publications, and films focus almost exclusively on contemporary slavery because NOW, quite understandably, counts most for antislavery activists working at close quarters and in short time frames to liberate the enslaved, prosecute their oppressors, and assist in rebuilding their lives while simultaneously competing for grants and soliciting funds from their supporters No matter where the area of concern—

¹ The most widely read of the recent studies on modern slavery include *Disposable people: The new slavery and the global economy* (Bales, 2001); *Ending slavery: How we free today’s slaves* (Bales, 2007); *A crime so monstrous: Face-to-face with modern-day slavery* (Skinner, 2008); *Human trafficking: A global perspective* (Shelley, 2008); *Sex trafficking: Inside the business of modern slavery* (Kara, 2010); *Bonded labor: Tackling the system of slavery in South Asia* (Kara, 2012). Many excellent documentaries exist, but these three are representative: “Fatal Promises” (Rohrer, Greenman, & Rohrer, 2009), “The Dark Side of Chocolate” (Mistrati & Romero, 2010) and “Not My Life” (Bilheimer, 2010). For one of the most accessible and comprehensive data-based sites addressing modern slavery and antislavery, see Polaris Project (n.d.).

India, Southeast Asia, Brazil, Eastern Europe, West Africa, northern Florida, Chicago, and Minnesota's Red Lake Indian Reservation, to name just a few places slavery exists—activist groups offer information about today's slavery bereft of historical context. Ordinary Americans, as a result, find it difficult to connect descriptions of today's slavery with their reflexive understanding of African American bondage in the national history. Whenever today's antislavery activists complain—as they often do—about the widespread and presumably ignorant American belief that the world permanently abolished slavery at the conclusion of the Civil War, they actually demonstrate a historical blindness for which, strangely enough, historians themselves are largely responsible.

Why not believe exactly this? After all, we historians are the ones who have (correctly) assured Americans time out of mind that emancipation constitutes a transformational event in United States history thanks to an enormous civil war. That war cost the lives of over seven hundred fifty thousand dead and left an additional four hundred thousand wounded while emancipating roughly four million people in what stands as the largest governmental appropriation of private property until the Russian Revolution. These scholars also insist that Americans can better understand the nation's ongoing racial difficulties once connected to the legacies of enslavement, emancipation, and the collapse of Reconstruction. Little wonder then that the vast majority of Americans find it difficult to empathize with today's enslaved, believing instead that all slaves were black, their owners all white, and that human bondage vanished in 1865. Mention of slavery today leads Americans to fasten instinctively on the Civil War and symbols of emancipation's enduring legacies—Abraham Lincoln, Robert E. Lee, Frederick Douglass, Gettysburg, Martin Luther King, the 1965 Civil Rights Act, post-Katrina New Orleans, the "prison industrial complex", the "achievement gap", reparations, racialized policing practices and Barack Obama. For this reason, today's manacled wood cutters in Manaus, Brazil, children sequestered behind barb-wire fences on West African cacao plantations, enslaved vegetable pickers in the Florida "panhandle", or prostituted women trafficked in Bangkok and St. Louis remain to most Americans wholly remote and unrecognizable as enslaved people.

At the same time, a variant of this historical blindness produces a pernicious form of antislavery ideology for which historians are clearly *not* responsible, apart from the obligation to refute it. This problem is created by politically-minded advocates of antislavery who "practice history (ignorantly) without a license" and at issue are myths asserting the uniqueness of our nation's historical "exceptionalism" and its "manifest destiny" in expanding "frontiers of freedom" the world over. Examining this ideology for a moment goes far to explain why African Americans view the "new aboli-

tionist movement" so suspiciously. Consider the remarks of Republican Texas Senator John Cornyn, a fervent supporter of U.S. government initiatives against slavery all over the globe, before Committee on the Constitution, Civil Rights and Property Rights (2004):

As we continue the fight to protect the American Way of life in our war against terrorism, we also have been fighting another war to protect American ideals and principles, a war against an old evil—human trafficking and slavery. Most Americans would probably be shocked to learn that the institutions of slavery and involuntary servitude, institutions that the nation fought a bloody war to destroy, continue to persist today, not just around the world, but indeed hidden in communities across America.

It has been nearly two centuries since the abolition of the Atlantic slave trade, and well over a century since the ratification of the Thirteenth Amendment. Yet to this day, men, women and children continue to be trafficked into the United States criminal, but profoundly evil.

The experiences that we will hear recounted amount to a modern-day form of slavery. The stories are not easy to hear, but we must hear them and we must face up to them if we are to finish the work of the Thirteenth Amendment, and truly expel the institution of slavery from our midst (Cornyn as cited in Hua, 2011).

What the good Senator is propounding here are assertions about the relationship of "then" to "now" that have become all too commonplace in antislavery ideology in the United States today, and to put it charitably, they exude smug nationalism and a contemptuous rejection African American history. By linking the abolition of the institution that originated today's forms of racial oppression—plantation slavery—to an agonizing human rights concern—contemporary human bondage—Cornyn casts white supremacy as a problem that no longer exists within the post-emancipation United States. What perverts "American ideals and principles" is not the persistent white racism that comprises slavery's legacy, but instead contemporary human trafficking that impinges into our previously secure communities from *outside the United States*. We in the United States are free and morally sound. They, the enslavers, beyond our borders, threaten to overrun us and undermine our cherished liberty.

Moreover, by arguing that human bondage today threatens "the American way of life" because it is reincarnation of the "old evil" of plantation slavery Cornyn, like so many other believers in "American exceptionalism" obliterates the epic historical struggle by African American abolitionists, their white allies and succeeding generations of Civil Rights activists to secure racial

equality in the face of white racial terrorism. By erasing this all-important history in favor of an account that emphasizes the smooth, triumphal progress of liberating American values. Cornyn creates a dangerous mythology that celebrates the nation's supposedly unique mission to lead the world in ridding itself of "the new slavery". As the history of African American struggle vanishes, so does the imperative that "white America" face up to its biases and bigotry. Meanwhile, the presumably antislavery Cornyn, like so many and many other Republican Party antislavery advocates (former President George W. Bush, Kansas Governor Sam Brownback and former Arkansas Governor Mike Huckabee only begin a much longer list) endorse voter suppression laws that aim at the disenfranchisement of African Americans. Unfortunately, this sort of rhetoric also circulates freely among white antislavery advocates whatever their political preferences who, like so many of their fellow Americans, hold fast to an instinctive belief in the fundamental goodness of their nation's founding principles. As Historian Against Slavery scholar Laura T. Murphy demonstrates, this parochial view too often taints the antislavery appeal with nationalistic anti-Muslim, anti-foreign and anti-immigrant prejudice (Murphy, 2014a, 2014b).

