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Perspectives on Human Trafficking and Modern Forms of Slavery

Editor
Siddharth Kara

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Editorial

Perspectives on Human Trafficking and Modern Forms of Slavery

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Abstract
Migration, technology, law, and measurement are each among the most topical areas of enquiry in the global human trafficking field, with much work remaining to be done in these and other areas. Beneath these particular intersections lies a crucial truth—slavery is a global business that thrives on the callous exploitation of the labor activity of a vast and highly vulnerable subclass of people whose brutalization is tacitly accepted by every participant in the global economy, from corporations to consumers. I am deeply gratified to edit *Social Inclusion*'s second issue on human trafficking and modern slavery. The level of scholarly interest in these topics continues to grow, and in this issue the authors explore some of the most pressing manifestations of human trafficking around the world.

Keywords
child trafficking; forced labor; human trafficking; labor trafficking; migration; sex trafficking; slavery

Issue
This editorial is part of the issue "Perspectives on Human Trafficking and Modern Forms of Slavery", edited by Siddharth Kara (Harvard Kennedy School, USA).

I am deeply gratified to edit *Social Inclusion*'s second issue on human trafficking and modern slavery. The level of scholarly interest in these topics continues to grow, and in this issue the authors explore some of the most pressing manifestations of human trafficking around the world. Articles by Ventrella (2017) and by Mandić (2017) explore the highly topical issue of the confluence of smuggling and human trafficking in the context of distress migration from northern Africa and the Middle East into the European Union. Migration will always remain central to the contemporary human trafficking crisis, and it is vital that we learn how traffickers prey on their victims in the context of mass migration events in order to devise more effective preventions and protections. The evolution of law on human trafficking is also a fertile area of enquiry. Craig (2017) analyzes the UK's Modern Slavery Act of 2015, rightfully lauded as the gold standard in anti-slavery legislation at the time, but nevertheless falling short in several crucial areas. Measurement also remains a central issue in the antislavery field, and Rudolph and Schneider (2017) present new methods of measuring human trafficking in an effort to address this data gap in the field. Another pressing area of development with human trafficking is the role technology plays in facilitating many aspects of a traffickers' business. Backpage.com has been at the center of heated debates in the United States on the liability, or lack thereof, of a website that hosts third-party advertisements that sell women and children for commercial sex. Swanson (2017) explores the legal and practical vectors of this debate incisively. Kaufka Walts (2017) explores a topic that has received very little research attention—child labor trafficking in the United States, filling yet another lacuna in research. Finally, Bain (2017) comments on the role that entrepreneurship can play in the fight against human trafficking.

Migration, technology, law, and measurement are each among the most topical areas of enquiry in the global human trafficking field, with much work remaining to be done in these and other areas. Beneath these particular intersections lies a crucial truth—slavery is a global business that thrives on the callous exploitation of the labor activity of a vast and highly vulnerable subclass of people whose brutalization is tacitly accepted by every participant in the global economy, from corporations to consumers. The relationship between slavery

and global supply chains requires significant scholarly attention. Slavery touches our lives every day, whether we know it or not, be it from the food we eat, the clothes we wear, or the technology devices that make our modern lives possible. I call upon all researchers, activists, and scholars to continue devoting their energies to deepening our understanding of how and why slavery persists in the world, what are the forces underpinning slavery that may be vulnerable to disruption, and what each of us can do to promote efforts to combat this crime. Slavery is an ignoble and archaic stain on humanity born during a time when it was universally accepted that a substantial segment of humanity could be treated as property. While no right-minded person continues to believe that any human being should be treated like chattel, the underbelly of our global economic order thrives on shadow labor markets which, in many cases, amount to treating people as property, or worse. Worse, because human life has in many ways lost a considerable amount of value across the centuries, given the immense population of ever-vulnerable and deeply impoverished people who can be transported quickly and inexpensively around the world for the purpose of slave-like exploitation. Minimal transport time and costs mean a person can be exploited for just a few months and still generate substantial profits for his or her exploiter, be discarded, and replaced relatively easily. This shift in the speed and inexpensiveness of slavery has had profound consequences on the profitability and pervasiveness of the system and led to its increasing permeation across the global economy. Chief among many imperatives regarding slavery must be a deeper understanding of the economic functioning of slavery, and how our global economic order can be cleansed of this ignoble offense.

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Siddharth Kara is the Director of the Program on Human Trafficking and Modern Slavery at the Harvard Kennedy School of Government. He is the author of numerous books and articles on contemporary slavery, including *Sex Trafficking: Inside the Business of Modern Slavery*, *Bonded Labor: Tackling the System of Slavery in South Asia*, and *Modern Slavery: A Global Perspective*. Kara's first book has been made into a Hollywood film, *Trafficked*. Across seventeen years of research, Kara has traveled to more than sixty countries on six continents to personally document several thousand slaves of all kinds.

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Article

Freedom, Commerce, Bodies, Harm: The Case of Backpage.com

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Abstract
This article situates lawsuits against Backpage.com in the context of changing laws and norms of sexual commerce and trafficking, and of evolving legal interpretations of Section 230 of the Communications Decency Act. Section 230 has been used repeatedly to shield internet service providers such as Backpage.com from liability for content generated by third parties that has led to criminal harm to others; in this case, the trafficking and commercial sexual exploitation of minors. Moving to a critique of the law as at times grievously detached from the realities it addresses, I compare the legal strategies and decisions in three prominent cases brought against Backpage.com in St. Louis, Tacoma, and Boston, respectively. This critique identifies the evacuation of gendered bodies and the harm done to them from the court opinions as an example of what Robert Cover has called the "interpretive violence" of the law, and of the judges who interpret and dispense it. I conclude by calling for courts and Congress to act together to disrupt the accumulation of interpretive precedent favoring freedom of commerce and speech over the protection of bodies from harm.

Keywords
Backpage.com; Communications Decency Act; human trafficking; legal theory; minors; sex trafficking; sexual commerce

Issue
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> "Legal interpretation takes place in a field of pain and death."
> Robert Cover (1986)

1. Introduction

A simple internet search for information about Backpage.com CEO Carl Ferrer yields little. Based on the results, it would seem that Ferrer's life began in 2004, when he teamed up with New Times Media principles Michael Lacey and James Larkin to launch Backpage.com, the world's largest online purveyor of "adult services" advertisements, as a strategic response to the market-driven migration of classified ads from print to internet vehicles. Since then, Ferrer's persona is best grasped through the phrase "no comment," repeated on camera and in print to reporters, judges, and legislators seeking his response to charges of trafficking adults and minors on Backpage.com—charges arising from law enforcement, trafficking victims and their *amici* in state courts around the country, and even the Senate Permanent Subcommittee on Investigations. Like other powerful people charged with unethical or criminal behavior, Ferrer's evasion of even the *question* of the charges only added to the sense of invulnerability attached to his image as an international corporate CEO—that is, until his arrest in October 2016 on felony charges of pimping and conspiracy, at which point his mug shot became the primary image radiating from internet search engines.

This article considers the role of the law in producing the gap between the Ferrer empowered to repel inquiry with the phrase "no comment" and the Ferrer compelled to respond to allegations as a criminal defendant in a court of law—in other words, between Ferrer the CEO and Ferrer the alleged pimp and trafficker. The crux of the matter—justice and redress for minors trafficked through advertisements posted on Backpage.com—remains stuck in that breach, reminding us that the law is a flexible instrument, a power-tool as likely to preclude as to produce justice. What lies in the

space between justice and its foreclosure is precisely the paradox that legal scholars Robert Cover and Colin Dayan have identified as the violence of the law, wielded purposefully or not by legislators (makers of the law) and judges (interpreters and distributors of the law). If the law came into being as an instrument to prevent the commission of violence, and to protect the weak from the strong, then, as Colin Dayan (2011) writes, "legal reasoning [must be made] as vital as the lives of persons lethally affected by it" (p. x).

I take up Dayan's challenge here, commencing by briefly situating suits against Backpage.com within the context of changing laws and norms of sexual commerce and trafficking, and of evolving legal interpretations of Section 230 of the Communications Decency Act (CDA), which has been evoked repeatedly to shield internet service providers such as Backpage.com from liability for content generated by third parties that has led to criminal harm to others. Moving to a critique of the technology of law as at times grievously detached from the realities it addresses and the spirit of justice it is meant to bring into being, I compare the legal strategies and decisions in three prominent cases brought against Backpage.com in St. Louis, Tacoma, and Boston, respectively, identifying the evacuation of gendered bodies and the harm done to them from the court opinions as an example of the "interpretive violence" of the law, and calling for courts and congress to act together to disrupt the proceduralist accumulation of precedent favoring freedom of commerce and speech over the protection of bodies from harm.[1]

2. Commercial Sex, Human Trafficking, and Slavery[2]

I begin with a brief description of the three cases under consideration here. The first, filed on September 16, 2010 in US District Court, Missouri, sought justice for M.A., a 13-year old child who was recruited at a fast food restaurant after she snuck out of her mother's home to attend a party. The child was missing for 270 days and raped repeatedly as a result of being sold online via Backpage.com. On August 15, 2011, the Court decided against M.A., dismissing the case on the basis that Backpage.com is protected under Section 230 of the CDA. No appeals were filed.

The second case involves a 15-year old who ran away from home and was recruited at a teen homeless shelter in Tacoma by an older woman to "go to the beach." Within hours, the child was being sold repeatedly on Backpage.com. She was missing for 180 days. This case, originally filed in 2013, is the only case brought by a child against Backpage.com to survive a motion to dismiss. In this potentially precedent overturning (and re-setting) case, the Washington Supreme Court decided that there was enough evidence against Backpage.com to support moving to discovery and litigation in a trial set for May 2017.

The final case against Backpage.com was brought by Boston law firm Ropes and Gray in 2014 on behalf of three minor children trafficked for sex in Massachusetts and Rhode Island via online advertisements on Backpage.com. Like the others, this suit sought to hold Backpage.com accountable for alleged criminal actions to facilitate the efforts of sex traffickers to sell children on its site. Backpage.com's Motion to Dismiss was granted by the federal district court judge in May, 2015, on the basis that Backpage.com was acting as a publisher of third party content and thus, was protected by Section 230. The 1st Circuit Court of Appeals upheld that ruling in March of 2016, expanding the protective coverage of Section 230 to an unprecedented extent: that Section 230 would protect a publisher who was a co-conspirator in a federal crime—in this case, the crime of child sex trafficking. A last challenge was filed on behalf of the Jane Does in the US Supreme Court, which declined in January 2017 to hear the case.

Unfortunately, the outcomes on behalf of the Jane Does are not surprising. Cases brought on behalf of minor children trafficked online for commercial sex unfold within a turbulent social and political field dominated by a split between, on one hand, those who seek to decriminalize prostitution, defining it as labor and arguing that criminal stigma and consequences cause far graver violence to sex workers than the harm typically associated with the act of commercial sex itself, and, on the other, those who seek to end trafficking by employing various models of prevention and criminalization of transactional sex. Consensus among those in the latter camps has converged around what has come to be known as the Nordic Model, whereby the purchase of sex is criminalized but the sale is not, thereby shifting attention to the demand side of the transaction and correcting the previous legal travesty by which those who sold sex suffered criminal consequences while those who purchased it walked free. At the same time, international agencies such as the United Nations, the World Health Organization, and the International Labor Organization (ILO) have advocated for the rights of sex workers, and Amnesty International, arguably the world's largest human rights organization, formally adopted in 2015 a policy that calls for the end of decriminalization of all consensual sex work. The trouble with that policy, of course, is identifying "consensual" v. "nonconsensual" sexual transactions in a fundamentally coercive environment where

[1] The cases under discussion here are explored in depth in the documentary feature *I Am Jane Doe*, Dir. Mary Mazzio (2017), which chronicles the fight against Backpage.com waged by the minor survivors, their families, and others who support their struggle.

