

ABSTRACT

‘Innocent Victims’ or ‘Criminal Aliens?’: A Critique of Trafficking Discourse and Policy in the United States

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Human trafficking is a global phenomenon with important implications for conceptualizations of citizenship, gender and sovereignty. The approaches by the US government and many academic studies of trafficking are based upon understandings of trafficked persons as "victims" and methods for identifying the trafficked that prevent them from being identified or self-identifying. These "victim" stereotypes reproduce inaccurate and unethical gender norms and limits of political community that devalue the lives of the trafficked. Problems with trafficking efforts extend beyond issues of identification. The ideologies of human rights and security are unnecessarily injected in anti-trafficking discourse and policy at the expense of providing support for the trafficked. US immigration policies are overly restrictive to the point of putting relief from trafficking out of reach of trafficked persons and actually facilitating trafficking. In place of status quo anti-trafficking efforts, this thesis provides recommendations for scholars and policymakers to re-prioritize the support of the trafficked.

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‘INNOCENT VICTIMS’ OR ‘CRIMINAL ALIENS?’:
A CRITIQUE OF TRAFFICKING DISCOURSE AND POLICY IN THE UNITED
STATES

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CONTENTS

INTRODUCTION	1
CHAPTER ONE. The Legal Framework for Anti-Trafficking	7
CHAPTER TWO. Immigration, Prosecution and “Protection”	22
CHAPTER THREE. (In)Voluntary Victims?: Gender, Sex and Trafficking	40
CHAPTER FOUR. Human Rights, Securitization and Trafficking in Persons	55
CONCLUSION. Recommendations for Policymakers and Scholars	73
BIBLIOGRAPHY	79

INTRODUCTION

Trafficking in persons is a global phenomenon with important implications for considerations of citizenship, gender and sovereignty. Unfortunately, the amount of people trafficked globally and within the United States is unclear because the methods for obtaining this data are flawed. While large amounts of trafficked persons are missed by officials in charge of identifying them, the numbers of persons trafficked internationally are impossible to determine because of the amount of trafficked persons still being held by their traffickers. Regardless of the amount of persons who are trafficked, trafficking in persons is an unethical form of labor subordination that requires more consideration by scholars and policymakers. To date, US efforts to end trafficking and support the trafficked have failed miserably and created worse environments for the trafficked. Policy and discourse relating to trafficking needs to be reformed to provide more accurate and less violent methods for identifying the trafficked and to shift prioritization from immigration and law enforcement to aiding the trafficked.

The identification of the trafficked is not solely relegated to the realm of policy or material identification but is shaped significantly by the discourses surrounding human trafficking. Discourse here refers not only to verbal discussions of trafficking but also to the concepts, images, advertisements, video, debates, policies, declarations both verbal and nonverbal, and texts circulated in reference to human trafficking. Analysis of this discourse is a necessary component of any critical analysis of US anti-trafficking as “it is the hegemonic position of the global North that has dominated the construction of the

definition of trafficking and its subsequent policy.”¹ Discourse cannot be separated from policymaking, but is instead fundamental to the formulation of policy:

It is, therefore, not only the discursive practices manifested in legal statutes that creates identities, but also the way that these practices are infused with societal norms and values. In examining the discursive production of national identity, then, one needs to examine not only laws per se, but the debates, interpretations, and professed needs and interests that surround legal statutes and the social practices these are linked to.²

As such, the critiques and recommendations provided below will be targeted at both scholars and government actors.

Chapter One provides an account of the historical development of international and US legal efforts to stop trafficking. Particular attention will be paid to the change in the meaning of the term “human trafficking” over time. This chapter first traces the history of major international agreements and treaties to address trafficking in persons. Then, the chapter will discuss the development of US policy against trafficking and the similarities and differences between this legal framework and the one established by international law.

The second chapter discusses the status quo prosecution and "protection" methods undertaken by the US. This includes the manner by which the trafficked are identified and removed from traffickers. Particular attention is paid to the quantitative and qualitative requirements for immigration relief in the form of visas. These limitations on immigration relief are scrutinized for their subordination of the support of the trafficked in favor of immigration and law enforcement agendas. The chapter critiques the use of

¹Desyllas, Moshoula Capous. “A Critique of the Global Trafficking Discourse and U.S. Policy” *Journal of Sociology & Social Welfare* 34.4 (2007): 58.

²Doty, Roxanne Lynn. “Immigration and National Identity: Constructing the Nation” *Review of International Studies* 22.3 (1996): 242.

raids as a mechanism for identifying the trafficked and the amount of discretion given to law and immigration enforcement in all steps of prosecution and "protection" procedures.

Chapter Three analyzes the influence of societal gender norms on stereotypes of trafficking "victims" and discourse about human trafficking. The analysis in this chapter utilizes a post-modern feminist lens that incorporates concerns of what is traditionally deemed "third world" feminist theory (intersections of gender, sex, race, and class) with discursive analysis.³ Using this analysis, the prioritization of anti-prostitution as a means to prevent and prosecute trafficking is criticized. Suggestions are made for the reformulation of trafficking discourse and policy to avoid contributing to global gender and racial hierarchies.

Chapter Four includes a critique of human rights and security centered counter trafficking programs and discourse. The chapter will analyze the ways in which US anti-trafficking policy and discourse is laden with the ideology of human rights (and by extension human security) and examine the impact this ideology has on the effectiveness of counter trafficking efforts and the corresponding ethical implications. In analyzing the implications of grounding counter trafficking scholarship and policymaking in these frameworks, this paper will utilize the concepts of governmentality and biopolitics as developed by Michel Foucault and Giorgio Agamben. Analysis of governmentality moves beyond examination of government in the old sense of the term toward study of "technologies of power" and "the political rationality underpinning them."⁴ Similarly,

³Ibid.

⁴Lemke, Thomas. "'The Birth of Bio-Politics' – Michel Foucault's Lecture at the Collège de France on Neo-Liberal Governmentality." *Economy & Society* 30.2 (2001): 190.

biopolitical analysis does not confine itself to the study of governmental systems or policies, although analysis of these issues is important. Thomas Lemke, Senior Researcher at the Institute for Social Research in Frankfurt, Germany, explains:

Biopolitics cannot simply be labeled a specific political activity or a subfield of politics that deals with the regulation and governance of life processes. Rather, the meaning of biopolitics lies in its ability to make visible the always contingent, always precarious difference between politics and life, culture and nature, between the realm of the intangible and unquestioned, on the one hand, and the sphere of moral and legal action, on the other.⁵

Analysis of biopolitics and governmentality is important for discussions of human trafficking because it fosters greater understanding of the implications that counter trafficking discourses have on the subjectivity of the trafficked and notions of governmental power and sovereignty. Biopolitics serves as a useful “key to analyze how the production and protection of life is articulated with the proliferation of death” and “how the reduction of human beings to “bare life” is linked to strategies to optimize and enhance human life expectancy.”⁶ The production and “politicization of bare life” through “the entry of zoe [the state of living that all living beings share] into the sphere of the polis...constitutes the decisive event of modernity.”⁷ The concept of bare life does not merely refer to a state of exclusion but instead “revolves around “the zone of indistinction between outside and inside, exclusion and inclusion,” whereby bare life is

⁵Lemke, Thomas. *Biopolitics: An Advanced Introduction* (New York: NYU Press, 2011), 31-32.

⁶Ibid., xi.

⁷Agamben, Giorgio. *Homo Sacer* (Stanford, CA: Stanford University Press, 1998), 4.

produced by sovereign (state) power.”⁸ For Agamben, this “production of a biopolitical body is the original activity of sovereign power.”⁹ Bare life thus provides a useful concept for analyzing governmentality and biopolitics. Because “it is precisely the regimentation of our social relations and identities by state power that radically separates the phantom of our naked (animal) life from the real (social) lives we lead, bare life perfectly “expresses our subjection to political power”.” In other words, sovereign power in modern biopolitics extends to the monopolization of the ability to decide on limits of the political community and as such the ability to determine which lives have value and which can be sacrificed for the benefit of the community. Incorporating analysis of biopolitics and governmentality into critiques of counter trafficking efforts illuminates the way that seemingly contradictory articulations such as human rights and security can act as complimentary “governmental processes” or “practical interventions with the purpose of managing the phenomenon of trafficking” that “shape, guide, conduct and modify the ways in which they [individuals] conduct themselves.”¹⁰

In the concluding chapter, the analysis provided in the chapters that precede it will be streamlined into recommendations. The way in which the trafficked are identified and the methods for producing indicators to predict and prevent trafficking must be altered. In addition, immigration relief needs to be made more available and decoupled from law enforcement. Specific recommendations will be directed at the US government and

⁸Peutz, Nathalie and Nicholas De Genova. *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (United States: Duke University Press, 2010), 37.

⁹Agamben, 6.

¹⁰Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking.” *Millennium: Journal of International Studies* 33.2 (2004): 253.

academics studying trafficking. Changes need to be made at all levels to ensure that scholars do not provide unethical frameworks for understanding international relations and reproduce the problems in policy. For reforms to be sustainable long-term, both scholars and policymakers need to be held responsible for the implications that strategies have for potential and actual trafficked persons.

CHAPTER ONE

The Legal Framework for Anti-Trafficking

International Law

In order to understand the anti-trafficking efforts of the United States, it is first necessary to trace the historical development of the international legal framework for addressing the trafficking of persons. Trafficking began to be regulated by international law with the International Agreement Against White Slavery in 1904.¹ The Agreement requires all signatories to take authority to gather information concerning the “[procurement] of women or girls for immoral purposes abroad.”² The Agreement fails to clarify the phrase “for immoral purposes.” Regardless of the reason for the movement of the trafficked, the Agreement sets forth the ultimate goal of government anti-trafficking efforts as their repatriation. If the woman and/or her “husband, relations, [and] guardian” were to be unable to pay the cost of her return to her determined “country of origin,” it would be left to the country in which she was trafficked to return her to the closest port in her “country of origin” to finance her return.³ This is significant because it shows that from the very beginning of international anti-trafficking law, the sovereign

¹Gallagher, Anne T. *The International Law of Human Trafficking* (New York: Cambridge University Press, 2010), 13.

²“International Agreement for the Suppression of the “White Slave Traffic,”” 5 May 1904, *United Nations Treaty Series* 1.

³*Ibid.*

right of individual states to secure their borders from foreign nationals and the corresponding responsibility to recognize their own nationals was asserted.

In the 1920's and 30's the League of Nations adopted several more anti-trafficking agreements.⁴ A notable feature in the 1921 International Convention for the Suppression of the Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age is their preambles. Both begin with the recognition that the respective parties to each are "anxious to secure more completely the suppression of the Traffic in Women and Children", thus solidifying the trafficking of humans as a security issue.⁵ Another similarity in these agreements is their failure to move beyond the presumed consensus on the meaning of "immoral purpose" and the lack of definition for the crimes they are purported to eliminate.⁶

With the end of the League of Nations and the introduction of the United Nations came the adoption of a new set of anti-trafficking measures. The Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others was modified and reintroduced in 1949.⁷ This Agreement was even more explicit than its predecessors in condemning even consensual prostitution. Its preamble declares that prostitution and trafficking go hand-in-hand: "Whereas prostitution and the

⁴Gallagher, 14.

⁵"International Convention for the Suppression of the Traffic in Women and Children," 30 September 1921, *United Nations Treaty Series* 1.

⁶"1933 International Convention for the Suppression of the Traffic in Women of Full Age," 11 October 1933, Available at http://www.oas.org/juridico/mla/en/traites/en_traites-inter-women_1933.pdf (Accessed June 2011).

⁷Gallagher, 14.

accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community...."⁸ Parties to the Convention were required to punish: "any person who, to gratify the passions of another: (1) procures or entices or leads away, for the purposes of prostitution, another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person".⁹ Similarly, it required the punishment of people that were involved in the creation and sustenance of brothels.¹⁰ Whereas earlier international agreements mention the movement of people for immoral purposes, the first Article of the 1949 Convention substitutes prostitution for immoral acts and even in instances where the person that was moved is consenting, prostitution is considered to be coercion.¹¹ Article Seventeen of the Convention requires its parties to agree to check for trafficking of both sexes for prostitution and eludes to the ability for immigration authorities to determine "prima facie" the "principals and accomplices in or victims of such traffic".¹² Like the international agreements before it, the Convention focuses on the

⁸European Commission, "1921 International Convention for the Suppression of the Traffic in Women and Children," 2 December 1949, Available at <http://ec.europa.eu/anti-trafficking/entity.action;jsessionid=X2Y6NZ1DmykT2Zh73QZSLkGfm9GRYzYJncd6v1hmcKDDLnJtl9BG!1145937442?id=66eded7e-3f22-49e3-982a-9e468b6b6649>. (Accessed June 2011).

⁹Gallagher, 14-15.

¹⁰Ibid., 15.

¹¹European Commission.

¹²Ibid.

repatriation of “alien” prostitutes and requires all parties to question prostitutes to determine their countries of origin and makes the destination country responsible for their return. Another notable feature of the 1949 Convention is that Article Twenty obligates states to supervise employment agencies to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.”¹³ According to Article Twenty-one of the Convention, states are also required to notify the UN Secretary-General concerning domestic laws that they enact regarding trafficking. This was an elevated amount of responsibility for party states considering the earlier agreements merely required states to notify the other parties concerning their records on convicted traffickers. It created the framework for the type of international accountability that can be seen in status quo United States anti-trafficking law, as will be discussed later.