Apart from the political arena, still other blind spots in the visions of today's antislavery activists are widely shared and easy to diagnose. They also go far to explain the reasons for the alienation of African Americans from the modern antislavery movement. Such are the consequences when today's abolitionists sift through cultural artifacts left to us by the largely white pre-Civil War antislavery movement and repurpose them for their own 21st century uses. Serious scholars of the original abolitionist movement have cautioned for decades against treating this legacy uncritically. Mixed with these white abolitionists' deep moral insights, compelling rhetoric, uncommon courage and unmatched persistence, historians warn, were reflexive tendencies to stereotype, patronize, display, commodify, and disempower the very African Americans for whom they were advocating. The visual images produced by the original white American abolitionists reflected all these biases with a voyeuristic intensity—fettered slaves, hands clasped, kneeling in supplication—helpless naked slaves being whipped by sadistic masters—scantly clad slaves fearfully trembling atop the auction block—half-naked female slaves being pursued by lust-driven planters—and so forth.

"The pornography of pain" is how one noted historian characterizes the appeal of these images to their composers and to the white audiences for which they were intended. Yet as a much respected members of Historians Against Slavery have demonstrated, today's American abolitionist movement has seized on these old images, has updated them to suit a 21st century idiom, and now circulates them extensively to broadcast

an antislavery message in which dark skinned people (again) have no place beyond silence, victimization, marginalization and powerlessness. As in antebellum times, chains, manacles, barred windows, sexually provocative poses and supplicating victims repeatedly constitute the dominant motifs. Quite recently historians such as Zoe Trodd (an active Historian Against Slavery) have begun taking exception to these representations with the result that some artists and designers have begun producing images that convey far more empowering antislavery messages. Surely this is how history ought to be employed in order to "make slavery history" (Haltunnen, 1995).²

4. Bringing the African American Past into the Present.

Apart from correcting the misrepresentations just discussed, what treatment is there for the most difficult form of historical blindness of all, the instinctive conviction shared by so many Americans that the Civil War put a permanent end to slavery? The balance of this essay contends, no surprise, that the surest cure is to emphasize the vital importance of African American history for the work of the modern antislavery movement. To illustrate, consider following hypothetical situation. Imagine yourself speaking on behalf of Historians Against Slavery on "the challenges of the new global slavery and the need for a new abolitionist movement" at Tougaloo College, Jackson, Mississippi, the birthplace of the Freedom Riders Movement in the late 1950s. The audience consists entirely of African Americans who trace their genealogies to enslaved ancestors. If you fail to connect the "new" slavery with the "old", the audience will likely conclude that the history of enslavement they consider central to their lives and the "global" slavery you plan to describe exist in separate and incompatible universes. They might also suspect that you harbor certain racial insensitivities, a likelihood confirmed by the facts that African American participation in contemporary antislavery work is close to non-existent. Politically engaged African Americans have repeatedly made it clear that their exclusive historical claim to the problem of slavery is no less overriding is that of the holocaust for many Jews.

Fortunately, the best response available is also one at which you excel: developing revealing (though to you obvious) comparisons and contrasts between slavery in the antebellum South and slavery in the world today. These include:

- The old slavery was legal and widely considered a respectable practice. Abolitionists attacked it from

² For a nuanced explanation of the human rights implications of these images of victimization see Clark (1995). For Zoe Trodd's examination of antislavery images, see Trodd (2014).

close range and caused enormous controversy. Today's slavery is illegal and universally condemned. Today's abolitionists have no proslavery advocates to argue against. How can an abolitionist movement thrive in the absence of controversy?

- In the nineteenth century, slavery constituted the United States' second largest capital asset. Controversy over slavery involved incredibly high stakes. Though enormously profitable, the enslaved today are treated as "disposable people". Their labor has no visible impact on our formal economy. In today's economic terms, who cares?
- Because of their skin color the enslaved in the South were easy to identify. Though racism and ethnic hatred often motivates slaveholders today, slavery involves so many races and ethnicities that the enslaved themselves become much harder for Americans to identify;
- Yesteryears' enslaved troubled the white nation by rebelling, fleeing, and becoming formidable abolitionists. The enslaved today remain isolated, sequestered, seemingly quiescent, and therefore all but invisible;
- Back then, abolitionists fought against geographically defined opponents and the enslaved escaped from their masters across those same geographical boundaries. Today's slavery respects no boundaries. Traffickers remain out of sight. How can we fight for enslaved people if we cannot see them?

As you develop these obvious comparisons it quickly becomes clear why Americans have such difficulty identifying, understanding, and responding empathetically to the enslaved today. The staggering contrasts between "then" and "now" make today's forms of slavery all but unrecognizable to historically conditioned Americans *until they are presented in comparison with one another, at which point the realities of modern enslavement and the distinctive brutalities of the "old" slavery both become perfectly clear.* Insight into contemporary slavery supplied by the African American makes modern slavery visible. Moreover, and at least as important, comparisons drawn from the African American experience make manifest the deepest truth about slavery that Americans need to know no matter its location, dynamics, or history. Inescapable in every instance, past and present, is slavery's detestable brutality and the categorical imperative to assist those ensnared in it. Its legacies, whatever its form and however abolished extend most painfully into the present, a truth that your Tougaloo listeners know only too well.

To illustrate this vital truth about slavery's legacies you continue your lecture by reflecting on enslavement in the United States *after* the ending of the Civil War. You are now about to develop still more illuminating

connections between a past that deeply engages your listeners and the moral challenges of slavery facing us today. You refer primarily to Pete Daniel, David Oshinski, and Douglas Blackmon, accomplished historians with whose work you've been familiar for years, and who have exhaustively documented how former masters redesigned African American slavery after 1865 by instituting debt peonage and by trafficking fraudulently indicted black citizens as enslaved convict-lease laborers. These practices ensnared tens of thousands, were implemented in the 1890's and persisted well into the twentieth century. Denied effective legal representation tens of thousands of African Americans (and a much smaller number of whites) convicted of any sort of crime (no matter how petty) found themselves shackled, transported long distances (sometimes in iron cages) and coerced at gunpoint to work long and excessively hard for not just the state, but for large private businesses. Prison officials extended sentences as it suited them. Resistance meant beatings, deprivation of food and water, extended isolation, and the risk of being murdered.

Leasing convicts to work for private corporations turned handsome profits in which prison officials shared. Exploiting incarcerated people to work on state sponsored projects lowered tax rates, suffocated union organizing and suppressed wages for everybody else. As always, slavery paid the owners handsomely, and slavery surely is what debt peonage and convict leasing were. Both systems employed the pretext of punishing criminal behavior to seize dark-skinned people, sequester them and wring profits from their coerced labor. The system mirrored features of state-sponsored systems of enslavement currently found the world over. It also reflects perfectly what the distinguished activist/scholar Kevin Bales posits as slavery's essence:

Of all the core characteristics of slavery the most important is the presence of violent control. After violent control is established, slavery can take many forms—human trafficking, debt bondage [chattel] slavery, contract slavery, slavery linked to religious practices or state sponsored forced labor (Bales, 2007).