[2] My discussion of the commercial sex trade relies on data from the International Labor Organization Global Estimate of Forced Labor (2012a), which estimates that of the 20.9 million people currently trapped in forced labor, 4.5 million are victims of forced sexual exploitation; of these, 98% are women or girls (see International Labor Organization, 2012b). Plaintiffs in each of the cases under consideration in this article are minor girls. Gendering sexually exploited people female in this work is not meant to discount the experiences of male or transgender persons engaged in the commercial sex trade and/or experiencing commercial sexual exploitation.

freedom of choice, as commonly understood, is absent. This brings us to the issue of the relation between commercial sex, trafficking, and slavery.

Volumes have been written on issues of consent and agency, and on definitions of slavery, trafficking, and bondage in relation to the commercial sex trade, and it is beyond the scope of this work to parse those debates. The ILO defines forced labor (e.g., nonconsensual sex work) quite simply as a situation in which persons are made to work against their free will. The scholarly organization Historians Against Slavery, made up of leading scholars of slavery and abolition, adds "for the profit of others" to this definition (Historians Against Slavery, n.d.).[3] The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime—the Palermo Protocol—(United Nations General Assembly, 2000b) defines trafficking as:

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

Significantly, according to this Protocol, the exploitation of a child need not be the result of coercion or any of the other means listed above; a child is defined as any person under 18 years of age. The cases under consideration here were all presented on behalf of minors; thus, according to international and domestic law, there is no disagreement about whether or not their exploitation meets the legal definition of trafficking. It does. As a legal matter, there is no consent.

Still, acknowledging the complexity of the debates and the difficulty of concretely identifying slavery and trafficking in the contemporary global context, I embrace Joel Quirk's (2011) theorization of "sufficient similarity" as a way of identifying forms of human bondage that resemble classical (transatlantic) slavery closely enough to demand redress, accepting that "the practices in question are not always identical, yet…still share sufficient features in common to be placed on the same footing" (p. 9). Considering the long and deeply contested history of activism and legislation against commercial sexual exploitation, I also find Quirk's identification of abolition as an "anti-slavery *project*" to be a useful framework, inasmuch as it provides room for nuance to consider different forms of bondage along with the range of strategies and uneven progress in disrupting them, all without reducing the histories of slavery and anti-slavery initiatives to a "linear or teleological process" (p. 19).

Significantly, as Quirk notes, from the first steps toward legal abolition of slavery in the mid-eighteenth century to the ongoing anti-trafficking activism of the 21st, "there was a significant pattern of delay, deflection, and dilution. These strategies may not amount to much in macro-historical terms, since slavery was eventually [legally] abolished, but their cumulative *human* cost was astronomical" (p. 19). My purpose here is to restore the account of such human cost to the narratives of the Jane Doe plaintiffs, who most certainly experienced treatment that bears "sufficient similarity" to slavery. Doing so requires illuminating plaintiffs' lived experiences and the claims for justice to which they give rise from within the shade of the normative world, or nomos, that has grown up around legal efforts to redress child sex trafficking today.

3. Commercial Sex: From the Streets to the Internet

The problem at issue in the St. Louis, Tacoma, and Boston cases is not whether the child plaintiffs were trafficked for commercial sex (a fact accepted by the court in each case), but rather whether Backpage.com, the internet service provider that hosted the ads initiating their violation, can be held at least partially responsible for that crime. In order to understand the relevant legal issues, let us first consider the shift of the commercial sex trade from "the streets"—the "stroll," massage parlor, brothel, etc.—to the internet, wherein the seller of sex acts is identified via an online host and details for the transaction, including meeting place, are arranged online and/or by telephone. This shift arose as the internet developed as a technology and means of connection, communication, and commerce in the late 1990s and early 2000s, and has also been associated with the widespread racialized gentrification and "law and order" policing that mark this period.

Sociologist Elizabeth Bernstein correlates the shift of commercial sex from street to internet with other socioeconomic trends, including the rise of the post-industrial service and tech industries and the deconstruction of traditional marriage and family ties. As Melissa Gira Grant (2014) notes in a description of Bernstein's research, "In an economy in which workers of all kinds are called on to produce an experience—not just a coffee, but a smile and a personal greeting; not just a vacation, but a spiritual retreat—sex work fits quite comfortably" (p. 95). This focus upon an "experience" accounts for a broad expansion in the menu of sexual services in the online market, from simple acts ("hand job," oral, intercourse) to performative role-play of everything from BDSM and fetish to "Girlfriend Experience (GFE)." This latter constitutes what Bernstein calls "bounded intimacy," available for sale in a world dominated by work and market forces

[3] Full disclosure: I sit on the board of this NGO.

with little time and less interest in the demands of long-term emotional investments.

This trend toward transactional socio-sexual relations extends far beyond the world of commercial sex, as Bernstein (2007) notes:

> Sociologists of culture have…pointed to a general trend of 'disenchantment' or 'cultural cooling' whereby intimate exchanges have increasingly come to resemble other forms of utilitarian exchanges. Whether in the guise of…efficiently managed 'quality time' with one's own children, or via an emerging ideology of romantic love that 'endorses flexibility and eschews permanence,' public-sphere market logics have become intricately intertwined with private-sphere emotional needs. (p. 5)

Interestingly, these trends mirror the broader neoliberal embrace of freedom of markets and commerce at the expense of bodies and humans, a worldview that "sees competition as the defining characteristic of human relations. It redefines citizens as consumers, whose democratic choices are best exercised by buying and selling, a process that rewards merit and punishes inefficiency. It maintains that the 'market' delivers benefits that could never be achieved by planning" (Monbiot, 2016). Interestingly, this description of dominant neoliberal ideology resonates with Bernstein's observation, based in fieldwork with members of COYOTE (Call Off Your Old Tired Ethics), the nation's first sex worker rights organization, that "the ethical and social world they inhabited was a fair approximation of 'the universal market in bodies and services' that feminist political theorist Carole Pateman predicted would arise if the logic of contract were allowed completely free reign" (Bernstein, 2007, p. 106; see also Pateman, 1988).

The logic of contract, the emphasis upon free market competition, the definition of citizens as consumers, the allegiance to commerce over citizens, as well as cultural assumptions about consensual sex work—all are at play in the many legal decisions that have allowed Backpage.com to continue operations despite overwhelming evidence unearthed by the US Senate of Backpage.com's complicity with commercial sexual exploitation writ large, and more specifically and egregiously, with the trafficking of minor children for sex. Substitute "property" for "commerce" in the sentence above and the through-line of such logics that support rights of property/commerce over personhood/protection is made visible, thereby situating the Jane Doe cases in the long history of US slavery and its enabling legal apparatus. Indeed, the cases share many similarities with those that Cover analyzed in *Justice Accused: Antislavery and the Judicial Process* (1975), his seminal study of judicial conduct and decisions about slavery in the US, particularly the problem of judges caught in the "moral-formal dilemma," or in the gap between what is morally right (liberty for all persons) and what is legally, procedurally, and formally correct (state laws governing ownership or manumission, for instance, or federal laws such as the Fugitive Slave Act). In such cases, Cover concluded, judges faced with a moral dilemma consistently revert to "the highest justifications for formalism, the most mechanical understanding of precedent, and the steadfast excision of self and appeal to separation of powers" (1975, p. 258). As we shall see, precisely the same judicial maneuvers manifest in the Jane Doe cases.

4. The Communications Decency Act (CDA) Section 230

At the heart of Backpage.com's power to thwart legal responsibility for its part in the trafficking of minors for commercial sex is Section 230 of the CDA. Introduced by Senator James Exon of Nebraska, its purpose was to address concerns about the ease of access to pornography afforded by the internet, particularly for children, at a time when the internet was still very new. Congress was clear that its intent with the legislation was to "target content providers, not access providers or users;" however, Congress also made clear that "owners of telecommunication facilities are liable where they knowingly permit their facilities to be used in a manner that violates the CDA."

The most controversial aspect of the CDA, Section 230, was not found in the original Act, but rather was added by the House of Representatives as "The Internet Freedom and Family Empowerment Act." This law, which states that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," was prompted by a lawsuit filed in 1995 by Stratton Oakmont (a firm founded by Jordan Belfort and made famous by the Leonardo DiCaprio film, "Wolf of Wall Street"). Stratton Oakmont had filed suit against Prodigy (one of the earlier internet message boards) because someone had posted a comment asserting that Stratton Oakmont had been criminally manipulating stocks. Belfort's firm argued that because Prodigy filtered content but missed this post, it should be held responsible for third party content on its site. The court agreed, and Prodigy was held liable for defamation. Legislators, in turn, found this to be an alarming development, worrying about the "chilling effect" on the newly emergent internet economy should internet service providers be flooded with such lawsuits every time someone became upset by a posting or comment.

The irony is that had Prodigy not initiated any attempts to monitor and filter content—in other words, if it had *done nothing* to protect against indecency or defamation—it would not have been held responsible, and would have suffered no penalties. But because it had initiated such efforts and failed to catch a "defaming" post, it was held liable by the court. This, of course, was seen as a major disincentive for internet service providers (ISPs, such as AOL, Google…and Backpage.com) to take any steps toward monitoring the con-

tent posted by third party users on their sites. In response, Section 230 legislatively overruled the Stratton decision by protecting from liability those providers who had made "good faith efforts" to monitor the content posted on their sites. Of course, the question of what constitutes "good faith" efforts by ISPs to filter indecent or defaming content remains undecided, with courts erring on the side of publishers in nearly every decision in which CDA Section 230 is evoked as a defense, even when those publishers have arguably *not* acted in good faith or have collaborated with users to create the content of their posts, and even when those posts constitute criminal activity—such as sex trafficking—under US law.

For the purposes of the cases examined below, the operative issues regarding Section 230 are:

1) whether Backpage.com can be treated as more than just the publisher of the ads in question, but rather as a participant in creating them. If it can be shown that Backpage.com developed "in whole or in part" the content of the ads that caused harm, then Backpage.com could be held liable because it would no longer be a passive publisher;
2) whether Backpage.com's stated efforts to identify and eliminate "escort" advertisements that feature minors constitute "good faith" efforts as required in Section 230(c)(2)(A) or, as a Congressional report on the matter asserts (in support of the many claims put forth by plaintiffs in state courts around the country), Backpage.com's "efforts" have more to do with inhibiting law enforcement attempts to identify such ads and helping pimps to post them without detection; and
3) whether civil private right of claims of criminal action can be brought under Section 230 (e)(1), which asserts that that "Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute."

