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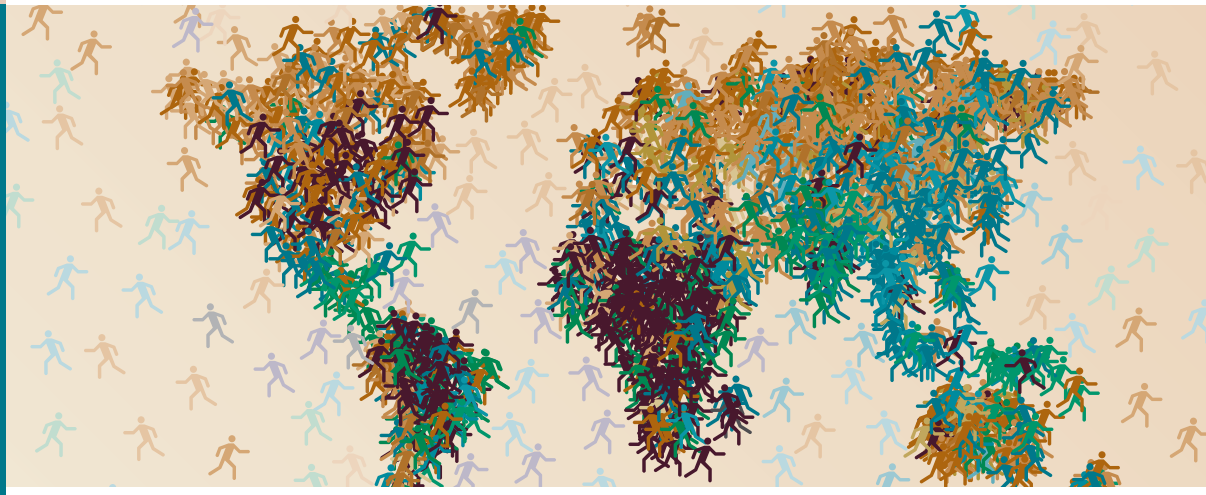

Rethinking Human "Trafficking"

Introduction

Richard Iserman, *Program Assistant, United States Studies*

The acceleration of globalization in recent decades has led to an increase in movement not just of goods or ideas, but of people. As more and more links are established across borders, the incentives increase for would-be migrants to leave home in search of greater opportunities, even if that means trusting their fate to an exploitative employer, a leaky boat, or worse. Despite growing attention to this issue and groundbreaking legislation in the last decade, trafficking in persons remains a poorly understood concept. Many activists see trafficking strictly as a problem for law enforcement. This position has largely informed policymaking in the United States and influenced approaches to the issue elsewhere in the world. But if this position is correct, why do many of those who have been trafficked resent more stringent policing, or resist cooperation with legal authorities?

To grapple with these questions, the Middle East Program and United States Studies of the Woodrow Wilson Center convened a conference on March 1, 2010 entitled "Rethinking Human 'Trafficking.'" The conference brought together experts from a variety of fields, including lawyers, sociologists, anthropologists, and those who work in government and advocacy. The goal was to present a multifaceted approach to the challenges associated with human trafficking, from the complex motives of migrants, to those who seek to assist survivors, and those seeking to develop a better national policy combating trafficking.

Because of its considerable influence on the rest of the world, U.S. human trafficking policy appeared as a recurring theme throughout the conference. U.S. policy comprises two main elements: the Trafficking Victims Protection Act of 2000 (TVPA) and the annual Trafficking in Persons (TIP) report authorized by the Act, which ranks countries according to their efforts in fighting trafficking. The TVPA is aimed at combating human trafficking domestically, whereas the TIP report is directed at influencing international policy. This publication is organized accordingly: Section I focuses on human trafficking and the law in the United States, while Section II discusses the international ramifications of the TIP Report.

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About The Woodrow Wilson International Center for Scholars

The Woodrow Wilson International Center for Scholars, located in Washington, D.C., is a non-partisan institute which aims to unite the world of ideas with the world of policy by supporting pre-eminent scholarship and linking it to issues of concern to officials in Washington. Congress established the Center in 1968 as the official, national memorial to President Wilson.

About the Middle East Program

The Middle East Program began in 1998. In addition to spotlighting day-to-day issues, it continues to concentrate on long-term regional developments and their impact on political and social structure, economic development, and relations with the United States. The program pays special attention to the role of women, youth, civil society institutions, Islam, and democratic and autocratic tendencies. Dr. Haleh Esfandiari directs the program, with the assistance of Mona Youssef and Kendra Heideman.

About United States Studies

United States Studies, which dates back to the founding of the Center, stimulates research and reflection on problems in U.S. society, politics, and culture by placing contemporary policy issues in historical, comparative, and global perspective. It seeks to understand the role of the United States as an important node in the transnational circulation of people, goods, and ideas. Dr. Sonya Michel is director of United States Studies, working with program assistant Richard Iserman.

The Unintended Consequences of "Help"

According to most if not all the authors presented here, the term "trafficked" is problematic for those individuals to whom it is applied. The term implies a lack of agency on the part of victims, whereas in reality circumstances are often more nuanced. Trafficked individuals may more accurately be understood simply as migrants, many of whom are driven by economic need and move in search of greater opportunity. To apply the trafficking label to their situations invites a moral judgment that only complicates attempts to offer assistance. As several of the authors point out, the stigma associated with the label often discourages individuals who need help from stepping forward. In addition, legal scholar Dina Haynes notes, it can feed anti-immigration rhetoric as it cements an association between crossing borders and illegal activity.

Discussions of trafficking are often inherently gendered. In the developed world, there is an inaccurate but unshakeable association between human trafficking and the sex industry. As Ambassador Luis CdeBaca pointed out in his keynote address, only a small fraction of involuntary workers throughout the world are sex workers, yet this association has come to dominate the discourse on trafficking. In developed countries where trafficking is usually elided or confused with sex work, sociologist Rhacel Parreñas notes, restrictive policies regarding migration are designed to "protect" women against trafficking. But these protective measures often do little more than entrench systems of control on the part of third-party agents who profit by acting as middlemen between individual workers and the business owners who ultimately profit from their work.

In the United States, the association between trafficking and the sex industry has led to a raft of legislation and law enforcement efforts that are often more disruptive to sex workers than helpful, sociologist Elizabeth Bernstein has found. She details the core activities that constitute "anti-trafficking" efforts, such as increased policing, surveillance and raids, and notes that none of them are especially intended to help the individuals (mostly women) who are targeted. Instead of protecting them, such initiatives lead to increased incidents of incarceration.

This prosecutorial attitude among authorities interferes with efforts to help. Haynes, drawing on her legal experience assisting trafficking survivors, explains their difficulties in talking to law enforcement officials. In her experience, front-line police and immigration officers have shown a persistent unwillingness to believe trafficking victims who come forward. This skepticism on the ground level creates practical barriers in obtaining a T-visa, the special protection created by the TVPA that is intended to assist trafficking victims.

As a result, the number of survivors of human trafficking in the United States who have managed to obtain T-visas is woefully inadequate, according to anthropologist Denise Brennan. Her research indicates that there is a range of types of forced labor and other exploitative labor practices, not all of them producing "slave labor" conditions but still meriting public attention. In order to truly combat trafficking and involuntary labor, Brennan recommends a greater focus on all forms of exploitative working conditions. Such an approach would not only help bring an end to involuntary labor, but would improve conditions for survivors looking to reestablish themselves again.

Florrie Burke shares her own experience with trafficking survivors as the co-chair of the Freedom Network, a coalition of organizations that advocate for trafficking survivors. She describes the challenges her organization faces, particularly the "fragile infrastructure" of law enforcement agencies, government institutions, and NGOs that interact to form human trafficking policy and response. The philosophical differences between the various stakeholders, she has found, undermine a victim-centered approach.

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Listening to the Voices of those who are "Trafficked"

A truly victim-centered approach depends on an accurate understanding of the conditions that migrants face, "trafficked" or otherwise. Studying Indonesian and Filipina domestic workers in Hong Kong, anthropologist Nicole Constable discovered that their decisions to migrate were complex. In addition to economic motivations, marital or familial problems and a desire to travel often drove these women to leave their home countries. Constable, like several of the other authors, argues that broader issues of trafficking must be understood within a framework of less-than-desirable working conditions as well as a lack of access to rights for many migrant worker groups. To combat underpayment and illegal working conditions, Filipina workers developed support networks in Hong Kong. Without such networks, Indonesian workers faced greater problems related to labor exploitation. Constable emphasizes, however, that their problems were representative of gendered migration, not trafficking.

Misperceptions of those labeled as trafficked can often lead to misguided policies and laws, and the impulse to "rescue" migrants perceived to be trafficked frequently goes awry. Rhacel Parreñas wrestles with the disconnect between trafficking labels and discourse and actual lived experience by providing a gripping case from her ethnographic study of Filipina migrants in Japan. She describes a young woman who was under eighteen and forced to work long hours in a Tokyo night club, yet who loved her job and wanted to keep it. Such examples convince Parreñas that understanding "trafficking" requires nuance, and that the central policy concern is not crossing borders, but whether migrant workers are free to stop working if they want to.

Similarly, efforts to prevent trafficking by regulating prostitution often backfire. In South Korea, Women's Studies scholar Sealing Cheng found, passage of anti-prostitution laws in 2004 produced mixed results. On the one hand, the laws were positive because, for the first time, they removed the moral stigma from sex workers by identifying them as victims, not just "fallen women." On the other hand, however, the laws proved harmful to the migrant women involved, as they continued to criminalize prostitution, imposed even heavier penalties than before, and ignored migrant workers' rights.

To anthropologist Pardis Mahdavi, the international focus on sex trafficking may be traced back to the TIP Report, which ignores the plight of individuals in other labor sectors. Drawing upon her extensive fieldwork in the United Arab Emirates, Mahdavi argues that the report has stifled progress toward developing more comprehensive approaches to forced labor and migration in regions such as the Middle East. Because of the apparent arbitrariness of its rankings, she found, many outside the U.S. consider the report a "tool of American hegemony" that is more intent on criticizing its enemies than on recognizing the root causes of human trafficking.

The papers presented here, based as they are on a rich and varied array of research and a determined effort to hear the voices of those who are labeled as "trafficked," peer behind the official face of human trafficking to reveal heretofore hidden dimensions of this transnational issue. Moving beyond a framework that assumes passivity on the part of "victims," the authors provide a more complex understanding of the motives of all those who migrate, the conditions they find upon crossing borders, and the unintended consequences of existing policies. As this understanding becomes incorporated into the policymaking process, it is hoped that more effective laws, regulations, and assistance programs will emerge—measures that will truly help those who migrate to find decent work and a better life.

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Human Trafficking and the Law in the United States

Human Trafficking and the Law in the United States

Editor's note: the following address was delivered by Ambassador CdeBaca as an introductory keynote to the conference.

Luis CdeBaca
Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State

Good morning. I am pleased to be here with you today and appreciate Haleh Esfandiari and Sonya Michel of the Woodrow Wilson Center and Denise Brennan of Georgetown University for inviting me to participate in today's discussion: "Rethinking Human 'Trafficking.'" And these well-placed quotation marks have me thinking a bit about words and actions.

Right now we are just steps from where generations of Americans have walked to pursue their own rights, equality and freedoms. A lot of different words have been used to describe why. In 1848, 77 slaves walked quietly through these streets, clandestinely making their way to a small ship, the Pearl, which was to take them North, away from their bondage. No matter what it was called—a "peculiar institution," "servants," "staff"—it was slavery, and they were making a run for freedom.

In the early part of this century, women across America marched these city streets to gain the right to vote. Sometimes it was called women's suffrage, or voice, or having their say at the ballot box. No matter what the name, they simply sought equality.

Decades later, Reverend Martin Luther King, Jr. led the Civil Rights Movement in the March on Washington and thousands of Americans joined him in the fight for jobs, equality, rights, fairness, and freedom. No matter what you call it, they sought their constitutional rights.

And today, we are discussing "trafficking," a word that can mean so many things to different audiences and in different languages, but, as Secretary Clinton recently said at the President's Interagency Task Force meeting to other members of the Cabinet, "Let's call it what it really is—a modern form of slavery." The freedom fighters from the suffragettes to the civil rights movement to today—those of us who work hard to absolve the world of modern slavery—all seek one thing for every person: the freedoms and rights guaranteed by the Constitution and universal women's rights norms.

And yet, somewhere in America, someone awoke bound by the chains of force, fraud, and coercion. Instead of setting off for school this morning, someone picks up a gun that is longer than he is as a child soldier. This evening, someone will be forced to peddle trinkets late into the night instead of resting in the safe confines of a home.

No matter what we may call it—debt bondage, servitude, sex trafficking, labor trafficking, forced labor, practices similar to slavery or enslavement—for as long as people of every community, culture, and country in the world are enslaved, our work and efforts go on.