In the 1990’s, interest in trafficking increased.¹⁴ This resurgence can be attributed to a multitude of factors. Anne Gallagher explains that this revival was fueled by a variety of issues, including the development of feminist groups aimed at abolishing prostitution and growing fears concerning HIV/AIDS transmission related to migration.¹⁵ The sudden growth of interest in trafficking fueled debates within the UN General Assembly on the definition of “trafficking.”¹⁶ Until this time period, the international agreements on trafficking had largely sidestepped the issue of the definition of

¹³Ibid.

¹⁴Ibid., 16.

¹⁵Ibid.

¹⁶Ibid., 16-17.

“trafficking.”¹⁷ A 1994 resolution on the trafficking on women and girls attributed the practice as an extension of problems caused by organized crime syndicates.¹⁸ The International Organization for Migration (IOM) had its own definition of “trafficking” in the 1990’s that was very similar to what would now be considered migrant smuggling, although it was particular to women.¹⁹ Despite the development of definitions by particular organizations, there was yet to be one that was internationally recognized.

In 2000, the UN created the Palermo Protocol or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.²⁰ The debate surrounding the definition for “trafficking” was contentious. Some of the sources of contention in formulating the definition surrounded ways to differentiate between smuggling and trafficking and the treatment of prostitution. One of the first proposals for the protocol suggested that it be separated into three parts. This would serve the purpose of distinguishing between “smuggling of migrants by sea,” “smuggling and trafficking of migrants” and the “trafficking of women and children” and treating them as distinct issues.²¹ Although this organization scheme was not adopted, UN protocols respect a very particular distinction between trafficking and smuggling. The Migrant Smuggling Protocol defines the “smuggling of migrants” as “the procurement, in order to obtain,

¹⁷Ibid., 14.

¹⁸Ibid., 17-18.

¹⁹Ibid., 19.

²⁰Howard, Neil and Mumtaz Lalani. Editorial Introduction: The Politics of Human Trafficking. *STAIR* 4.1 (2008): 7.

²¹Gallagher, 25.

directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”²² There was also contention about how the protocols should treat prostitution. Abolitionists that had supported the 1949 Trafficking Convention argued for the evaluation of prostitution as one of the end purposes of trafficking in order to signal international disdain for the practice.²³ Others argued that this definition was overly broad and would cause anti-trafficking efforts to focus on voluntary prostitution instead of actual trafficking.²⁴ The abolitionists’ response was to argue for the impossibility of voluntary prostitution.²⁵ The final definition was a compromise between the two views that does not adequately address the point of contention regarding the potential for consensual prostitution. Instead of including the abolitionists’ phrase, “use in prostitution,” the “exploitation of the prostitution of others” was used to describe one of the primary end purposes of trafficking.²⁶ The issue of consent to forms of trafficking was dealt with by adding that consent is irrelevant if the means of trafficking are present i.e. there is evidence of “coercion, fraud, abuse of power, etc.”²⁷ This definitional compromise here is a poor attempt to sidestep the problem with determining consent in relation to prostitution that ultimately supports the anti-prostitution/abolitionist agendas. Although the definition

²²Ibid.

²³Ibid., 27.

²⁴Ibid.

²⁵Ibid., 26.

²⁶Ibid., 28.

²⁷Ibid.

may not reflect univocal views on prostitution amongst ratifying states, it does seem to engender an inherently negative and desubjectifying view of prostitution. The ends, in this case prostitution, invoke particular understandings about the means that can count as trafficking. Because prostitution can be construed as inherently stripping agency from its participants, it becomes difficult to distinguish the means of trafficking from the ends. Prostitution is not viewed as a legitimate form of work and can instead be criminalized under the guise of combating trafficking. The final definition adopted for the Trafficking Protocol and Organized Crime Convention, requires three elements for action to be considered trafficking. There must be action, means and purpose. The exception is in cases of child trafficking, in which there are no requirements for demonstration of means.²⁸ Action refers to “recruitment, transportation, transfer, harbouring or receipt of persons.”²⁹ As discussed above, means refers to the use of coercion etc. Under the Trafficking Protocol purposes for the action of trafficking include several forms of “exploitation”: “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.”³⁰ The element of purpose that is included in the definition ensures that “a situation of trafficking can arise without exploitation taking place.”³¹ These definitions ensure that prostitution continues to be conflated with trafficking.

²⁸Ibid., 29.

²⁹Ibid.

³⁰Ibid.

³¹Ibid., 34.

In addition to the emergence of a definition for “human trafficking,” there are some notable differences between the Palermo Protocol and its predecessors. One of these differences pertains to the level of accountability that states have for caring for the trafficked identified within their borders. Article Six calls for states to “consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.”³² Similarly, Article Seven calls for states to “consider adopting legislative or other appropriate measures that permit victims of trafficking in persons” to stay in their destination countries and also to “give appropriate consideration to humanitarian and compassionate factors.”³³ While these changes appear to be moving in the correct direction, they are vaguely outlined and unable to be enforced. These calls for increased attention to “compassionate factors” are not mandatory and fail to provide a guideline from which countries can ensure their immigration enforcement officials do not abuse or traumatize “victims.” While the Palermo Protocol provides greater insights on the interaction between immigration officials and the trafficked than the international agreements before it, it does not sufficiently outline a method by which immigration officials can delineate between “illegal immigrants” and “innocent victims” or create a standardized right to immigration relief. The Protocol suggests that the training of immigration officials “[take] into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental,

³²Office of the United Nations High Commissioner for Human Rights (OHCHR), “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” 15 November 2000. Available at <http://www2.ohchr.org/english/law/protocoltraffic.html> (Accessed June 2011).

³³Ibid.

other relevant organizations and other elements of civil society.”³⁴ Considering that the Palermo Protocol groups trafficking in persons with organized crime and illegal immigration, immigration enforcement officials are from the outset more likely to treat the trafficked as criminals than people deserving safeguards. Another distinct feature of the Palermo Protocol is the extent to which states must take legislative measures to prevent trafficking. Article Nine of the Protocol calls on states to prevent victimization of women and children in particular through “research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.”³⁵ These campaigns can be educational, cultural or social and ought to include non-governmental organizations and “elements of civil society.”³⁶ States are called upon to pay special attention to the factors that “make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”³⁷ There is no enforcement for these guidelines or uniform standard by which to implement them.

Although the Palermo Protocol is unique from prior anti-trafficking agreements, it maintains several features common to those that preceded it. The Palermo Protocol focuses on women and children as the most likely and most prevalent victims of trafficking. It also retains the focus on repatriation in opposition to providing immigration relief to the trafficked. States must accept repatriated nationals, recognize

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

their nationals, and issue travel documents for those to be repatriated. The Protocol claims that repatriation should aim to be safe and voluntary, but does not require that states create an avenue for legal relocation for victims. Despite these problems, the Palermo Protocol acts as a model for states' attempts to articulate their own anti-trafficking policy.

The United States and the TVPA

During the time period in which the Palermo Protocol was being drafted, the US was working toward its own comprehensive anti-trafficking legislation. Since President Bill Clinton's 1998 Executive Memorandum on the Trafficking of Women and Children, the US has approached efforts to curb human trafficking according to the "3P" method: "prosecution, protection, and prevention."³⁸ In the interest of furthering and extending related anti-trafficking efforts, the US passed the Victims of Trafficking and Violence Protection Act (TVPA) in 2000, a mere six weeks prior to the birth of the Palermo Protocol.³⁹ Although it was not developed with the Palermo Protocol in mind, the TVPA is "firmly rooted in international law."⁴⁰ While it is rooted in international law, the TVPA demarcates a unique and separate anti-trafficking regime by instituting a definition of human trafficking and set of initiatives for pursuing the "3Ps."

³⁸United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition* (Washington, D.C., June 2010), 12.

³⁹United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition* (Washington, D.C., June 2011), 16.

⁴⁰*Ibid.*

The definition of human trafficking set forth by the TVPA provides a means by which to differentiate US anti-trafficking efforts from those set forth in international law. According to the TVPA definition of “severe forms of trafficking” there are two major forms:

- a. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or,
- b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁴¹

The 2010 State Department Trafficking in Persons Report advocates that one of the principles for a “good anti-trafficking law” should not include “alien smuggling or prostitution” in their definitions of trafficking.⁴² Other practices that are excluded from the definition of “severe forms of trafficking” are illegal adoptions, trading human organs, and child pornography.⁴³ This represents a deviation from the Palermo Protocol definition, which includes organ trading as human trafficking.⁴⁴ The major categories of “severe forms of trafficking” recognized by the US are “involuntary servitude, slavery,

⁴¹United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition* (Washington, D.C., June 2011), 8.

⁴² *Ibid.*, 13.

⁴³ *Ibid.*, 8.

⁴⁴ Gallagher, 29.

debt bondage, and forced labor.”⁴⁵ These categories include forced labor (of both adults and children), child soldiering, and sex trafficking.⁴⁶

There are several initiatives through which the US pursues the prosecution of traffickers in persons. Legal statutes, such as the TVPA, criminalize forced labor and the trafficking of persons.⁴⁷ Such TVPA prohibitions are an extension of the legal restrictions against slavery and child prostitution that predated its enactment.⁴⁸ Trafficking carries deservedly harsh sentences under US law. Sex trafficking penalties range from 10 years to life imprisonment.⁴⁹ In 2009, a specialized anti-trafficking task force within the Civil Rights Division of the Department of Justice (DOJ) was able to meet the record of the largest amount of prosecutions in one year with convictions in forty-three cases of trafficking in persons.⁵⁰ The DOJ sponsors more than thirty anti-trafficking task forces across the nation.⁵¹ Unfortunately, the full extent of prosecutions for trafficking is not recorded in the State Department’s annual trafficking report due to the lack of coordination amongst anti-trafficking forces on both state and nationwide levels.

⁴⁵United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition* (Washington, D.C., June 2010), 7-8.

⁴⁶*Ibid.*, 9-10.

⁴⁷United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition* (Washington, D.C., June 2010), 339.

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰*Ibid.*

⁵¹*Ibid.*, 340.

“Protection” of trafficking victims includes immigration relief and other forms of assistance. The TVPA established a federal model for victim protections that has not been adopted by a majority of states in the US.⁵² NGOs that provide victim assistance are provided grants by the DOJ and the Department of Health and Human Services (HHS) according to the amount of individuals who are certified as trafficking victims.⁵³ About seven hundred “foreign victims received services from NGOs supported by the federal government” in 2009.⁵⁴ The report indicates that there has been a “210 percent increase in certifications of foreign victims” with “no corresponding increase in funding for services.”⁵⁵ The two forms of immigration relief that are given to foreign trafficking victims under the TVPA are “continued presence, which allows temporary immigration relief and may allow work authorization for potential victims who are also potential witnesses in an investigation or prosecution” and the “T visa,” which provides “legal immigration status for up to four years for victims who cooperate with reasonable law enforcement requests for assistance with an investigation or prosecution.”⁵⁶ Trafficked persons can obtain temporary legal immigration for their families through the T visa as well.⁵⁷ The T visa can serve as a pathway to legal permanent resident status and T visa

⁵²Ibid., 341.

⁵³Ibid.

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition* (Washington, D.C., June 2010), 341.

holders are eligible for benefits that are essentially the same as those allotted to refugees.⁵⁸ The U Visa is also an available route of immigration reprieve for the trafficked.⁵⁹

Prevention is another one of the prongs of the “3P” approach to anti-trafficking. Prevention efforts are focused on decreasing the demand for “commercial sex and cheap labor to which traffickers respond”.⁶⁰ The President’s Interagency Task Force to Monitor and Combat Trafficking (PITF) is the agency in charge of implementing the TVPA and directs the Senior Policy Operating Group (SPOG) in the enforcement of anti-trafficking measures and the coordination of prevention efforts amongst different governmental agency.⁶¹ The work of various governmental agencies to enforce the rights of temporary workers is considered to be a form of prevention by the State Department.⁶² The United States Agency for International Development (USAID) provides funding for anti-trafficking programs internationally that are geared toward prevention of trafficking.⁶³ The Department of Defense (DOD) facilitates education of military and civilian employees to raise awareness about human trafficking to prevent federal sponsorship of trafficking.⁶⁴ There are local efforts to address trafficking as well. Because prostitution

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Ibid., 342.

⁶¹Ibid.

⁶²Ibid., 343.

⁶³Ibid.

⁶⁴Ibid., 344.

is considered intertwined with trafficking, cities and states work to decrease demands for prostitution.⁶⁵ Overall, the majority of US prevention efforts are aimed at decreasing the recruitment for the types of labor associated with trafficking rather than hedging against the socio-economic factors that cause certain forms of labor to be appealing.

⁶⁵Ibid.