In many ways, the struggle between Section 230 and the plaintiffs who have been harmed by the internet service providers it protects rests upon two points: precedent and jurisdiction (or separation of powers), both of which I address below through theories of legal interpretation. In each of the court decisions under examination here, as well as in many others, the court expresses dismay at not being able to offer remedy to plaintiffs, but, referring to the many precedents of cases dismissed on the basis of Section 230 protection, argues that the matter is for Congress to correct legislatively, rather than for courts to re-interpret what they see as the plain language of Section 230 to err on the side of protection for ISPs. As Judge Selya of the 1st Circuit Court of Appeals put it in a phrase much-quoted by Backpage.com in its opposition briefs, "There has been near-universal agreement that Section 230 should not be applied grudgingly" (*Jane Doe v. Backpage.com*, 2016, p. 10). Nearly every opinion repeats the phrase that originated with Section 230, that allowing ISPs to be held liable for third-party content posted by their users would have a "chilling effect" on the opportunities for freedom of speech and commerce provided by the internet. It is worth noting that in the bulk of the 300 cases adjudicating Section 230, the majority involve defamation, and not allegations of criminal conduct. In response, plaintiffs and their *amici* argue passionately that in passing the CDA (major "decency" provisions of which were struck down as unconstitutional in the late 1990s, leaving only Section 230 as a basis for positive law in cases involving ISP liability), Congress did not mean to create a protected space—much less a broad *immunity* (a word used in several judicial opinions, but a word which does not appear in the statute itself)—for criminal enterprise on the internet that could not possibly be permitted in "brick and mortar" spaces. As Erik Bauer, lead attorney on *J.S. v. Backpage.com* in Tacoma, protests:

> Prosecutors will go after a kid on the streets, an 18-year old kid selling 12-year olds, but they won't go after Backpage…This is not about freedom of speech, this is not about freedom of sexuality, it's about the freedom of a kid to get raped by someone who has paid a pimp for the pleasure. It's about a company that has enabled that to happen on a massive scale, a company that has taken advantage of this miracle of marketing called the internet to blow human sex trafficking right through the roof. No one thinks that this is what Congress intended when they passed Section 230. (Bauer, 2016, interview with author)

The question remains whether the courts will continue to dodge the issue by referring it back to Congress, and whether, then, Congress will act legislatively to block the unintended escape route currently entrenched within the law.

5. The Cases and the Legal Strategies

Studying the cases brought against Backpage.com for their strategies and the grounds upon which plaintiffs' claims are brought is an exercise in the complexity of legal theory and method, and of the potential for violence inherent within judicial interpretation and the application of precedent. For our purposes, it is important to clarify the legal grounds upon which each team advanced its case, and the response of the courts to those claims in relation to the seemingly insurmountable barrier of Section 230 protection.

5.1. St. Louis: M.A. v. Village Voice Media Holdings, LLC., and Backpage.com, LLC.

In 2009, 13-year old M.A. ran away from home and was trafficked for commercial sex by Latasha Jewell McFar-

land, who served time in prison on charges of sex trafficking and illegal interstate commerce as a result. As the ads used by McFarland to traffic M.A. were posted on Backpage.com, M.A. attempted to prove that Backpage.com's posting rules and limitations "aid in the sight veiling of illegal sex services ads to create the veil of legality" (*M.A. v. Village Voice Media Holdings and Backpage.com*, 2011, p. 187) and that therefore Backpage.com must be characterized as an "Information Content Provider," rather than simply a *publisher* of third-party content. As a *content provider*, Backpage.com would not be protected by Section 230 from processes of discovery and litigation related to criminal or civil charges. In addition to alleging criminal charges of aiding and abetting her traffickers, M.A. also argued that Backpage.com and its parent company, Village Voice Media Holdings, had violated her rights under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (United Nations General Assembly, 2000a).

The Eastern District of Missouri Court in *M.A. v. Village Voice Media Holdings and Backpage.com* decided against M.A. on the basis of each of her claims, asserting that "The actual injury suffered by M.A. is, as she describes it, her victimization by McFarland," and that "[H]owever horrific the consequences to M.A. of McFarland's posted ads were, the ads were created by McFarland." Citing multiple Section 230 precedents, the court held that neither notice of nor profit from the unlawful nature of information provided by a third party renders an ISP liable for that information: "Section 230 immunity applies even after notice of the potentially unlawful nature of the third-party content" (Lycos, Inc., 478 F.3d at 420, quoted in *M.A. v. Village Voice Media Holdings and Backpage.com*, 2011, p. 199). The aiding and abetting charges were dismissed based upon precedent that requires *intention* to commit the *particular* crime in question; here, the opinion states that "[M.A.'s] allegations of Backpage.com aiding and abetting McFarland do not describe the specific intent required for aiding and abetting....Rather, those allegations describe only a violation of Section 2255 by 'the creation and maintenance of [a] highly effective internet tool" (*M.A. v. Village Voice Media Holdings and Backpage.com*, 2011, pp. 206–207). The court also denies M.A.'s right to civil remedy for criminal actions under Section 2255 (which allows for civil remedy for personal injuries to minors), asserting that Section 230(e)(1) only allowed for prosecution of ISPs on federal criminal, not civil grounds (a problem of jurisdiction).

Finally, the court denied M.A.'s contention that the Optional Protocol to the Convention on the Rights of the Child superceded Section 230's protective provision on the grounds that while the Optional Protocol constitutes an international law commitment, it does not by itself function as binding federal law (*M.A. v. Village Voice Media Holdings and Backpage.com*, 2011, p. 212). Instead, when the Senate ratified the Optional Protocol, it did so as a non-self-executing treaty, meaning that it would not create privately enforceable rights because its provisions are already covered under existing domestic law. And under that law, according to the court in this case, M.A.'s remedies begin and end with her suit against her trafficker, Natasha Jewell McFarland, because the host of ads posted by her trafficker, Backpage.com, was protected under Section 230 of the CDA.

Several times throughout the opinion, the court expressed "sympathy" for the "horrific" circumstances of M.A.'s "victimization," but in each case, it wrung its hands, making clear that the court was constrained (1) by the jurisdiction of Section 230 ("Thus, regardless of M.A.'s characterization of the policy choice of denying Section 230 immunity in such circumstances as alleged as "clear," it nonetheless is a matter Congress has spoken on and is for Congress, not this Court, to revisit"); (2) by the procedural distinction of a civil remedy, even one conferred as a private right of claim under a federal criminal statute, versus federal criminal liability as read through Section 230, finding in favor of the latter; and (3) by the failure of Congress to create privately enforceable rights under international law. The court concludes:

> Plaintiff artfully and eloquently attempts to phrase her allegations to avoid the reach of Section 230. Those allegations, however, do not distinguish the complained-of actions of Backpage.com from any other website that posted content that led to an innocent person's injury. Congress has declared such websites to be immune from suits arising from such injuries. It is for Congress to change the policy that gave rise to such immunity (2010, p. 215).

This theme of "artful" framing of "sententious" claims arises again in the Boston case, below, and can be read as one of many rhetorical strategies evidenced in court opinions that bracket or disparage plaintiffs' accounts of suffering so as to dismiss them in favor of precedent and jurisdiction arising from Section 230.

Such interpretation on the part of judges reveal a *nomos* that devalues the rights of children as a special category while also operating according to dominant gender norms that, as children's rights advocate Barbara Bennett Woodhouse (2008) asserts, "generate cultural stereotypes, which in turn generate laws based on these disabling stereotypes" (loc. 1073). Such gendered stereotypes are particularly damaging in the case of children trafficked for commercial sex, who are often seen as "just another 'teen prostitute'…nameless, faceless, ignored, already damaged…" (Lloyd, 2011, loc. 699). In just one example of the manifestation of gendered cultural attitudes in the Jane Doe cases, Judge Richard Posner, writing for the 7th Circuit in *Dart v. Backpage.com, LLC*, 2016, acknowledged that a majority of ads on Backpage.com's adult section are for sex, but went on to assert that "a majority is not all, and not all advertisements for sex are advertisements for illegal sex." In seeking to protect such "legal" commercial sexual transactions, Judge Posner re-

marked in open court, "What about also old people, old men who like to be seen with a young woman, right. That is an aspect of escort service, it's not all sex." This judicial comment reveals the normalization of cultural attitudes toward men's right to access women's bodies, regardless of age or of the potential for harm. As Rachel Lloyd, prostitution survivor and founder of Girls Educational and Mentoring Service—a NYC agency that provides services for girls and women who have survived commercial sexual exploitation—is at pains to make clear, public sympathy is retained for the few cases of abducted "Amber Alert" children, those who fit a gendered and raced image of purity and innocence, as opposed to the majority of commercially sexually exploited children who are homeless or runaways:

> These girls and young women have a tougher time in the court of public opinion and in the real courts of the criminal and juvenile justice systems. It is presumed that somewhere along the line they 'chose' this life, and this damns them to be seen as willing participants in their own abuse (2011, loc. 1103)

As we will see, such deeply entrenched cultural attitudes toward gender and sex find their way into the opinions issued by judges in each of the Jane Doe cases such that the testimony of these child plaintiffs to severe harm is read—and dismissed—as merely "artful" or "eloquent" distractions from the weightier truth of the law and its precedents.

5.2. Washington: J.S., S.L., and L.C. v. Village Voice Media Holdings, L.L.C., and Backpage.com, L.L.C.

The circumstances in *J.S. v. Village Voice Media Holdings and Backpage.com* are similar to the St. Louis and Boston cases, in that plaintiffs (collectively "J.S.") were each between the ages of 13 and 15 years old when trafficked for commercial sex by third parties on Backpage.com. The suit asserts state law claims of negligence, outrage, sexual exploitation of children, ratification/vicarious liability, unjust enrichment, invasion of privacy, sexual assault and battery, and civil conspiracy as well as a private right of claim conferred under federal criminal statutes which criminalize "participation" in the sex trafficking of children. Unsurprisingly, Backpage.com moved to dismiss the claims on the grounds that federal law (Section 230) preempts both state law and federal private right of claims; however, the case, which was appealed to the Washington State Supreme Court, was decided, surprisingly, in favor of the Jane Doe plaintiffs. The court concluded that the plaintiffs had alleged sufficient facts to support the conclusion that Backpage.com was not simply a passive publisher, but was actively involved in creating content. The court stated: "Backpage.com's advertising posting rules were not simply neutral policies prohibiting or limiting certain content but were instead 'specifically designed…so that pimps can continue to use Backpage.com to traffic in sex'" (*J.S. v. Village Voice Media Holdings and Backpage.com*, 2015, p. 8). These rules and policies include age verification with prompting from the website (if a user enters an age under 18, they receive an "oops" message that users must be 18 years of age or older, at which point they are prompted to re-enter an age, without verification); stripping of meta-data from posted images so that they cannot be traced; encouragement of the use of pre-paid credit cards in order to assure anonymity of users, who are not required to provide other identifying information, such as a telephone number; and finally, as the United States Senate Permanent Subcommittee on Investigations later reported:

> Backpage.com has knowingly concealed evidence of criminality by systematically editing its 'adult' ads….The terms that Backpage.com has automatically deleted from ads before publication include "Lolita," "teenage," "rape," "young," "amber alert," "little girl," "teen," "fresh," "innocent," and "school girl." (United States Senate, 2017, p. 2)

J.S. v. Village Voice Media Holdings and Backpage.com begs the question of why the Supreme Court in the State of Washington concluded that "[f]act-finding on this issue is warranted" when so many other courts have succumbed to Section 230 pressure (read: precedent), allowing that even if it was clear that "horrific" acts had been committed from within that shield, it was for Congress and not the courts to remedy. One clue is to be found in the concurring opinion of Justice Charles Wiggins, who writes separately "to emphasize that this holding implies that the plaintiffs' claims do not treat Backpage.com as the publisher or speaker of another's information under the CDA Section 230" (*J.S. v. Backpage.com*, Wiggins, J., Concurring, 2015, p. 1). Wiggins continues:

> Backpage.com argues that plaintiffs' inducement [to sex trafficking] theory clearly treats them as publishers and that holding it liable would punish the company for publishing third party content. To the contrary, plaintiffs have alleged a totally different theory—that Backpage.com guided pimps to craft invitations to prostitution that appear neutral and legal so that the pimps could advertise prostitution and share their ill-gotten gains with Backpage.com. Plaintiffs are not claiming that backpage.com itself is acting as their pimp but that Backpage.com is promoting prostitution, which is a crime in Washington…and should support a cause of action (*J.S. v. Backpage.com*, Wiggins, J., Concurring, 2015, p. 10).