But as you continue your Tougaloo presentation you need above all to stress one largely unappreciated aspect of these familiar facts: If transported back to the 1880s today's enslavers and human traffickers would instantly recognize the activities of their southern counterparts and eagerly join in. Enslavement today and the enslavement of African Americans that menaced your audience's immediate ancestors for generations appear as close fraternal twins. Slavery "then" should strike today's antislavery activists as disturbingly like slavery "now". The crucial importance of this point cannot be overstressed. What African Americans

endured in the post emancipation is precisely what vulnerable people the world over endure today. *Properly understood, African American history illuminates the problem of slavery today. Properly understood, the problem of slavery today illuminates legacies of the plantation for African Americans.*

To explain: As we well know, enslaving traffickers the world over demand the repayment of impossible sums for supposed “services rendered” from undocumented people after smuggling them across national borders. These workers find repayment impossible and face the penalty of enslavement for sexual exploitation and/or brutalizing labor in factories, on farms, and in fishing ships. The southern convict lease system replicates itself wherever unscrupulous governments and private recruiters enslave “guest workers” after luring them with promises of employment. What awaits them is enslavement in public works projects and private industries. Similarities multiply once one recalls that debt peonage has paved the way for newer forms of enslavement throughout the world. The Central American nations, the British Caribbean Islands, Haiti, and the Philippines, each a major exporter of “enslaveable” people today, have a significant history based in “old” slavery followed by decades of debt peonage. It is well documented that in China and India, debt peonage enslaves millions, many of whom flee only to face re-enslavement elsewhere. Undocumented labor as a springboard to enslavement has hardly ended within the United States either. Exploitative fruit and vegetable growers, for example, have made southwest Florida infamous as “ground zero” for modern-day slavery”, as former chief assistant U.S. Attorney Douglas Molloy notes (President’s Advisory Council on Faith-Based and Neighborhood Partnerships, 2013, p. 23). The African American experience illuminates the plight of enslaved people today. *The enormity of the problem of contemporary slavery, conversely, lends powerful support to historical claims for justice on behalf of African Americans.*

Wrapping up your presentation, you stress to your Tougaloo listeners that much remains unaddressed regarding history’s relationship to slavery within the United States today. How, for example, might the enslavement of violently displaced Native Americans before the twentieth century help to explain why today’s Indian reservations stand as epicenters of sex trafficking? How might the history of slavery in the Far West, embedded in early twentieth century “guest worker” and “coolie labor” program, help account for the enslavement of undocumented immigrants today? How might late nineteenth century “white slavery” involving immigrants from Central and Eastern Europe illuminate our current plague of sexual enslavement of undocumented Asian, Mexican, and Central American women and children? Most obvious of all, how might the history slavery’s re-emergence in the post-emancipation South illuminate the massive application of incarcer-

ated labor, prisoners who are overwhelmingly dark complexion? Convict leasing in its historical form ended in 1945, but has it really?

5. From Plantation to Prison

How well do the following facts support Kevin Bales’ contention that slavery depends on “violent control”?

The United States today has less than 5% of the world’s population, but incarcerates 25% of all the prisoners in the world.

1 in 106 **white** men today (80% US male population) are incarcerated;

1 in 36 **Hispanic** men today (8% US male population) are incarcerated;

1 in 15 **Black** men today (10% US male population) are incarcerated.

Whites make up 72% of illegal drug users. **Whites** are eight times more numerous in the US population than **blacks**. Yet **Blacks** incarcerated for drug violations outnumber whites 4:1. **White** drug users usually receive probation. **Blacks** and **Latinos** are almost always imprisoned.

Incarceration rates have skyrocketed over the past decade as crime rates have fallen.

The two largest private prison corporations, Correction Corporation of America and Wackenhut Inc. post combined profits of close to \$5 billion annually.

Prison labor has supplanted free workers in the production of hundreds of types of goods and services. Victoria’s Secret, Chevron, Boeing, IBM, Motorola, Honda, Toys R Us, Compaq, Dell, Texas Instruments, Honeywell, Hewlett-Packard, Microsoft, Nordstrom’s, Revlon, Macey’s, Pierre Cardin, Target Stores and AT&T only begin a list of companies that are using or have used prison labor. Inmates in federal prisons manufacture practically all the clothing and small scale equipment items necessary to outfit our entire armed forces. Prison “workers” are paid an average of 25 cents per hour. (Is there such a thing as wage slavery? Don’t immediately dismiss this possibility. Think carefully. Long before Marx industrial workers in the United States vehemently insisted that this was exactly what they were.)³

Can some of these overwhelmingly dark skinned inmates be legitimately categorized as slaves? This question has surely crossed the minds of those in Tougaloo listening to your speech. While granting unequivocally

³ These statistics and factual summaries have been supplied by The Sentencing Project (n.d.) the Prison Policy Initiative (2010) and the Center for Research on Globalization (Pelaez, 2014).

that those committing serious crimes need incarceration, from this historian's perspective, the answer is "absolutely". To this particular Historian Against Slavery it seems obvious to conclude that as long as conviction and sentencing rates remain so catastrophically biased against people of color, prisons today are much like the convict-lease prisons of the post-emancipation South, that is, highly remunerative profit centers that exploit dark skinned laborers while depriving free workers of gainful employment. The exercise of "violent control", by law enforcement agents and judicial officers precisely explains the dismaying disparities. By Bales' definition many of these inmates have been forcibly detained and incarcerated not for serious crimes but for their raw monetary value of their bodies Michelle Alexander (2010) lays all these facts bare in her highly disturbing *The new Jim Crow: Mass incarceration in the age of colorblindness*. And since we taxpayers capitalize this system, the argument might well be advanced that we're all directly complicit.

Is it being recommended that today's antislavery activists further complicate their challenging missions by confronting the nation's prison systems? Absolutely not. Highly effective NGOs such as the Sentencing Project, address this challenge and in this writer's view it is imperative that modern abolitionists support their work. But there is no reason for duplication of effort. Instead the point regarding our prison system is exactly the one that has been made throughout this essay—that organizations fighting against today's slavery need to embrace historical perspectives and that do requires historians to explicitly connect "then" with "now" and act on the resulting ethical imperatives. Some already have by supporting Historians Confront the Carceral State, an organization founded by Historian Against Slavery Heather Thompson. Otherwise, the vast majority of Americans will continue responding to appeals against modern slavery by fastening reflexively on cotton plantations and the Civil War. Politicians hostile to racial equality will continue, unchallenged, to wrap themselves in antislavery rhetoric. Today's enslaved, imprisoned or "outside", will remain invisible. Absent historical perspective, it will be ever thus.