CHAPTER TWO

Immigration, Prosecution and “Protection”

Although there are mechanisms in place to pursue the prosecution and protection objectives of the United States’ “3P” model, they are largely ineffective and few trafficked persons in the US benefit from these programs. Visa eligibility requirements and the processes by which the trafficked are identified and processed serve as significant barriers to anti-trafficking efforts. Numerical limitations on the amount of T and U visas are one of these eligibility requirements. There are also major problems with the qualitative limitations on visa eligibility. The emphasis on prosecution in the US anti-trafficking approach has allowed the processes by which the trafficked seek “protection” to be placed in the hands of the agencies whose foremost priority is to pursue violators of criminal and immigration law. This has had negative repercussions for trafficked persons seeking visas as it makes them less likely to be identified as trafficked and makes the requirements for eligibility more strenuous. Placing such responsibility in the hands of law enforcement officials has resulted in the prioritization of raids as tactics for prosecuting traffickers and “rescuing” the trafficked. The intertwining of the “3P” initiatives decreases their effectiveness with detrimental impacts on the trafficked that are supposed to benefit from these programs.

Visa Eligibility Requirements

Quantitative limitations on visas severely limit the effectiveness of immigration relief as a method of protection for the trafficked. While it is estimated that 17,500 people are trafficked into the U.S. annually, only 616 victims received T visas between 2000 and 2007.¹ Similarly, in 2009, 313 T visas were issued and only 299 “victim-witnesses” were granted the right to “continued presence.”² There is a numerical cap of five thousand for the T visa, yet the US continuously fails to meet this cap.³ There is also a cap of ten thousand on the U visa.⁴ Unlike the T visa, trafficked persons are not the only migrants that are forced to compete under the cap for the U visa. Criminal activity for the sake of determining U visa eligibility ranges from rape to witness tampering to perjury.⁵ Despite the wide range of crime victims potentially eligible for the U visa, the US government has failed to issue them. From 2000 to 2009 only sixty-five individuals

¹Srikantiah, Jayashri. “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking” *Boston University Law Review* 87.1 (2007): 162, 159.

²United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition* (Washington, D.C., June 2010), 340.

³Srikantiah, 175.

⁴United States Citizenship and Immigration Services. Questions and Answers: Victims of Human Trafficking, U Nonimmigrant Status. Last Updated 11/22/2010. Available from <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1b15306f31534210VgnVCM100000082ca60aRCRD&vgnnextchannel=ee1e3e4d77d73210VgnVCM100000082ca60aRCRD>. (Accessed 15 June 2011).

⁵Ibid.

were approved for U-1 visas.⁶ For the first eight years after its inception, the U visa was only temporarily approved.⁷ It was not until the summer of 2009 that roughly sixteen hundred U visas were granted.⁸ Data on the number of U visas given specifically to the trafficked are unavailable, but one can assume based upon the numbers of U visas dispersed, that it is significantly less than what ought to be given. Like the T visa, the U visa cap has never been met. The caps on immigration relief clearly limit the effectiveness of these avenues for providing protection to the trafficked because the caps severely underestimate the amount of potentially eligible trafficked persons in the US that are in need of legal immigration status to leave their positions safely.

Yet caps and bureaucratic failure are not the most significant barriers to the effectiveness of the protection model and by extension the prosecution model. The tightly intertwined nature of the protection and prosecution aspects of the “3P” model is its own undoing. Law enforcement agencies are given the authority to identify and process the trafficked at each step of the process. This is the most fundamental flaw that prevents the immigration relief mechanisms from aiding the trafficked.

The process by which beneficiaries are granted eligibility for immigration relief is a deterrent to trafficked persons that would otherwise be able to qualify for it. Trafficked persons are unable to access immigration relief without going through law enforcement authorities. In order to be eligible for continued presences status or the T visa, one must

⁶Gorman, Anna. “U-visa program for crime victims falters.” LA Times, 26 January 2009, <http://articles.latimes.com/2009/jan/26/local/me-crimevisa26>.

⁷Ibid.

⁸Espinoza, Jean Pierre and Jung Choi. “Overview of the U Visa: “Race between Approval and Removal”.” Bender’s Immigration Bulletin, no. 15 (May 2010): 645.

prove that they are a victim of a “severe form of trafficking in persons,” physically present in the U.S. due to trafficking, have “complied with any reasonable request for assistance in the investigation...of acts of trafficking” and “would suffer extreme hardship involving unusual and severe harm upon removal.”⁹ In short, eligibility for the T visa is conditioned upon cooperation with law enforcement.¹⁰ This cooperation is proven through an official endorsement from the law enforcement agency in charge of the related criminal investigation.¹¹ It is still possible to obtain a T visa without obtaining a certification of endorsement from a law enforcement agency. However, it is much more difficult for such applicants to prove their status as a trafficked person. They are required to provide secondary sources such as police reports and news articles. They must write a statement about what they tried to do to obtain formal endorsement from a law enforcement agency.¹² They also have to prove that they were unable to leave the country before law enforcement officials became involved in their case.¹³ For these trafficked persons, they are forced to take responsibility for their apparent failure to escape their situation. All T visa applicants must petition for themselves and not even their attorneys can request immigration benefits for them.¹⁴ This prevents many people

⁹Srikantiah, 174-5.

¹⁰Ibid., 175.

¹¹Ibid., 176.

¹²Srikantiah, 176.

¹³Ibid., 177.

from accessing benefits because they often must risk being deported for the chance to access immigration relief.

Applicants for the U visa face similar requirements. Beneficiaries of the U visa must:

[1] have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity. [2] The individual must have information concerning that criminal activity. [3] The individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. [4] The criminal activity violated U.S. laws.¹⁵

There is no fixed standard for adjudicating whether or not an individual has suffered “substantial physical or mental abuse.”¹⁶ This gives law enforcement officials an extraordinary amount of leeway in determining eligibility for the U visa. In addition, individuals must cooperate with law enforcement in the criminal investigation and/or prosecution of their traffickers.¹⁷ The cooperation eligibility requirement for the U visa is only waived for applicants that are under the age of sixteen or are unable to aid investigators due to incapacitation or incompetence.¹⁸ To prove that a person is willing to cooperate with the prosecution of their traffickers, they must be certified by the

¹⁴Women’s Commission for Refugee Women and Children. “The U.S. Response to Human Trafficking: An Unbalanced Approach.” May 2007. Available from <http://www.humantrafficking.org/uploads/publications/ustraff.pdf> (Accessed 18 January 2010).

¹⁵United States Citizenship and Immigration Services. Questions and Answers: Victims of Human Trafficking, U Nonimmigrant Status.

¹⁶Espinoza, 647.

¹⁷Ibid.

¹⁸Ibid.

“agencies responsible for investigating or prosecuting the crime.”¹⁹ One of the features unique to the U visa, in contrast to the T visa, is that representatives of the crime victim are able to petition and cooperate on behalf of the trafficked.²⁰ While this represents more lenience than is allowed for T visa petitions, it does not allow petitioners to sidestep the requirement that they cooperate with law enforcement.

The degree to which the adjudication of eligibility for both T and U visas is left to the discretion of (primarily local) law enforcement agencies precludes them from being useful tools for the trafficked. Some agents are simply ignorant about human trafficking and overlook traumatized victims.²¹ Especially in the context of the U visa, local law enforcement agencies are underprepared to deal with the trafficked because “there are very few comprehensive U-visa policies in the country.”²² Without a protocol for processing U visa requests, law enforcement agents claim ignorance to the point of inability to sign certifications.²³ Language barriers are significant obstacles to trafficked individuals seeking immigration services. Although the 1964 Civil Rights Act and an executive order both call on federal agencies to grant access to their services without discriminating “on the basis of national origin,” law enforcement agencies fail “to

¹⁹Sreeharsha, Kavitha. “Victims’ Rights Unraveling: The Impact of Local Immigration Enforcement Policies on the Violence Against Women Act.” *Georgetown Journal of Gender and the Law* 11 (2010): 669.

²⁰Espinoza, 646.

²¹Srikantiah, 180.

²²Sreeharsha, 669.

²³*Ibid.*

provide meaningful language access.”²⁴ Local law enforcement agencies simply are not equipped to be the primary contact for trafficked persons desiring legal immigration status and reprieve from slavery. Not only do these agencies fail to help the trafficked when they do come forward, they send a signal that prevents the trafficked from seeking legal channels to escape their situation. The absence of protocol “leaves attorneys and advocates representing crime victims reluctant to report victimization.”²⁵ The unwillingness of law enforcement to overcome language barriers “sends a message to immigrant communities that law enforcement is not available and willing to protect them.”²⁶ The perception that law enforcement agencies are unable to help trafficked persons means that even in areas of the country where there are protocols for processing petitions for T and U visa status, the trafficked and their representatives are unlikely to seek legal avenues for redress.

Trafficked individuals fortunate enough to encounter knowledgeable law enforcement officials that speak their language are not much better off in terms of their chances to access immigration benefits. Either the applicants are successful in presenting themselves as passive undeserving victims of utility to law enforcement or they are subject to removal proceedings and typecast as criminal migrants. The statutory limitations upon what constitutes “severe human trafficking” and the requirements for law enforcement endorsement reify a stereotype of the “good” desirable immigrant and

²⁴Ibid., 668.

²⁵Ibid., 669.

²⁶Ibid.

the “bad” “illegal alien.”²⁷ The “good” immigrant follows legal channels for entry into the country or is unwillingly transported and cooperates with immigration agents and other law enforcement officials. In contrast, the “illegal alien,” too un-resourceful to migrate legally, falls in with criminals as a means to get to a “destination country” and as a result of involving themselves with risky behavior, gets their just desserts followed by deportation. Jayashri Srikantiah quotes the Department of Justice (DOJ) as arguing in a fact sheet that “[p]ersons smuggled are violating the law. They are not victims.”²⁸ It is often difficult for law enforcement agents to make a clear distinction between smuggling and trafficking, economically driven immigrants and those that have been trafficked. The motivations that may caused a person to be lured into a trafficking situation or the economic threats used to force someone into trafficking can make a person seem ineligible because they are not seen as being passive enough in the conditions spurring their trafficking.²⁹ Srikantiah describes this as the victim “mythology” which continuously “fails to grapple with the reality of the trafficking victim’s complex identity and psychological state – one in which the survivor may be both victim and individual actor.”³⁰ This method of depicting trafficking victims glosses over the complexity of agency as it relates to trafficking.

Because physical entrapment is easier to identify, law enforcement agents often overlook the trauma and manipulation that can be utilized to control and traffic people.

²⁷Srikantiah, 188.

²⁸ Ibid., 192.

²⁹ Ibid., 198.

³⁰ Ibid., 198.

Traffickers often take away any forms of identification, which makes it harder for people to find relief from trafficking.³¹ In addition, trafficking victims can sometimes be involved in other criminal activity with their trafficker. This makes them less likely to come forward for fear of being legally reprimanded.³² The four major methods of entrapment include fear, lack of knowledge about alternatives, isolation, and physical and psychological confinement.³³ Often, instead of attempting to seek immigration relief in the face of trafficking, trafficked individuals find ways to cope with their situation. This can make them seem less passive and even complicit with their traffickers' behavior. Some will work to make small reforms to their situation. Others try to shift attention away from the threat or rationalize their situation.³⁴ Cognitive attempts to adapt to their situation often result in mental defeat. Posttraumatic stress disorder and depression symptoms can be found in trafficked individuals regardless of the level of harm with which they are threatened.³⁵ The versatile nature of human trafficking renders attempts to iconize victimhood a laughable project. The varied means by which the trafficked leave their traffickers only magnifies the difficulty of associating willingness to cooperate with legitimate victimhood: "given the psychological state of trafficking victims post-rescue or escape, law enforcement's assessment of cooperation is not a principled or accurate way to distinguish between trafficking victims and other undocumented

³¹Logan, T.K, Robert Walker and Gretchen Hunt. "Understanding Human Trafficking in the United States" *Trauma Violence Abuse* 10.3 (2009): 12.

³²Ibid., 7.

³³Ibid., 13.

³⁴Ibid., 15.

³⁵Ibid., 16.

migrants.”³⁶ Thus, the premise of the cooperation standard, that once they are “saved” by law enforcement or exit slave conditions, victims of trafficking will experience a new sense of agency and use that to cooperate to prosecute their trafficker, is a delusion. Law enforcement officers’ gut-feelings and hunches are an insufficient litmus test for identifying the trafficked.

Even for those that can clearly demonstrate that they are trafficked and not simply undocumented migrants, immigration relief is placed out of reach by the emphasis on law enforcement. The endorsement/cooperation requirement incentivizes prosecutors to abandon the purpose of the visa and instead use it as a prosecutorial tool. Applicants that would otherwise meet the criterion are rejected because they make poor witnesses.³⁷ In essence, applicants must prove that they have endured enough trauma or injury to be unable to escape and/or to be afraid to return to their “country of origin,” yet they cannot step beyond the invisible limit of the cogent credible witness.

Anti-trafficking Raids

In addition to the problems with the standards for beneficiary eligibility for the T and U visa, the mechanism by which victims are identified by law enforcement officials is detrimental to the interests of the trafficked. Raids by law enforcement are the “primary means of identifying victims of trafficking in persons.”³⁸ Raids fail to provide

³⁶Srikantiah, 201.

³⁷Ibid., 179.

³⁸Ditmore, Melissa. 2009. “The Use of Raids to Fight Trafficking in Persons.” Sex Workers Project. Available from <http://www.nswp.org/sites/nswp.org/files/swp-2009-raids-and-trafficking-report.pdf>. (Accessed 15 June 2011), 7.

an environment in which officers can identify the trafficked or provide them relief and they do not benefit the trafficked. First, anti-trafficking raids usually take the form of anti-prostitution raids, ignoring other forms of trafficking. The second major problem with raids as a means for identifying and aiding the trafficked is that raids place the identification of the trafficked solely in the hands of law enforcement agents. The problematic nature of having law enforcement agents determine who counts as a trafficking “victim” is magnified in a raid setting. Third, raids traumatize the trafficked. Fourth, they make it more difficult for law enforcement to be a vehicle for trafficked persons to leave their traffickers.