Here we see the power of straightforward federal and state statutes to address the immunity provision of Section 230 head on. As Attorney Erik Bauer shares:

> Section 230 protects internet sites from getting sued because of third party content, and it's been tightly in-

> terpreted. The way the statute reads, the keywords to consider are whether an online publisher is "responsible in whole or in part for the creation or development of illegal content." The statute does not say you have to author the bad content; it says you have to be *responsible in part* for the creation or development of illegal content. If they wanted to say authorship, they would have said authorship. They didn't use that term. (Bauer, 2016, interview with author)

In other words, while Backpage.com and the courts that have sided with it in Section 230 cases contend that they did not *author* the content of the ads, and therefore are protected by Section 230 against liability for harm arising from them, the statutory language "*responsible in part*" provides enough room for the courts to find against the shield of Section 230.

The court in this case agrees, and also takes issue with the term "immunity" as repeated in many decisions that treat ISP's as publishers, noting that the word does not appear anywhere in the statute, and that:

> Subsection 230(c)(1) is neither an immunity nor a defense; it is a prohibition against considering the provider as a publisher or speaker of content provided by another. The main purpose of subsection 230(c) is not to insulate providers from civil liability for objectionable content on their websites, but to protect providers from civil liability for *limiting access* to objectionable content. (*J.S. v. Backpage.com*, 2015, Wiggins, J., Concurring, p. 5; emphasis mine)

Finally, the court does not accept Backpage.com's avowal that their efforts to prevent child sex trafficking constitute "good faith" efforts, and decides to allow discovery to proceed in order to…discover more. The failure of other courts in the country to allow for such discovery has frustrated plaintiffs and their teams, along with the Senate Permanent Subcommittee on Investigations, all of whom desire the opportunities afforded by the discovery process in order to more fully understand the nature of the harms they seek to address.

In considering the Tacoma decision as an outlier, a great deal turns on the court's navigation of Section 230, which runs against the tide of majority precedent, as well as its belief that "It is important to ascertain whether in fact Backpage.com designed its posting rules to induce sex trafficking to determine whether Backpage.com is subject to suit under the CDA" (*J.S. v. Village Voice Media Holdings and Backpage.com*, 2015, p. 8). Again, keep in mind that each of these cases, having been dismissed at the federal district court or federal magistrate level, advanced to the appeals phase simply asking to proceed to discovery and trial, to be permitted to investigate claims of participation in what judges in these cases unanimously acknowledge to be serious crimes with grave injuries. Compare the majority decision to allow the question to be explored in discovery and trial with the dissenting opinion, which concludes:

> This case does not ask us to decide whether pimps should be able to traffick [sic] our children without consequence. The answer to that question is certainly no. And this case does not ask us to decide whether third party accomplices or co-conspirators should be able to escape criminal prosecution for human trafficking and child rape. The answer to that is also a resounding no. Instead, the question before us is whether the CDA, a federal statute, shields this defendant from this state law claim. Using settled principles of statutory interpretation, the CDA compels me to conclude that the answer to that question is [yes].[4] (*J.S. v. Village Voice Media Holdings and Backpage.com*, 2015, Gordon McCloud, J., Dissent, p. 40)

If one thinks in terms of what Robert Cover calls "the reality of common meaning," then the first two "no's" advanced by McCloud in her dissent cannot co-exist with the "yes" response to the third question; instead, her rhetoric reveals the violent dissonance of the law whereby, as Colin Dayan avers, "To think legally is to be capable of detaching ways of thinking from what is being thought about" (Dayan, 2011, p. 12). Here, what is being thought about is the rape of minor girls for the profit of others, but the judge is "compelled" by the CDA and its accompanying "settled principles of statutory interpretation" (precedent) to position herself in the absurd breach that separates that harm from its redress.

5.3. Jane Doe No. 1 et al. v. Backpage.com, L.L.C. et al.

The final case under examination is *Jane Doe No. 1 et al. v. Backpage.com, L.L.C.*, brought in Boston in May 2015 on behalf of three minor girls trafficked for commercial sex using ads posted on Backpage.com. This case, brought by Boston law firm Ropes & Gray, alleges violations of the federal William Wilberforce Trafficking Victims Protection Reauthorization Act, the Massachusetts Anti-Human Trafficking and Victim Protection Act, as well as copyright infringement, unfair business practices, and violation of privacy statutes. Here too, both the initial complaint and the appeal in Boston's First Circuit Court of Appeals failed on the basis of CDA protection, as did a plea to the United States Supreme Court to take the case. I analyze this case and the rhetoric of the written opinion in greater detail below as the clearest example of a court bracketing the harm done to human bodies, in this

[4] The original text of the opinion reads "Using settled principles of statutory interpretation, the CDA compels me to conclude that the answer to that question *is also no*. J.S. fails to allege facts sufficient to provide that Backpage was a content provider as opposed to a service provider. Thus, subsection 230 immunizes Backpage from liability for JS's claims. And Subsection 230 trumps conflicting state law claims." It appears from the sense of the text that the opinion mistakenly asserted that the answer to the third question was also "no," but in fact the Justice means that the answer is "yes."

case via sex trafficking, failing to address the gaping hole in Section 230 that allows for criminal activity to take place because of a reliance upon what Colin Dayan calls a "hoard" of precedent and what Robert Cover calls "deference to political branches" (Dayan, 2011, p. 9; Cover, 1986, p. 58).

6. The Violence of the Law

It was perhaps his early immersion in the history of United States slavery laws that gave rise to Robert Cover's later seminal work on the distance between the law and the experiences of those who must live under it—for surely there rarely has been such an egregious detachment of legal interpretation from its lived implications than that exemplified in the various laws and codes governing enslaved people and property in the antebellum US. Cover first explored the question of unjust law in *Justice Accused: Antislavery and the Judicial Process* (1975), going on to write two landmark essays on the subject of the "dissonance of the lawfulness of the intolerable" in the 1980s (Cover, 1986, p. 39).[5] These essays have guided scholarly thinking in the intervening years about how legal interpretation often hinders, rather than supports, the distribution of justice. While Cover's essay addresses the harm done to criminal defendants, not plaintiffs, the overarching analysis of judicial behavior is relevant to our discussion here.

For Cover (1983), the problem is that jurists often fail to understand, on the one hand, the relation between the law and its interpretation, and on the other, the normative world, or *nomos*,[6] within which the law operates: "Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live" (pp. 4–5). Cover (1983) recognized the force of the *nomos* as being every bit as influential as "the physical universe of mass, energy, and momentum" (p. 5), and more, identified this force as a violent one (1986): "Between the idea and the reality of common meaning falls the shadow of the violence of the law itself" (p. 1629). Cover understood that the accumulation of law over time through precedent and jurisdiction could be world creating or world destroying, and that it was largely up to judges, as individuals and representatives of the law, what kind of worlds would be engendered, which would survive and which would be crushed. As Cover put it, "Judges are people of violence. Because of the violence they command, judges characteristically do not create law, but kill it….Confronting the luxuriant growth of a hundred legal traditions, they assert that *this one* is law and destroy or try to destroy the rest" (1983, p. 53).

We witness this confrontation among competing legal claims and traditions in the Backpage.com cases, analyzing the judicial response through the trail left by the written opinions. In St. Louis, Tacoma, Boston, and the many other cases against ISPs for their role in harm done by postings on their internet sites, plaintiffs challenged one law, Section 230, with others: criminal and civil statutes at federal and state levels, as well as international protocols and laws. In each case, the judges favored the *nomos* of one law—overwhelmingly, Section 230—over the others. Each court took it upon itself to determine which law should prevail in the event of a conflict of laws—and in every case except for Washington State, these judges found in favor of Section 230. The prevailing *nomos* accompanying the chosen law is the neoliberal vision of unfettered markets and revenue generation, while the *nomos* lost as a result of the judgments prioritizes human rights and protections from harm, particularly for children who are defined *a priori* within the law as vulnerable. In other words, even when confronted with two federally enacted statutes, one much later than the other (typically, later statutes take precedence over earlier ones in the case of a conflict), the courts have continued to generate positive legal outcomes—e.g., law—around freedom of speech and markets (Section 230), and negative legal outcomes around statutes meant to protect bodies from harm (the Trafficking Victims Protection Act, the Optional Protocol to the Convention on the Rights of the Child, criminal trafficking and child sexual exploitation statutes).

Let us examine how this "jurisgenerative" principle works in practice, using the opinions set forth in the three cases above. For both Cover and Dayan, "It is through law that persons, variously figured, gain or lose definition, become victims of prejudice or inheritors of privilege. And once outside the valuable discriminations of personhood, their claims become inconsequential" (Dayan, 2011, p. i). Here we can see the persons of Ferrer, Lacey, and Larkin, as well as their proprietary manifestation of corporate personhood, Backpage.com, gain definition, standing, and the privilege to continue generating profit each time Section 230 is used as a shield against what a jurist in the *J.S. v. Village Voice Media Holdings and Backpage.com* trial court proceeding concedes is too obvious to ignore: "And, frankly, my note to myself in the sideline was Backpage.com doesn't know this is for prostitution and isn't assisting with the development? And despite the case law, I answer that question on the side the plaintiffs and I'm denying [Backpage.com's motion to dismiss]" (quoted in *J.S. v. Village Voice Media Holdings and Backpage.com*, 2015, Gordon McCloud, J., Dissent, p. 5). In this case, the judge bridges the gap between "the reality of common meaning" and the exercise of the law, erring on the side of the *nomos* experienced by vulnerable people subjected to harm rather than that of ISP's generating revenues and profits. In order to do so, how-

[5] These two essays are *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative* (1983) and *Violence and the Word* (1986).

[6] In current usage, *nomos* refers to "the law; principles defining human conduct originating especially from culture and custom." The term originates from the classical Greek for usage, custom, law, melody, composition (Oxford English Dictionary online, n.d.). While *nomos* evokes and constitutes the law, its meaning extends into the realm of the shared, ever-evolving, and often intractable cultural, historical, and ethical narratives that constitute the "normative universes" in which we live.

ever, she must transcend or override the power of precedent and jurisdiction, both.