6. Endless Slavery: The Indeterminacy of Emancipation in Global Perspective

Though an essay this brief cannot address the many varieties of post-emancipation slavery to be found in the United States, it does suggest that for all their immediate importance, great emancipatory moments in western history such as the Civil War have limited durability. True, historians must always acknowledge the supreme importance of dramatic turning points such as the Haitian Revolution, the U.S. Civil War, the British Compensated Emancipation Act, the Cuban War for Independence, and the collapse of Brazilian slavery. But

at the same time, the public must keep in mind Wendell Phillips's prescient admonition in response to the ratification of the 13th Amendment: "We have abolished the slave, but the master remains". Though the narrative of "from slavery to freedom" retains enormous explanatory power for all Americans, Phillips's comment suggests that this narrative can also double back on itself, especially when, as just discussed, post-bellum southern planters created "slavery by another name" even as other groups entering the United States fell prey to similar exploitation. The narrative becomes painfully twisted when historian Sven Beckert documents how the post-emancipation plunge in southern cotton production in the United States caused the massive expansion of state-sponsored slavery in India and Egypt as its governors rushed to capture unmet world demand. Could the United States' Civil War have enslaved at least as many as it emancipated? It tangles and snarls completely in Joel Quirk's *The antislavery project: From slavery to human trafficking* (2012), which confutes the ahistorical assumptions that inform so much of contemporary antislavery activism—that a "new" slavery has only recently exploded across the planet, powered by unprecedented globalization, political disruption, population explosion, and so forth. We know better (*National Anti-Slavery Standard*, Feb. 23, 1866, as cited in Stewart, 1986, p. 98; Beckert, 2014; Quirk, 2012).

Quirk forcefully reminds us that in the face of epochal emancipatory moments slavery endures and evolves across the centuries, having adapted in response to ongoing social and economic changes. While old systems of enslavement across the Americas ended, they were replaced by newer forms in the nineteenth century, and millions remained in long-standing systems of bondage across Africa, the Middle East, India, and Asia through much of the twentieth century. Following the traumas of two world wars and in response to antislavery, activists demanded that first the League of Nations and then the United Nations issue protocols requiring global abolition. Certain governments took these injunctions seriously and significantly advanced the abolitionists' agenda. Many others, however, responded with flimsy legal decrees while persisting with time-honored forms of coercion or replacing them with new ones that continue today—again, "slavery by another name". As Quirk notes, little about either the "new slavery" or about global initiatives to eradicate it is unprecedented. The deepest and most comprehensive historical account we have of slavery and antislavery all over the globe, Seymour Drescher's magisterial *Abolition: A history of slavery and antislavery* (2009), confirms this crucial point with unmatched erudition.

Yet for all this crucially important scholarship no historian has pursued more deeply the troubling the implications of slavery's uninterrupted march across the past and into our time than has the distinguished Africanist Joseph C. Miller. His recently published *The*

Problem of slavery as history: A global approach (2012) asks historians to set aside everything we think we know about slavery as historical archetypes or as formal systems. Instead, according to Miller, historians and activists can best comprehend how the practice of subjugating others has been enacted and reenacted only if they abandon the noun “slavery” and all references to “the institution of slavery” as self-contained, nationally defined entities. These, Miller argues, are static, ahistorical characterizations that convey none of the dynamism of slavery’s evolution across the centuries. This problem arises, Miller argues, because historians too often have erroneously constructed “models” of antebellum United States slavery specifically and of 19th century slavery in the Western Hemisphere more generally that they then apply in an ahistorical manner when comparing slavery in differing locales.

Instead of constructing static models, Miller insists, the best way to come to grips with the extreme subjugation of humans by one another is by using the active voice when recounting the history of human bondage. Employ the dynamic gerund “slaving”, Miller recommends, and dispense with the use of “slavery” with its connotations of stasis and passivity. The gerund, Miller argues, forces us to recognize that human bondage has always been and remains above all a historical process specific to time and place carried forward by force by “slavers” who are engaged in “slaving” under ever-changing circumstances and historical contingencies. To present such practices as having produced archetypal “institutions of slavery” is descriptive sociology, Miller contends, not analytical history.

For these reasons, Miller concludes, it is useless to attempt to understand or combat human bondage by developing “models” of Western Hemisphere slavery such as that once practiced before the Civil War in order to build comparisons between them and to delineate the nature of master/ slave relationships anywhere else in the history of the world. Historical accounts that highlight variability and change over time in specific places are much more revealing. This approach also offers a disturbing cautionary against falling prey to the misapprehension that the 13th Amendment, the Haitian Revolution, the Cuban War for Independence, British West Indies emancipation, the fall of King Leopold’s empire or the liberation of the death camps, life transforming as these events incontestably were, constituted significant historical “progress.” In the final analysis, no matter how epochal the moment of emancipation for all involved “the master (or as Miller would have it the “slaver”) remains” (Miller, 2012).⁴

To be clear, Miller’s analysis invites criticism. It can be argued for example that plantation slavery throughout the Western hemisphere did in fact organ-

ize itself into highly articulated institutionalized systems, supported as they consistently were by the force of national interest, law and military might, the prevailing political order, ecclesiastical organizations, white supremacy, and the web of agencies and practices that sustained global capitalism in that era. In this fundamental respect, one might contend, human bondage in 19th century Brazil, Cuba, Haiti, the British West Indies and the United States is best described as a cluster of distinctive systems of institutionalized slavery. Certainly the abolitionists of that time understood their task as the destruction oppressive institutions embedded in economic, political and racial regimes much more than the suppression of individuals practicing “slaving”. Likewise slaveholders everywhere comprehensively defended their “peculiar institution” not simply their actions as “slavers”. But granting all this, Miller argues, only reinforces his basic objections about how historians have been describing slavery. The terms historians currently employ to present slavery as a reified institution, he points out, originate in nineteenth century moral polemics for and against slavery, not in well-grounded historical description that reveals what actually developing over time locally, regionally or transnationally. Precisely for this reason, he stresses, all the descriptive and analytical language associated with the history of slavery that grounds itself in Western hemisphere models requires a thoroughgoing overhaul.

Miller’s extended analyses of what *was* actually developing as slavery spanned the centuries are dense and often difficult to follow, but also stunningly erudite, analytically powerful and comprehensive. Addressing his text in detail is far beyond the scope of this essay. However, his explanation of who “slavers” were and what has motivated them over the millennia deserves attention because it holds great import for those seeking historical perspectives when addressing the problem of slavery today. “The definable and distinguishing position of slavers is their marginality”, Miller explains. “It is a very precise situation in terms of historical contexts that both motivated and enabled slavers to enslave” (Foner, 1983; Miers, 2003).⁵ Moving from the margins to positions of social centrality meant acquiring people, dominating them, growing rich from their labor, deriving status and patronage from their dependency and deploying resources derived from their exploitation to work their way into elite positions.

⁵ For a powerful historical account of the struggles over the centuries of enslaved people throughout the Western hemisphere to secure freedom see Kerr-Ritchie (2013), which includes a challenging “Epilogue” (pp. 150-161) addressing enslavement and freedom seeking today in historical perspective. This study does not address Miller’s preference for active voice gerunds (slaving) over passive descriptive nouns (slavery) but does reinforce such an approach by deploying little other than active verbs when describing the struggles between those engaged in slaving and those engaging in “anti-slaving”.

⁴ For a deep, disturbing study of linkages between slavery and the idea of progress see Davis (1989).

Slaving, in all these respects, has served as the time-honored way for ambitious outsiders to secure legitimacy that is woven deeply into the entire fabric of history across the centuries “Strategic slaving” is Miller’s term of choice and its value lies in the strong historical underpinnings it provides for the prescient comment by Wendell Phillips that reappears so often in this essay: “We have abolished the slave, but the master remains”.