The TVPA allocates funds to local and federal anti-trafficking task forces, which most often take the form of anti-prostitution task forces.³⁹ This is problematic for a number of reasons, one of which is that it decreases the effectiveness of raids as a method for locating the trafficked. The focus on addressing the supposed linkages between prostitution and trafficking supersedes attention to other forms of labor for which people are trafficked.⁴⁰ This is not to say that raids are necessarily the most effective means for disrupting such methods of trafficking, but rather to argue that the funding made available by the TVPA for anti-trafficking task forces is limited, making allocation a zero sum endeavor. Anti-prostitution raids also detract from efforts to address trafficking for other forms of labor because they provide the illusion that sex trafficking is the most prevalent thus in need of more resources than other forms of trafficking.

³⁹Ibid., 19.

⁴⁰Ibid.

Raids place the identification of the trafficked in the hands of law enforcement agencies. This wrests the ability for trafficked persons to self-identify as such away from them. While it is true that without the raids, the visa eligibility system would still require that the trafficked cooperate with law enforcement, the raids remove the ability for trafficked persons to come forward on their own. In addition to the individuals who are forcibly revealed, raids deter individuals from approaching law enforcement in a non-raided format. In a study by Melissa Ditmore, who conducted a survey of sex workers, service providers, and law enforcement officials, one attorney remarked “Law enforcement will blow off a trafficking victim who is sitting in front of them for ten imaginary victims in some brothel somewhere where they don’t even know what’s going on.”⁴¹ Trafficked persons that come to law enforcement absent raids are deemed less legitimate and ignored. The ability for trafficked persons to approach law enforcement on their own terms is important for them to express autonomy. One of the women interviewed by Ditmore decided to present her case to the police, putting her in “a position of strength” and allowing her to be “only briefly interrogated without a lawyer present.”⁴² Trafficked persons that are able to approach law enforcement on their own can control the terms of their interrogation and processing more than those picked up in a raid.

Deferring identification of the trafficked to law enforcement officials causes the objectives of raids to be inherently more focused upon law enforcement objectives than the interests of the potential trafficked. This is especially true in cases where trafficking raids take the form of anti-prostitution raids. The “primary goal” is “the policing and

⁴¹Ibid., 51.

⁴²Ibid., 35.

punishment of prostitution. Identifying people who have been trafficked can be a secondary goal of anti-prostitution vice raids.”⁴³ Law enforcement training to recognize the trafficked is ineffective in the face of such an anti-prostitution focus for anti-trafficking task forces.⁴⁴ The emphasis placed on the law enforcement objectives in raids precludes them from being a tool for trafficked persons to receive aid. Both local and federal agents are “unlikely to identify victims of trafficking through raids.”⁴⁵ Ditmore’s study provides a useful example of the subordination of the interests of the trafficked to law enforcement objectives. Out of the nine women she interviewed that had been arrested in police raids, “none had been identified by local law enforcement following the raid, despite the fact that 7 of these 9 women self-identified as trafficked.”⁴⁶ Only one of the nine women “had been asked whether she was coerced into sex work following arrest by local law enforcement.”⁴⁷ Another woman was arrested four times in raids before eventually escaping her trafficker on her own.⁴⁸

In addition to the subordination of the interests of the trafficked to law enforcement objectives, law enforcement officials are unlikely to be effective at identifying trafficked persons in raids because of their proclivity to see the trafficked as criminals. To law enforcement agents trained to identify and detain prostitutes or “illegal

⁴³Ibid., 17.

⁴⁴Ibid., 49.

⁴⁵Ibid.

⁴⁶Ibid., 24.

⁴⁷Ibid.

⁴⁸Ibid., 31.

immigrants,” trafficked persons toe a fine line between the innocent victim and the deportable criminal. This victim “mythology” was discussed earlier in the context of eligibility standards. In the context of anti-trafficking or anti-prostitution raids, officers are even more likely to allow these predispositions to color their judgment. “Law enforcement and the criminal legal system” frame sex workers as “either deviant criminals who must be punished, or as victims in need of rescue.”⁴⁹ In a case study of a 2005 raid in Dallas, Texas, Marisa Silenzi Cianciarulo provides a good illustration of the views held about sex workers and immigrants in law enforcement. Of the forty-two women that were found in the raid, only five were determined to be "potentially eligible for immigration benefits" for cooperating with law enforcement officials and only four of those five were present at the trial for the woman responsible for their forced prostitution.⁵⁰ The thirty-eight women that did not receive relief were deported and treated as criminals. An ICE Agent, John Chawkin, claimed that the majority of the women were "mature women in their 30s....who knew exactly what they were doing," implying that they should have "known better."⁵¹ All of the evidence obtained from the raid suggests the opposite of Chawkin's assumptions. The women in the brothel were forced to "work as prostitutes six and seven days a week" and "to be on call for sex at all times."⁵² Their movements were monitored via video surveillance and escorts.⁵³ In

⁴⁹Ibid., 19.

⁵⁰Cianciarulo, Marisa Silenzi. “Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking.” *Nevada Law Journal* 7 (2007): 832.

⁵¹Ibid., 833.

⁵²Ibid., 831.

addition, the fact that the women were made to work as prostitutes to pay off debt, proves that they were not the willing and "professional prostitutes" that Chawkin depicted them as being.⁵⁴ This case illustrates the inability of law enforcement agents to delineate between criminals and trafficked individuals, particularly in raid situations where such judgments must be made quickly and in the midst of much chaos and confusion. Raids unnecessarily expose the trafficked to immigration officials and law enforcement agents that tend to view them as potential criminals. The treatment of potential trafficked persons as harboring criminality creates a poor environment for identifying the trafficked. People who appear to be too fearful or uncooperative are disqualified from being considered trafficked.⁵⁵ In supposition to the unlikelihood that officers will recognize the trafficked, treatment of the trafficked as potential criminals legitimates an unnecessary amount of surprise and force in raids that magnifies their failure to provide an outlet for trafficked persons to self-identify and seek aid. This causes an ugly cycle in which the trafficked are too terrified to present themselves as iconic "trafficking victims" and deserving aid.

Anti-trafficking raids are often traumatic for those subjected to them. Law enforcement officers often "occur in the early morning...increasing confusion and disorientation" and officers "enter a home or workplace by force and without warning" without their uniforms.⁵⁶ The fact that most people are awakened by the raids and cannot

⁵³Ibid.

⁵⁴Ibid.

⁵⁵Ditmore, 22.

⁵⁶Ibid., 17.

recognize officers as law enforcement officials causes raids to be a terrifying experience. Traditional evaluations of anti-trafficking policy evaluate the issue in a manner that prioritizes state-level analysis. Evaluations do so by prioritizing the analysis of the impacts of raids based upon state interests rather than the experience of the trafficked. Such evaluations fail to grasp how the “production of the self and the state...takes place at the traumatic intersection between peace and war, inside and outside.”⁵⁷ Statehood and “political community are themselves produced and reproduced through social practices, including practices of trauma and memory.”⁵⁸ Everyday threats to personal security, such as trafficking, constitute a trauma that threatens symbolic order.⁵⁹ Trafficking challenges the symbolic order of statehood in several ways. First, in many cases, as noted earlier, the women found in trafficking raids recognize the intervening law enforcement officers as clients. This shatters their sense of the responsibility of state officials to provide security for those within their territory, a responsibility that is integral to the justification for state sovereignty.⁶⁰ Even if they were not sexually involved with their “saviors,” the raids can enhance the trauma that they are meant to alleviate. Second, the encounter between the trafficked and law enforcement shapes the limits of political community because they are subject to visa controls and screening by state officials, begging the question of the desirable qualities for members of the populace. Through their encounter with law enforcement officials through raids or the visa process, the trafficked are forced

⁵⁷Edkins, Jenny. *Trauma and the Memory of Politics* (New York: Cambridge University Press, 2003), 10.

⁵⁸*Ibid.*, 11.

⁵⁹*Ibid.*, 15.

⁶⁰*Ibid.*, 10-11.

to recount their trauma in a linear closed narrative that does not always capture their true experiences. The inability to fully speak to the realities of the experience of the trafficked does not necessitate abandoning bearing witness. Instead, testimony and witness can “challenge structures of power and authority.”⁶¹ Scholar Jenny Edkins emphasizes the necessity of developing a method of “not forgetting” trauma that does not rely upon a linear narrative that attempts to gentrify trauma by forcing its speakability.⁶²

In addition to being traumatizing for the trafficked persons involved in raids, raids are counterproductive for law enforcement goals. Raids decrease the ability of trafficked persons to leave their traffickers because they increase resentment of law enforcement within migrant communities and create conditions in which trafficking flourishes. Raids erode the little trust that exists between migrant communities and law enforcement.⁶³ The exposure of trafficked persons to law enforcement officers and ICE agents "encourages the deeply ingrained sense among victims that law enforcement is indifferent to them at best and hostile at worst."⁶⁴ Trafficked persons, who are often taught by their traffickers to avoid compliance with law enforcement for fear for their families abroad, are unlikely to present themselves as the iconic victims that law enforcement officials expect. Not only does trafficking fail to achieve law enforcement objectives, the absence of raids facilitates the achievement of these objectives. Trafficked persons that came

⁶¹Ibid., 5.

⁶²Ibid., 15.

⁶³Brennan, Denise. “Key Issues in the Resettlement of Formerly Trafficked Persons in the United States.” *University of Pennsylvania Law Review* 158 (2010): 1592.

⁶⁴Cianciarulo, 833-4.

forward to law enforcement instead of being identified in raids “were more prepared to cooperate with law enforcement in the prosecution of their traffickers.”⁶⁵ Raids must be abandoned as an anti-trafficking strategy altogether.

A contributing factor to the inability of law enforcement officers and others to identify the trafficked is the gendered nature of representations of trafficking. Trafficking discourse is representative of and produces particular categorizations of the trafficked. The difficult binary of innocent victims and deportable criminals that shapes anti-trafficking efforts is informed by pervasive stereotypes concerning appropriate gender roles. The following chapter will analyze multiple instantiations of the gendered aspects of trafficking discourse and provide suggestions for more ethically and politically responsible approaches to discuss trafficking.

⁶⁵Ditmore, 11.

CHAPTER THREE

(In)Voluntary Victims?: Gender, Sex and Trafficking

In addition to the aspects of the victim mythology sponsored by anti-trafficking efforts that portray “victims” as good witnesses who comply with criminal investigations, the caricature of the trafficking victim is shaped according to (mis)understandings concerning sex and gender. Anti-trafficking efforts are gendered both in terms of the discourse and in their material effects on trafficked bodies. Discourse about human trafficking provides the justifications and knowledge production that make anti-trafficking policies and initiatives possible. There are two primary ways in which normalized conceptions of gender influence anti-trafficking efforts and the identification of the trafficked in particular. First, groups of the trafficked are excluded from anti-trafficking discourse and policy. Second, ideas about the proper societal roles for women have supported the criminalization of prostitution.

Trafficking discourse is not neutral, but rather it is shaped by normative understandings of appropriate gender roles. Gender and sex in this discussion should both be understood as socially constructed and historically contingent. The two concepts are mutually constitutive although one’s sex does not determine one’s gender and both are fluid concepts.¹ Gender norms dichotomize “identities, behaviors, and expectations

¹Peterson, V. Spike. *A Critical Rewriting of Global Political Economy: Integrating Reproductive, Productive and Virtual Economies* (New York: Routledge, 2003), 181.

of masculine-feminine” and these dichotomies become institutionalized over time.² In this way, “gender is not simply an empirical category that refers to embodied men and women and their material activities but also a systematically analytical.”³ Within these constructed dichotomies, masculinity is valorized at the expense of the feminine. Masculinity is traditionally associated with strength and rationality while the feminine is portrayed as relating to weakness and irrationality. Such privileging of masculine values can be seen in anti-trafficking discourse that stereotypes the trafficked, designates them as “victims” and regulates sexuality.

Discursive treatment of trafficking effects the creation of categorizations of trafficking victims which privileges particular understandings of victimhood over others. Within dominant anti-trafficking discourse, there are vast amounts of trafficked groups that are left out due to the gendered notion of the iconic “victim.” These groups include trafficked men, individuals trafficked for non-sexual labor, and individuals that exert a degree of free will within their individual trafficking scenario.⁴ These groups are excluded for two major reasons. First, men are excluded because it is considered unlikely that they could be coerced, overpowered or manipulated.⁵ This exclusion has effects on both those that identify as men and women. Whether they are exploited for sex or other forms of labor, trafficked men are commonly denied the benefits allotted to trafficked

²Peterson, V. Spike. “Feminist Theories Within, Invisible To, and Beyond IR” *Brown Journal of World Affairs* X, issue 2 (2004): 39.

³Ibid.

⁴Srikantiah, Jayashri. “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking” *Boston University Law Review* 87.1 (2007): 211.