The "3P" Approach

It has now been ten years since the passage of the Trafficking Victims Protection Act. Ten years since the adoption of the United Nations Protocol that guides our response to modern slavery by mandating that human trafficking must be confronted by working for more and better Prosecutions, increased victim Protection,

and ultimately, Prevention of this heinous crime—the "3P Paradigm." Of this approach, which has become the global standard, we are rightfully proud.

The "3P" approach allowed us to ensure that there were non-governmental organizations that are key partners in the anti-trafficking movement, and trained people in law enforcement agencies to whom we could turn for help.

It is an approach that applies the lessons of the domestic violence movement, which fought for a victim-centered solution to a hidden crime—an approach that would not replicate or mimic the stigma and abuse of the batterer, but would look to women's' experiences and strength to fight against the violence.

It is an approach that seeks to deliver, every day, on the promise of Emancipation. To honor the glory achieved by those who fought for freedom. And to guarantee the promise made by the 13th Amendment that never again would "slavery or involuntary servitude…exist in the United States, or any place subject to their jurisdiction."

A framework, to be sure. A bold proposition. A sharp turn of a phrase. But what do these "3P's" mean, once they are taken from the page and applied to the real world?

Over the last fifteen years, we have built the "3P's" into an interlocking paradigm. It is one that has helped save millions of lives and one that can always be improved. Rethinking the "3P" paradigm as it is applied, enforced, and followed is essential to making even more progress in the fight against modern slavery. We may rethink our approaches and efforts to make improvements, but we will not rethink the right to be protected by criminal law, and we won't back away from any efforts to protect victims and prevent incidences of modern slavery in the first place.

So we have the paradigm. And we have the policies that follow. One hundred thirty-seven countries are parties to the UN Protocol. New laws have come online around the world. Thousands of victims have been helped, and we have seen thousands of arrests and prosecutions that would never have been brought without the legal and policy achievements of the last decade.

Hidden Victims

But still, the promise of our Constitution, the mandates and protections of the UN Protocol, and the cutting-edge American anti-trafficking laws have, to date, only been applied to a subset of the victims about which we know. The lowest estimate is that of the International Labor Organization—12.3 million people toiling in bondage around the world, representing a profit to the abusers of $32 billion and an additional loss to the victims of $20 billion. And in a world with millions of victims, success stories in the thousands account for an unforgivably low percentage.

Some of that is because of the global value that is put on fighting human trafficking—both in terms of money and power. But I think it's also due to a sort of "root cause malaise."

Let me be clear: human trafficking is sexist, racist, environmentally degrading, and economically destabilizing. Its presence undermines the rule of law and its perpetrators are guilty of the most heinous human rights abuses any of us could imagine.

But human trafficking around the world is not something we can address only by ridding the world of sexism and racism, of poverty, conflict, corruption or human rights abuses. Nor is it a cultural phenomenon that can only be tackled with education and awareness building.

To put it bluntly, trafficking in persons is a crime. It is a crime akin to murder and rape and kidnapping. We have to confront it not just by addressing root causes that are so far away from the realities of the trafficker and those they

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enslave, but by using all of our tools. And so the UN Protocol mandates criminalization of trafficking in persons, and the U.S. laws are very focused on law enforcement, because a policy solution to a heinous crime problem must involve freeing the victims and punishing their tormentors.

The Right to Protection

As long as there are only 3,000 prosecutions worldwide every year, society is sending a message that despite movies and advertisements and conferences, somehow the injustice the victims suffer is not really a national or an international priority. That may be because the victims of this crime are perceived to be throwaways—runaways, poor, prostitutes, or "illegals." We should not be measured by how well we protect the "deserving victim"—the innocent who is deceived and kidnapped.

Rather, we have to stand for everyone's entitlement to justice. Traffickers should not be assessed by who their victims are, but by the heinous crimes they commit. Otherwise, we're sending a message that the traffickers are not hurting people who matter.

We need only to look at our own history to know the moral depravity of failing to protect some in society: the suffragettes; African Americans in pursuit of civil rights; and a host of other Americans who have been left on the periphery of society.

The people who are on the farthest margins of any society have as much right as anyone to the protection of the criminal law. Indeed, they need the protection more than those whom legal establishments would like to favor. They have a right to see their abusers brought to justice. They have a right to have their voices heard in the legal process. It is because of this that I strongly believe that compassionate and smart prosecution is the foundation to the victim- centered approach of the "3P's."

And yet, as sure as we cannot wait for every societal ill to end before we free people, we will never effectively combat modern slavery through prosecution alone. Prosecution alone cannot provide victims with the compassion and patience that meets their immediate needs and long-term potential alike.

A victim-centered approach does not mean patching up a potential witness long enough to get their testimony; it means obligations that extend well beyond the confines of a criminal case. It means partnerships between law enforcement and service providers, not just to win the case, but as colleagues sharing the responsibility of letting the survivors' voices be heard.

It means policies that allow these things to happen, with the best interest of the victims in mind. Like counseling and certain forms of immigration relief – an umbrella of services that surround the survivor but also extend to their children and family members who are in danger or feel peril. It means access to educational and economic opportunities and a conception of justice not as a winning percentage of court cases but instead as a process that recognizes and reinstates the power of the survivor.

At its best, victim protection is a series of laws and policies—broadly funded, understood and implemented—with adaptability on the ground and always taking into account the needs of the victim.

The "3Ds" of Mis-protection

The sad truth is that we have a long way to go here. All too often, when it comes to protection, policies and practices are at best unhelpful and at worst harmful. In the failure of many countries to adequately protect their victims, a new alliterative paradigm emerges; the "3Ds" of victim mis-protection—Detention, Deportation, and Disempowerment—as countries jail and repatriate victims without screening or protection. If we are to deliver on the promise of freedom, we must confront what happens to

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victims when they are liberated from their traffickers.

Here's how the Obama Administration is rethinking human "trafficking" and delivering on the promise of freedom. We're making linkages between NGOs who run shelters with openness and flexibility and their partners in those countries who still think that a women's shelter means a cleaner jail. We're advocating for legal changes so that exclusionary policies are taken off the books and victim protections are put in place.

And we are not only advocating for exclusionary policies to be taken off the books, but we are also taking exclusionary policies out of our approach. Everyone who has an interest and commitment to ending modern slavery has a seat at the table in the Obama Administration. We all strive toward best practices in prosecution, prevention, and victim protection.

Like laws that required guest workers to get permission from their employer— even the one who may have beaten or raped them—in order to switch jobs or leave the country: laws that only recently we got rid of in our Pacific territories. Or laws that require a victim to win his or her case in court before being granted immigration status. We're working with governments to ensure that the way they register births and care for at-risk youth prevents people from becoming victims, rather than shunting them off into a zone of impunity where they are fair game for the predators. Changing these policies doesn't just protect victims; it keeps people from being victimized in the first place. For as far as we have to go on protection, we must go still further on prevention.

Fighting trafficking is about fighting modern slavery, not cleaning up after the traffickers who practice it. I have been accused throughout the years of using some fairly inventive language, often reflecting my family's ranching background. And the reactive approach to combating trafficking that is seen in so many places brings to mind a particularly apropos saying about closing the barn door after the horses have run off. At its core, combating trafficking in persons is about prevention—and, to be clear, strong prosecution and victim protection are critical to effective prevention. But we can and must do more.

Prevention

In the past ten years, we've seen a lot of talk about prevention. Every time we talk about the "3P's," there it is. But when it comes time to include it in policies, or legal instruments, the concept of prevention seems to have become, at best, an afterthought—a feel-good throwaway to ease the hard-edged work of arresting traffickers and the stressful reality of victim service provision.

It is time to move past naïveté to reality when it comes to prevention efforts. Ten years ago the world's comfort zone around prevention limited it to public awareness campaigns or the big structural fixes of alleviating poverty, gender discrimination—root causes so enormous that anti-trafficking imperatives got lost in the development response.

A decade later, we are expanding our understanding of prevention to include policies and practices that cut it off at the source. This is where government, corporations and consumers come together on this issue. It's about looking at our demand for cheap goods and how we ensure that free trade means free labor rather than labor for free. About a hospitality industry that facilitates tourism and business, rather than panderers and pedophiles.

To paraphrase President Obama's speech in Tokyo, it's about society valuing a girl not for her body, but for her potential. A cultural shift that is then reflected in what government and business do on a daily basis. Because at its best, prevention is not just about poster campaigns; it's about implementation and results.

Implementation and results matter, or we will have a lot of public condemnation, with

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interesting documentaries and advertisements to show for our efforts, but we will not have changed the fact of this crime. If public awareness without policy implementation is the legacy we leave, this fight can and should be again dismissed as a "moral panic," just like the White Slavery hysteria and weak laws of the early 1900s that effectively lost us a century.

Therefore, in the Obama Administration, we are looking for ways to reduce the demand for all forms of trafficking, including commercial sex and forced labor, through stronger enforcement, better reporting, and the development of government-endorsed business standards for supply chain monitoring.

The 2008 Trafficking Reauthorization law that then-Senator Biden sponsored gave us important new tools that stand for the proposition that ignorance is not an excuse. The strip club owner who looks the other way as "talent agents" enslave women is no longer just a bystander; he is an accomplice. So too for the grower who looks the other way as farm labor contractors use force and threats to get in the crops. And to those in the corporate world who have turned a willfully blind eye to the exploitation in front of them, the new law puts down a marker: whether you partake or profit, you're accountable. Period.

What "We" Can Do

And in that spirit, we need to hold ourselves accountable as well. To hold countries, including our own, accountable for policies and practices that either create or further endanger populations vulnerable to trafficking. As we have been rethinking our approach to combat trafficking in the Obama Administration, Secretary Clinton has rightfully recognized the importance of holding ourselves to the same standards as others. This year, we will rank the United States in the annual Trafficking Report for the first time, and encourage other countries to undertake honest self-assessments.

But when I say we, I don't just mean governments. I mean "us." Each of us should take personal responsibility for our own contribution to this crime. Just as we know to think about our carbon footprint, we must each pause to assess our modern slavery footprint.

There is a campaign in Latin America that routes victims to a hotline so that they can "call and live." What we can do—each of us—is "ask and act."

Was the cotton that made my shirt picked by a trafficked woman? Was the shrimp I ate for dinner last night caught by a man enslaved on a fishing boat? Did my holiday chocolate come from children enslaved on cocoa farms?

So you see, prevention shouldn't be seen as the weakest of the "3Ps", reduced to an afterthought or a rhetorical flourish, but instead can become the most interesting, most exciting and, yes, most challenging, part of this fight.

A year ago, when President Obama took office, people around the globe were hopeful for a new day where America would lead the world through positive change. Today, we have seen the early stages of positive change take place, with the pursuit of improved human security policies and practices that better the daily lives of trafficking victims.

And while fighting involuntary servitude has been a priority for such administrations as those of Ulysses Grant, Franklin Roosevelt, Bill Clinton and George Bush, never before have we seen an administration with such a wide array of senior officials with such depth of experience on the frontlines of this fight. Indeed, if you were to take a walking tour of the people behind the President, you can't help but be struck by their understanding of trafficking victims as real and innocent people.

On my part, I can tell you of some of the survivors who I've been lucky enough to know. The man who dove over a fellow sweatshop worker to protect her with his own body, only to suffer permanent nerve damage in his arm

and his jaw as the guards' clubs rained down. The maids who furtively looked up English words in their bosses' dictionary over the course of weeks to write a note which they threw over the backyard fence in the hope that someone would come for them. These are not people who are weak, or powerless, or lack an understanding of what is right or wrong. They are just people who need for us to listen to them, and walk with them on the path to freedom.

I'm not the only person in the Administration with these kinds of experiences. We now have a Secretary of State who forced America to rethink human "trafficking" in the 1990s when nobody but a few civil rights lawyers and immigrant advocates knew it still existed and the sins of slavery had been long forgotten by the American people. As I just mentioned, Secretary Clinton is rethinking human "trafficking" by adding more tools to the United States' effort to combat this crime. Ten years into this fight, it's time to rethink, reload, and re-engage on this issue with every tool in hand, and ranking the domestic efforts against trafficking will not only lead to greater diplomatic tools around the world, but it will also refocus our efforts here at home.

We have a Secretary of Labor, Hilda Solis, who cares about this issue not because it is in her organizational chart, but because as a Congresswoman, she helped stop a deportation of a trafficking victim who had been failed by the system for more than twenty years.

We have a Vice President who is passionate about ending violence against women; the last bill that he passed in the Senate was the path-breaking 2008 Trafficking law that provided so many critical tools for our work. We have Assistant Secretaries like Tom Perez, Juliette Kayyem, and Arif Alikhan, who convened the first task forces, advocated for the first laws, and tried some of the first cases under the "3P" approach. Across the agencies, the President has appointed people who fought modern slavery as victim advocates, human rights researchers, and prosecutors. He has called upon us to view the fight against modern slavery as a shared responsibility. To see how, working together, "we can and must end this most serious, ongoing criminal civil rights violation."