By invoking “marginalization” Miller opens the supremely important question of what exactly, beyond greed and raw ambition, motivated enslavers in the long term and perhaps still today. The most substantial studies of those motivations, in this writer’s opinion come from Bertram Wyatt-Brown’s exceptional analyses of codes of honor and humiliation as practiced in the American South and by Americans through slavery and through warfare in large portions of the Atlantic and Mediterranean worlds, Orlando Patterson’s formulations of enslavement as the infliction of “social death” and Nell Painter’s view of enslavers as “soul murderers”. Writing in ways that should more than satisfy Miller’s preference for active verbs each of these scholars opens rich opportunities for all of us, historians and activists alike, to assay the deeper motives of the enslavers and the grievous circumstances of those enslaved (Wyatt-Brown, 1982, 2007, 2014; Patterson, 1982; Painter, 1995).

Historical insights and debates of such rich import have much to offer today’s activists engaged with the problem of slavery, (or as Miller might put it engaged in the action of “anti-slaving”). Instead of regarding their work as perpetually focused on the moment, those who combat human bondage today on a day-to-day, “real-time” level can look to the past and recognize themselves as the inheritors of rich, varied, and endlessly challenging abolitionist traditions. They can develop empowering understandings that illuminate their predecessors’ incontestable accomplishments, enduring insights, and sustained commitment. They can develop self-critical perspectives by considering how and why earlier abolitionist initiatives fell short, generated unintended negative consequences, or outright failed. They can and above all should demand that historians answer questions that repeat the ones that once so deeply engaged Wendell Phillips and his fellow abolitionists: Where did this *particular* oppressive practice come from? Who was responsible for creating it and who is currently responsible for maintaining it? What instructive examples and cautionary lessons does history offer us when we oppose it?

American historians responding to queries such as these have served as vital intellectual first responders to our nation’s most agonizing social crises. They have also developed powerful historiographical precedents for doing so. When in the 1960s, as has been mentioned, the United States experienced deep conflicts over white supremacy and civil rights, historians contributed African American history. In the 1970s when

women reignited their struggle for equality, historians answered with women’s history. When the 1980s brought the realization that humans are destroying the planet, historians created environmental history. Scholars engaged today with the history of slavery and antislavery clearly face challenges from contemporary enslavement every bit equal to the crises of previous decades. The problem of human bondage in our time demands from historians precisely the same intellectual engagement on behalf of human rights that a previous generation of morally grounded scholars offered the Civil Rights Movement. This, in short, is what Historians Against slavery means when promising to “use history to make slavery history”.

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Commentary

Human Trafficking and the UK Modern Slavery Bill

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Abstract

This article provides a commentary on growing awareness of human trafficking to and within the United Kingdom and government responses to it.

Keywords

forced labour; modern slavery; trafficking

Issue

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Two hundred years after William Wilberforce led the UK parliamentary campaign to abolish the Transatlantic Slave Trade,¹ British parliamentarians have woken up to the fact that slavery still existed, not just, as many thought, on the other side of the world in exploitative or poorly regulated labour markets, or in autocratic dictatorships, but on their own doorstep. Disbelief in the existence of modern slavery, in all its forms, was widely shared: as Archbishop Desmond Tutu, no stranger to exploitation, put it in 1999, “Slavery...I didn’t know about all these forms that existed. I think it’s largely because we aren’t expecting it. It is hidden. Generally people would not believe that it is possible under modern conditions. They would say ‘No I think you are making it all up’, because it’s just too incredible” (Tutu, 1999, as cited in Craig, 2007).

The British government was thus initially reluctant

to endorse all aspects of what has come to be known as the Palermo Protocol, the legal instrument established by the United Nations in 2000 to “prevent, suppress and punish trafficking in persons, especially women and children” (Palermo Protocol, 2000), supplementing the United Nations Convention against Transnational Organised Crime, and followed in 2005 by the Council of Europe Convention on Trafficking in Human Beings. Questions in the UK parliament revealed considerable ignorance of the scope and scale of trafficking; estimates of those involved were very vague and, as it later turned out, hopelessly undercounted the actual numbers involved.

As evidence grew (supported by growing awareness of the related issue of forced labour—for example, the death of 23 Chinese cockle pickers working for a criminal gangmaster, who drowned off the English coast in 2004—and more general labour exploitation), the UK began to move on the issue establishing, in 2007, a new organisation, the UK Human Trafficking Centre (UKHTC), staffed largely by serving police officers, to monitor and collect data, and report to government on the extent of human trafficking. By 2013, the scale of human trafficking emerged more clearly. The UKHTC, now part of the umbrella National Crime Agency, re-

¹ It is probably worth noting that, in line with many other claims made by the UK government to be world-leading, the claim that this was an innovative initiative is not true. Denmark had abolished the slave trade in its colonies in the late 18th century, several decades before the UK. The UK Act was however significant because the UK had industrialised the slave trade, making it larger, more efficient and more profitable—for a while—than it otherwise might have been.

ceived almost 3000 referrals that year, from so-called First Responders,² of alleged trafficking victims to its National Referral Mechanism (NRM), the official “entry point” for victims seeking “rescue” and rehabilitation. By then, it also became clear that human trafficking, whether for sexual or labour exploitation, was the tip of a much larger modern slavery iceberg. The Joseph Rowntree Foundation, a charitable foundation sponsoring research into poverty and disadvantage published a report in 2007 into the scope of modern slavery in the UK (Craig, Wilkinson, Gaus, Mcquade, & Skrivankova, 2007), following this with a large research programme into forced labour (see Joseph Rowntree Foundation (n.d.), for example, Geddes, Craig, & Scott (2013)). By 2014, it had become clear that both the scale of modern slavery was much larger than had been presumed, and that its scope was also much wider than had been understood, with new forms of slavery practice becoming much more common within the UK. These included the imprisonment of young (often Vietnamese) men by Chinese gangs to manage cannabis “farms”, the severe physical and sometimes sexual exploitation of domestic workers by wealthy businessmen/women and diplomats, forced begging and theft by young children trafficked or smuggled into the UK for this purpose and the suggestion, although as yet unsubstantiated, that some people had been trafficked into the UK for the purposes of organ harvesting.³

The growing clamour around issues of modern slavery, focused initially on the issue of trafficking for sexual purposes in particular, where a number of prominent NGOs had been active in lobbying government, alongside growing pressure from groups of MPs, finally led to the government agreeing to publish a draft Modern Slavery Bill, which appeared in December 2013. This Bill (HoC, 2013) was very weak and led to substantial criticism from virtually every side, notwithstanding the claim by government that it was intended to be world-leading in the fight against modern slavery. The draft Bill went through an unusual process before reappearing in a final form before Parliament in June 2014, being subject to examination by a Joint Select Committee⁴ and by a separate All-Party Group of MPs, each of which was highly critical of much in the Bill and much that should have been but wasn’t. The Bill was

² First Responders are a range of organisations which have the responsibility for referring alleged victims of trafficking into the NRM: these include immigration authorities, local council children’s services departments, police forces, some Non-governmental organisations and other criminal justice agencies

³ Organs such as livers and kidneys are removed under compulsion or duress of some kind (for example to settle cases of debt bondage), often in dangerous contexts, for sale to wealthy people requiring transplants.