⁵Surtees, Rebecca. “Trafficked Men as Unwilling Victims.” *STAIR* 4.1 (2008): 17.

persons.⁶ Their exclusion also causes them, if found, to be returned to situations that cause them to be vulnerable to being trafficked again.⁷ While excluded from consideration as a trafficked person, men are more commonly grouped as “victims” of their own poorly planned attempts at “illegal” migration and treated as criminals.⁸ In addition to ensuring the failure of protection and rehabilitation efforts, the exclusion of men from discourses of human trafficking decreases the capacity for well-informed scholarship on the trafficking of men because statistics concerning trafficked men “are likely to be underestimates.”⁹ Women are seen as more likely victims and thus the primary focus of anti-trafficking discourse. When men are included as potential trafficked persons in anti-trafficking discourse, it is almost as an afterthought. In the 2011 TIP Report, the feminine pronoun is used to describe prostitutes and those with the potential to be trafficked for sex.¹⁰ The TIP Report portrays prostitutes as women and men as pimps:

...it is little wonder why anti-trafficking efforts may be received skeptically by a *woman* who has been told – and maybe even shown – that law enforcement would not protect *her* and that the only people who care about *her* are *her* pimp and *his* entourage [emphasis added].¹¹

⁶Surtees, 19.

⁷Surtees, 23-4.

⁸Ibid.

⁹Ibid., 20.

¹⁰United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*. (Washington, D.C., June 2011), 25.

¹¹Ibid.

Focus on women as the sole victims of sex trafficking results in the equation of women's migration with trafficking.¹² Such an example can be seen in the 2011 TIP Report claims: "Migrants are vulnerable to modern slavery. Women travel with dreams of better lives and jobs as waitresses or maids, only to be enslaved in prostitution or domestic servitude."¹³ This perspective denies female migrants of their agency and relegates them to objects.¹⁴ Decisions to migrate are seen as unreasonable and inherently risky because women are stepping outside of their natural place within the domestic order.¹⁵ Both men and women are disadvantaged from gendered representations of trafficking and caught in a difficult position between legitimate victims and criminals or "illegal aliens." Second, focus on sex trafficking in particular excludes men and trades off with anti-trafficking efforts directed toward other forms of labor.¹⁶ As mentioned in Chapter Two, law enforcement agencies often focus primarily on victims of sex trafficking instead of other forms of human trafficking like forced labor and also tend to ignore the trafficked by equating them with crime or failing to escape.¹⁷ The emphasis on sex trafficking in anti-trafficking discourse at the expense of other forms of labor exploitation is unjustified statistically. "The inordinate focus on sex-sector trafficking

¹²Surtees, 20.

¹³United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition.*, 26.

¹⁴Surtees, 17-18.

¹⁵Ibid., 18.

¹⁶Ibid.

¹⁷Srikantiah, 177-8.

believes the reality that non-sex-sector trafficking accounts for nearly as many—and arguably more—trafficking cases worldwide.”¹⁸ Focus on the innocent helpless female sex trafficking victim also causes a tradeoff between focus on gender as an indicator of vulnerability and attention to other factors motivating migration, such as globalization, gender/class/racial and other categories of hierarchies based upon personal identity (race, religion, nationality, etc).¹⁹ This is an important omission from trafficking scholarship because it causes anti-trafficking efforts to fail to address the root causes of human trafficking. This is not to say that sex trafficking is an unimportant issue, but that it ought not be prioritized at the expense of other forms of trafficking and should not be framed as solely a women’s issue. As Felicity Schaeffer-Grabiell, Assistant Professor of Feminist Studies at UC Santa Cruz, argues, “While sex trafficking is a serious problem around the world that warrants attention, the saturation of the media towards this cause is more effective in rendering invisible the USA’s participation in contemporary forms of exploitation, slavery-like labor conditions and the increase in criminalizing ‘undocumented’ migrants.”²⁰

The stereotype of the female sex trafficking victim can be seen in dominant anti-trafficking discourse in the US, particularly those relating to the TVPA. The TVPA presents women as more likely victims who are “helpless” and in need of being “rescued

¹⁸Chuang, Janie A. “Rescuing Trafficking From Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy” *University of Pennsylvania Law Review* 158 (2010): 1696.

¹⁹Surtees, 20-1.

²⁰Schaeffer-Grabiell, Felicity. “Sex Trafficking as the ‘New Slave Trade’?” *Sexualities* 13 (2010): 153-160.

and protected.”²¹ Professor of Sociology, Moshoula Desyllas aptly demonstrates the imperialistic and masculinist discourse surrounding the TVPA:

The TVPA has been presented in the media as a policy that ‘combats’ sex trafficking. The use of the word ‘combat’ perpetuates a language of violence and war, brining in the necessity of masculinity to “save” the innocent, female, childlike victims from the “barbaric crime of trafficking,” as stated by President George Bush in a keynote address at the First National Human Trafficking Conference in July of 2004 (U.S. Department of Justice, 2004). The usage of the word ‘barbaric serves to construct the idea of the uncivilized, dark-skinned trafficker abroad who manipulates innocent women into sex trafficking.²²

The US State Department’s 2011 Trafficking in Persons (TIP) Report follows the TVPA in positing women as helpless victims more likely to be trafficked than men. Of the thirteen “victim’s stories” included in the report, nine are from the perspective of a self-identified female trafficked person while only four are from that of a person who identifies themselves to be male.²³ The 2010 and 2011 TIP Reports refer to anti-trafficking efforts as “combating” trafficking at least twenty times in each.²⁴ Tier placement in accordance with the TVPA is described as being based upon “the extent of

²¹Desyllas, Moshoula Capous. “A Critique of the Global Trafficking Discourse and U.S. Policy” *International Sex Trafficking of Women & Children: Understanding the Global Epidemic*. Eds. Leonard Territo and George Kirkham. (Flushing, NY: Looseleaf Law Publications, 2009), 353.

²²Ibid.

²³United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition.*, 1-60.

²⁴United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition* (Washington, D.C., June 2010); United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*.

government action to combat trafficking.”²⁵ The 2011 TIP Report resembles the keynote address by President Bush in terms of furthering the barbaric/civilized binary as well. A quote of Robert Bilheimer, director of the documentary “Not My Life,” included in the 2011 TIP Report states:

If there is a heart of darkness, I believe without question that the unrelenting, unpunished, and craven exploitation of millions of human beings for labor, sex, and hundreds of sub-categories thereof is simply the most appalling and damaging expression of so-called human civilization we have ever seen.²⁶

This type of discourse, which upholds the civilized/uncivilized binary, is both gendered and racialized. As Mark B. Salter, Associate Professor in the School of Political Studies at the University of Ottawa, explains, the term “barbarian” etymologically derives from the Greek’s method for describing foreigners who were “slaves by nature” (as described by Aristotle) and those excluded from the polis for their inability to speak properly.²⁷

The term “barbarian” from its inception has been “gendered...sexualized (a lack of sexual restraint or perversion), capitalized (as ignorant of capitalism and the class system, but wily and dishonest once introduced), surveyed...indistinguishable (numerous and lacking individuality) and dangerous.”²⁸ This terminology must be avoided in discourse concerning human trafficking. As Salter proclaims, analysis of international relations shapes considerations for political action at all levels of society. The discursive

²⁵United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 11.

²⁶United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 28.

²⁷Salter, Mark B. *Barbarians and Civilization in International Relations* (London: Pluto Press, 2002), 18-19.

²⁸Salter, 18-19.

construction of the “West” as the model of civilization as opposed to the “Third World” validates “imperialist stereotypes” and fosters Otherization.²⁹ A CNN opinion piece by Milika Saada Saar, critical of the TVPA, demonstrates the way violent self/other dichotomies are exacerbated by anti-trafficking discourse. Saar argues:

Americans are right to get angry at the violence against women and girls in developing nations: the Congo rape camps, the widespread practices of female genital mutilation in West Africa and the infanticide of females in China. Our disgust at the violence committed against women and girls is heightened by the culture of impunity that allows the perpetrators of these crimes to go free without condemnation or punishment. That culture also turns victims into criminals, such as the girls in Thailand who are beaten and raped and then ostracized by their families and society.³⁰

Countries and regions designated as “developing” or “Third World” are subordinated and rendered culturally inferior and in need of being set right in their ways. In the article, women and girls are portrayed as the only people subject to trafficking. The article goes on to demand a “war on trafficking,” mimicking the “combat” language of US President George W. Bush and the US State Department cited above.³¹ Such a demand for intervention and “war” is demonstrative of the dangers of the civilized/uncivilized, developed/undeveloped, barbarian/civilized dichotomies. The concepts “‘civilization’ and ‘barbarians’ have been used in political, ideological and unstable ways for imperialist ends since the nineteenth century.”³² Framing human trafficking in terms of the civilized/barbarian dichotomy risks validating interventionist anti-trafficking policies that

²⁹Salter, 160-1.

³⁰Saar, Malika Saada. “U.S. Should Stop Criminalizing Sex Trafficking Victims.” *CNN*, February 05, 2011, Opinion.

³¹Saar.

³²Salter, 160-1.

serve imperialist ends. Academics must avoid utilizing such discourse in order to disrupt violent self/other dichotomies and resist dominant imperialist power relations.³³

Reforming anti-trafficking discourse to better reflect the actual composition of the trafficked and the causes of trafficking requires several changes to academic and popular discussions of trafficking. Surtees indicates that the expansion of definitions of trafficking to include those previously excluded is an insufficient maneuver to improve access to benefits for the trafficked.³⁴ Discursive portrayals of “trafficking victims” must be problematized.

Both men and women are reluctant to name themselves as victims, which is a prerequisite for assistance.³⁵ Victimhood is a gendered concept.³⁶ Women are depicted as inherently more vulnerable and passive than men, making them more likely victims. Although Surtees focuses her analysis on notions of masculinity in Southeast Europe, Russia and Asia, her argument that trafficked men are likely to be ashamed of exploitation because of hegemonic notions of masculinity can be extended to apply to male trafficked persons in general.³⁷ It is simply not socially acceptable for men to identify themselves as “failed migrants or trafficked persons.”³⁸ Trafficked persons ought “be seen and understood in a framework which captures their multi-tiered realities,

³³Salter, 160-1.

³⁴Surtees, 24.

³⁵Surtees, 25.

³⁶Ibid.

³⁷Ibid., 26.

³⁸Ibid., 27.

subjectivities, and identities.”³⁹ Viewing trafficked persons solely as victims is disempowering and ought to be avoided.⁴⁰ Taking into account the “needs of trafficked persons” of both sexes requires interrogation of hegemonic notions of masculinity.⁴¹ Trafficking discourse must interrogate the gendered representations that limit considerations of who counts as trafficked. This effort includes rejection of victim terminology and the myth of the helpless innocent female sex trafficking victim, including representations of barbarism.

In addition to promoting the exclusion of particular groups of the trafficked, the interpolation of gender norms into trafficking discourse has resulted in the criminalization of sex work and its equation with trafficking. Historically, anti-trafficking legislation has reflected and incorporated societal gender norms and worked to regulate sexuality. As briefly outlined in Chapter One, anti-trafficking legislation emerged as a result of anxiety concerning the “White Slave Trade.” Annuska Derks, researcher at the Institute for Social Anthropology at Universität Bern, provides a useful etymology and historical analysis of the term, “White Slave Trade”:

The term ‘white slave trade’ was derived from the French term ‘Traite des Blanches’, which related to ‘Traite des Noirs’, a term used in the beginning of the nineteenth century for the Negro slave trade. The term ‘white slave trade’ became popular and used in several treaties and laws. However, through its focus on white slaves, it neglected the traffic in people of other races and colors...⁴²

³⁹Ibid., 29.

⁴⁰Ibid, 28.

⁴¹Ibid., 29.

⁴²Derks, Annuska. “From White Slaves to Trafficking Survivors: Notes on the Trafficking Debate” (paper presented at the Conference on Migration and Development, May 4-6, 2000), 2.

The “White Slave Trade” provided a convenient cover for fears over women’s sexuality, their increased social mobility, and immigration. The resultant legislation shaped considerations of prostitution and the rhetoric of the “White Slave Trade” continues to influence framing of human trafficking issues today.⁴³ The 1904 International Agreement for the Suppression of the White Slave Trade is an example of such legislation. Following this Agreement, the White Slave Traffic Act of 1910 or Mann Act was passed, which “prohibited unmarried women from crossing state lines for immoral purposes and it criminalized interracial couples.⁴⁴ This piece of legislation was more concerned with regulating voluntary movement of women than human trafficking. For example, in 1914, 70% of convictions were for prostitution and migration for immoral purpose.⁴⁵

The increase of women’s social mobility provoked a moralistic backlash, as their mobility was associated with sexual immorality and prostitution.⁴⁶ Because sex work was not considered (and is still not seen to be) valid work, it was attributed to forced migration.⁴⁷ The view of prostitution sponsored by responses to the “White Slave Trade” was adopted by 1949 UN Convention for the Suppression of the Trafficking in Persons and Exploitation of Prostitution of Others. It declared prostitution as incompatible with

⁴³Saunders, 343.

⁴⁴Desyllas, 350.

⁴⁵Saunders, 346.

⁴⁶Howard, Neil and Mumtaz Lalani. “Editorial Introduction: The Politics of Human Trafficking.” *STAIR* 4.1 (2008): 6.