So you see, this is an Administration comprised of individuals who earned their place at the table by fighting traffickers. Not all of us work on trafficking full-time, but all of us carry with us the strength of the survivors with whom we have walked.

And we have walked with a range of victims, who today are survivors. Whether it's a well-known victim-turned-survivor-turned activist who has put her horrific experiences in sexual slavery to good use to help young girls; or Maria, a deaf Mexican who was forced to peddle trinkets on the streets of New York City, who testified that she fainted within feet of the Statue of Liberty—the beacon of freedom—because she had not been allowed to eat for several days; or a young girl from the Midwest who was sold by her parents into sexual slavery in order to make money for her poor family.

Why am I telling you stories of people whose suffering was so great?

Because they are why we need a "3P" approach and why we need to rethink our efforts against contemporary forms of slavery. It is for them, and those whom we do not yet know. Without laws and legal training, the federal authorities in New York wouldn't think to raid the desolate building holding modern slaves. Without victim protections, the group helping the deaf Mexicans in New York City could not prevent them from being deported back to Mexico.

People sometimes ask me how I can work on something as horrific as modern slavery; how I can resist the secondary trauma and the seemingly intractable challenge? At the end of

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the day, I think that I can continue to do this because these are not stories of despair, but of hope.

This hope may be seeded with our past, but it grows with our future. If in one short decade, we can write a law and build a paradigm, then we can implement its provisions and ensure that men, women, and children alike are safeguarded in America and around the world from the crime of modern slavery. As we leave this meeting today, we will pass the National Mall where millions of Americans have marched in the pursuit of freedom. Through their memory and example, surely, with the new tools and new paradigms of the last decade, we can deliver on the Constitution's living promise of freedom—at home, and around the world.

From "Prostitution" to the "Traffic in Women": Political Implications of the (Re)emergence of a Discourse

Elizabeth Bernstein
Assistant Professor of Women's Studies and Sociology, Barnard College

I have been researching sex workers and the activists and state agents who aim to regulate their labor for over a decade.1 This research has been primarily carried out in post-industrial cities within the United States such as San Francisco and New York, but also in European cities such as Amsterdam and Stockholm. I began my research in the 1990s, before the trafficking framework had really come into ascendance. Because of the collapse of the Soviet Union and accelerated cross-border migration streams, the issue first emerged in Europe in the mid-1990s, a bit earlier than in the United States. In the United States, concerns about the "traffic in women" did not begin to take hold until the late 1990s and the early 2000s.

The trafficking framework received a significant political endorsement from the presidency of George W. Bush, as trafficking became the signature women's and human rights issue of his administration. This was largely due to the opportunities that his faith-based initiative afforded to evangelical Christian activists and to the fostering of political alliances with anti-prostitution feminists who would go on to assume powerful positions in the Bush White House (the right-leaning Hudson Institute was instrumental in this regard). This coalition of evangelical Christians and anti-prostitution feminists helped to displace a previously ascendant discourse of "sex workers' rights" with a political vision that equated all prostitution with the crime of human trafficking and rhetorically captured both of these activities under the rubric of "modern slavery."

It is important to look at the commitments and activities of the two principal groups that compose the anti-trafficking coalition because they have produced policy transformations on a scale unparalleled since the "white slavery" scare of the Progressive era. For this reason, my current research concerns the feminist and evangelical activists who have resurrected the issue of the "traffic in women" over the course of the last decade, as well as the lived impact of this framework upon the sex workers it purports to help. I argue that the various constituencies that have pushed for the anti-trafficking frame have been united not only by a particular sexual

politics (i.e., a commitment to an ideal of amatively coupled heterosexual egalitarianism, contained within a vision that cannot imagine a place for prostitution outside the scope of exploitation), but also by an unspoken commitment to a particular *carceral* agenda, in which the pursuit of "women's human rights" is envisioned primarily in terms of criminal justice. The unspoken sexual and carceral assumptions that prevail amongst these well-intentioned social activists can often wind up doing more harm than good.

The Effects of "Trafficking" on Domestic Sex Workers

Because an increasing number of trafficking cases in the United States are "domestic" (according to U.S. attorney Pamela Chen, about half of trafficking cases at the federal level concern underage prostitution, and that figure is higher at the state level),[2] it is important to keep in mind that when we talk about "trafficking" in a U.S. context, we are essentially talking about street-based prostitution (and to a lesser extent, migrant-staffed brothels). For it is only prostitution, and not other forms of exploited labor, that fits the definition of "domestic trafficking," according to the terms of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005. Furthermore, the form of prostitution that is most policed under the guise of "fighting trafficking" is street-based prostitution in the inner city. At the anti-trafficking trainings that I have attended in various cities, vice officers have been quite explicit about this. Some were happy to have their (typically low-status) policing work redefined as a humanitarian intervention.

Given the recent historical context of trafficking, it is also important to consider the increased policing and surveillance that have taken place in its name. During the 1990s, street-based and migrant sex workers were increasingly arrested in U.S. cities as part of gentrification policies and "broken-windows" policing.[3] Now, the policing of sex workers has accelerated under the guise of "fighting trafficking." While police and some feminist advocates have lamented the necessity of apprehending sex workers in order to help them capture "traffickers" and "pimps," they also acknowledge that the increased surveillance of sex workers may in fact be necessary to intervene to catch the "bad guys." The accelerated arrest of sex-workers is particularly ironic, given that sex workers themselves are likely to describe prison, not prostitution, as tantamount to slavery. Increasingly, heightened policing, arrests and incarceration have become the surprising political core of some anti-trafficking activists' agenda on behalf of "women's human rights."

Numbers and Prevalence

In New York City, where I currently reside and have been collecting data, the vice squad made eight sex trafficking arrests in 2008 and just five in 2009—this in a city that is supposedly one of the major global hubs for sex trafficking. The majority of these arrests took place on the streets of the Bronx. We can surmise that most of these cases concerned underage sex workers or sex workers who work with pimps, a feature that, under criminal law, automatically qualifies them as trafficking cases, regardless of the women's consent. Police officers and prosecutors describe instances of underage prostitution as the easiest "trafficking cases" to prosecute because they do not have to prove force, fraud, or coercion.[4] As a result, a number of spectacular arrests of pimps-as-traffickers have hit the headlines recently, with young men of color being given 99-year or even life sentences as "domestic traffickers"—more than they would get if they had killed the women in question, rather than simply profiting from their labor.

I do not intend to suggest that the pimps'

> *"…the policing of sex workers has accelerated under the guise of 'fighting trafficking.'"*

activities are purely benign, that women never benefit from having their abusive partners apprehended for their protection, or that no one has ever been grateful for the social services that they received as a result of having been certified as a trafficking victim. I would, however, like to offer a few additional comments about the limitations—and perils—of using the trafficking framework for U.S. sex workers.

"More police contact is a risky proposition for vulnerable populations…."

First, *increased policing, surveillance, and arrests are not necessarily beneficial for sex workers*. More police contact is a risky proposition for vulnerable populations who are engaged in criminalized activity, and policing has been a primary source of violence against women in prostitution. Furthermore, an arrest record will make it even more difficult for women in prostitution to secure socially legitimate employment should they one day choose to leave the sex industry.

Second, *the rubric of "trafficking" often has the net effect of arresting and deporting the migrant sex workers that it aims to save*. Women who are not successful in getting themselves classified as "innocent victims" (by virtue of age, consent, previous experience in the sex industry, or refusal to testify) frequently get reclassified as "criminals" instead. For example, in the case of the 2005 "Operation Gilded Cage" anti-trafficking raids in California, of the nearly 150 women who were arrested, fewer than a dozen were eventually declared to be legitimate victims who were entitled to social services. More than half of the women taken into police custody during the raid were immediately deported when federal officials deemed that they had not been coerced (and were subsequently threatened with arrest by the Korean government on prostitution charges), while 46 women were forcibly retained by the federal government as material witnesses.[5] Other cases reveal even more disturbing patterns. In California's "Operation Bad Neighbor," 104 women were arrested and only twelve were certified as victims.[6] In a 2006 El Paso, Texas case, 74 of 75 apprehended women were deported.[7]

Finally, *the mandated "services"(in both secular and faith-based guises) that have emerged from the trafficking framework may be of dubious benefit to sex-workers.* To take but one example, there is currently an evangelical Christian group in New York City that has begun collaborating with the New York Asian Women's Center. The fact that the group's funding comes from the Christian group's church means that it is not beholden to government guidelines in order to identify victims. Members of the organization locate victims by stationing themselves in Queens and Manhattan community courts and approaching women who have pled guilty to prostitution charges after their brothels have been raided. This allows them to work with people "they know have been trafficked" even if the women in question do not see themselves as victims and do not desire to leave the industry.

Problematizing "Demand"

Finally, I would like to say something about the recent activist push to "focus on demand" as a means of combating trafficking. Once again, based upon the research that I have done, I am quite skeptical about the efficacy of this approach. As with most attempts to curb trafficking, what is really meant by this rubric is something quite specific: men's demand for *prostitution*. Activists who endorse this strategy rarely focus upon the demand for other commodities or for domestic labor, and when they do, criminalization is never the proposed remedy. In practice, what the "focus on demand" amounts to is the stepped-up arrest of poor men of color (or white working-class men) who shop for sex on the streets.[8] Yet by winnowing down the available pool of clients, a "focus on demand" tends to make life more difficult for the sex workers who have the fewest choices to begin with. Meanwhile, as a political strategy,

"demand" does little to address the most egregious forms of labor exploitation that fall outside the sex sector or, for that matter, the underlying sexual concerns (e.g., around the commercialization of sexuality, the growth of pornography, and the sexual dynamics of contemporary consumer culture) that initially galvanized anti-prostitution feminists and evangelical Christians around the issue of the "traffic in women."

Conclusion

Though conceived with good intentions, the trafficking framework that has emerged in recent decades has been of uncertain benefit to most sex-workers, and detrimental to many others. To seriously address the exploitation that some women (as well as men) experience in prostitution would require a rather different political agenda, one that considers the global inequalities that often drive individuals into sexual labor, and the ways that these inequalities are themselves created through a broad range of policies. In terms of domestic policies, these include the promotion of deindustrialized urban economies, gentrification, and the slashing of state budgets for social entitlements such as housing, health care, and child care.[9] The strengthening of gender equity policies within the workplace and of more general social and economic remedies to assist low-wage and migrant workers (such as living-wage policies, job training programs, and the extension of basic labor protections to informal sector employment) would also make a significant difference. Of course, what is perhaps most important in the pursuit of any political project of social betterment is the active participation of those populations who will be most affected by the proposed remedies—in this case, street-based sex workers themselves.

Endnotes

[1]See, e.g., Elizabeth Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (University of Chicago Press, 2007); Bernstein, "The Sexual Politics of the 'New Abolitionism,'" *Differences: A Journal of Feminist Cultural Studies* 18, 3 (2007); Bernstein, "Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns," *Signs: Journal of Women in Culture and Society* 36, 1 (2010).

[2]Bernstein, "Militarized Humanitarianism."

[3]Bernstein, *Temporarily Yours.*

[4]On this point, see also Denise Brennan, "Competing Claims of Victimhood? Foreign and Domestic Victims of Trafficking in the United States," *Sexuality Research and Social Policy* 5, 4 (2008).

[5]Bernstein, *Temporarily Yours,* 184.

[6]Law Enforcement Instructors Alliance, Human Trafficking and Vice National Training Seminar, March 20-22, 2006.

[7]Women's Commission for Refugee Women and Children, *The U.S. Response to Human Trafficking,* May 2007; available at http://www.humantrafficking.org/uploads/publications/ustraff.pdf.

[8]Bernstein, "The Sexual Politics of the 'New Abolitionism.'"

[9]When researchers with the Urban Justice Center in New York interviewed a diverse sample of street-based sex workers in order to document the women's own assessments of their most pressing political needs, they found that the single most important intervention that the women desired was an adequate supply of housing. See *Revolving Door: An Analysis of Street -Based Prostitution in New York City* (New York: Urban Justice Center, 2003); available at http://www.urbanjustice.org/pdf/publications/RevolvingDoor.pdf.

Conceptual, Legal and Implementation Gaps in the Protection of Trafficked Persons in the United States

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Despite making great strides in addressing the problem of human trafficking, the United States has still by and large failed to help persons trafficked into and through its borders. In 2000, Congress proudly passed and Bill Clinton signed into law the Trafficking Victims Protection Act (TVPA)[1] with one stated goal in mind: protecting victims of human trafficking by working to eliminate the crime in the United States and around the world. The law itself has the potential to be quite successful; however, eight years after passage, it remains to be effectively implemented. While the United States continues to emphasize and spend money on prosecuting traffickers and criticizing other countries for their weak anti-trafficking efforts, victims of human trafficking at home are not found, "rescued," believed, supported or assisted.