In her analysis of the violence of the law, Dayan describes "sinkholes of law where precedents gather, festering as they feed on juridical words, past and present" (p. 9). For Cover (1983), too, precedents can generate:

> …an entire *nomos*—an integrated world of obligation and reality from which the rest of the world is perceived. At that point of radical transformation of perspective, the boundary rule…becomes more than a rule: it becomes constitutive of a world. We witness normative mitosis. A world turned inside out; a wall begins to form and its shape differs depending on which side of the wall our narratives place us." (p. 31)

While the judges in the Tacoma case scale narrowly down the side of the wall accommodating allegiance to victims of profound harm, those in the Boston case land on the opposite side; indeed, as John Montgomery, lead attorney for the Jane Doe plaintiffs in Boston, wrote in his Reply Brief petitioning for appeal by the US Supreme Court, "Had petitioners' exact allegations been asserted in a district court in the Ninth Circuit, or in Washington State court, their claims would not have been dismissed" (*Jane Doe v. Backpage.com*, Reply Brief, p. 5). This is because the judges in the Ninth Circuit departed from the "hundreds of reported decisions [that] have interpreted Section 230…[finding] that the website is entitled to immunity from liability" (*Jane Doe v. Backpage.com*, Opp. Brief, 2016, pp. 4–5). And indeed, negative responses to the J.S. decision ground their claims in the argument that J.S. "deviates from precedent" and "subverts the policy rationales behind Section 230," thereby "mark[ing] the opening of the metaphorical litigation floodgates [and] impeding policy goals such as technological innovation, user control, and choice in the free markets" (Lee, 2016, p. 12). Characterizing sex trafficking, especially of minors, as a "serious and sensitive *public policy* issue in Washington" rather than a serious and gravely harmful criminal act and human rights violation, the comment finds the Ninth Circuit court's discretion in allowing the case to proceed to trial "unwelcome in a judicial system that emphasizes the predictability of legal outcomes [and] highly detrimental to ISP's, which seek clear precedents for their business decisions" (Lee, 2016, p. 16, emphasis added). Witness what Cover called "normative mitosis": the creation of a world in which the ability of corporations to plan business decisions based upon the extent to which they can count on precedent to protect them from criminal liability takes precedence (*entendre* intended) over the right of children to be protected from trafficking, sexual exploitation, and rape.

Further, the rhetoric of Judge Bruce M. Selya in the First Circuit court of Appeals (Boston) contributes to the creation of this *nomos* inasmuch as his opinion adopts a style of rhetorical gamesmanship in tackling plaintiffs' claims one by one, bracketing the gendered harm done to the plaintiffs in the process of interpreting and upholding Section 230 precedent against them. As it happens, Judge Selya is known for his complex, "quirky," and erudite writing style; still, as one commentator pointed out, his flourishes can "demean litigants and the legal process" (Garner, quoted in Margolick, 1992).[7] They certainly do in the Jane Doe case, in precisely the manner that worries legal scholars like Cover and Dayan.

Selya begins by acknowledging the difficulty of the case because of the bodily harm suffered by plaintiffs: "This is a hard case—hard not in the sense that the legal issues defy resolution, but hard in the sense that the law requires that we, like the court below, deny relief to plaintiffs whose circumstances evoke outrage" (*Jane Doe No. 1 et al. v. Backpage.com*, 2016, p. 3). Granted, Selya does not acknowledge that he or the other two justices hearing the case themselves experience outrage at the plaintiffs' circumstances, only that the circumstances (which he declines to name or define) evoke outrage in the abstract; to be sure, there is precious little by way of attention to such outrage in the opinion that follows. Indeed, Selya later asserts that:

> [T]he appellants contend that [Backpage.com's] course of conduct amounts to participation in sex trafficking and, thus, can ground liability without treating Backpage.com as the publisher or speaker of any of the underlying content. This contention comprises more cry than wool. (*Jane Doe v. Backpage.com*, 2016, p. 14)

"More cry than wool" is an antiquated proverb that originated with the cries made by sheep while being shorn, the assumption being that there is no real pain in those cries, and the proverb coming to mean a "dramatic assertion backed by little evidence" (Simpson & Speake, 2008). Selya's use of a figure of speech that makes its meaning by dismissing the substance of an expression of pain emanating from another being is more in keeping with the treatment by the court of the suffering experienced by plaintiffs than his earlier abstract characterization of their claims as "circumstances that evoke outrage." It demonstrates the overall glossing over of plaintiffs' suffering evidenced throughout the opinion.

Selya concludes his brief introduction to the case with the simple sentence, "The tale follows," thereby highlighting what Dayan calls the "achingly disparate significant experience" of the judge (perpetrator) and plaintiff (victim) of the "organized violence" that is law:

> For the perpetrator, the pain and fear are remote, unreal, and largely unshared. They are, therefore, almost never made a part of the interpretive artifact, such as the judicial opinion….[F]or those who impose the violence the justification is important, real and carefully cultivated. Conversely, for the victim, the justification

[7] Thanks to David Nersessian for bringing this matter of Selya's unique writing style to my attention.

> for the violence recedes in reality and significance in proportion to the overwhelming reality of the pain and fear that is suffered." (2011, loc. 1629)

For Selya, "Striking the balance in a way that we believe is consistent with both congressional intent and the teachings of precedent" is an important, real, and carefully cultivated justification for denying relief for the pain and fear of plaintiffs who, as a result of this opinion, will not be entitled to relief, redress, or justice (*Jane Doe v. Backpage.com*, p. 3). To preface one's rationale for an opinion that destroys a person's ability to pursue justice by introducing it as a "tale" ("a story imaginatively told," according to the Oxford English Dictionary online, n.d.) is to trivialize the narrative of suffering experienced by but not limited to the three plaintiffs in the case. Selya's tale is a remote walk through judicial precedent and legislative intent, while the claimants' tale is a horror story: the dehumanization, exploitation, and rape of children to line another's pockets. But Selya's prevails, thereby providing a cautionary "tale" to other victims who might seek protection in the courts: don't bother.

Despite these stakes, Selya proceeds through the opinion as if it *is* simply a tale, or a game, at stake, embracing without ambivalence Section 230 precedent throughout, as when he triumphantly claims, "Precedent clinches the matter" (*Jane Doe v. Backpage.com*, p. 15). He further characterizes the complaint as reliant upon "sententious rhetoric rather than well-pleaded facts" (p. 18) or upon charges of "Machiavellian manipulation…as surrogates for well-pleaded facts" (p. 19); designates plaintiff's claims about the status of Backpage.com as participant in the development of its online posting as "a pair of end runs" around Section 230 (p. 19); calls plaintiff's claim that Backpage.com profited from unauthorized use of the girls' photos as a "fusillade wide of the mark" (pp. 29–30); and describes plaintiff's final contention that their right to privacy was violated when Backpage.com posted their photos as "a last ditch effort to bell the cat" (p. 35).

In addition to likening the plaintiff's claims to (failed) tactical moves in sporting events and war games, Selya diminishes the assertions of harm embedded therein in gendered terms as hyperbolic, hysterical, or pompously moralizing, in contrast with the rationality of "well-pleaded facts." In the rare moments when he appears to acknowledge such suffering as real or true, he then dismisses it on the basis of both precedent and jurisdiction, as in his conclusion:

> "As a final matter, we add a coda. The appellants' core argument is that Backpage.com has tailored its website to make sex trafficking easier. Aided by the *amici*, the appellants have made a persuasive case for that proposition. But Congress did not sound an uncertain trumpet when it enacted the CDA, and it chose to grant broad protections to internet publishers….If the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through litigation. *We need go no further*" (*Jane Doe v. Backpage.com*, 2015, p. 37, emphasis added).

7. Conclusion

We need go no further. It is perhaps this tone of certitude that clinches (to borrow from Selya) the interpretive violence of this decision. For indeed we must go further, and as current events would have it, will go further. The *nomos* of certitude around Section 230 has been unsettled in legislative, criminal, and judicial contexts. The Senate Permanent Subcommittee on Investigations held Carl Ferrer in civil contempt of Congress for refusing to reply to its subpoena for information on Backpage.com business practices or even to show up to a hearing on the matter in November 2015. In January, 2017, Ferrer, Lacey, and Larkin were forced to appear before the Subcommittee, at which time they each invoked their Fifth Amendment rights not to testify, a move that "validat[es] the Senate's report on their illegal activities," according to Subcommittee Chair Senator Rob Portman, who adds that Backpage.com has "put profits ahead of vulnerable women and children"—as, indeed, the judicial interpretation of Section 230 and the accumulation of precedent has allowed them to do (quoted in Daly, 2017). And while the October 2016 pimping charges against Ferrer, Lacey, and Larkin were dropped (by a court that accepted Section 230 as sufficient prophylaxis against criminal liability), the State of California has brought new charges that led to another indictment for Ferrer, Lacey, and Larkin. Finally, the Tacoma case against Backpage.com in the Ninth Circuit on behalf of J.S. will go forward in May, 2017. Should it succeed, an important new precedent will be established, one that disrupts the normative prioritization of freedom of commerce, infusing life into the nomos of human rights that has languished in the shadow of Section 230. That case is still alive, notwithstanding recent filings by Backpage.com to stay that action, stating that it must deal with a new grand jury investigation currently underway before it can address the civil claims. As of this writing, the adult services sections on the Backpage.com website have been shuttered, and Backpage.com has posted a note under each adult services category heading that reads "Censored! The government has unconstitutionally censored this content," and that invites readers to "protect internet free speech" using the hashtags #FREESPEECH #BACKPAGE, emphasizing once more Backpage.com's commitment to the nomos of freedom of speech which actually acts as cover for unstated subtexts: freedom from costly litigation that hinders business operations; freedom of commerce and profit generation.

Returning to the discussion of slavery at the start of this work, acknowledging that concrete definitions and legal redress are challenging in an era in which slavery has been abolished legally but continues to thrive

materially, we would do well to remember Orlando Patterson's (1982) description of slavery "as a special form of human parasitism" (p. 14) characterized by "direct and insidious violence…namelessness and invisibility…endless personal violation…and chronic inalienable dishonor" (p. 12). Stopping the parasitic flow of profits to Backpage.com executives from the bodies of those children trafficked on their website will entail review and, likely, amendment to Section 230 by Congress. But in the meantime, judges and courts must reject the neoliberal *nomos* that has pooled in the accumulation of precedent in this case, must transcend the current judicial "commitment to hierarchical ordering of authority first, and to interpretive integrity only later," (Cover, 1983, p. 58), and must restore protection of the gendered subjects seeking redress from the criminal harm of child sex trafficking to the center of future cases.

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Conflict of Interests

The author declares no conflict of interests.

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Article

The UK's Modern Slavery Legislation: An Early Assessment of Progress

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Abstract
In 2015, the Westminster UK government introduced a Modern Slavery Act described by its proponents as 'world-leading'. This description was challenged at the time both inside and outside the UK. Two years on, it is possible to make a preliminary assessment of progress with the Act and its two counterparts in Scotland and Northern Ireland.[1] This article reviews the origins of discussions about modern slavery in the UK, describes the process leading to the passage of the Modern Slavery Act(s) and attempts an early evaluation of their effectiveness. It concludes that much remains to be done to ensure that they achieve their goal of abolishing modern slavery in the UK.

Keywords
forced labour; human trafficking; legislation; modern slavery

Issue
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1. Introduction

This article attempts an early assessment of the provisions of the UK Modern Slavery Act, enacted in 2015. It provides a necessarily brief historical and global context to this Act supporting the argument that, contra to the beliefs of many during much of the period since the two UK anti-slavery Acts of the early 19th century, slavery never really disappeared but remained as a potentially significant policy and political issue both outside the UK and its links to goods and services consumed within the UK,[2] and, more latterly, within the UK itself. It examines the development of the Act itself and the significant role that was played by NGOs in lobbying for it and shaping its form, and concludes by pointing to a range of policy and practice issues which have yet to be resolved. Some of these are being addressed but others, particular those which have an apparent link to wider debates about immigration, appear to be unlikely to be resolved in the near future.