⁴⁷*Ibid.*

human worth.⁴⁸ Prostitution was denigrated in all its forms, regardless of consent.⁴⁹

Although the 2000 UN Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children expanded the definition of trafficking beyond sex trafficking to issues of labor rights, this definition change has done little to change the way that human trafficking is regulated.⁵⁰

The US continues to approach efforts to stop trafficking with anti-prostitution as a priority. The 2010 edition of the Department of State Trafficking in Persons Report claims that “under the TVPA, a person may be a trafficking victim regardless of whether they once consented, participated in a crime as a direct result of being trafficked, were transported into the exploitative situation, or were simply born into a state of servitude.”⁵¹ The contra-interpretation, that the TVPA does not recognize consensual participation as trafficking, can be supported simply by looking to the explanation of what is not considered human trafficking on the same page of the report. Prostitution is not considered trafficking, nor is it considered a “valid form of employment.”⁵² Willing prostitutes are only considered trafficking victims if after participation in prostitution “they are thereafter held in service through psychological manipulation or physical force.”⁵³ Despite the fact that prostitution is not considered trafficking, the report

⁴⁸Saunders, 346.

⁴⁹Derks, 5.

⁵⁰Saunders, 347.

⁵¹United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 10th Edition*, 8.

⁵²Ibid.

“evaluates the efforts of countries with legalized prostitution to reduce the demand for commercial sex acts as part of its assessment of the countries’ serious and sustained efforts to eliminate severe forms of trafficking in persons.”⁵⁴ Commercial sex is portrayed as one of the sources of modern slavery.⁵⁵ In discussing the initiatives that governments ought to undertake to come into compliance with the TVPA’s requirements for Tier One countries, the 2011 TIP Report advocates for a zero-tolerance policy toward commercial sex work:

Poverty, unemployment, lack of opportunity social upheaval, and political instability facilitate traffickers' ability to recruit victims, but they do not in themselves cause trafficking. The economic reality is that human trafficking is driven by profits. The economic reality is that human trafficking is driven by profits. If nobody paid for sex, sex trafficking would not exist. If nobody paid for goods produced with any amount of slavery, forced labor in manufacturing would be a thing of the past.⁵⁶

There are two flaws with the arguments presented in the TIP Report. First, the argument that trafficking is caused by prostitution because sex is given monetary value and thus should be made illegal is akin to saying that chocolate or gold should be rendered illegal because they are capable of spurring profits that cause employers to enslave workers. Second, even if it is a legitimate strategy, the writers of the TIP Report do not follow their arguments to their logical conclusion. While the US government demonizes commercial sex work to attempt to end demand, initiatives fail to reduce the demand for exploitation in other forms of labor. To reduce the demand for and profitability of non-

⁵³Ibid., 9.

⁵⁴Ibid.

⁵⁵Ibid., 14.

⁵⁶United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 19.

sexual forms of labor exploitation would require addressing the demand for cheap labor and/or any goods that could be produced with slavery. Yet, the TVPA and the Report dismiss initiatives that would seek to address global economic or social inequality as an effort to reduce the demand for goods produced through labor exploitation.

Prostitution and commercial sex work should be delinked from definitions of human trafficking and should not be the focus of anti-trafficking initiatives. Treating prostitution as an illegal inherently disempowering activity that sponsors trafficking can have profoundly negative effects. As argued above, focus on sex trafficking comes at the expense of other forms of trafficking and facilitates poor forms of anti-trafficking efforts, such as raids. In addition, as Assistant Professor of Law at American University – Washington College of Law, Janie A. Chuang warns:

The discursive slippage between prostitution and trafficking sweeps any exercise of agency by the putative victim under a totalizing narrative of victimization that refuses to engage in any marking of relative control or freedom—“men dominate and all prostitute women are subordinated, oppressed and unfree.” Instead, those women—the self-proclaimed “sex workers” who defy the dominant narrative—are explained away as suffering from a false consciousness and thereby unaware of their oppression or as deviant in desiring abuse.⁵⁷

Discourse that equates trafficking with sex work thus essentializes the experiences of sex workers and denies people the ability to choose how to relate to their own bodies. The disadvantages to viewing prostitution as immoral and linking it to trafficking outweigh the advantages. Despite common fears, decriminalizing prostitution does not increase trafficking.⁵⁸ Moving beyond an abolitionist or anti-abolitionist advocacy would improve

⁵⁷Chuang, 1699.

⁵⁸World AIDS Campaign. “Sex Work and the Law: the Case for Decriminalization.” 2010.

analysis and responses to trafficking by broadening the scope of causes considered to include “underlying gender, race, and class discrimination, the inadequate migration avenues, and the socioeconomic policies that increase vulnerability to exploitation.”⁵⁹ Such an approach would overcome the pitfalls of “victim” discourse and avoid the unnecessary diversion of resources to ineffective anti-prostitution efforts.

Incorporating analysis of gender and sexual norms is only part of the change that needs to be made to trafficking discourse. Scholars and activists must also be critical of anti-trafficking initiatives that treat human trafficking as an issue of human rights or security. These approaches to trafficking rely on a “politics of pity” and a “politics of risk” that degrade sex work and sex workers in a similar manner to masculinist representations of trafficking, in addition to introducing their own problems, respectively.⁶⁰ The following chapter will analyze some of the ways in which anti-trafficking efforts have become entangled with the ideology of human rights and/or security and argue for an alternative framework from which to address the practice of human trafficking.

⁵⁹Chuang, 1728.

⁶⁰Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking.” *Millennium: Journal of International Studies* 33.2 (2004): 254.

CHAPTER FOUR

Human Rights, Securitization and Trafficking in Persons

In addition to being influenced by and itself attributing to societal constructions of gender, human trafficking discourse is caught up in the ideologies of human rights and security. This is not to say that human rights and security are not co-constituted by gender, but that the processes can be thought of as separate conceptualizations of trafficking discourse that require addressing. Anti-trafficking advocates must be critical of attempts to ground efforts in either human rights and/or security. The conceptual underpinnings of both human rights and security are problematic for trafficking discourse. These “humanitarian and security articulations” are “governmental processes: practical interventions with the purpose of managing...trafficking” that “[constitute] subjects to be governed.”¹ While humanitarian and security articulations each “confer specific identities upon trafficked women” and men, the typologies of trafficking “victims” that humanitarian and security articulations produce are not irreconcilable with one another.² Humanitarian and security articulations independently and collaboratively mask the root causes of trafficking and sponsor violent global intervention and stratification and as such, should be abandoned by scholars and policymakers.

¹Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking.” *Millennium: Journal of International Studies* 33.2 (2004): 253-4.

²Ibid., 276.

Trafficking should not be addressed as a human rights issue. Trafficking can be considered to be an important issue and an ethically undesirable practice without resorting to human rights rhetoric to describe the problem and solutions to it. Unfortunately, US anti-trafficking efforts have been heavily invested in promoting the notion of international human rights. The concept of human rights has been integrated into counter trafficking efforts in numerous ways. The 2008 legislation reauthorizing the TVPRA is heavily laden with human rights rhetoric and directly calls for intervention in the name of human rights. In Title IV section 403(7)(A), the TVPRA advocates that US diplomatic missions adopt strategies “to promote efforts to end such abuse of human rights.”³ The degree to which US counter trafficking efforts are catered to target prostitution as a major cause of trafficking is another manner in which these efforts are saturated in the ideology of human rights as anti-prostitution rhetoric lends itself well to the promotion of human rights.⁴ The 2011 TIP Report is ripe with examples of the usage of human rights as a justification for counter trafficking policy and the ways in which corresponding policy is utilized to promote human rights internationally. In the introduction to the report, Hilary Clinton’s letter to the reader claims that “standing up for human rights is part of our national identity” and calls for the US to “protect victims, punish abusers, and restore the lives of survivors so that someday they will have the opportunity to realize their God-given potential.”⁵ In Clinton’s letter, human rights are

³*William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, 110th Cong., 2nd sess., 10 December 2008. H.R. 7311.

⁴Saunders, 351.

⁵United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 1.

not only elevated as an important national interest but also described in a manner indebted to Christian moral norms. The “3P” approach of the TVPA is described by the 2011 TIP Report as essential to “guarantee the freedom set forth in Article 4 of the Universal Declaration of Human Rights.”⁶ Countries that meet the standards to receive a Tier One ranking in the annual TIP Report are those that adhere to “international obligations, particularly those with regard for human rights” and “[construct]...and [adhere] to a victim rights system...”⁷ These examples portray but a few of the many ways in which the TVPA/TVPRA and overall counter trafficking efforts are indebted to the logic of human rights.

Counter trafficking policies and scholarship should not be framed in terms of protecting human rights. Humanitarian anti-trafficking efforts forward a politics of pity that views only the trafficked that meet certain standards of suffering as legitimate trafficked persons. This strategy of universalizing suffering as a common identifying trait of all trafficked persons “has to function as a strategy of dis-identification” as the trafficked are separated from “categories of migrants, criminals or prostitutes by emphasis on raw physical suffering.”⁸ Even though the particular trafficked persons’ “trajectory might have coincided with that of a migrant or prostitute, suffering is

⁶United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 17.

⁷United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 17.

⁸Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking.” *Millennium: Journal of International Studies* 33.2 (2004): 262.

redeeming.”⁹ Because the trafficked persons legitimacy depends upon their subjection to or ability to convey the appropriate amount of violence, the politics of pity fails to break down the categories of the prostitute, illegal immigrant, and/or criminal.¹⁰ On the contrary, attempts to adopt more precise and human rights oriented definitions of trafficking creates a “governmentality of trafficking” that operates to make trafficking a governable and manageable object of knowledge.¹¹ Subsequent investigations and definitions of trafficking are then put in terms of pre-existing knowledge bases about organized crime, migration and prostitution.¹² This method of typologizing the trafficked based upon their encounters with suffering produces a category of deserving trafficked persons as a necessary counterpart to “innocent victims.”¹³ Human rights discourses thus only succeed in creating a new category of helpless “victims” or trafficking survivors.¹⁴ In addition to categorizing the trafficked and distributing inequalities amongst them according to their ability to fit notions of the right type of victim, human rights ideology produces inequalities between citizens and non-citizens. Human rights are not universal but rather are dependent upon individual’s ability to be recognized by sovereign states. Citizenship is reliant upon the “presence of aliens” who “[define] “our” privilege(s) as

⁹Ibid.

¹⁰Aradau, Claudia. *Rethinking Trafficking in Women: Politics out of Security* (New York: Palgrave Macmillan, 2008), 14-15.

¹¹Ibid.

¹²Ibid.

¹³Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking,” 263.

¹⁴Aradau, Claudia. *Rethinking Trafficking in Women: Politics out of Security*, 34-35.

citizens.”¹⁵ Even within states that promote a seemingly universal notion of rights, “for those who are only precariously protected by the state (non-citizen immigrants, “aliens”, and “enemies”), the law may provide scant comfort even during “normal” times and its suspension could be perilous.”¹⁶ The negation of rights and political agency to non-citizen others is made necessary to imbue citizenship with meaning: “The constitution of the differentiation between us and them not only permits the installation of mechanisms of exclusion and the negation of related rights, but also allows “a ‘re-foundation’ of the political community.”¹⁷ Further implications of this exclusionary citizen/non-citizen discourse will be explored further below in the context of the indebtedness of human rights to the logic of security.

The promotion of human rights as it relates to counter trafficking efforts is inextricable from securitization. Human rights centered counter trafficking discourses traditionally describe trafficking as an issue of the denial of security, dignity, and the right to be free from slavery.¹⁸ Both risk management frameworks for counter trafficking and humanitarian frameworks are reliant upon the assessments of the trafficked as vulnerable bodies to be evaluated in terms of their likelihood to be at risk or to pose a risk

¹⁵Peutz, Nathalie. “Embarking on an Anthropology of Removal.” *Current Anthropology* 47.2 (2006): 220.

¹⁶Peutz, Nathalie. “Out-laws. Deportees, Desire, and “The Law.” *International Migration* 45.3 (2007): 182-3.

¹⁷Ausserer, Caroline. “‘Control in the Name of Protection’: A Critical Analysis of the Discourse of International Human Trafficking as a Form of Forced Migration.” *STAIR* 4.1 (2008): 105-6.

¹⁸Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking,” 253.

to the general population.¹⁹ As such, “risk management becomes the insidious, disavowed presence within the humanitarian discourse that infuses and subverts the politics of pity.”²⁰ This form of risk management ensures that the securitized anti-trafficking discourses replicate the same method of typologizing the trafficked that can be seen in their humanitarian counterparts. As Claudia Aradau, Senior Lecturer in International Politics at King’s College, argues “the divisions among categories of migrants, sex workers, and criminals need to be understood in relation to the problematization of (in)security.”²¹ These categories are utilized to calculate the potential vulnerability of populations to trafficking. Such forms of “indicator[s] of future risk” construct victimhood in a way that “sees women as perpetuating a risk of illegal migration to Western society” and in order “to contain and neutralize this risk, they are to be surveyed and disciplined” for their own security as well as that of the recipient nation, in this case, the US.²² The practices of categorization and resultant “profiling are part of the strategies and techniques of pro-active policing and prevention and they are important inasmuch as they create specific exclusions which cannot be understood from an invariant account of 'ontological security'.”²³ The processes of exclusion this drive for ontological security causes, result in an identification of otherness based upon difference

¹⁹Ibid., 276.

²⁰Ibid.