The Numbers

The Department of State (DOS) asserts that trafficking "has a profound impact… [in depriving] people of their human rights and freedoms; it is a global health risk, and it fuels the growth of organized crime."[2] The DOS estimates that 800,000 individuals are "trafficked across national borders each year."[3] The Department of Justice (DOJ) estimates that the number of new victims trafficked into the United States each year ranges between 17,500[4] and 50,000.[5] The DOJ has implemented a system of distributing T-visas, which they describe as "a powerful new tool to protect the most vulnerable victims and prevent future trafficking."[6] According to the Department of Homeland Security (DHS), the purpose of the T-visa "is to allow eligible victims of trafficking to remain legally in the United States and provide assistance with the investigation and prosecution of traffickers."[7] Granting such visas formally acknowledges that applicants have been trafficked and provides them with the opportunity to remedy violations of their rights and freedoms. Nevertheless, eight years after passage of the TVPA, the DHS Citizenship and Immigration Service (USCIS) had received only 2,300 T-visa applications, and of these, only 1,308 had been granted.[8]

These statistics alone suggest many potential problems, the most important of which is this: the United States government and its agencies are not encouraging trafficking victims to come forward. It could be that victims of human trafficking simply do not know of the existence of the visa or how to apply for it, or, more troubling, that the U.S. government is actively discouraging victims from applying. My research suggests that government officials—those tasked by Congress to help eradicate human trafficking *and protect its victims*—are both passively and actively discouraging victims from coming forward, thereby limiting the law's effectiveness.

The Process

The focus of domestic human trafficking initiatives is heavily oriented toward law enforcement, yet law enforcement efforts have not yielded much in the way of prosecution of traffickers.[9] As of 2008, there were seven prosecutors in the DOJ Human Trafficking Prosecution Unit, ninety-three U.S. attorneys,[10] and thousands of U.S. Immigration and Customs Enforcement (ICE) officers, whose primary responsibility is to look for, find and arrest undocumented immigrants. As a point of

reference, the DOJ's Human Trafficking Prosecution Unit, working with all of the department's U.S. attorneys and their investigators, initiated 183 investigations and charged 89 defendants in 32 cases, and obtained 103 convictions involving human trafficking.[11] Even with more than one hundred attorneys and thousands of federal law enforcement, few prosecutions have been secured. This suggests that priorities should be reorganized if eradicating human trafficking is the goal.

Negative Preconceptions

Rather than yielding more prosecutions, the heavy law enforcement focus serves to perpetuate and strengthen the threat that traffickers already use to control their victims: that if the victims come forward or otherwise make themselves known to authorities, the likelihood is that they will be arrested and/or deported. One reason for this is that the front-line law enforcement officials most likely to encounter a potential victim of human trafficking (ICE, FBI, or local police) tend not to elicit or believe their claims. Victims encounter such officials during a raid or by approaching them through an attorney or other care provider, but victims may not be ready to talk openly and officials have not tended to believe victims who do not come to the table prepared to deliver a full and complete story of human trafficking.[12]

Law enforcement agents are particularly skeptical of victims of human trafficking who self-report. This is because the agents are trained to perceive individuals as law breakers rather than victims. In many cases potential victims of trafficking have in fact broken the very laws these officials are most skilled at investigating and prosecuting (by committing immigration violations, or engaging in unlawful employment such as prostitution, illegal entry into the country, passport or other document fraud).[13]

Agents may also be skeptical because they have not seen the victimization themselves (they did not "rescue" the victim).[14] Yet, human trafficking often takes place outside of the public sphere, with few, if any, witnesses. Law enforcement officials are not well-equipped to believe that a crime has taken place when they cannot find any evidence and have only the word of a (sometimes law-breaking) individual to rely on. As a result, they are negatively predisposed to believe the story of the trafficked person.[15] In other, non-trafficking, contexts, of course, law enforcement officials typically do not directly witness crimes themselves, but this does not prevent them from pursuing investigations, as is too often the case with human trafficking.

Tying victim protection to cooperation with law enforcement

In order to obtain a T-visa, victims must cooperate with law enforcement. They may apply for a T-visa without law enforcement certification if they can establish that they attempted to cooperate, but in practice this will do little good. First, the application will be heavily scrutinized by USCIS if the applicant claims to have cooperated with law enforcement but law enforcement has not elected to supply a certification letter.[16] However, the failure or refusal of law enforcement to certify may occur simply because the law enforcement officer (who is not an adjudicator) does not believe the story,[17] or for reasons utterly unrelated to the bona fides of the applicant's claim—for example, because the officer who first heard the story has moved to a new office, because law enforcement fears that the prosecutor will not think the victim's testimony is strong enough to yield a prosecution against the traffickers.[18]

Furthermore, prosecutors and law enforcement are not fully utilizing the legal tools granted to them under the TVPA. This may be due to a lack of confidence or uncertainty about how to use the law. Or it may be that perceptions of the "criminal actions" of the

"Law enforcement agents are particularly skeptical of victims of human trafficking who self-report."

"At a minimum, victim protection should include not only a bed for the first nights after escaping from traffickers, but also transitional and long-term housing…"

victim (being in the country illegally, using false documents, being illegally employed, being a sex worker)—all crimes these same law enforcement officers are much more accustomed to prosecuting than to seeing as evidence of being a victim of human trafficking) are obscuring their willingness to apply the law. The fact remains that few of the victims the U.S. government believes reside in the United States are actually rescued by law enforcement, and few of those not rescued are *believed* by law enforcement to be victims of human trafficking.

Impact of law enforcement failures

While applying for a T-visa does not explicitly require certification by law enforcement, obtaining a bed for the night does require such certification, or at least pre-certification. The simple but powerful impact of law enforcement's failure to believe trafficked persons is that those persons will not have a place to stay for the night. Picture the trafficked person who has escaped his or her own trafficker and finds someone to refer him/her to a church or social worker or hospital or legal services provider. If no shelter or bed is available, the victim may then be taken to a trafficking victim services provider. Most service providers obtain their funding through the Department of Health and Human Services (DHHS) and DOJ under the provisions of the Trafficking Victims Protection Reauthorization Act (TVPRA). They are reimbursed only when they provide assistance to persons certified or "pre-certified" by law enforcement. If providers have no additional funding beyond their federal funding, then they have no beds for those not pre-certified.[19]

If law enforcement is not willing to begin liberally certifying even those whom they have not yet heard, do not yet believe, do not think will ultimately assist with any prosecution or who they think lack sufficient evidence (as do most trafficking victims), then the result is thousands of bona fide trafficking victims left without food, bed, or shelter for the first nights after their escape from their traffickers. Without such provisions, most victims have no alternative but to return to what they know—their traffickers.

At a minimum, victim protection should include not only a bed for the first nights after escaping from traffickers, but also transitional and long-term housing; both emergency and long-term medical and mental health care, appointed legal counsel, clothing and food; language or literacy assistance, employment assistance and witness protection assistance. To be truly effective, solutions should be offered to protect family members threatened in the home country and pay off or obviate debt still owed to the traffickers for debt bondage. T-visas alone do not eliminate the threat of harm from traffickers.[20]

Conclusion

With passage of the TVPA, Congress offered prosecutors, lawmakers and victim services providers the legal tools, as well as all-important funding, to make a significant impact in fighting human trafficking. Because of its inherently elusive and private nature, human trafficking is one of the most difficult crimes to discover and prosecute. Trafficking, as well as the labor trafficked persons carry out, often occurs within homes or hidden away in factories, fields and workplaces which have not been inspected. Nevertheless, the law itself is both broad and specific enough to create some powerful tools for prosecutors. It allows them to charge with human trafficking any person who receives, harbors, transports, provides or obtains (or attempts to do any of the foregoing) a person through means of force, fraud or coercion (including threatening to use the law to deport them, for instance) for the purpose of either commercial sex, labor or services. Crucially, passage of the law also created a broad endorsement for protecting victims of human trafficking. Unfortunately, the endorsement has failed to convince law

enforcement that victims of human trafficking are legitimate or legitimately in need of protection. It is this particular failure which must be addressed. As a result, the purpose of the TVPA—protecting victims—is undermined not because of a lack of will or absence of a law, but because of improper interpretation of the law and a lack of certainty and confidence by those who apply it.

The active and passive reluctance of law enforcement and government agencies to believe, listen to, respond to, and assist victims of human trafficking continues to stymie the implementation of an otherwise good law. Law enforcement at every level (local, state and federal) and within every agency (particularly ICE and FBI) must be encouraged to actively use the law with the purpose of aiding trafficked persons. The message must go out from above and be implemented below that it is the obligation and responsibility of law enforcement to actually protect trafficked persons and that failing to do so means not doing the job.

Endnotes

[1]"Victims of Trafficking and Violence Protection Act of 2000," Public Law. No. 106-386 (Oct. 28, 2000). Codified at INA §§ 101(a)(15)(T), 101(a)(15)(U), 214(n), 214(p), 245(l), and 245(m).
[2]U.S. Department of State, Bureau of Public Affairs, "Facts about Human Trafficking"; (Washington, D.C.: Department of State, 2007); available at http://italy.usembassy.gov/pdf/other/FactsTrafficking.pdf.
[3]Ibid.
[4]Ibid., 9. For a critique of the DOJ's methods and rationale for lowering the initial estimates, see Dina Haynes, "(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protect Act," *Georgetown Immigration Law Journal* 21, 3 (2007), 5.
[5]U.S. Department of State, "Trafficking in Persons Report 2002," 109, available at http://www.state.gov/documents/organization/10815.pdf; USCIS Ombudsman, *Annual Report* 2009,(Washington, D.C.: Department of Homeland Security, 2009), 57; available at http://www.dhs.gov/xlibrary/assets/cisomb_annual_report_2009.pdf.
[6]Department of Justice, "Department of Justice Issues T Visa To Protect Women, Children and All Victims of Human Trafficking" (Jan. 24, 2002), quoting former INS Commissioner James Ziglar; available at http://www.usdoj.gov/opa/pr/2002/January/02_crt_038.htm.
[7]See generally Sec. 106 (a) and (b) of the TVPA for T-visas. USCIS Webpage, "Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)"; available at www.uscis.gov.
[8]USCIS Ombudsman, *Annual Report,* "709 were denied or withdrawn, and 212 remained pending since the establishment of the T visa."
[9]See Dina Haynes, "Good Intentions are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act," *University of St. Thomas Law Journal* 6 (Fall 2008), 81-86.
[10]U.S. Attorney Mission Statement; available at http://www.usdoj.gov/usao/index.html.
[11]Department of Justice release "Myths and Facts About Human Trafficking," August 2008, available at http://www.justice.gov/opl/pdf/myths-and-facts.pdf.
[12]See, for example, the comment of a self-reporting (e.g. not "rescued" by ICE or law enforcement, but someone who escaped her traffickers herself) victim of human trafficking, eventually certified, discussing her unfavorable experience attempting to talk with law enforcement: "I reported it [the trafficking] to the police but they didn't believe me; they wouldn't arrest them." Urban Institute, *Comprehensive Services for Survivors of Human Trafficking: Findings From Clients in Three Communities*, June 2006; available at http://www.urban.org/UploadedPDF/411507_human_trafficking.pdf.
[13]See, for example Haynes, "(Not) Found Chained," 23. The article describes a U.S. Attorney who, despite having (correctly it turned out) identified a victim of human trafficking, nevertheless first prosecuted her for misuse of a passport, even though the passport was known to have been provided to the victim by her trafficker for the purpose of trafficking her into the United States. The victim spent eighteen months in a federal prison, first serving time for the criminal offense, and then remaining because Department of Homeland Security refused to release her, given, ironically, her lack of identification documents.
[14]For more on the "rescue myth" see Haynes, "(Not) Found Chained," 349-53. "The rescue myth" refers both to the myth that law enforcement succeeds in rescuing victims of human trafficking from exploitation and to the myth that in so finding trafficked persons law enforcement is fact "rescuing" them from harm, rather than subjecting them to further harm by failing to believe them or initiating criminal or deportation proceedings against them.
[15]See Haynes, "Good Intentions," 79-85, for a description of two almost identical cases, the one difference being that one woman was rescued by ICE and the other escaped her traffickers and self-reported, but with very different outcomes.
[16]"Certification" involves the process whereby a law enforcement official can provide a document attesting to the "cooperation" or "pre-certify" that victim is willing to cooperate. Under TVPA, 22 USC Sec. 7105(b)(1)(E), the criterion is that the victim be "willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons and that she is a person whose continued presence in the US the Attorney General is ensuring in order to effectuate a prosecution." Ibid., Sec. 7105(b)(1)(E)(i)(I).
[17]USCIS Ombudsman, "Improving the Process": "cooperation from law enforcement officials is inconsistent and some officials are not fully aware of the T-visa process. Eligibility for T non-immigrant status require[s] applicants to be willing to assist with criminal investigations to be eligible for the immigration benefit. Stakeholders have reported to the Ombudsman that the requirement that the certification be signed by a supervisor or agency head is a significant administrative obstacle for applicants because the supervisor or agency head is often unavailable or not as familiar with the case as another officer who worked on the case. Also, stakeholders have indicated that some officials are not always cooperative and are unaware of the protections afforded to victims in the TVPA."
[18]This creates a "prosecutorial bottleneck" in which law enforcement officials do not believe the victim or choose not to investigate her story further because they think that prosecutors will not be interested, given their limited resources and unavailability of evidence. For more on the "prosecutorial bottleneck" see Haynes, "Good Intentions," 78-85.
[19]As one woman put it, "My status is just waiting for me to get an interview with the government even to talk to local police it hasn't happened yet. Right now agency [shelter staff] is trying to get me an appointment with local police and until that happens we don't know what to do with my case or legal status"; Urban Institute, *Comprehensive Services.*
[20]See Haynes, "(Not) Found Chained," 378-381, detailing the fact that debt incurred by trafficked victims to their traffickers is not relieved even after securing T-visa assistance and trafficking victims know this. Traffickers continue to threaten family members of victims in the home country in order to secure payment of this debt.