⁴ Specifically-nominated group of representatives from both the Commons (the Lower House) and the Lords (the Upper House)

also subjected to pre-legislative scrutiny (a more technical legalistic process) and examined by other interests within Parliament (such as the Joint Committee on Human Rights) for any implications for their own work. At the same time, many individuals, organisations, NGOs, researchers and others, took the opportunity to promote their own critiques. By the time the government’s final Bill was published, it had thus been very thoroughly scrutinised, the government’s claim that it was world-leading looking fragile indeed.⁵

Before a Bill becomes an Act of parliament, it passes through a series of processes: in a nutshell, these involve detailed debate in a special Bill Committee, in which existing clauses are fought over and new ones (possibly) added (Committee stage); an amended Bill is then presented to the Commons (Report stage) when the whole House has the chance to debate it, clause by clause; passage then to the House of Lords where a very detailed and possibly elongated debate takes place through a similar process; and return to the House of Commons in an amended form when final debates take place and, normally, the government has its way, in the process often nullifying many changes which the Lords have made. Given that the government intends the Bill to be enacted by the end of Parliament, this requires it to pass through all its stages essentially by Easter 2015.⁶

Despite growing awareness of the much wider scope of modern slavery, most of the Bill remains focused on the issue of human trafficking. Much of the early work of the Commons Committee debating the Bill focused on establishing the precise wording needed to encompass all the possible offences which might be involved, and how children in particular might be protected by its provisions.⁷ One key argument has been

⁵ There has been considerable debate as to why, in the last year of a five year parliament, the Home Secretary Theresa May, should bother to promote a Bill of this kind which was unlikely to be a large votewinner. Most explanations have come to rest around the view that, if the General Election is unkind to the Conservative Party and the current leader David Cameron is obliged to resign the leadership, it would not harm May’s ambitions to be party leader if she were associated with legislation which would distance her from the epithet of “nasty party” often attached to the Conservatives. Her behaviour during the passage of the Bill suggests that she personally has had some difficulty in maintaining that distance.

⁶ By the time of reading this, we shall know whether this was the case and in what form the Bill finally reached the statute book. Much concern regarding this timetable is centered on the Lords where it is feared that everyone will have a view—perhaps at great length—and that time will be so pressured by the point at which the Bill goes back to the Commons, that serious issues may be lost or not debated.

⁷ This is important as the UK judiciary remains largely very ill-informed about the nature of modern slavery and has often either failed to recognise the seriousness of offences or regarded victims of trafficking or forced labour as criminals. The gov-

about what form the precise protection for children might take with one suggested scheme, involving children being provided by the state with Advocates, to defend the best interests of the child, being piloted by an NGO.⁸ Whilst the issue of trafficking remains very central to the Bill, this has essentially focused almost entirely on trafficking for sexual exploitation of adults and children (those defined by the UK to be under 18).

The issue of trafficking for labour exploitation, and of forced labour (which can occur whether or not trafficking is involved) is receiving far less attention. Although forced labour was made a freestanding criminal offence in 2009,⁹ thus technically detaching it from the issue of trafficking, the number of cases brought before the courts remains very low and in one notable case, Operation Ruby, what was a clear-cut and very well-prepared case of forced labour was thrown out by the judiciary who had, it seemed, a very limited understanding of how forced labour worked, the judge arguing that if people were free to move around, they could not be regarded as being enslaved: this completely failed to understand the nature of psychological or emotional compulsion. At the time of writing, one important victory appears to have been won with the government finally agreeing to include a clause requiring companies to take some responsibility for exploring whether slavery might be found in their supply chains.¹⁰ Contrarily, the Committee however has failed to respond to demands to protect domestic workers.

ernment is now committed to recognising victims as just that.

⁸ This is one of several initiatives the government has taken whilst the Bill is still being debated. Another is to create a Modern Slavery Unit within the Home Office; yet another to move departmental responsibility for the Gangmasters' Licensing Authority, which scrutinises businesses for evidence of forced labour, from the agricultural department (DEFRA) to the Home Office; a fourth to review the NRM in light of the scathing critique developed by many organisations (see the reports produced by the Anti-Trafficking Monitoring Group, n.d.); and a fifth, to advertise publicly for the post of Anti-Slavery Commissioner. This role, essentially that of a national rapporteur, was recommended by the Council of Europe to be an independent one but, although the Bill alludes to an Independent Commissioner, it is far from clear that the Commissioner can work free from government interference and, for example, report direct to Parliament. To advertise the post whilst the issue has yet to be debated in Parliament smacks of a government determined to get its own way. The pilot project is being undertaken by Barnados, a leading UK children's charity (n.d.).

⁹ In a clause in the Coroners and Justice Act 2009 (TSO, 2009).

¹⁰ See the report by J. Allain and colleagues on this issue, available through the JRF website, see footnote 5 (Allain et al., 2013). Perhaps surprisingly, some big businesses have supported further regulation, arguing that unscrupulous companies, using forced labour, would be able to price their goods lower, thus taking a greater market share from the "better" companies.

There has also been substantial pressure to extend the remit (and thus the resources) of the Gangmasters Licensing Authority from its current narrow focus on three industrial sectors to many more (or even the whole of the labour market), which would probably require it to move its departmental home again. At present the GLA is only able effectively to investigate a small fraction of possible forced labour cases.

The outcome of these debates remains to be seen and lobbying will remain intense right up to the day of enactment. At present, whilst it seems that claims for the UK to be world-leading in its legislation may be somewhat overblown (not least because it has been taking advice from other countries on the form of various proposals), there is no doubt that many other states are watching the Bill's progress with interest and hopefully will learn from it. Once enacted, it will provide many improvements and provide a focus for further debate and improvement, though there is a huge task to turn law and policy into practice. There is little doubt however that it will be considerably less than 200 years before another Act comes to be placed on the statute book.

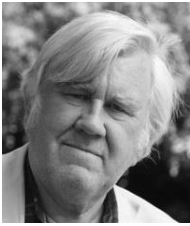
Conflict of Interests

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Commentary

Human Trafficking: Fighting the Illicit Economy with the Legitimate Economy

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Abstract

Since the beginning of research on human trafficking, there has been attention paid to the challenges surrounding the illicit economy. In creating new strategies and initiatives on combatting human trafficking, there needs to be more discussion surrounding the legitimate economy and how the business sector can make an impact in the fight against trafficking. Currently, there is a growing movement of businesses that are looking to address human trafficking through training, education, and leadership initiatives; codes of conduct; supply chain management; and financial analysis. This paper will examine the latest in these strategies and approaches by businesses in the global war against human trafficking, in addition to a discussion of a new initiative engaging the private sector co-led by Dr. Louise Shelley and Christina Bain through the World Economic Forum's Global Agenda Council Network.