2. Context: The UK's New Anti-Slavery Initiative

On March 26, 2015, the British Parliament enacted the Modern Slavery Bill, described both by lead-Parliamentarian Home Secretary (now Prime Minister) Theresa May and her successor as Home Secretary, Amber Rudd, as 'world-leading'. This claim, reminiscent of claims made for William Wilberforce's First Act of 1807, seemed hyperbolic, given that several European countries—such as Finland and the Netherlands, prompted by the Palermo Protocol—had already introduced many key elements of state anti-slavery law including Anti-Slavery Rapporteurs. The final form of the Act indeed left most active NGOs—which had been key policy actors in the original lobbying for the Act and in terms of its final shape[3]—and

[1] This article focuses largely on the Modern Slavery Act for England and Wales although some observations are made in the final substantive section on the contrast between this Act and its counterparts in Northern Ireland and Scotland for which separate comprehensive assessments would be useful.
[2] Which became highly significant in the debates about Clause 54 of the Act concerning private company supply chains.
[3] It is interesting to note that NGO-sponsored research and evaluation (sometimes in collaboration with individual academically-based researchers) was far more significant in shaping the political and policy debates around modern slavery leading up to the passage of the Act, than academic research; it is only in the past two to three years that a reasonable volume of academically-based research has begun to emerge.

many Parliamentarians disappointed at the exclusion or watering-down of key clauses (see final section below), although there is no doubt that it has placed the issue of modern slavery firmly on the British political agenda, providing important leverage for campaigners in the years to come. This article, two years on from its passage, attempts an early evaluation of progress. It is based on careful monitoring of the progress of the Act, from before its inception, including extensive involvement with key organisations lobbying for change, a reading of key documentation and from feedback from ongoing work with a national network of organisations involving in anti-slavery work, which participated in a total of eleven national seminars examining aspects of the Act.[4]

3. Modern Slavery in Historical and Global Contexts

Placing discussion about modern slavery in a wider context—making links between the history of slavery and slavery today—emphasises that modern slavery is not a historically isolated phenomenon. It is a contemporary manifestation of human relations, driven by economic avarice and legitimised by racism. After the global arms and drugs trades, modern slavery is estimated now to be the third largest illicit trade in the world, valued at at least $32 billion per year (Bales, 2007). Whilst slavery in the past has been associated with the spoils of war or with the industrialised trade of the Transatlantic slave trade, human trafficking for sexual and labour exploitation and forced labour now are associated with migration. This is driven in most cases less by the explicit pressure of war (although that is clearly happening today as in Syria where many migrant adults and children seeking refuge are at serious risk of ending up in the hands of people traffickers) but by the less obvious pressures of poverty, poor attention to human rights, lack of basic education, and economic and demographic dislocation.

The conditions driving people to migrate and to be trafficked are described in detail in a series of vignettes in Gupta (2007). The impact of globalisation of labour markets is also substantial; essentially, trafficking for sexual purposes reverses the dynamic where those owning capital (sex tourists) move to labour (those offering sexual services, e.g., in South East Asia) to the converse, where labour is now moved to meet the demands of capital on the latter's own territory. Moldova is a typical example; one seventh of the population is estimated to have emigrated during a few years in the early 21st century. In 3 years, 1131 Moldovan victims of child trafficking were identified.

Though the slave trades were legally abolished by all European powers by the end of the 19th century, slavery persisted. In the 200 years since the 1807 British abolition, slavery has taken many forms, each of which has impacted on present-day demographical and political realities. Africans were transported to the present-day Gulf area; within Central and West Africa, enslavement of African by African or Arab continued, the capture of slaves often accompanied by wars of religious conquest. Thirty percent of this African population remained enslaved at the beginning of the 20th century. In the 1960s, more than 200,000 adult slaves remained in former French colonies, their descendants still present as familial slaves in the Sahel (Quirk, 2009).

At the beginning of the 20th century, there were still up to 2.5 million slaves in British-controlled Northern Nigeria; slavery was common both in the Muscovy and Ottoman empires.[5] Slaves remaining in hundreds of thousands within the Arabian peninsula until the 1960s have now been replaced by migrants from countries such as India, the Philippines and Malaysia, many of them working effectively as slaves—in construction, as nannies, nurses and cleaners, women's economic contribution often associated with a requirement to perform sexual acts, in conditions so extreme that acts of suicide are not unusual.

Slavery was formally abolished in India in 1843, but most slaves were transformed overnight into debt bondsmen. Here, there remains the largest single concentration of slaves with tens of millions of adults and children enslaved in debt bondage, particularly in agricultural work, further instance of the links between historical and contemporary worlds of slavery. Forced labour (including prostitution) remained a familiar part of the colonial landscape throughout the early 20th century, most appallingly in the Congo's genocidal landscape of the Congo (Hochschild, 2006).

Although most countries have now formally made slavery illegal, slaves—including many millions of children—continue to be found in many Asian and Latin American countries in a variety of more modern industries including brick-making, fish processing, mining, carpet production, charcoal burning, gem-making and the production of fireworks, alongside girls trafficked from neighbouring countries into sexual slavery (Craig, 2009). Although slavery is usually hidden, difficulties in abolishing it in many countries are also accentuated, despite laws, by complicity between slave-masters and the state in maintaining it.

This brief historical review suggests that it is wrong to see modern slavery as isolated from its previous manifestations; many of the commodities historically associated with slavery indeed continue to be so. Although, with the emergence of international legislation from the early 20th century (Craig, Gaus, Wilkinson, Skrivankova, & McQuade, 2007), pressure to end slavery has grown, legal instruments and international political pressure failed to abolish it. Slavery changes its forms

[4] The first six seminars, which ran from 2013–2015, were funded by the ESRC; the second five, running from 2015–2016, by a grant from the Joseph Rowntree Foundation. The conclusions drawn from this work are entirely those of the present author. Some of the findings of the ESRC seminars were published in a report (Craig, Balch, Geddes, Scott, & Strauss, 2014).

[5] Much of the specific data in this section draws on Quirk (2009) to whom I am indebted.

to reflect an industrialised and increasingly globalised world where the migration of labour—almost half of it female[6]—to new, strange contexts makes it more vulnerable to enslavement.

Ironically, comprehensive data—which, during the period when slavery was legal, diligently recorded and widely available—is now, in a context of illegality, far less accessible. Estimates of numbers and types of slaves in any country thus come with a health warning as to their understated nature. The International Labour Organization (ILO, n.d.) estimates there may be 211 million children aged 5–14 engaged in economic activity, many of them trafficked, most of them working in hazardous situations, and at least 8.4 million subjected to the 'worst forms of child labour'. They are concentrated in the Asia-Pacific region, producing many goods which go worldwide, most of all again to the consumer markets of 'developed' countries. Estimates of adults involved in slavery worldwide range from 12 million to 40 million—substantially larger than those involved throughout the transatlantic slave trade.

Modern slavery worldwide takes many forms, including chattel slavery, forced labour, debt bondage, serfdom, forced marriage, trafficking of adults and children, child soldiers, domestic servitude (Kalayaan, 2008), the severe economic exploitation of children and organ harvesting;[7] many of them exist now within the UK or in other countries linked to the UK through the supply of goods and services. More recent manifestations in the UK include large-scale farming of cannabis plants by young Vietnamese boys, imprisoned in suburban houses; and the use of children and adults, by, predominantly, Eastern European gangs, to beg, pickpocket or shoplift.[8]

The most common forms of modern slavery in the UK are of forced labour and human trafficking for sexual purposes (Craig et al., 2007). The most recent estimate of those in forms of modern slavery in the UK is 10,000–13,000 (Bales, Hesketh, & Silverman, 2015) although many commentators, based for example on the numbers of those already passing through the National Referral Mechanism (NRM, the formal system for logging victims of modern slavery), suggest this maybe a serious underestimate. In 2014, around 3000 people were officially recorded by the NRM;[9] the numbers of those referred for sexual and labour exploitation were roughly equal, together accounting for more than 80% of the total, although, as in many European countries, the numbers of those recorded for labour exploitation was growing much more rapidly—the consequence in part of the steady deregulation of the UK labour market[10] (Standing, 2011; Waite, Craig, Lewis, & Skrivankova, 2015, passim, but especially the editorial introduction).

Early discussion of modern slavery within the UK (and elsewhere) focused almost exclusively on the issue of human trafficking for sexual purposes. The US Department of State estimated that at least 800,000 people are trafficked annually across borders worldwide, most of them women and children for sexual purposes, and not including people trafficked *within* countries (UNICEF, 2005). This may have been a modest estimate as it is believed that more than 500,000 are trafficked into Europe annually and the UN believes that 1.2 million children may be trafficked annually, internally and externally (UNICEF, 2006a). Literature on trafficking into and within the UK began to emerge from 1995 onwards. Parliament reflected this growing awareness by establishing an All Party Parliamentary Group on Trafficking although the British government was reluctant initially to endorse all aspects of the Palermo Protocol, the legal instrument established by the United Nations in 2000 to 'prevent, suppress and punish trafficking in persons, especially women and children', supplementing the United Nations Convention against Transnational Organised Crime, and followed in 2005 by the Council of Europe Convention on Trafficking in Human Beings.

Questions in the UK Parliament revealed considerable ignorance of trafficking's scope and scale. Estimates of those involved were very vague[11] and, as it later turned out, based on better data (see above) hopelessly undercounted the actual numbers involved. Much of the early leadership in raising issues about trafficking of adults and children came from prominent British NGOs. UK policy concern began to be translated into legal instruments from 2002. From 2004, all forms of trafficking were made illegal through use of the Sexual Offences Act 2004 and the Immigration and Asylum Act 2004 although two NGOs (Liberty and Anti-Slavery International) later managed successfully to insert a clause regarding the criminalisation of forced labour as a stand-alone offence within the Coroners and Justice Act of 2009. Until then, forced labour could not be prosecuted in the UK unless shown to be associated with human trafficking. It was estimated in the mid-2000s that there were at any one time about 5000 sex workers in the UK, most of them traf-

[6] About 52% of all migrants in the Global North and 43% in the Global South were female, see OECD (2013).

[7] Organs such as livers and kidneys are removed under compulsion or duress of some kind (for example to settle cases of debt bondage), often in dangerous contexts, for sale to wealthy people requiring transplants. Latest data available suggests and reported in GRETA (2016)'s monitoring report on the UK suggested that there were eight cases in the UK in the past year.

[8] See for example the various recent publications produced by Anti-Slavery International at https://www.antislavery.org

[9] It is important to note that the NRM data includes indigenous children and adults who had been trafficked for various forms of modern slavery *within* the UK.

[10] The two New Labour former Prime Ministers, Blair and Brown, frequently celebrated the fact that the UK has an increasingly flexible labour market, one now regarded as the most flexible labour market in Western Europe. Flexibility, however, appears to be a code for high levels of exploitation including low wages, long hours, insecure contracts, poor working conditions and little trades union organisation. The UK Coalition government of 2010 and the Conservative government of 2015 have continued this trend.