²¹Aradau, Claudia. *Rethinking Trafficking in Women: Politics out of Security*, 35-6.

²²Aradau, Claudia. “The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking,” 273.

²³Aradau, Claudia. *Rethinking Trafficking in Women: Politics out of Security*, 54-5.

from the conception of the self.²⁴ Such a drive for security sponsors endless cycles of conflict as communities are defined in terms of opposition to others that must be removed from the community or eliminated.²⁵ These conflicts take place on the scale of the global community as US anti-trafficking policies legitimate the international scope of policing and prevention.

Because human rights are characterized as an issue of the extension of life and therefore human security, the usage of rights as a framework for legitimating sovereign power “expands the terrain of sovereign power to ‘humanity’ by setting the terms of humanity’s political life in a biopolitical form.”²⁶ The global nature of the problem is emphasized by human rights discourses through claims that human trafficking is a threat to human dignity and the survival of national identity (as shown in Secretary of State Clinton’s rhetoric in the TIP Report referenced above).²⁷ Through manipulation of the threat of trafficking to humanity, global intervention is claimed to be justifiable. As professors of Political Science Marc Doucet and Miguel de Larrinaga explain:

Once the language of international human rights qualifies and codifies humanity's life as bare, the legal and biopolitical ground is set for potential acts of sovereign power with the globe as their plane of operation. Such acts of sovereign power can come in the form of international interventions that take place through the

²⁴Ibid., 65.

²⁵Ibid., 67-8.

²⁶Chandler, David and Nik Nynek. *Critical Perspectives on Human Security: Rethinking Emancipation and Power in International Relations* (New York: Routledge, 2011), 134-5

²⁷United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 1.

suspension of certain foundational elements of international law often in the name of securing insecure (bare) life.²⁸

The usage of human security as a justification for counter trafficking efforts renders the lives of potential trafficking victims as bare life by categorizing particular populations as at risk of losing or completely lacking human security as a result of originating in “sending countries” that are seen to lack the appropriate adherence to international human rights law. The risk of trafficking within these populations is not deemed important primarily due to threats to the lives of the members of these risk populations but rather is situated within greater concerns for the continued existence of the human race and the concepts of human dignity and security. Risk populations are placed in a state of inclusive exclusion such that they are included within the international community only to the extent that their lives can be used as a political tool to justify government intervention. At the same time as countries like the US make claims to protect and prevent future “victims,” individuals in these populations are denied political identity and full inclusion in the international community through exclusionary constructions of citizenship and the manner in which the US imposes its laws on other countries through the TVPA/TVPRA, as noted in the preceding paragraphs. Thus, the logic of human security is not benign, but instead sponsors a violent form of global interventionism:

Not only does human security define life biopolitically, it also works towards legitimating the possibility that killing life (without homicide or sacrifice) to protect life may be unavoidable if military intervention is deemed necessary once all other options have failed.²⁹

²⁸Chandler, David and Nik Nynek. *Critical Perspectives on Human Security: Rethinking Emancipation and Power in International Relations* (New York: Routledge, 2011), 134-5

²⁹Chandler, David and Nik Nynek, 134-5.

The degree to which US anti-trafficking efforts have extended to sponsor global intervention can be seen in the rankings of countries in the TIP Report and the breadth of US anti-trafficking assistance promoted by the TVPA/TVPRA shown in the picture below, with the darker shaded areas representing recipients of US Anti-Trafficking Assistance.³⁰

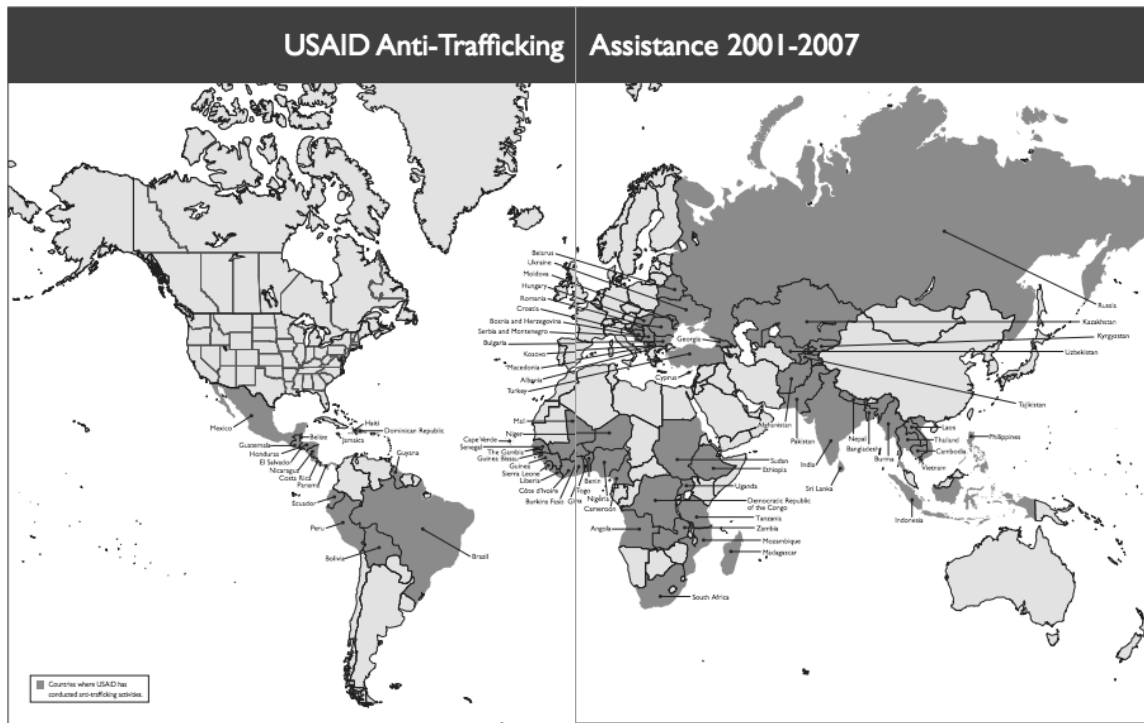


Figure 3.1. USAID Anti-Trafficking Assistance 2001-2007

Another significant problem with the entanglement between human rights and securitization is the manner in which these ideologies affect immigration policy and the study of immigration. The act of framing trafficking as a humanitarian issue is indebted

³⁰United States Agency for International Development. ‘Combating Trafficking in Persons in the 21st Century.’ October 2008, 34-5.

to and complacent with the process of securitization in relying upon a demarcation of undesirable immigrants and foreclosing questions of unequal global wealth distribution and other motivating factors to migration.³¹ The association of trafficking with issues of migration controls has implications for scholarship, policy formation and by extension trafficked persons.

The usage of distinctions between regular and irregular migration is detrimental to the study of trafficking. The maintenance of discursive binaries such as regular/irregular and legal/illegal migration decreases the empirical and ethical quality of research on trafficking. Distinctions between regular and irregular migration are problematic "... because they occlude the fact that our knowledge of the issue of irregular migration is both incomplete and contested."³² This accumulated knowledge is so incomplete as to suggest the meaninglessness of the terms "illegal," regular and irregular migration. As Nicholas De Genova, Senior Lecturer in the Department of Anthropology at Goldsmiths, University of London, argues:

there is no such thing as undocumented or 'irregular' migration (or migrant 'illegality') 'in general', and these analytic categories plainly do not constitute a generic, singular, universal, and thereby transhistorical and essentialized object of study or target for policy intervention or enforcement.³³

Although these discursive binaries are empty signifiers, their use in trafficking and immigration scholarship has real consequences. As mentioned in Chapter Two and

³¹Squire, Vicki. *The Contested Politics of Mobility: Borderzones and Irregularity* (New York: Routledge, 2011), 2-3.

³²Squire, 2-3.

³³De Genova, Nicholas. "Alien Powers: Deportable Labour and the Spectacle of Security." In *The Contested Politics of Mobility: Borderzones and Irregularity*, edited by Vicki Squires, 91-115 (New York: Routledge, 2011), 93.

Chapter Three, the categorization of “illegal” or irregular immigration plays an important role in the construction of the victim mythology that prevents trafficked persons from being identified as such and contributes to a citizen/”alien” dichotomy of value in which the latter is subordinated. In such discourses and corresponding policies the non-citizen is not only denied immigration benefits or citizenship, but is attributed with non-human characteristics.³⁴ The common practice of naming “illegal” migrants after animals is a salient example.³⁵ Some examples include the naming of “smugglers at the Mexican-U.S frontier as *coyotes*, *loups* in Gibraltar-Morocco-Spain or *snakeheads* in China-Hong-Kong.”³⁶ This discourse functions alongside racializing discourses that consider “differences as a fixed characteristic inherent in their bodies.”³⁷ These supposedly inherent traits are used as justifications for exclusion and violence because migrants are relegated to a sub- or non-human status.³⁸ This is not to say that the approach of scholars or policymakers should be to restore their human status, but rather that the category of the human as a method of attributing value should be abolished altogether. Maneesha Deckha, Associate Professor at the University of Victoria Faculty of Law, explains succinctly the limitations of the re-humanization approach and the need for transcendence of the human/animal binary:

This approach does not effectively [sic] achieve its aims of protecting vulnerable human groups from violence because it leaves the subhuman category intact, a

³⁴Ibid., 106.

³⁵Ibid.

³⁶Ibid.

³⁷Ibid., 107.

³⁸Ibid.

category that humanized humans can always assert should convictions sway about the relative moral worth of a particular human group. The subhuman category is then poised to “animalize” or dehumanize the targeted group and generate corresponding justifications as to why the human group does not deserve better than subhuman treatment. A better strategy would be to eliminate the subhuman category from the onset by impugning the human/nonhuman boundary itself and thus the claim to human superiority.³⁹

Perhaps the first step to realizing this removal of the category of the human as a manner for distinguishing between the values of the lives of various animals (both non-human and human) is to abandon the idea that counter trafficking should be tied to human security, thereby delegitimizing the institutionalization of the conception of human superiority within counter trafficking efforts. Purging the human/non-human binary from academic writing on trafficking is an ethical act that avoids reproducing the dehumanization of non-citizens and trafficked persons. Removing this binary rhetoric from scholarship is a necessary first step to changing the way that policies are formulated and implemented due to the influence discourse has on policy, as discussed in the preceding chapters.

The treatment of the relationship between immigration and trafficking as an issue of poor border controls and lax security measures shapes the formation of policy. Framing trafficking as an issue of immigration tends to support more restrictive immigration controls. The manner in which countering trafficking is reduced to an issue of managing irregular or “illegal” migration is exemplified by the 2011 TIP Report, which argues:

Government responses need to trace trafficking to the points of exploitation and exert pressure where it will do the most good. This is in keeping with what

³⁹Deckha, Maneesha, 44.

governments do: they grant visas and regulate businesses, negotiate trade agreements, and oversee both social services and criminal justice responses.”⁴⁰

The enforcement of migration controls is depicted as being an essential part of preventing susceptibility to exploitation and a normal operation of sovereign powers. However, rather than decreasing the ability for people to be trafficked, the demand for strict immigration enforcement facilitates labor subordination. Indeed, as De Genova adeptly argues “labour subordination and securitization of migration operate in concert in the mass production of migrant ‘illegality’.”⁴¹ The construction of “illegal” migration is used to legitimate more restrictive policies to increase cheap deportable labor forces, which means that instead of immigration controls “representing a solution to the problem, the analysed discourse entails alarming political implications, strengthening governmental power...ultimately leading to more control than protection.”⁴² Increasing the difficulty of legal immigration facilitates an incentive to take risks to immigrate and actively makes migrants more likely to be exploited by employers. Despite describing migration controls as a necessary and normal act of sovereignty in the above quote, the US Department of State in the 2011 TIP Report acknowledges that migrants’ dependence on “employer[s] for visas or work permits” increases the vulnerability of migrant laborers.⁴³

⁴⁰United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 16.

⁴¹De Genova, Nicholas. “Alien Powers: Deportable Labour and the Spectacle of Security.” In *The Contested Politics of Mobility: Borderzones and Irregularity*, edited by Vicki Squires, 91-115 (New York: Routledge, 2011): 94.

⁴²Ausserer, Caroline. “‘Control in the Name of Protection’: A Critical Analysis of the Discourse of International Human Trafficking as a Form of Forced Migration.” *STAIR* 4.1 (2008): 109-110.

Migrant workers are reliant upon their employers to gain legal entry into the country and avoid deportation. Instead of decreasing levels of migration, restrictionist immigration policies only leave (potential) migrants “more vulnerable to irregular forms of migration, including smuggling of migrants and human trafficking for labour and other forms of exploitation.”⁴⁴ Nando Sigona, Senior Research Officer at the Refugee Studies Centre at Oxford, succinctly explains the relationship between restrictive policies and what is labeled “irregular” immigration:

In the UK and EU, policies of deterrence and restrictionism (Zetter et al. 2005, 2006) have severely restricted access to the asylum process and curtailed regular migration routes, requiring migrants to use irregular means of entry and stay (Jordan and Düvell 2002; Anderson and Rogaly 2005; Bloch and Chimienti 2011; Schuster 2011). Expulsions and deportations changed from being exceptional practices, and became the main devices to enforce modern migration policies.⁴⁵

While Sigona’s analysis is in the context of the European Union, it is applicable to the state of immigration restrictions in the US. Strict border control policies thus give migrants an incentive to avoid trying to migrate legally, making them more susceptible to trafficking.