Securing Migrants' Rights as Anti-Trafficking Work

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The United States has been presented with two critical opportunities for forging meaningful anti-trafficking activities—and thus endorsing pro-migrant ones. The "road map" I suggest would bring together practitioners, activists, researchers, policy makers and formerly trafficked persons around such an agenda. This paper makes two major assertions: First, research and policy on "trafficking" must be part of the ongoing national conversation about immigration reform and migrants' rights. Second, outreach on "trafficking" should focus on basic rights-work in migrant communities. Doing so will foster reporting of less severe forms of exploitation *before* they tip into forced labor.

My road map for preventing forced labor by protecting migrant workers emerges from five years of anthropological field research with individuals whose migration strategies to the United States veered drastically off-course into situations of forced labor. I am indebted to the social workers and attorneys—who oversee the resettlement of formerly trafficked persons throughout the United States—and who introduced me to their clients as well as generously sharing their concerns and insights. Since 2004 I have been speaking with individuals who received T-visas to stay legally in the United States. The Trafficking Victims Protection Act (TVPA) of 2000 defines a "trafficked person" as one who has worked under conditions of "force, fraud or coercion." My interviews with T-visa recipients—and with their social workers—form the basis for a book that I am writing while at the Woodrow Wilson Center as a fellow. The book is tentatively titled *Settling In: Life after Trafficking into Forced Labor in the United States.*

My central research question is straightforward: How do individuals whose lives were controlled by violence or threats of violence regain control over their lives and undertake the process of resettlement in the United States? In order to understand the effects of coercion and violence that can occur during the resettlement process, I explore how workplace environments of intimidation, threat and exploitation structure the lives not only of individuals in forced labor, but also of low-wage migrants in general. Since T-visa recipients typically enter low-wage, insecure, and sometimes exploitative work after being trafficked, the challenges they face in the short term threaten to preclude opportunities for economic security or mobility in the long term.

Whereas stories in the media often focus on the spectacular cases of cruelty and abuse in forced labor or on dramatic rescues or escapes, as an anthropologist my research dwells on the unspectacular, specifically the banal daily struggles to build a new life in a new country. I write about what concerns formerly trafficked persons as they undertake the everyday tasks and chores of resettlement: finding a home, finding work, finding friends. I call attention to how these individuals are highly resourceful, not "passive victims." After all, these are individuals who had the courage and savvy to put migration-for-work plans into place.

One of the main questions in my research is how formerly trafficked persons' settlement in the United States looks similar to or different from that of refugees or other migrants. With no identifiable community to relate to, these individuals often experience social isolation. This isolation can be amplified by their decision to avoid living or working with co-ethnics (in places where their trafficker or his or her associates may live). Consequently, they forgo

the material and social support, knowledge and assistance of established migrant communities—things that have been long-heralded by migration scholars as providing a leg up for new migrants and refugees.

It is important to understand the political-economic backdrop in which forced labor unfolds and in which T-visa recipients enter the labor market after forced labor. Forced labor is just one part of a larger story of rampant migrant labor exploitation. Trafficking and its after-effects should be situated along a continuum of exploitative practices that low-wage migrants (documented and undocumented) experience. Low pay, no pay, unsafe work conditions and job insecurity are all part of the business in sites where migrants labor—particularly in the informal economy and in jobs created through subcontracting. Most undocumented workers are, at some point, cheated out of their wages in what legal scholar Jennifer Gordon refers to as "everyday sweatshops." They do not report these abuses for fear of being fired or deported.

In this environment of abuse and silence, it is difficult to locate those who are in forced labor in the United States. To date, fewer than 3,000 individuals have received T-visas since the legislation was enacted in 2000. This number is in sharp contrast to fluctuating estimates of the scope of trafficking under the Bush administration (which had initially asserted that 50,000 persons were trafficked into the United States every year, while their last figures stood between 14,500 and 17,500). The low numbers of persons found thus far in forced labor nationwide has been, in part, a consequence of focusing on only one labor sector—the sex industry. The Bush administration's priority was ending both forced—and voluntary—prostitution. As a result, attorneys for individuals who were in forced labor in other industries were frustrated that investigations and prosecutions had been sought more aggressively in cases classified as "sex trafficking." As we move forward under a new administration, there is not an easy path ahead for law enforcement or labor inspectors as they investigate labor conditions in work sites where fear reigns—both fear of one's employers/traffickers and also of law enforcement and the possibility of deportation. Threatened, intimidated, and frequently isolated, individuals in forced labor are difficult to reach; it is little surprise that workers stay quiet in settings where unsafe working conditions, wage violations, or abuse thrive.

More than ever before, there are disincentives to come forward. Raids by the U.S. Immigration and Customs Enforcement (ICE) in workplaces where undocumented migrants are assumed to work, in combination with Immigration and Nationality Act Section 287(g) agreements (which empower local police officers to check the immigration status of individuals stopped for other violations), have deepened distrust between migrant communities and law enforcement. As the raids and arrests continue, labor abuses are less likely to get reported. And, as localities enact policies that target undocumented migrants, more and more foreign nationals working in or vulnerable to situations of forced labor are likely to mistrust law enforcement, both local and federal. Forced underground, they will be harder to find and to assist.

Despite these challenges, migrants' rights organizations are well-situated both to find individuals in forced labor and facilitate migrant activists in taking leadership roles as they fight for better working conditions where migrants labor. Small forums can have a big impact. Particularly impressive, for example, are workshops offered by social service agencies and community-based organizations through which formerly trafficked persons meet one another for the first time. Ostensibly designed to offer specific skills (such as money management, resumé writing, or computer classes), these workshops have an ancillary result: formerly trafficked persons who have never had a chance to encounter other formerly

"In this environment of abuse and silence, it is difficult to locate those who are in forced labor in the United States."

trafficked persons learn that they are not alone in experiencing abuse. These meetings also lay the groundwork for more leaders to emerge—much like those at the Coalition of Immokalee Workers in Florida—to work on issues related to forced labor in particular, as well as on migrants' rights more broadly.

This everyday rights work through outreach in migrant communities is a critical first step to preventing forced labor. Increasing workers' knowledge about their rights and creating safe channels to report "everyday" abuses (with some kind of "whistle-blower protections") need to be part of "anti-trafficking" strategies. Labor protections for low-wage workers and undocumented migrant workers can help prevent forced labor and assist in the resettlement of "trafficked" individuals by ensuring against re-exploitation. The fight against forced labor in the United States is a fight for migrants' rights.

Notes from the field

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I have been on the front lines as a practitioner, specializing in trauma during most of my career, and for the last thirteen years my work has focused on cases of human trafficking. I have worked with those traumatized by fear, by abuse, by violence and by torture. In forty years of doing work with marginalized populations, I have never before seen the massive divisions, splits and rifts between and among both government and non-government entities as those I currently see in this work. The Trafficking Victims Protection Act (TVPA), passed in 2000 by President Bill Clinton and reauthorized in 2003, 2005 and 2008, was a major milestone and had bipartisan endorsement. The basic tenets of the TVPA—protection, prosecution and prevention—were created so that human rights abuses could be recognized and dealt with. Victims of human trafficking and modern-day slavery have suffered a litany of abuses, and this law promises a victim-centered approach that will help survivors regain stability and punish those responsible for the crime. I have spent the years since passage of the TVPA developing best practices for assisting survivors and developing programs that support them. Much of my work now is through the Freedom Network and its Training Institute, which provides a comprehensive view of human trafficking and tools for an effective response.

In 1997 I was called in to work on what came to be known as "the deaf Mexican peddling case" in New York. The case took place before the TVPA, and we worked on it because it was the right thing to do. Most of us did this work in addition to our regular jobs. I was the Executive Director of a mental health agency at the time, and there were no special programs, no request for proposals (RFPs) to compete for, no philosophical divides of which we were aware. We were simply all united behind the need to right a wrong and to use the skills we already had. There had been exploitation, greed and great psychological and physical harm done to a group of people who came here because they believed they could have a better life and legitimate work.

Some of us are lucky enough to have mentors who help us along in our professional pursuits. One of my mentors is a gifted artist from Mexico who was enslaved for ten years in this peddling ring. She was beaten, raped and humiliated time and time again. She taught me about slavery, but most of all, about resilience.

After passage of the TVPA, more cases were uncovered, services were developed, and

our country very slowly started learning about this crime, this travesty. There were attempts to replicate those heady days of working on the early cases, because it was the right thing to do. I think, however, that something very fundamental began to shift. We talk about the models of collaboration and cooperation, but is this a reality? There are now many task forces around the country, some functioning very well with true cooperation, others not. There are major turf issues: locals versus federals, stand-offs between federal agencies about who will be top dog on a case, and basic philosophical differences among the NGOs that have split people into camps and greatly hindered our work. There are barriers to justice that easily eradicate the notion of a victim-centered approach. Many survivors of trafficking are simply unable to cooperate early on and because of that, they are denied a restoration of their basic human rights.

It has taken years to build an infrastructure in the field of human trafficking. Working on these cases is difficult and challenging and requires creativity, flexibility, intelligence and compassion. This fragile infrastructure has been damaged or, in some cases, completely dismantled because of divisions, rifts and lack of strategic planning. Financial support is awarded and then stopped (often due to the politicization of the issue), seemingly with no consideration to what happens to the victims and ultimately, to the case. The timelines for service provision put forth by government-funded programs do not match the reality of a survivor's life.

These services are expensive and extensive. Expertise has built slowly, but knowledgable, skilled service providers do exist—people who are familiar with the particular issues of modern-day slavery and the needs of victims of this crime. Some of these providers are experts in working with people trafficked here from other countries. Others have expertise in working with U.S. citizen victims of trafficking, especially young people who have been sexually exploited. The U.S. citizen-victim is getting a lot of attention now and rightly so. Who among us is not disturbed and outraged when we think of young girls and boys forced to work the streets selling themselves for the benefit and greed of someone who controls them?

I have been accused of not caring about these young people, and this is a charge I do not take lightly. I helped start the largest anti-trafficking program in the country. Until recently, the funding sources for that program mandated that it serve only foreign-born individuals. This was somehow translated and spun into attacks against the program and against me stating that we did not care about U.S. citizens. The program has assisted over three hundred victims of human trafficking. I have worked on many more cases than that, outside the New York area as a consultant or expert witness. I have interviewed hundreds of victims, from cattle herders, ship welders, bargirls, prostituted women and domestic workers, among others. It happens that a greater percentage of the cases with which I am familiar are forced labor cases. This fact has also been misinterpreted and distorted. Somehow, my expertise in labor cases has turned into being labeled pro-prostitution and pro-violence against women. I challenge anyone to tell me that one kind of trafficking is more egregious than another. Freedom and rights are at stake because rape, violence, threats and abuse occur in the migrant camp as well as in the local brothel. Who are we to judge the impact on the victims?

This work is not about us, or what factions are accomplishing which tasks. It is not about pitting citizens against immigrants. It is not about numbers or dollars. The TVPA law was created to right the fundamental wrong of taking away someone's human rights.

I have seen many of my colleagues leave the

"This work is not about us, or what factions are accomplishing which tasks."

"We need a better strategy that involves all the players, not just the ideologues."

field. I think about this fact on days when I feel like a hamster on a wheel. My work for the last five years, especially in the Freedom Network, has focused on cooperation and collaboration across disciplines. Our more recent focus is to have stronger partnerships with worker and immigrant rights groups. We need a better strategy that involves all the players, not just the ideologues. This strategy would look at what exists, what works and what does not, and then examine gaps. Instead of decimating programs because they are out of political favor, one must first consider their effectiveness. The field has developed in a hit-or-miss fashion, and it is time to correct that.