Keywords

business and human rights; corporate social responsibility; human trafficking; illicit economy

Issue

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1. Introduction

As thought leaders continue to examine and strategize solutions to human trafficking on a local, national, and global scale, much attention has been paid to the drivers within the illicit economy. At this critical juncture in the anti-trafficking movement, more research, discussion, and inclusion need to be focused on how to address this issue through a business lens. Current and emerging business leaders have a crucial role to play, whether as the head of major corporations and imparting social value or embarking on social enterprises or applying business-thinking to non-governmental organizations. There is an important role also of employees of corporations to use their positions and the resources

that are provided by the corporations to serve their communities in ways that advance the anti-trafficking effort. Therefore, anti-trafficking efforts can and do consist of both top down and grassroots efforts.

Human trafficking is a business, and a profitable one with profits estimated in the billions of dollars annually according to the International Labour Organization (International Labour Organization, 2014). This business, in some ways, mirrors the trade within the legitimate economy. Human trafficking intersects in many ways with the legitimate economy through supply chains, transport and logistics, finance and payments as well as facilitators (Aronowitz, Theuermann, & Tyurykanova, 2010). Corporations, non-governmental organizations, and social enterprises are at the core of

fighting this egregious human rights abuse. Corporations in many different sectors may be both facilitators of human trafficking and their employees, without proper training or codes of conduct, may fail to act responsibly or proactively in this area.

The problem of human trafficking will be with us in coming decades. Therefore, to provide sustainable action and results, business leaders and business schools training the next generation of business leaders must be engaged and invited to the anti-trafficking movement. This concern with human trafficking must be part of courses on supply chain risk, corporate social responsibility and on entrepreneurship. In order to succeed in today's unpredictable world, leaders must have more than just functional business skills, but also a societal view and appreciation. It must be integrated into less specialized courses as well but into an appreciation that the increasingly global business environment should not result in inattention to the rights of human beings as exemplified by the problem of both labor and sex trafficking (Schlesinger, Kiefer, & Brown, 2012, p. xviii).¹

If future business leaders are trained to expand and rethink existing frameworks in solving business and societal challenges, issues like human trafficking can be addressed from within: legitimate business models and solutions combatting illicit business models and practices (Shelley, 2010). Whether leading a major corporation or starting a new non-governmental organization, business students are now trained through an entrepreneurial lens to solve the world's most difficult and pressing global dilemmas.

Current business leaders have an immediate role to play. This is particularly important in sectors where exploitation is most likely to occur such as travel and tourism, construction, manufacturing, retail, seafood processing, and financial services. According to the International Labour Organization, nearly 21 million globally are estimated to be held in forced labor (International Labour Organization, 2012). Of this total global estimate, 68% are labor exploitation victims within a diversity of sectors while 22% are sexual exploitation victims (International Labour Organization, 2012).

Through training of leadership and personnel; establishing standards of conduct and performance; supply chain identification; and financial analysis, businesses have the ability to eliminate human trafficking, particularly labor trafficking. There is increasing involvement of the corporate sector in combating human trafficking but this involvement is not well-known. Rather, information on this activity is hidden within corporate responsibility reports of corporations; evaluations of funded programs; or corporate magazines.

¹ Illustrative of this is the teaching methodologies like Babson College's Entrepreneurial Thought and Action® (ETA) that confirms that entrepreneurs are made and not born, and that they lead at all stages, levels, and types of organizations.

Although many believe good works are best done anonymously, this is most probably not the case in human trafficking. Corporate leadership that is visible in the anti-trafficking movement would probably be of much greater value in changing the culture of the business world. As one senior corporate executive who has taken a lead has said, "Many CEOs still do not understand the magnitude of human trafficking and the dire need for a coordinated global business response" (Manpower, n.d.).

With the above in mind, in 2013, the World Economic Forum (WEF) launched the Global Agenda Council Network-Wide Human Trafficking Task Force, a cross-council collaboration formed amongst the then 86 Global Agenda Councils. The Global Agenda Council network was formed in 2008 in order to address the world's most pressing global concerns and now currently contains over 1,500 thought experts (World Economic Forum, 2014). Utilizing the platform of the World Economic Forum, the Task Force was created in order to compile the most promising practices in the business community in anti-trafficking strategies and solutions in the six key sectors of travel and tourism, construction, retail, manufacturing, seafood processing, and financial services. A toolkit publication is presently being formed, constructed of submissions from a variety of corporations and partner organizations, and a future workshop will be held, the World Economic Forum represents an ideal community to highlight the efforts that have been achieved by major corporations in combating human trafficking. By providing an analysis of corporate successes created by corporate leadership and by employees, it is hoped that large corporations and small and mid-sized corporations (which have fewer resources to develop initiatives) will learn and benefit from the lessons learned and successful strategies.

2. Corporate Anti-Trafficking Efforts: A Sectoral Approach

In this discussion paper, key sectors will be addressed in the following sections citing their individual current strengths in anti-trafficking strategies and the challenges being encountered.

The greatest strengths in corporate anti-trafficking efforts have been identified in hospitality, technology, and financial services. Much less success has been identified in areas that involve supply chains and labor trafficking such as production of consumer goods, food items, and construction.

Market forces, reputation, and the possibility for affecting change, all appear to be key elements in the readiness and the ability of corporations to engage in human trafficking. There are few corporations, other than Carlson Rezidor, where the head of the corporation has made anti-human trafficking a key policy of the corporation. Rather, the process of engagement with human trafficking appears to result from many different

forces including: the desire of corporate employees to address this issue, the possibility of sanctions if there is not change, consumer boycotts and protests. The fact that some corporations have been implicated in human trafficking or have been shown to buy from suppliers who have engaged in labor trafficking has made companies that are doing the right thing hesitant to reveal their practices. General research prior to the World Economic Forum initiative has revealed corporations in the construction sector and in consumer products who are making significant efforts to stop these practices but choose not to be identified. They also do not want to share lessons learned. Fears of litigation, corporate reputation, as well as consumer boycotts for past behaviour all figure in their desire to fail to disclose their serious internal efforts to stop human trafficking.

In the case of the travel and tourism industry, anti-trafficking strategies and efforts seem to be flourishing. This particular sector has made significant strides mainly due to the following factors: a coalition effort with other companies in the travel and tourism industry; an emphasis on public-private partnerships with government and NGOs; and leadership from within the company, whether from top executives or employee initiatives.

Leadership in the travel and tourism has come from three sources: company heads, personnel, and partnerships with non-governmental organizations (NGOs). Marilyn Carlson Nelson, former Chairman of Carlson, Inc., was on the forefront of not only the travel and tourism industry's engagement in the fight against trafficking, but began a new era of involvement from the business community. Her leadership spurred a whole new sub-movement with the broader anti-trafficking movement (MacMillan, n.d.). In addition, employees at Carlson have also initiated further work, trainings, and education programs within the corporation. Marriott International and Hilton Worldwide have learned from these efforts in launching their training programs and/or have allowed initiatives by corporate employees seeking to leverage company resources to counter human trafficking.