In addition to facilitating the demand for alternative forms of migration, restrictive immigration policies make it more difficult for trafficked persons to leave their exploitative situations and often contribute to the trauma trafficked persons experience. Even if trafficked persons are aware of their possible eligibility for benefits and services,

⁴³United States Department of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking in Persons Report: 11th Edition*, 19.

⁴⁴Gramegna, Marco. “Human Trafficking: Policy Needs and Political Responses.” *STAIR* 4.1 (2008): 65.

⁴⁵Sigona, Nando. “‘I Have too much Baggage’: The Impacts of Legal Status on the Social Worlds of Irregular Migrants.” *Social Anthropology* 20 (2012): 50–65.

the association of immigration enforcement with counter trafficking efforts prevents them from identifying themselves as trafficked to access these services.⁴⁶ Many trafficked persons do not come forward and/or are not identified as result of “fear of...law enforcement, deportation or stigmatization” and the “deportation [and detention] of unidentified trafficked persons.”⁴⁷ William Walters, Professor of Political Science at Carleton University, describes the implications that even legalized forms of expulsion such as deportation have on social mobility by tracing the corollaries between the deportation of “illegal” migrants and historical forms of exile, such as “the expulsion of indigenous or long-settled populations.”⁴⁸ The contemporary “right to reside in a given territory” and the “removal of the threat of expulsion” is reliant upon the gradual “acquisition by states of a technical capacity (border controls, etc.) to refuse entry to noncitizens and undesirables.”⁴⁹ The reliance of legalized deportation on the historical development of the sovereign right to control its borders and limit citizenship and “is invested with former practices and historical memories in such a way that it can never be merely the deportation of aliens.”⁵⁰ Walters draws eerie similarities between deportation and methods of human transport restrictive immigration laws are meant to prevent:

⁴⁶Ditmore, 7.

⁴⁷Women’s Commission for Refugee Women and Children. “The U.S. Response to Human Trafficking: An Unbalanced Approach.” May 2007, 12-13.

⁴⁸Walters, William. “Deportation, Expulsion, and the International Police of Aliens.” In *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, edited by Nathalie Peutz and Nicholas De Genova, 69-100. (United States: Duke University Press, 2010), 82.

⁴⁹Ibid.

⁵⁰Ibid., 83.

Doesn't a plane full of deportees resemble transportation? Don't the shackling and chemical pacification of deportees invoke the galley slaves? Doesn't the clandestine way in which immigration authorities cooperate with public and private airlines to prosecute certain deportations resemble human trafficking in reverse – trafficking by states and big businesses?⁵¹

In detaining and deporting unidentified trafficked persons and those whose applications for immigration visas are denied, the US effectively forces the trafficked to go through the process of being trafficked a second time. The trafficked person turned detainee and/or deportee, much like the populations at risk for trafficking, is rendered as bare life:

It is no mere contrivance or exaggeration, therefore, to say of the “deportable alien” that—like the exiles and bandits to whom Agamben analogizes the figure of bare life (1995, 1998, 183-84), excluded from all political life, disqualified from any juridically valid act, and yet in a continuous relationship with the power that banishes it—no life is more “political” than hers.⁵²

Deportable trafficked persons can be detained indefinitely: “the deported are (as a rule) “returned” only to the jurisdiction of a state that will claim or accept them, meaning that many “stateless” individuals are in fact indefinitely detained rather than deported.”⁵³

This infinite detention is itself a form of torture comparable to the conditions into which people are trafficked. Immigration detention centers subject deportees to sexual abuse and degrading conditions, such as being verbally harassed and coerced by immigration staff into performing sex acts.”⁵⁴ In addition, incidents have been reported in which

⁵¹Ibid., 82.

⁵²Peutz, Nathalie and Nicholas De Genova. *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (United States: Duke University Press, 2010), 46-7.

⁵³Peutz, Nathalie and Nicholas De Genova, 14-15.

⁵⁴Lonegan, Bryan. “American Diaspora: The Deportation of Lawful Residents from the United States and the Destruction of their Families.” *NYU Review of Law & Social Change* 31 (2008): 993.

immigration detainees have been intimidated with attack dogs and given the wrong medication.⁵⁵ Based upon the conditions to which the deportable are subjected, it is unsurprising that the prospect of deportation would incentivize alternative methods of migration and/or prevent the trafficked from seeking relief from the US government. The securitization of immigration in counter trafficking efforts and discourses hides the fact that restrictions on movement and global hierarchies in social mobility actually work to facilitate trafficking in persons by placing the blame on porous borders.

Rethinking counter trafficking away from framing trafficking as an issue of human rights and human security is necessary to avoid the dangerously inadequate state of US anti-trafficking policy and discourse. The articulations of human rights and security cannot simply be reformed or modified. In so far as the logic of human rights is irredeemably indebted to security it must be abandoned. Security is such a totalizing logic as to be unable to be reformed to incorporate ideals such as human rights or liberty. Mark Neocleous, Professor of the Critique of Political Economy at Brunel University, explains the way that security comes to “marginalize all else” and justify almost anything:

it's a concept that legitimizes any action by the state whatsoever, so long as the action is conducted in the name of security. And this explains why virtually every authoritarian measure since has been conducted in the name of security, from the reordering of international capital under the guise of national security (Neocleous, 2006b), to the reassertion of loyalty and consensus as the foundation of domestic order (Neocleous, 2006c), all the way down to the extermination camps of the holocaust, the first stage of which was to be taken into 'security confinement' by the security police.⁵⁶

⁵⁵Ibid.

⁵⁶Neocleous, Mark. “Security, Liberty, and the Myth of Balance: Towards a Critique of Security Politics.” *Contemporary Political Theory* 6 (2006): 131-149.

Completely removing human rights and security from acceptable justifications for anti-trafficking policy and explanations of the phenomenon of trafficking is essential to dismantle the construction of categories of risk and end the search for the most restrictive immigration policies. This reframing of trafficking is essential to the production of counter trafficking efforts that are able to come to terms with the influence of that the unequal distribution of wealth and social mobility worldwide have on trafficking. The purging of human rights and security articulations from trafficking policy and discourse is fundamental to end the biopolitical US global anti-trafficking police regime.

CONCLUSION

Recommendations for Policymakers and Scholars

Scholarship on trafficking and US counter trafficking policies are seriously flawed, but not irredeemably so. Human trafficking is a contestable concept and a practice that is even more difficult to eradicate than it is to define. Despite the outrageously insufficient and problematic status quo attempts to counter trafficking, there are numerous changes that can be incorporated to increase the efficacy of anti-trafficking policy and discourse and improve their effect on the trafficked. The degree to which trafficking discourse shapes the formation and implementation of policies requires that measures be taken by both trafficking scholars and policymakers in the US to change anti-trafficking efforts.

Recommendations for the US Government

The Obama administration and the US government as a whole needs to reform the US approach to the eradication of human trafficking. The status quo approach fails to address the root causes of trafficking, incentivizes trafficking, and further traumatizes the trafficked. While there are modifications that could be made to anti-trafficking efforts at the national, state, and local level, these recommendations will focus on the adjustments that should be made to the TVPA and national immigration policies because these policies heavily influence and dictate guidelines for the operation of anti-trafficking efforts at the state and local levels. These policy changes should be coupled with changes

to the way the State Department studies and reports on the global state of trafficking in persons. Radical reform is required at all levels of government in order to be effective.

The TVPA should be changed in several ways. First, the rhetoric and attendant explanations of the justifications for the TVPA should be altered. The TVPA should be edited to remove rhetoric and justifications imbedded in the logic of human rights and human security. It should also be modified to end the labeling of trafficked persons as “victims” in order to avoid patronizing them or making them appear passive. In addition, the masculinist and militarist rhetoric of “combat” and “protection” should be stricken from the TVPA. This will require reformulating the “3P” method. In place of “protection,” “relief” or “support” could be used to avoid the connotations of weakness on behalf of the recipient in “protection” terminology. Second, the method for providing support for the trafficked forwarded by the TVPA must be decoupled from law enforcement. This may require the creation of an agency that specializes in providing immigration relief for the trafficked. Regardless of the method, immigration and law enforcement officials should not be the primary actors to interact with the trafficked and definitely should not be given the discretion to decide upon the eligibility and distribution of continued presence status or T and U visas. Removing or at least mitigating law enforcement from efforts to support the trafficked would help provide a less hostile environment in which the trafficked would be encouraged to self-identify. Decoupling law enforcement from method to provide support for the trafficked would entail the removal of cooperation/endorsement requirements for eligibility for continued presence status, the T visa, and the U visa. It would also include the eradication of raids as a method for identifying the trafficked. Third, the quantitative limits placed on T and U

visas need to be removed. Despite the fact that the US rarely meets these limits, the removal of numerical limits would allow more trafficked persons to receive immigration relief once more begin to come forward after anti-trafficking policy is reformed. Fourth, anti-prostitution should no longer be linked to counter trafficking efforts. While it is beyond the authority of the TVPA to legalize prostitution in the US, the US should not use the TVPA as a justification to impose its sexual and gender norms on other countries by ranking them according to their efforts to stop prostitution and intervening to try to change their domestic laws. Fifth, the TVPA should be modified to end the categorization of countries according to their tier placement. The criterion by which the US determines tier placement is rooted in efforts to promote human rights and stop prostitution. Another reason to end this form of categorization is that tier placement is used to legitimize US intervention globally.

In addition to the changes in immigration relief that need to be made to the TVPA, overall US immigration policy should be made less inaccessible and less restrictive. Making immigration law more accessible would entail increasing the availability of translators to trafficked persons seeking relief and migrants as a whole. Current immigration law is difficult to navigate even for people for whom English is their first language. Increasing the availability of translators would make it easier for migrants to receive optimal legal representation and for the trafficked to identify themselves as such and avoid detention and deportation. Detention and deportation must be phased out or abandoned altogether as immigration enforcement techniques. Unfortunately, the change of US presidents has done nothing to diminish restrictive immigration policies. In fact, detention and deportation have increased under the Obama administration. In 2011

about 396,906 “illegal” immigrants were deported as compared to 291,060 deportations in 2007.¹ The extent to which detention has proliferated is visually evident in the map of detention centers in the United States shown below.²



Figure 4.2. Detention Centres in the US.

Because detention and deportation place the trafficked persons and migrants in situations that could otherwise be considered torture or trafficking if these actions were not inflicted on such people by the US government, they are unethical and must be stopped. Besides being unethical, detention and deportation are ineffectual methods in so far as they do not stop the “illegal” form of migration they are purported to prevent. They also decrease the ability for trafficked persons to receive relief, and incentivize alternative forms of

¹Brower, Kate Anderson, “Republicans Seeking Hispanic Votes Risk Immigration Backlash,” *Bloomberg*, March 16, 2012.

²Detention Watch Network. “Detention Centres.” Detention Watch Network Web site, 2010. <http://www.detentionwatchnetwork.org/dwnmap>

migration. Loosening immigration restrictions and making immigration law more accessible to the trafficked and migrants would benefit these groups and constitute better more effective policies.

The State Department must accompany these aforementioned policy changes with reform in the manner in which it studies and reports in the annual TIP reports. The State Department should mirror the changes in rhetoric, justifications, and policies discussed above. On top of these modifications, the State Department should work to make the TIP report more equally representative of each sex as potential and actual trafficked persons. There needs to be a greater emphasis placed on trafficking for labor as there is currently an overemphasis placed on sex trafficking. If these changes were instituted to the annual TIP it would better reflect the composition of trafficked persons and avoid reproducing flawed gender norms that characterize women as weaker and more susceptible to trafficking than men.

Recommendations for Trafficking Scholarship

Scholarship on trafficking needs to be changed as well. Academics that study trafficking must be conscious of the way that their arguments can be picked up by policymakers and integrated into the formation of policy. Scholars who study and write about trafficking must drop the language of human rights and security. This shift includes the need to reject the categorization of migrants as “illegal,” “criminal,” or “irregular” as such discourse securitizes trafficking. It entails the need to de-privilege the human as a marker of value in order to avoid the hierarchies in life value instituted by citizenship norms. Scholars must avoid the discourse of “combating trafficking” and

“protection” of “victims” criticized in the preceding paragraphs. The eradication of such masculinist rhetoric from discussions of trafficking should be accompanied by an incorporation of gender analysis and overall better attention paid to identity politics in the academic study of trafficking. Trafficking should no longer be referred to as “barbaric” in order to side step the reification of the civilized/barbarian dichotomy that creates racist moral global hierarchies. Adoption of these changes within scholarship produced on trafficking will allow for more ethical writing about trafficking and reinforce the policy changes recommended above.

Trafficking in persons is an important issue in the US and worldwide. The unsuccessful attempts by the US to stop trafficking and provide relief to the trafficked to date do not sufficiently disprove the need for governmental responses to trafficking. However, serious changes need to be made in terms of US policy and scholarship to make counter trafficking efforts more beneficial for trafficked persons. While the recommendations made above are broad and unlikely to be completed overnight, this is no excuse for continuing on the current course. Without efforts to reform the TVPA, related immigration policy, and trafficking scholarship, US anti-trafficking measures will continue to further traumatize the trafficked, fail to prevent trafficking, and provide an environment for human trafficking to flourish by instituting global inequalities in access to wealth and social mobility.

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