For years, most Americans drew a blank at the mention of human trafficking and modern-day slavery. At this point, people are aware of it, which is a good thing. Even though I cringe at the sensationalism of most of the films and news articles, I am happy that the word is out. What I would love to see is a human rights-based plan for the country, coordinated among funders, researchers, scholars, policy makers, practitioners and survivors. It is all too easy to blame one another for the fact that too few victims are being identified. We need to build on what is solid and what has enabled many people to attain freedom and success. We should not be starting over again and again. We need to expand our approach and move forward.

We have a wealth of expertise in this country that is being overlooked and sacrificed because of endless debates about citizen versus non-citizen, prostitution, labor violations, competitive funding opportunities, and training endeavors. In my work, I borrow from the trauma field, social work best practices, non-traditional cross-cultural mental health practices, law, faith-based entities, civil rights, mediation, domestic violence, the torture treatment field, and from my own previous work in child abuse. We desperately need to create best practices in our response to human trafficking and modern-day slavery. And once created, we need to share them. We need to look at the root causes of modern-day slavery and stop developing better Band-Aids. The survivors I work with inform what I do, and I will keep doing it until I cannot do it anymore.

II

The International Ramifications of the TIP Report

Migrant Workers, Cross-Border Marriages, and Trafficking

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The concept of "trafficking" requires rethinking. On the one hand, it is as broad and inclusive as a tidal wave that threatens to capture all forms of mobility in its wake. Such inclusivity feeds popular anxieties, promotes anti-immigration agendas in the name of protection, and becomes so all-encompassing as to render the term almost meaningless. On the other hand, it is as narrow and exclusive as a glass slipper; few can fit into the impossibly restrictive qualifications of a "trafficked person." A prime example is the remarkably low number of specially designated T-visas awarded versus the huge estimates of numbers of trafficked persons in the United States. There are also inconsistencies among those identified as trafficked versus those who are not.

Here I present anthropological research I conducted among migrant domestic workers in Hong Kong[1] and among foreign women and U.S. men involved in cross-border relationships,[2] in relation to the notion of "trafficking." My work was not originally conceived of as research on "trafficking," but it is commonly interpreted to be about trafficking since it focuses on women migrants, a category of persons widely assumed to be vulnerable. My research thus helps illustrate how "trafficking" claims too much and in so doing threatens to encompass and blur multiple, very different, forms of mobility, and is thus rendered meaningless. My research also demonstrates the problem with the narrowness of "trafficking" in relation to social categories of persons (i.e. women from poor countries) who are assumed to be potential victims, which draws attention away from *actual* trafficking victims (including men, workers outside the sex industry, and women who are not deemed innocent enough). This promotes restrictions in opportunities for mobility in the name of protecting potential victims from their migratory decisions.

Labor Migrants: Maid to Order in Hong Kong

In the 1990s, Filipinas were the largest group of foreign domestic workers (FDWs) in Hong Kong. As temporary labor migrants on two-year contracts, they worked in private homes, tied to one employer. A popular assumption is that FDWs work solely out of economic need and desperation; why else would they take 3D (dirty, dangerous, difficult) jobs far from home? Paired with this economic push model is the assumption that the "sending country" (Philippines, Indonesia, Thailand, India, etc.) is a "basket case," so women have little option but to work abroad. In reality, although economic factors are primary, motivations are often more complex. Women work in Hong Kong for many reasons besides economic need, including escaping marital problems or familial conflicts, or a desire for travel and adventure. Filipina DWs are well educated and do not come from the poorest sector of the Philippine population. If they were, they would not be able to afford the required fees associated with working overseas. Many were under-employed or dissatisfied with opportunities in the Philippines, and their incomes may be higher as DWs in Hong Kong. Many described their decisions as the most desirable "choice" among the available options. "If I want my children to go to good schools, this is what I have to do…." Unmarried women spoke of their

willingness to work abroad to help their families and their decisions to make "sacrifices" for the benefit of parents or siblings. Some were pleased at how far their earnings went if their employers provided them—as stipulated in the contract—with the legal wage (around $400US per month plus room and board). For others, overcharged by recruitment agencies, underpaid by employers, exploited by monetary lending schemes, provided with inadequate food, or laid off prematurely, the financial payoff was disappointing or devastating. Yet despite the well-known risks, women continued to return for multiple two-year contracts and to speak of Hong Kong as one of the best destinations in Asia.

The main focus of my research was on forms of discipline and control that FDWs experience—in the course of seeking an overseas job within the host setting and in relation to Hong Kong rules and regulations, and within employers' homes—and how they respond to and resist these forms of discipline. A majority of domestic workers receive the legally stipulated pay and benefits and do not encounter severe difficulties, but most nonetheless experience homesickness, loneliness, exhaustion, and various day-to-day challenges. A less fortunate number of Filipinas, as 1990s studies document, suffered an array of abuses including underpayment, no rest days, illegal work (outside the home), overcharging by agencies, document and passport confiscation by agencies or employers, physical abuse, rape, or imprisonment in a flat.

In the 1990s, the problems experienced by FDWs were framed by migrant worker organizations and NGOs as labor issues, as exploitation of vulnerable workers whose difficulties are compounded by the fact that they are temporary migrants, sponsored workers who are isolated in private homes. Their problems were also compounded by the fact that asserting their legal rights against an agency or employer left them without work or income, and often at the mercy of charity if they pursued their cases through the time-consuming courts and bureaucratic channels. Few could afford to do so. By the time I conducted follow-up research after 2000, Filipinas were suffering fewer abuses, but Indonesians, who by then constituted almost half of the 250,000 FDWs in Hong Kong, experienced many difficulties. Indonesian DWs are younger, less educated and experienced, have fewer support networks, and are more vulnerable to abuse including severe "overcharging" by recruiters. What had previously been understood as problems of labor and migration were by then increasingly spoken of as human rights issues linked to global inequalities, as problems of "modern day slavery" or a form of "human trafficking." Common protest placards read, "We Are Workers, We Are Not Slaves" or "Workers' Rights are Human Rights." Such rhetoric helped to garner international attention and has drawn much-needed attention to problems faced by migrant domestic workers that have not been satisfactorily addressed through Hong Kong's labor and immigration laws and policies.

Correspondence Courtship, Cross-Border Marriage

In the late 1990s and early 2000s, I conducted research among U.S. men, Filipinas, and Chinese women who sought marriage partners through correspondence. The project grew from questions I had about Filipinas and their "pen pals," who were prospective marriage partners, versus the U.S. scholarly, activist, and popular depiction of so-called "mail-order brides" (MOBs), who are said to be "bought and sold," desperate to marry to escape poverty. My research included analysis of online introduction agencies, also known as International Marriage Brokers (IMBs); meeting women through these websites and conducting face-to-face interviews with them in China and the Philippines; and online and offline research and interviews among men. It became clear that these women and men objected to the idea that they were engaging in "mail order marriages" and

"What had previously been understood as problems of labor and migration were increasingly spoken of as human rights issues linked to global inequalities..."

"…the assumptions derived from popular media… are not broadly representative of cross-border marriages."

"buying" or "selling" brides. While agencies could be criticized for the merchandizing of women's images, the women involved did not consider themselves commodities.

One finding of this project was that the assumptions derived from popular media, scholarly writing on MOB catalogues, as well as feminist critiques of correspondence marriages, focus almost exclusively on a few well-known, sensationalist and tragic cases of marriages that resulted in fatal violence but are not broadly representative of cross-border marriages. As in the case of domestic workers, the common assumption is that women from poor countries are impoverished, ignorant, have little choice but to agree to such arrangements, and are thus vulnerable to trafficking. At worst, such marriages are assumed to be a cover for recruiting women into sex work or slave-like conditions, thus resulting in new U.S. legislation such as the International Marriage Broker Regulation Act (IMBRA), which passed in 2006. John R. Miller, Director of the U.S. Government Task Force to Combat Trafficking, praised this legislation as an essential contribution to the war on trafficking despite the admitted lack of evidence that U.S.-based introduction agencies were, in fact, associated with trafficking.

Several years of ethnographic research revealed that, in contrast to the common assertion that U.S. men and foreign women marry almost sight unseen, most couples went to great lengths to get to know each other before taking vows. Most spent months corresponding, sometimes multiple times a day, before deciding even to meet, and most met several times or for an extended period before deciding to marry. Many of the Chinese women I knew over several years turned down opportunities to meet men they considered unsuitable, turned down multiple marriage proposals, and some gave up on the prospect altogether. The women I met (granted, a small sample) had all chosen to submit their profiles, or a friend had done it for them. They met a range of men and made what appeared to be careful decisions based on the options as they understood them. They were not desperate to marry any foreigner who came along.

Trafficking?

Migrant domestic workers and Asian brides/fiancées are often described as trafficked, as sex slaves, as mail order brides who are "bought and sold" or as contemporary slaves. A central problem is that on the one hand the notion of "trafficked victims" (and related ideas about mail order brides, contemporary slaves, and bonded laborers) and the notions of force, fraud, coercion, and deception threaten to render choice or voluntary acts moot or non-existent, and can thus be used to portray almost any form of mobility as undesirable for fear of the potential for trafficking and protecting potential victims from their own decisions. On the other hand, any indication of choice or agency serves to cancel out the possibility that someone was subject to force, fraud, or coercion.

Neither of my research projects was originally conceived of as a study of trafficking but rather as a study of gendered migration of women who legally move between borders of nation-states. Brides/fiancées and contract workers are subject to and protected by laws and regulations, and each form of mobility involves individual decisions that are influenced by multiple structures of inequality (e.g., class, gender, ethnic/national). My work, like that of others, shows how the dichotomies of victim and agent, as well as the related binaries of coercion and choice, are rarely cut and dried and are at play in most forms of migration. Such dichotomies, entangled with attempts to determine agency and intent in relation to trafficking, interfere with recognizing and granting rights.

Greater international attention needs to be paid to illegal and exploitative labor practices such as overcharging by recruitment agencies in Indonesia and the Philippines, and disreputable DW "training camps" run by Indonesian recruitment agencies that train women while restricting their movements, charging exorbitant fees, exploiting their labor, and pressuring them to

accept exploitative or illegal work. Both Philippine and Indonesian governments prohibit "direct hires." In other words they require domestic workers to use recruitment agencies to "protect them from trafficking." As NGOs have argued, this form of "protection" subjects workers to severe exploitation by recruiters. Not all agencies are ill-intentioned, but attention to those that are can help prevent such abuses. For domestic workers, the language of trafficking, with its discursive and moralistic weight, has provided leverage for activists and NGOs to pressure governments to deal with issues of corruption and inaction. But securing the rights of migrant workers is the fundamental concern.

In the case of cross-border marriages, the perceived "risk" of trafficking has produced legislation aimed at regulating International Marriage Brokers in the name of protecting prospective foreign brides. But the majority of foreign women meet men though other means and many introduction agencies (including those with a majority domestic clientele) are excluded from the regulations. The IMBRA was intended to protect victims of domestic abuse (despite already existing legislation), but it in fact serves to regulate U.S.-based IMBs, which are singled out because they are assumed to be linked to the *potential* for trafficking. This legislation received remarkable bipartisan support, but international introductions and marriages are not usually the problem. This example illustrates how the notion of trafficking—in U.S. government, popular and international organization discourse and policy—can serve as a tool to reduce mobility, rather than as a way to assist people in securing their rights as immigrant spouses.

In sum, my research among migrant workers and prospective immigrant spouses underscores the vital importance of policies that recognize and promote rights, specifically workers' rights, migrants' rights, and human rights. Regulations aimed at trafficking and its "3Ps" (Prevention, Protection, Prosecution) often lead to or help justify greater obstacles to mobility and may do little to address situational contexts and the particular interests, concerns, and difficulties faced by mobile people.

"Regulations aimed at trafficking and its "3Ps" (Prevention, Protection, Prosecution) often lead to or help justify greater obstacles to mobility."

Endnotes

[1]*Maid to Order in Hong Kong* (Ithaca, NY: Cornell University Press, 1997; 2007).

[2]*Romance on a Global Stage* (Berkeley: University of California Press, 2003); *Cross-Border Marriages* (Philadelphia: University of Pennsylvania Press, 2005).

Rethinking "Human Trafficking": Reflections from South Korea

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Is trafficking about coerced labor or prostitution? Is trafficking a criminal justice or a human rights issue? Even though the UN Protocol, adopted in 2000, defines human trafficking as the exploitation of coerced labor and various governments have passed their own anti-trafficking legislation, there is still a great deal of confusion about these issues. Ten years after the protocol was first introduced, the pertinent questions remain unanswered: What is trafficking? What should be done about it? Who qualifies as victims, and what should be done for these people? The United States has taken a strong lead in globalizing anti-trafficking initiatives and exerting pressure on other countries to follow U.S. procedures, such as criminalizing prostitution, since it is considered one of the main causes of sex trafficking. My research in South Korea over the last twelve years explores how global anti-trafficking discourses are used by local agents in different contexts and what these anti-trafficking efforts mean to those who are represented as victims of the practice.