[11] One Parliamentary response from Harriet Harman when Solicitor General suggested that between 142 and 1420 women had been trafficked that year into the UK (see Craig, 2015, for further discussion of early data).

ficked into the UK, 75% of them female, and 30% aged under 16 (UNICEF, 2006b) and that possibly 10,000 adults had been trafficked into the UK by about 2008.

Although the National Criminal Intelligence Service (NCIS, 2002) once suggested that there was no evidence of large-scale trafficking into the UK, this view became indefensible. Growing concern amongst NGOs largely drove the introduction of legislation, the development of a Home Office-led UK Action Plan on Trafficking and the establishment, in 2007, of the police-led UK Human Trafficking Centre (UKHTC), later incorporated into the National Crime Agency (NCA), despite commentators arguing that it was in existence for too short a period to assess its effectiveness. The NCA is more policing-oriented and less open to public scrutiny but it was hoped that it would address the lack of effective communication between police, immigration and both statutory and voluntary social services agencies in particular. Most commentators remained critical of the government which appeared far more concerned with tracking and capture of traffickers, with immigration (e.g. the fear that illegal economic migrants may abuse the provisions of the Convention) and law enforcement, than with victims' needs and rights.[12]

The European Convention for the Protection of Human Rights and Fundamental Freedoms is the overarching policy and political framework covering the treatment of refugees, the right to be free from torture, inhumane or degrading treatment and the prohibition of slavery and forced labour. Here, slavery has also been interpreted to imply a ban on trafficking. The Council of Europe, as well as requiring binding standards of human rights amongst member states, introduced a treaty and the Palermo Protocol in 2000 which specifically addressed trafficking. This proposed measures to prevent and combat trafficking and for better victim protection, and established a monitoring body to review progress in implementation—Ad Hoc Committee on Action against trafficking in Human Beings, Council of Europe Convention (revised draft), 5 July 2004.[13] However, although most countries adopted laws to combat trafficking, and there has been international cooperation and movement as a result of GRETA's work, policy and practice responses still vary quite widely between countries.[14] The general view of the UK position from those working in the field was initially that legal frameworks were largely adequate in principle but that policy and practice responses were inadequate. For example, the Trades Union Congress, the peak trades union federation (TUC, 2006), pointed out that trafficking victims in general appeared to have no enforceable employment rights, possibly contributing to the deaths of the 23 Chinese Morecambe Bay cockle-pickers in 2003. This generally benign view changed.

As evidence of modern slavery grew, the government was forced to act and to widen its concern to include other forms of modern slavery than just trafficking for sexual exploitation. The agreement to establish an Anti Slavery Day in 2010, the result of a private member's Bill in Parliament, also helped to focus minds as did the publication of a series of reports outlining the scope and possible size of modern slavery in the UK (Centre for Social Justice, 2013; Craig et al., 2007; Geddes, Craig, & Scott, 2013). It became clear that human trafficking, whether for sexual or labour exploitation, was the tip of a much larger modern slavery iceberg with the scale of modern slavery being much larger than presumed, and its scope much wider than had been understood, with new forms of slavery practice becoming apparent.

Growing clamour around issues of modern slavery within Parliament prompted largely by lobbying by a number of prominent NGOs, research findings and media coverage finally led to the government agreeing to publish a draft Modern Slavery Bill in December 2013. Since its inception the Bill, now Act, and subsequent Parliamentary work, has become an important element of the parliamentary portfolio of Theresa May, whose sponsorship, whilst contradictory in the light of her other political positions,[15] has helped to keep a high profile for the issue. Certainly, it seems that May has wanted to use her involvement with the origins and progress of the Act to enable her to project an inclusive political stance both in relation to her own party and to its broader policy agenda.

Having reviewed the historical, global and political context to the debates on modern slavery in the UK, we now move on to a discussion of the implementation of Modern Slavery Act itself and an analysis of progress to date.

4. The Modern Slavery Act

The early draft of the Bill was very weak, leading to substantial criticism from virtually every side, notwithstanding claims made by government. Consequently, the draft Bill went through an unusually prolonged, detailed and highly critical process of scrutiny before reappearing in a final form before Parliament in June 2014. At the same time, many individuals, organisations, NGOs, researchers and others, took the opportunity to promote their own critiques. By the time the final Bill was published, it had been very thoroughly examined, the gov-

[12] See, for e.g., a Parliamentary written answer from Baroness Scotland, Home Office Minister of State, cited in Hansard House of Lords November 2, 2006: 'The government are examining how the Council of Europe's Convention's approach could best be harmonised with effective immigration controls', a comment which came back to haunt her as she was later found to be employing an irregular worker.

[13] This body was overtaken by the work of GRETA (Group of Experts on Action against Trafficking), which has a key role in monitoring the implementation of action against trafficking in EU member states.

[14] GRETA is tasked by the Council of Europe to monitor the implementation of various conventions and protocols.

[15] This apparent contradiction is in fact easily explained by considering her own personal political interests. In the event of a leadership election (which came unexpectedly quickly following the Brexit vote which led to Cameron's resignation), May—normally regarded as a candidate of the Right—might well have calculated that she needed votes from the more liberal centre of the Conservative party to win a campaign.

ernment's claim that it was world-leading looking fragile indeed.[16]

Despite growing awareness of the much wider scope of modern slavery, most of the Bill still remained focused on the issue of human trafficking.[17] Much early debate focused on establishing the precise wording needed to encompass all the possible offences which might be involved, and how children in particular might be protected by its provisions.[18] One key argument was about what form the precise protection for children might take with one suggested scheme, involving children being provided by the state with Advocates, to defend the best interests of the child, being piloted by an NGO, Barnardos (for an evaluation of this pilot see Kohli, Hynes, Connolly, Thurnham, Westlake, & D'Arcy, 2016)

This was one of several initiatives the government, unusually, took whilst the Bill was still being debated. Another was to create a Modern Slavery Unit within the Home Office; yet another to move departmental responsibility for the Gangmasters' Licensing Authority (GLA),[19] which scrutinised businesses for evidence of forced labour and issues licences to agencies supplying labour to companies, from the agricultural department (DEFRA) to the Home Office; a fourth to review the NRM in light of the scathing critique developed by many organisations (see Anti-Slavery International, n.d.); and a fifth, to create the post of Anti-Slavery Commissioner. This role, essentially claimed to be equivalent that of a National Rapporteur, was required by the Council of Europe to be an independent one but, although the Act alluded to an Independent Commissioner, it remains unclear that the Commissioner can work free from government interference.[20] The First Commissioner, Kevin Hyland, reports to the Home Secretary who can redact his reports, rather than directly to Parliament.[21] The post was advertised *before* being debated in Parliament which suggested that the government was determined to get its own way on this issue. Whilst the issue of trafficking remained very central to the Bill and thus to the Act, this essentially focused almost entirely on trafficking for sexual exploitation of adults and children (those defined by the UK to be under 18). This limited the time available to debate or legislate on other aspects of modern slavery.

During discussion of the Bill, the issue of trafficking for labour exploitation, and of forced labour (which can occur whether or not trafficking is involved) thus received far less attention. The number of cases for forced labour brought before the courts had remained very low and very well-prepared cases of forced labour were thrown out, or given lenient sentences by the judiciary who had, it seemed, a very limited understanding of how forced labour worked (The Spectator, 2014). One important victory was won by lobbyists with the government finally agreeing to include a clause requiring companies to take some responsibility for exploring whether slavery might be found in their supply chains.[22] The Act in its final form indicated a series of issues which companies with an annual turnover above a threshold of £36 million would be required to include in anti-slavery statements on a website. Contrarily, the government failed to respond to very strong and prolonged demands from inside and outside Parliament to protect overseas domestic workers from the abuse they suffered at the hands of wealthy employers.

There was also substantial pressure to extend the remit (and thus the resources) of the Gangmasters Licensing Authority from its early narrow focus. Initially the GLA was only able effectively to investigate a small fraction of possible forced labour cases (Wilkinson, Craig, & Gaus, 2009). The Act required the government to complete a thorough review of the scope of the GLA within a year of its enactment. This review was eventually subsumed into a wider review of immigration and labour market policy, thus confirming the myth in many minds that modern slavery was really an immigration issue rather than one of exploitation, and in October 2016 the GLA became the Gangmasters and Labour Abuse Authority (GLAA). Although the government conceded that the GLAA should have a remit which effectively covered the whole of the labour market including a number of industrial sectors which had begun to be of concern to NGOs, trades unionists and others (such as leisure and hospitality, construction, social care), and some additional quasi-policing powers, the GLAA has been given nowhere near the kinds of resources it needs commensurate with these responsibilities.

[16] Most significantly, a joint committee of the House of Commons and House of Lords engaged in pre-legislative scrutiny of the Bill, again informed by lobbying and briefings from many NGOs and some academics. The government response to this scrutiny paper—see UK Government (2014)—outlines many of the ways in which the government accepted much of the Committee's critique, including around issues such as, for e.g., the statutory defence for victims, the scope of offences, the role of the Anti-Slavery Commissioner, and the nature of prevention mechanisms such as Trafficking Prevention Orders. Other specific issues such as the supply chains clause—Clause 54—were inserted at a later date as a result of specific campaigns for their inclusion.

[17] This was rather more the case in Scotland where the Scottish government promoted a separate Bill to a more leisurely timetable and even more so in Northern Ireland where an anti-trafficking Bill was enacted in a manner which led many to question the motives of the private member (Lord Morrow) who sponsored it, much of the Act being given over to discussion of a law criminalising the payment of money for sex rather than trafficking per se.

[18] This is important as the UK judiciary remained—some would argue still remains—largely very ill-informed about the nature of modern slavery and has often either failed to recognise the seriousness of offences, or regarded victims of trafficking or forced labour as criminals. The Modern Slavery Act committed to recognising victims as just that.

[19] The GLA was established after the Morecambe Bay tragedy and initially concentrated on agriculturally-related sectors.

[20] GRETA's monitoring report on the UK anti-slavery strategy notes that the Anti-Slavery Commissioner 'falls far short of that of a National Rapporteur' and that the UK authorities should 'examine the possibility of establishing an independent rapporteur.' (2016, p. 11)

[21] The Commissioner's first report was published in October 2016, see www.antislaverycommissioner.gsi.gov.uk

[22] See the report by Allain, Crane, LeBaron and Behbahani (2013) on this issue. Perhaps surprisingly, and certainly wrongfooting the government, some big businesses (including, for example, supermarkets and hotels) supported further regulation, arguing that unscrupulous companies, using forced labour, would be able to cut prices, thus taking greater market shares from what they argued were more responsible companies.

The final debates took place in the week running up to the point at which Parliament was to be suspended for the period of the 2015 General Election. This enabled the government to drive through clauses to which opposition parties were hostile: running the debates right up to the deadline (literally to the day when Parliament ended) provided the government with the opportunity effectively to say 'you can have half a Bill or no Bill'. In the event, opposition parties in the Lords and Commons both settled for 'half a Bill': given that it had all-party support in general, no-one was prepared to prevent it from being enacted.