The tourism industry has been involved with NGOs in an effort to more effectively combat human trafficking, particularly child trafficking. In 1998, the NGO End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) developed The Code (The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism), a series of guidelines and tools for the travel and tourism industry to combat child sex tourism. When a company signs on to The Code, the company commits to 6 steps to protecting children including: establishing company policies that combat sexual exploitation of children; training of employees in the rights of children, prevention, and reporting; contract clauses of zero tolerance with suppliers; provide information to travellers on children's rights, prevention, and how to report; work with other stakeholders; and finally, create annual re-

ports on these efforts (The Code, 2012). ECPAT created The Code in partnership with the travel and tourism industry and established this effective collaboration. Within 10 years, 900 companies from 34 countries had signed on as members (The Code, n.d.). A separate non-profit organization formed in 2004 entitled The Code.Org which furthers this work, and the organization's website hosts a public online database for consumers to research travel and tourism companies and their codes of conduct. This dual-pronged strategy makes consumers an active partner in this effort to reduce the risk of child sex trafficking. The involvement of more sectors contributes to success.

New ways of involving the tourism industry in anti-trafficking have emerged building on the strength of the initial ECPAT effort. In 2010, the U.S. State Department's Trafficking in Persons office awarded a grant of \$200,000 for the Youth Career Initiative (YCI) which partners with Marriott and other hotel chains to provide at-risk youth vocational training and skills within the travel and tourism industry (Marriott International, Inc., 2010). This specific grant allowed for the training of victims of sexual exploitation in Mexico, Brazil, and Vietnam, and Marriott played a key role in implementing this grant once it was awarded (Marriott International, Inc., 2011). In Mexico, for example, Fundación Infancia, a local NGO that combats child sexual exploitation, assists in coordinating the YCI program. YCI is currently operating in twelve top properties in Mexico and has assisted 340 young trainees nationwide (Youth Career Initiative [YCI], n.d.). Hilton Hotels has also initiated their own programs to train and employ survivors of human trafficking. These are promising examples of emerging public-private partnerships with corporate sector involvement.

The tourism industry has also worked with Sabre, an early signer of The Code, to use technology to address human trafficking (Sabre, n.d.). Sabre is not only using its technology to support the tourism industry as a means of targeting human trafficking but is also providing online anti-trafficking training; scholarships for former victims; and working to promote improved legislation. Therefore, its support of trafficking goes beyond its technical capacity.

Technology also can play a significant role in the fight against trafficking outside of the tourism sector. There are some banking, financial service, technology, and Internet companies that have engaged in fighting human trafficking. The utility of their activities suggests that it is crucial that the anti-trafficking movement more broadly engage the tech industry. Many firms, because they are not immediately involved with human beings, (like the members of the tourism and transport industries) do not understand how their involvement is crucial to combating human trafficking.

The most obvious point of interaction between human trafficking and technology is the Internet. Victims of human trafficking are often recruited, advertised, and

exploited through the Internet. Child pornography, often marketed through the Internet, is a crime that often uses sexually trafficked children. It has grown enormously because of the anonymity of the Internet. It is in this area where there is a clear intersection between human trafficking and technology that the most action has been taken by technology firms. Therefore, companies such as Microsoft have in-house capacity to track child pornography and have also been active in funding research to help address the linkages between human trafficking and technology (Microsoft, 2012).

The capacity of tech firms to do metadata analysis is extremely important in identifying and tracking human technology. This has been shown in tracking the on-line ads posted through companies such as Craigslist (Latonero, 2011), enabling researchers and law enforcement to understand some of the networks and criminals involved in human technology. But there is also an important role for banks and financial companies to play in using the large scale data to identify possible cases of human trafficking.

Fincen, the agency of the U.S. Treasury, responsible for monitoring money laundering requires the reporting of suspicious financial transactions. Unfortunately, in the case of human trafficking, there is rarely a single interaction that is suspicious. Only in the amalgam and by discovering patterns of financial flows can one identify human trafficking. Therefore, financial firms can only find human trafficking by developing computer programs that mine large amounts of data incorporating insights concerning human trafficking patterns. J.P. Morgan was a pioneer in this effort and these techniques have now been adopted by other corporations in the financial sector. Building on these successes, there is now a public-private partnership between the prosecutors in New York City and the financial services community, the center of the financial industry in New York (Large, 2013). This partnership reveals that important efforts can be based on local initiatives and are not dependent on the efforts of the federal government.

Technology companies outside the financial sector can also provide assistance in important ways. Palantir has provided software and expertise to the Polaris Project to help mine and map the data from the US human trafficking hotline (Palantir, 2014). Polaris partners with many strategic anti-trafficking NGOs in different regions of the world. This is just one example of how a company with software to analyse networks is providing pro-bono support to those seeking to map illicit trade in humans being and other commodities.

Technology firms can also help by developing economic training programs through smartphone technologies and by utilizing technical tools to assist law enforcement and governments. Because many traffickers use advanced technology, often developed and owned by the private sector, it is of paramount importance that the technology community become even more in-

involved to ensure that the traffickers are not always one or more steps ahead of law enforcement.

3. Conclusion

If more sectors continued on the successful path of the travel and tourism, technology, and financial service industries, there would be a significant shift in anti-trafficking measures and strategies. It is critical that more sectors begin to address human trafficking, but in order to do so, a safe space must be created for such discussions. Companies must be comfortable with launching these initiatives, free from fear of litigation, negative consumer response, or future backlash from competition. In addition, the importance of addressing human trafficking must be stressed in different ways. It must be shown how it may affect a company's bottom line or reputation. Those that address these issues may gain clientele for their dedication to human rights, especially the rights of women and children. The downsides of their failure to address this issue can be seen in loss of reputation as well as economic and legal repercussions.

There also needs to be a public shift of consciousness: the public must give corporations *the chance* and allow for this *safe space* to engage in the anti-trafficking movement. This is not to say that all corporations will step up to the plate, and this is where consumers can actively demand for products, services, and environments to be free of trafficked labor and/or sexual exploitation. Citizens can urge corporate social responsibility to include provisions to address human trafficking and corporate philanthropy to include programs to address gender-based violence and human trafficking. Organizations such as Verité now make it possible for corporations to monitor and improve their supply chains to eliminate child labor and other forms of human trafficking (Verité, n.d.).

The movement against human trafficking and modern day slavery is growing and has engaged many different sectors of society globally. The role that these mobilized citizens can take can have enormous impact on the business community as they use their buying power; their force as investors; and their access to media to advance their goals. Therefore, it is important that the business sector voluntarily become more visibly engaged in this issue before they are pressured. Those companies that are already doing much and are unrecognized for their actions must be encouraged to come forth through public-private partnerships. Without the concerted efforts of different sectors of the business community to work with many diverse communities worldwide, the problem of human trafficking will increase. Traffickers have already discovered this highly profitable sector where they can effectively exploit human vulnerability. In order to truly fight this egregious human rights abuse, it is going to take all actors affected by this issue, especially the business sector.

Conflict of Interests

The authors declare no conflict of interests.

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