In 1998 I began ethnographic research with Filipina entertainers in U.S. military camp towns in South Korea. As the South Korean economy grew from that of a war-torn country in the 1950s to one of the largest in the world in the 1990s, cheap labor was introduced to fill occupations that had been abandoned by Korean workers. Entertainers from the Philippines and ex-Soviet states entered South Korea, following the footsteps of migrants from other countries who found jobs in small- and medium-sized factories. Over the next two years, Korean and international non-governmental organizations (NGOs) came to identify these women entertainers as "victims of international trafficking." I collaborated with local NGOs to produce some of the first reports that defined them as victims of trafficking. For example, employers withheld employees' passports and salaries until the end of their one-year contracts. Some imposed arbitrary penalties and demands on work performance (with drink quotas), while others committed verbal and physical violence. These abuses were similar to those being experienced by the much larger population of migrant workers in factories in South Korea.[1] Central to these women's identification as victims of trafficking, however, was the performance of sexual labor by some of these women—sometimes but not always under coercive circumstances.

Silences in Official Texts

In spite of my involvement in producing the reports, scenes and conversations from my everyday interaction with the Filipinas rarely made their way into official texts. They failed to reflect the insights I had gained into the Filipinas' intimate relationships with their G.I. customers and their employers, their fear of the police, their ambition to make money for a better future for their families and themselves, their dreams of finding love and marrying a G.I. The reports were silent on the fact that some of the Filipinas chose to leave their jobs while others opted to stay on in spite of the exploitative conditions, given the hard-earned opportunity to work overseas. Lacking the personal, mundane and intimate details that constituted the women's subjective experiences, the dominant "trafficking" discourse represented them as powerless victims—even "sex slaves," as in the case of a Fox News report in 2003. This particular TV report caught the

attention of Congressman Christopher Smith (R-N.J.), who then mobilized other members of Congress to demand an investigation by the Pentagon into the role of the U.S. military in the sex trafficking of women.

The discrepancy between my ethnographic research findings and the ways these women were represented in activist and policy arenas gave me pause. Were these women migrants, trafficked victims, or sex slaves? Additionally, in what ways were their experiences unique compared to those of other migrant workers in South Korea? As alarms about the trafficking of Filipinas into forced prostitution caught international attention, both the Philippine and South Korean governments tightened control on travel and visas for "entertainers," and it became more difficult for Filipinas to leave home for these jobs. In the following years, some of the women who had returned to the Philippines and wanted to work again in South Korea had to resort to more dangerous paths and less familiar destinations, placing themselves in more precarious situations.

The year 2000 marked a turning point on both international and local fronts with the surge of anti-trafficking efforts, passage of both the United Nations Trafficking Protocol and the Trafficking Victims Protection Act (TVPA) in the United States. In particular, the U.S. government identified prostitution as a prevalent form of human trafficking and promoted this view through its annual Trafficking in Persons Report.

South Korea's response to this global discourse was made particularly fervent because of a series of local events. In September 2000, five women were killed in a brothel fire in the city of Kunsan. A similar fire killed fourteen more women (and one man) in January 2002. Identifying these singular tragedies as evidence of the general harms of prostitution, the Korean Women's Associations United (KWAU), the largest umbrella organization of women's groups, mobilized public support for reforms to eliminate prostitution—which was equated with sex trafficking. The first U.S. State Department Trafficking in Persons (TIP) report, published in July 2001, gave South Korea the lowest possible ranking, Tier 3 (along with countries such as Burma, Sudan, and Albania), for failing to meet minimum standards in combating trafficking. The International Organization for Migration called this a "Tier 3 embarrassment" to the South Korean government.[2] It was embarrassing mainly because it openly challenged the government, which, under President Kim Dae-jung, prioritized human rights and gender equality.

Focus on Prostitution

These incidents on both domestic and international fronts instigated vigorous efforts from both the South Korean government and the women's movement to take up the issue of trafficking as solely a problem of prostitution. The Act on the Punishment of Procuring Prostitution and Associated Acts (Punishment Act) and the Act on the Prevention of Prostitution and Protection of Victims Thereof (Protection Act) were passed by the South Korean National Assembly in March 2004 to replace the old Prevention of Prostitution Act, first passed in 1961. These laws led South Korea to be recognized by the U.S. government in their 2005 TIP report as an example of "Best International Practices" to combat trafficking—even though the governmental responses were targeted only at prostitution.

Despite this limitation in its definition of trafficking, South Korea's laws seemed to have groundbreaking effects when it came to prostitution. First, they recognized for the first time that women could be "victims of prostitution," marking a radical departure from the previous approach of criminalizing all women in prostitution. Second, they provided victims of prostitution with access to livelihood support, welfare services, and vocational training. And finally, they empowered both NGOs and the women to challenge cases of abuse through legal channels.

"Were these women migrants, trafficked victims, or sex slaves?"

"Neither migrant wives nor migrant workers find the language of 'trafficking' helpful in addressing their concerns."

But because the new laws offered protection only for "authentic" victims, they made life much harder for many prostitutes. They continued to criminalize women who did not qualify as victims, such as those working in brothels without debts or independently outside of brothels, or those who managed other sex workers and sold sex at the same time. By imposing heavier penalties, implementation of the new laws meant that sex workers now had to pay much higher fines than before.

The new laws were launched with high-profile crackdowns and arrests of clients, brothel owners, and sex workers in red-light districts, hostess clubs, karaoke bars, barbershops, and massage parlors. Since 2004, seasonal and annual police raids have taken place as a demonstration of the government's will to enforce the new laws. These raids are now reported in the media and by the National Police Agency as raids on "venues that violate women's human rights" without mentioning the fact that women found in these venues are often charged with the crime of prostitution. A separate report by the National Police Agency, however, stated that by the end of 2009, there were 1,779 middle or high school girls in Seoul officially recorded as having fled from their homes. Of these, 175, or 9.8 percent, were apprehended for prostitution charges.[3]

Meanwhile, even though the laws were introduced to tackle the problem of trafficking into prostitution (Article 18.3.3), a 2008 report by the Korean Women's Development Institute found that *not a single case* of prosecution took place under this provision. The majority of the cases (91.7 percent) were prosecuted for procuring prostitution, with only 1.9 percent prosecuted for coercion into prostitution.[4]

Women Migrants under the Law

How do the laws address the needs of foreign women forced into prostitution? In the Punishment Act, Article 13, "Special Provisions for Foreign Women," stipulates that those who file reports or are being investigated as victims of trafficking into forced prostitution would be temporarily exempted from deportation in order to file suits and claim damages. In effect, foreign women are turned into instruments of law enforcement without due protection of their means of livelihood. Even though the 2009 TIP report suggested that victims with G-1 visas are allowed employment, documents of the Immigration Department as well as local service providers indicate otherwise. The number of foreign women who sought help in shelters never exceeded three every year between 2004 and 2008.[5]

Since anti-trafficking laws in South Korea are "narrowly" focused on prostitution to the virtual exclusion of migrant workers, one may ask whether migrants in South Korea fight for their inclusion in this global discourse. Evidence on the ground shows they do not. Neither migrant wives nor migrant workers find the language of "trafficking" helpful in addressing their concerns. In 2006, 11.9 percent of all marriages (a total of 39,690) were international– with 30,208 occurring between foreign women and Korean men. Initially, NGOs were eager to use the term "human trafficking in international marriage" to describe the hardships and domestic violence that some of these women experienced. However, this was dropped due to opposition from activists from within the international marriage community. They strongly protested against the use of "trafficking" as a blanket description of the women because it erased their agency, and instead demanded the protection of their rights as migrants and as individuals.

Of the one million foreigners living in South Korea in 2008, 56 percent were migrant unskilled workers, while 220,000 were undocumented.[6] Migrant workers have been organizing to fight against "slave-like" working conditions and the lack of remedies for employers' violations of their rights.[7] They want to repeal the Employment

Permit System that ties their immigration status to their employers, making them particularly vulnerable to employers' abuses. Migrant workers' principal concern is fighting for rights, and they are well aware that using the trafficking discourse does not help get them achieve this goal.

The exclusive focus of South Korean anti-trafficking laws on prostitution fails to protect the rights of women in prostitution and renders irrelevant the human rights abuses of migrant workers. At the same time, migrant wives and migrant workers who experience multiple vulnerabilities and abuses resist anti-trafficking initiatives, with their emphasis on victimhood and criminalization rather than the advancement of rights. These observations compel activists and policymakers to reconsider two major questions: first, whether instituting anti-trafficking policies, with their emphasis on criminalization and prosecution, is the best strategy to prevent abuse of vulnerable populations; and second, what we can learn from migrant wives and female workers in South Korea who resist the customary anti-trafficking discourse and instead favor institutional reforms that protect their rights?

Endnotes

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Filipino Labor Migrants and Human Trafficking

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I am a gender, labor and migration scholar who studies the emigration of women from the Philippines. I examine women's migration for the purpose of identifying how gender inequalities shape the experiences of women, how these inequalities are reconstituted in processes of migration, and lastly how they are also challenged in these very same processes. As a scholar of labor migration, I found myself having to engage the issue of human trafficking when the group of labor migrants that I had decided to study—migrant Filipina entertainers in Tokyo's hostess clubs—were identified as trafficked persons, specifically sex trafficked persons, by the U.S. Department of State in the annual TIP (Trafficking in Persons) report in 2004. Prior to this project, I had done research on migrant domestic workers in Rome and Los Angeles and on the families of migrant workers in the Philippines. I had dealt with issues of human rights violations, specifically abuse in the workplace as well as forcible family separations, but not as much the question of trafficking.

The identification of Filipina entertainers in Japan as trafficked persons conjures up images of people who are entrapped, held against their will, and forced to have sex with clients. These images for the most part are not true. The basis for my assertion is the data I gathered from nine months of field research in Tokyo, which included interviews with 56 entertainers—a handful of whom I acknowledge were trafficked, three months of working as a hostess in a club owned by the yakuza (organized crime groups in Japan), and supplementary interviews with various middleman brokers, club owners, and government representatives.

Worker or Victim?

Despite the inaccuracy of such a claim, the identification of Filipina entertainers in Japan as trafficked persons beginning in 2004 has severely affected their lives, preventing most of them from reentering Japan. As a result, the number of entertainers entering Japan from the Philippines has declined by 90 percent, from around 80,000 in 2005 to 8,000 by 2008.[1]

From my scholarly perspective, I see the identification of migrant Filipina entertainers as trafficked persons to be a discursive construct shaped by gender inequalities. Use of the label "trafficked"—driven by an impulse to protect women—is indicative of the state's attempt to exert moral control over women's migration. Yet it is not just the United States that wishes to exert this kind of control. We see this cultural collusion among certain states over the desire to protect women whenever they step outside the confines of the home. As Nana Oishi has astutely noted, both sending and receiving countries impose what she calls "value laden policies," or what I would call morally-driven laws, that seek to "protect" migrant women by restricting their movements with age requirements, job restrictions, job criteria, and so on.[2]

Indeed what I found in my study is that various protectionist laws—morally-driven laws—in the Philippines and Japan constrain the movement of migrant entertainers. These laws ensure that the labor conditions for hostesses meet labor standards in the Philippines, require that employers in Japan hire at least 50 hostesses per year, and mandate two years of training or experience in the performance arts. Intended to upgrade the status of women categorized as entertainers, such laws in fact leave entertainers open to trafficking because they bar prospective migrants from traveling independently and make

them vulnerable to middleman brokers who subject them to relations of debt bondage. Labeling entertainers as *trafficked persons* only adds to their vulnerability because of the stigma attached to that designation.

As my data shows, Filipina entertainers in Japan are primarily labor migrants who travel to Japan for the purpose of working in a hostess club. While labor migration laws restrict their employment to singing and dancing on a stage, most know they will be asked to do more than this. They are aware that they will have to do the illegal work of entertaining customers at the table, a job that entails flirting up-close. Interestingly, nongovernmental organizations (NGOs) cite this activity—flirting via talking to customers inside and outside the club—as proof of their trafficking. Flirting is indeed illegal, but it is questionable whether it is always a sign of trafficking.

While I question the universal identification of Filipina entertainers in Japan as trafficked persons, I do not deny that trafficking occurs. However, the trafficking of entertainers is not a universal occurrence but is instead situational. One must ask in each instance whether migrant Filipina entertainers should be categorized as trafficked persons or more properly as labor migrants who face severe structural constraints.

The Case of "Baby"

What is the difference between these categories? To address this question, I will describe the scenario of a case that shows the difficulty of making such distinctions. One interviewee in my study, who is aptly called "Baby" by her co-workers, came to Japan when she was seventeen years old. No one pressured her to go to Japan. No one coerced her or told her that her family would be victimized if she did not. Instead, Baby told me that she went to Japan of her own free will and volition. Baby grew up in the Philippines amongst the poorest of the poor. Her father supported her family with his small income from driving a passenger *jeepney*. Baby had two older sisters who both got pregnant and married before finishing high school. Baby told me that she wanted to show her parents, especially her father, that at least one of his children could provide for him.

So Baby went to a recruitment agency and was selected for hostess work abroad, but because she was underage, she had to get a fake passport. To make this long story short, her agency charged her an exorbitant amount of money (50,000 pesos, or $1000) to provide false documentation. The agency she used–unlike other agencies–charges interest for loans that prospective migrants might take, again, at an exorbitant rate: 100 percent. So Baby's debt is now $2000. This amount is significant considering Baby expects to earn no more than $3000 for her six-month contract stint in Japan.

When I met Baby she was a first-time contract worker, earning $500 a month for six months. That is the going rate for first-time contract workers despite the fact that Japanese law stipulates a minimum monthly wage of 200,000 yen or approximately US $2000. Their low wage is partially due to the fact that as "talents," the agencies that represent them are legally entitled to 40 percent of their salary—the going rate for recording artists and other such public figures in the Philippines.

By law, Baby cannot negotiate directly with a prospective employer in Japan because she has to go through a broker in the Philippines who makes sure that the terms of her employment meet Philippine labor standards. This broker usually takes advantage of the authority that the law grants them, a power that is derived from the government's moral impulse to protect women. Most, if not all, recruitment agencies require that the entertainers that they place in Japan sign a contract obligating them to seek no fewer than

"Labeling entertainers as trafficked persons *only adds to their vulnerability because of the stigma attached to that designation."*

five labor contracts in Japan over the next six years. Agency employees told me that this is the only way they can profit from the time they invest in training entertainers by teaching them how to apply make-up, sing, dance, etc. During these six years, someone like Baby cannot get pregnant, marry, or take a different job in Japan. Otherwise she will be subject to a $3000 fine from the agency. Usually those who marry one of their customers can easily afford to pay this fine. There is also a cultural logic to this. They see the $3000 not as a fine but as a "balato"—the money given away by a winning gambler as goodwill.

"The issue of trafficking arises when people cannot quit their jobs."

I use the example of Baby to address the question of trafficking because, under the terms of global policies, someone below eighteen years old, regardless of consent, is considered to be trafficked. But it is Baby who herself sought work in Japan, seeing this as the best possible option for social mobility, given her family background (she thinks domestic work is more dangerous). Yet, she is in a relationship of indenture with her recruitment/placement agency. In spite of all of its challenges, Baby loves her job. She loves flirting with customers. She loves dressing up every night. Interviewed while she was at home in the Philippines, she told me that she is looking forward to returning to Japan. Of course her position of indenture would become a problem if she wishes to quit, but the fact is, she does not want to quit. So is Baby trafficked? Or is she a labor migrant with severe structural constraints?

This position of being in debt and trapped in a position of debt bondage is relevant not only to hostesses but also to migrant domestic workers. The research of sociologist Pei-Chia Lan in Taiwan, for instance, indicates that domestic workers from the Philippines always construct their migration as a three-year plan: the first year of work pays for their debt, the second for their projects, such as building a home, and the third goes to savings they will likely use to pay for their next labor migration stint (for example Canada). In the case of Taiwan, most migrant domestic workers would tolerate inhumane working conditions during their first year due to the debt that binds them to their employers. Clearly, they are indentured.

The issue of trafficking arises when people cannot quit their jobs, whether they are domestic workers in Taiwan or hostesses in Japan. But what if they don't want to quit? Are those individuals trafficked as well? We can view workers such as migrant hostesses in Japan or migrant domestic workers in Taiwan as trafficked persons or as labor migrants who are vulnerable to trafficking because they face severe structural constraints. By labeling them as "trafficked persons," we unfortunately deprive them of their agency, and by criminalizing their form of employment, we effectively eliminate their source of income. This is what has happened for migrant Filipina entertainers in Japan, many of whom are now entering Japan illegally, by purchasing tourist visas or engaging in fake marriages. These situations actually expose them to even greater risk.

While large groups of migrant workers are vulnerable to trafficking, our solutions focus on preventing migration instead of reducing their risk. Our goal should be to insist on viewing those we currently label as trafficked persons more accurately as labor migrants who face severe structural constraints. Then the challenge is to construct laws that increase workers' control over their own labor and migration, a challenge that must be met with multiple solutions from the ground up.

Endnotes

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Contrasting Policy and Lived Experiences of "Trafficking" and Migration through the Lens of Dubai's Migrant Workers

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At the heart of my research lies a question: How do conversations and policies about "human trafficking" and migration, conceived of and brought to fruition in EuroAmerica (but mostly Washington, D.C.), contrast with and affect life on the ground in very different countries with different political and social topographies? Using ethnographic, on-the-ground research in the United Arab Emirates (UAE), perhaps the largest migrant-receiving country in the world today, allows us to begin to understand the contrast between policy and the reality of the lived experience of migration and "trafficking." What do these terms mean, and how is one labeled "migrant," "laborer" or "trafficked"?

In addition to the question of policy, there is also the question of discourse: how do global conversations about trafficking (including media and journalistic representations such as *Taken* or MTV's EXIT program) construct an image of the experience of migration in the minds of the public and policymakers alike? How do these global stereotypes and caricatures affect policy at the global and, by default, local level in places such as Dubai and Abu Dhabi? And, in turn, how do these policies, as well as the global conversations informing them, affect the lives of migrants and/or trafficked persons? Critical of melodramatic, sensationalized journalistic and media representations of the issues (such as those seen in the films such as *Call and Response* or *Human Traffic* or in the writings of Nicholas Kristof), I believe it is important to use ethnographic data to engage with the literature on trafficking and migration through the lens of race, class, gender and sexuality.

In this paper, I aim to interrogate our construction of labels and address ways in which the trafficking discourse has been constructed through the lens of U.S. foreign policy. In my larger work, I draw on ethnographic interviews to show the disconnect between policy and lived experience, while in this article, I seek to highlight the global implications of the trafficking discourse that has emanated from Euro America. Contrasting paradigms about trafficking, migration, forced labor and sex work with narratives of transnational migrants themselves helps produce a more well-rounded picture of the challenges migrants face, as well as define steps we can take to create policies and practices that better serve their needs. Broadly speaking, a larger framing of "trafficking" within conversations about migration and forced labor is needed

Between 2004 and 2009, I made several extended trips to the UAE to interview male and female migrants employed in various industries such as domestic work, construction, sex work and service work, who came from a variety of countries such as the Philippines, Iran, Ethiopia, India, Pakistan, Sri Lanka, Bangladesh, and Indonesia. I also spent several months interviewing government officials in the UAE about labor, migration and trafficking policies, in addition to returning to the United States to interview members of the State Department who work on international trafficking policy. Throughout my fieldwork, and also in my review of policy documents, I observed that policymakers or opinion leaders labeled certain groups of people in ways that were not only inaccurate and arbitrary at times, but also affected their experiences. Most

"It is useful to interrogate the terms we use to describe the experience of moving to work abroad."

significantly, it seemed as though many of these labels were gendered, raced, classed and sexualized.

Labels such as "migrant" and "trafficked victim" are often placed on various populations without interrogation. It is for these reasons that I argue for a larger conceptualization of trafficking within a broader framework of forced labor and migration, while recognizing the race, class and gender biases that may accompany such labels. It is useful to interrogate the terms we use to describe the experience of moving to work abroad. As we enter the twenty-first century, we find ourselves in an era where the movement of bodies, ideas, and discourses occurs rapidly. While the term "trafficked" is mistakenly used mostly to refer to women, usually in the sex industry, the term "migrant," especially in the Gulf, has a very masculine connotation, and one that is classed as well. In the UAE, "migrant" typically refers to unskilled, low-wage male workers.[1] Unskilled female workers in the formal economy are referred to as housemaids (*khaddamah*) or nannies, or more commonly as "the help." So too the concept of "laborer" is often gendered, used to refer primarily to low-wage male workers, while women are viewed as "helping" in the domestic sphere. The concept of "laboring" should be expanded to include women's work as well. In addition, ethnic undertones persist in the construction of these labels. In the UAE, the term "migrant" is never used for workers of Western backgrounds, who are exclusively referred to as "expatriates." The term "expat" implies highly skilled, Western guest workers in the Gulf and can be applied to people of both genders who come from a certain class and country of origin.

Global Implications of the Trafficking Discourse

The Trafficking Victims Protection Act (TVPA)—the United States' major piece of legislation regarding trafficking—calls for the creation of an Office to Monitor and Combat Trafficking in Persons in the Department of State. One of its primary responsibilities is the production of the annual international "Trafficking in Persons Report" (TIP). Essentially functioning as a global scorecard, the TIP report appears every spring and places foreign nations into one of three tiers based on the severity of human trafficking within its boundaries and the perceived adequacy of its domestic policies (though the United States itself has remained conspicuously absent from these rankings).[2]

Countries that have achieved Tier 1 status, such as the United Kingdom, Italy and Sweden, have been deemed to possess satisfactory counter-trafficking measures, including effective anti-trafficking laws and well-developed programs within civil society. Countries that have historically received this designation are primarily located in the developed world. Tier 2 countries, such as Thailand, Israel and Mexico, are countries that do not fully comply with U.S. international anti-trafficking criteria but are deemed as making significant efforts to do so. Between Tiers 2 and 3 lies a category entitled "Tier 2 Watch List" which consists of countries, such as Argentina, Russia and the Philippines, which are not making "significant enough" efforts to combat trafficking, but do not yet merit the heavily stigmatized designation of Tier 3.

Countries currently placed at the bottom (Tier 3)—those that do not comply with U.S.-designated standards to "combat trafficking," such as Iran, Malaysia and Syria—are subject to public shaming in the international community. Being on Tier 3 also is accompanied by punishment in the form of cutting off non-humanitarian aid. In addition, some government officials in the UAE noted that U.S. officials used placement on the TIP "Watch List" to strong-arm the UAE into bilateral agreements operating in the United States' favor. Not so coincidentally, countries placed in the Tier 3 or Tier 2 Watch List are mostly Muslim countries (with the addition of Cuba and North Korea), while countries in Tier 1 are mostly in the "West"

(except for a few such as New Zealand and Australia).

Critics from both within the United States and across the globe have protested these rankings and the criteria used to determine them, citing, among other things, prejudice and differential treatment based on the racial and religious composition of a given country. Some point to the use of the TIP as a tool of American hegemony—and a way for the United States to further portray its adversaries in a negative light. Scholars such as Kathleen Frydl, a historian of the "wars on drugs" in the United States, point to the similarities in the use of American rhetoric about drug trafficking that was used to demonize China during the earlier years of the twentieth century, when the threat of communism loomed large. Castigation of Muslim countries through the TIP report may speak more to the climate of Islamophobia couched in rhetoric about the "clash of civilizations" and Orientalism than about actual trafficking issues in blacklisted countries.

Furthermore, as many scholars have noted, the criteria used in compiling the report lack consistency and transparency. Reporting on a particular country is often based on conversations with a single country desk officer who may or may not be familiar with the issue of trafficking. Many scholars and UAE government officials with whom I spoke underscored the haphazard construction of the tiered rankings, emphasizing that they were often constructed based on speculation or rumors about a country rather than in-country research. As a result, the TIP report is undermining its own strength in regions such as the Middle East and further inflaming anti-U.S. sentiment in the region.

Currently, policies such as those embodied in the TIP report operate to the detriment of those they are designed to protect because they do not take into consideration a broader understanding of forced labor or migration gone awry, or the larger macro-social forces that structure migrants' individual decision-making processes. For example, the United States can and will block low-ranked countries from receiving aid from the IMF and World Bank. These bodies in turn impose Structural Adjustment Programs which lead to high unemployment, forcing many migrants to opt to leave their home countries in search of work elsewhere.

Despite these negative effects, I believe that the TIP report could in fact be a worthwhile means of addressing the issue if the concept of "trafficking" continues be separated from the concept of "sex work," a move that has begun since the installation of Luis CdeBaca as the new Ambassador on Trafficking in the United States. Ultimately, the definition of trafficking needs to be both broadened and narrowed. While the definition currently encompasses all sex work, it must be narrowed to exclude sex workers who do not face instances of force, fraud, or coercion, while simultaneously broadening the definition to include all types of migrant laborers who have experienced conditions of abuse. The TIP report and U.S. trafficking policies must be viewed as interconnected with the issue of migrants' rights and forced labor. In addition, current trafficking policies operate within a framework of criminalization rather than one of rights. If the frame could be re-harnessed to operate within a migrant and labor rights context, the TIP could indeed be a worthwhile means of addressing instances of force, fraud or coercion faced by migrants around the world.

"Ultimately, the definition of trafficking needs to be both broadened and narrowed."

Endnotes

[1]Attiya Ahmad and Jane Bristol-Rays, presentations given at the Georgetown University conference on Gulf Migration held in Doha, Qatar, January 2010.

[2]As of the time this talk was submitted, the U.S. had never been ranked within the TIP report. The newly appointed ambassador to combat trafficking, Luis CdeBaca, had, however announced that in the 2011 report, the United States too would be ranked.

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