The final form of the Act(s) thus reflected a substantial amount of unfinished business, some of it explicit as noted above, some of it implicit or contested. It is arguable that these failings closely reflect the unwillingness of government to act on much of the strong and concerted advice offered in the period leading up to and during the passage of the Bill.[23] Clearly the fact that the Acts are now part of the legislative and policy landscape is a great advance: this has not only put the issue firmly on the public and policy agendas, but given a substantial boost to those who have been arguing the case for action for many years, and provided a range of potential tools for the differing organisations (whether concerned with criminal justice, victim support, social care, advocacy and advice or ethical trading) to up their game. As a result the number of prosecutions has increased (289 prosecutions were brought in 2015 and 113 convictions obtained) (Inter-Departmental Ministerial Group on Modern Slavery, 2016), although perhaps not as many as might have been hoped given the scale of the problem, and some sentences have been regarded as derisory given the seriousness of the offences. Additionally, most (but not all) police forces have begun to create modern slavery units which, with the improvements in some data collection, have helped them to focus more clearly on modern slavery as a defined criminal offence and in some parts of the country they have taken the lead in creating multi-agency modern slavery partnerships to coordinate local work.

Many have argued that, despite these gains, the Act's provisions represent a missed opportunity in many ways. In the final section below we examine some of these outstanding issues, by reviewing progress to date and assessing claims made by the UK government for it to be a world-leading initiative. We do so under a number of key headings below. There are also cross-cutting issues which will not be discussed below, a prominent one of which is probably the question of training (see, for e.g., Independent Anti-Slavery Commissioner, 2015; The Passage, n.d.). It is quite clear from a wide range of reports that there is no group of concerned professional, whether it be police, judiciary, medical practitioners, NGOs, care workers, children's service providers where the level and quality of training for identifying and supporting victims of modern slavery, and of knowing how to progress their cases, can be regarded as adequate. This is a huge task requiring input from all agencies involved.

In discussing possible changes to the Act over the next few years, it is also important to acknowledge the current political and policy context within the UK. Many commentators have suggested that the significant spike in race hate crimes following the Brexit vote of June 2016 not only drove many of those who voted to leave the EU but also reflected the more general antipathy to immigration and specifically to migrant workers which has been growing for some time (see, for e.g., Institute of Race Relations, 2016). It seems hardly a coincidence then that recent changes in the form of the Gangmaster's Licensing Authority (see below) which were claimed to address the issue of severe labour exploitation were introduced in an Immigration Act in late 2016 (and see below).[24]

5. What Remains to Be Done?

5.1. Three Acts or One?

We commented above that in parallel with the Westminster legislation, separate legislation was introduced in both Scotland and Northern Ireland. The Scottish legislation appeared in many respects rather weaker than that of Westminster, and that in Northern Ireland even more narrowly conceived. Criticisms of the situation at the time focused mainly on the fact that inconsistencies between law, policy and practice might lead to some areas becoming more attractive to traffickers and gangmasters. The Independent Anti-Slavery Commissioner (IASC) has made some attempts to bridge these gaps and has been given a UK role in respect of some provisions, but important difficulties remain and an independent evaluation of the legal framework across the UK as a whole has pointed to very significant problems (Anti-Slavery International, n.d.). In the event, however, it appears that the legislation in Scotland and Northern Ireland has turned out to be more comprehensive and/or effective in certain areas such as protection of children (Anti-Trafficking Monitoring Group [ATMG], 2016). These difficulties include the following:

- 'Significant differences' in a number of key areas across the three jurisdictions, including around the criminalisation of victims, and in statutory support for adult victims (see below);
- A lack of any monitoring facility to ensure coordination and calibration of the Acts' progress, as well as to assess the effectiveness of specific provisions;

[23] This could well be the subject of an entirely separate article focusing specifically on the policy process.

[24] For commentary on the appointment of a new Director of Labour Market Enforcement, whose identity was announced in February 2017, see, for example Weatherburn and Toft (2016) who examined the position in the UK in relation to the European Agency for Fundamental Rights report on the severe labour exploitation of workers. This issue is also covered in various chapters within Waite et al. (2015).

- The ambiguous wording of certain clauses or words such as 'travel' and 'duty to notify';
- Significant differences in provision and timetable in areas such as child guardianship.

The ATMG report also proposes that the IASC should be given a central role in terms of collecting and analysing data in order to identify specific gaps. At the time of writing, the IASC had just appointed a first research worker although it is not clear what her role will be.

It is also worth noting that Wales is the only territory within the UK with what is claimed to be a comprehensive anti-slavery strategy coordinated from a single point (see Welsh Government, n.d.). Core elements of this strategy have been evaluated with the evaluators reaching broadly positive conclusions about the effectiveness of the key elements of the scheme, namely training provision and the support arrangements for identified victims of trafficking. The Wales strategy is also developing freestanding critiques of aspects of the Act and guidance related to it (see, for e.g., Welsh Government, 2017, in relation to ethical practice in supply chains).

5.2. The role of the GLAA

It is obviously too early, months after its establishment (and with formal structural changes only being implemented in April 2017), to comment in detail on the impact of the shift from the GLA to the GLAA although there is a clear need for the issue of resources to be addressed. The GLA's remit, covering about 0.5 million workers in the food-related industrial sectors, was being monitored by a workforce at the GLA of 70 staff of which 40 were field staff. The new all-encompassing GLAA has, technically a target of upwards of 30 million workers but is only being offered resources for an additional 40 staff. The GLAA, like its predecessor the GLA, is intelligence-led. Whether it will have the capacity to respond to claims that a whole sector such as construction or social care is infected by trafficking or by forced labour remains a moot point. Construction is indeed a case in point where the frequency of so-called self-employment may mask an equally frequent occurrence of severe labour exploitation. Other sectors where far-reaching investigations may be needed include food production and retailing, shown by research to be one possible focus for forced labour (Geddes et al., 2013), social care (Craig & Clay, 2017) and fishing.

The Modern Slavery Act extends to the seas around the British Isles within UK jurisdiction where cases of deep sea trawlers crewed by enslaved foreign nationals have been identified: again, whether the GLAA has the resources to pursue the issue thoroughly remains in question. The other major change to the GLAA has been in terms of institutional structures: although the GLAA still has a (much-slimmed down) Board of Directors it appears that it may in practice be more closely accountable to government through the new Director of Labour Market Enforcement, thus less open to change driven by external critiques. It will be some time before it is clear what difference its new remit will make although, given the generally high regard in which the GLA's work has been held to date by those active in this area, given its limited resources, it would be a great shame if these changes were to undermine its effectiveness.

5.3. Supply Chains

Clause 54 of the Modern Slavery Act, inserted relatively late on in the Parliamentary process, required companies (which number around 12,000) with a turnover of more than £36M to ensure that slavery practices were not present in their supply chains, and to publish annual modern slavery statements. A number of NGOs and other organisations such as the Ethical Trading Initiative and the British Institute of Human Rights have been monitoring compliance with this requirement. The Clause, though welcome in terms of raising the profile of 'hidden' slavery within the goods and services found within the British economy, is, as most commentators have observed, very weak, with no formal legal sanctions other than civil proceedings involving injunctions in the High Court, unlikely to impact significantly on profitability. The government's view is that naming and shaming with its impact on companies' reputations might be adequate to persuade companies to take effective action, a view not widely shared. Early experience confirms feelings that the provision is inadequate: few companies have complied to date, most providing statements have failed to meet the requirements of the Act; and many companies remain ignorant of the Act's provisions (see, for e.g., Chartered Institute of Procurement & Supply, 2016). Meanwhile, 71% of companies believe that there is slavery in their supply chains (Fifty Eight, 2016). There remains a clear case for toughening sanctions against companies in line with the UN Guiding Principles on Business and Human Rights (OHCHR, 2011). Additionally, the requirement only applies at present to private companies: a member of the House of Lords is currently pursuing the possibility of a Private Members' Bill which would extend the Acts' requirements to the public sector many parts, of which, such as hospital trusts and large local authorities, have substantial procurement budgets.[25] The government has also declined to monitor compliance by collating and publishing anti-slavery statements, a task which might fall to an NGO. Several organisations have begun to undertake this task[26] (also see footnote 48) and something of an industry has grown up of organisations advising companies on how to comply with the terms of Clause 54 (e.g., Walk Free Foundation, 2014).

[25] HLBill 6, 56/2. See also House of Lords, In Focus LIF 2016/0035 Briefing Note.
[26] See Research Briefing No 1 from the Modern Slavery Research Consortium, available on request from the present author.

5.4. The NRM

As the Modern Slavery Act became operational, the government committed to reviewing the National Referral Mechanism, the system by which the claims of those alleging to be victims of modern slavery were assessed (see National Crime Agency, n.d.). The NRM had been widely criticised, including by a consortium of NGOs which argued, inter alia, that the NRM was racist, with those from countries outside the EEA (most of whom were Black or from other minority ethnic groups) standing only one quarter of the chance of having their claims accepted as those from within the EU (most of whom were white) (see Anti-Trafficking Monitoring Group, 2014). The treatment of those also claiming asylum was widely criticised, as confusing immigration status with the status of potential slavery victim. The NRM internal review undertake by the Home Office led to a proposed simplification of structure with modern slavery leads replacing the 'First Responders', whose job it was to refer identified possible victims of modern slavery into the NRM via the NCA or UK Visas and Immigration. Pilot projects for the new structure were established in the West Yorkshire and South West England police forces to test the new system and a full evaluation of their effectiveness is awaited. However, although the government claims that the new system makes it easier for non-First responder NGOs to make referrals, this is disputed by some NGOs and there appears to have been little evidence of a greater volume of cases being processed. The separation of the asylum/immigration and modern slavery elements within the assessment process is needed to ensure that alleged victims are not discouraged from reporting their experience for fear of being deported—and possibly re-trafficking. At the time of writing it is unclear whether the pilot system, which is not well-regarded in many quarters, will be rolled out across the country or amended again. The Independent Anti-Slavery Commissioner (2016) has published a scathing criticism of the NRM which he regards as not fit for purpose, cumbersome and requiring radical change, in a letter to the Home Office Minister (Independent Anti-Slavery Commissioner, 2017). In the letter he particularly criticises the need for a two-stage process for validating claims made by victims, other difficulties of accessing the NRM and the failure to provide adequate support for victims. The last point is particularly stressed in a report produced by a coalition of NGOs (Human Trafficking Foundation, 2017).

5.5. Child Advocates

As noted, the government committed during parliamentary debates to introducing a system of child advocates whereby each child alleged to be the victim of trafficking would have a unique Independent Child Trafficking Advocate responsible for protecting their interests vis-a-vis other interests. This scheme was piloted by a childrens' NGO, Barnardos, in 23 local authority areas and the scheme independently evaluated (Kohli et al., 2016). Although some successes were noted, the government remained unconvinced by the effectiveness of the scheme arguing that it had not made much difference in terms of identifying or retaining trafficked children. The government accepted that much more needs to be done to ensure the scheme's effectiveness but has also acknowledged that it should not wait for these to be developed as it would put a number of children now at risk in danger. It has therefore agreed to invest in a modest child protection fund targeted on alleged victims of child trafficking, particularly focusing on the reasons why they might go missing and on children from high risk countries. It might therefore be two years or more before a system involving an agreed form of advocate is established, and this may still have inconsistencies across the UK.

5.6. Domestic Workers

Prior to 2010, domestic workers employed for example by wealthy businesspeople or diplomats had a degree of protection in that, although their visas were tied to a specific employer, if evidence of abuse emerged (as frequently occurred) the worker could change employer without endangering their immigration status. The 2010 government changed this arrangement, and workers became liable to deportation (and thus loss of income also) if they tried to change employers (Mantouvalou, 2015). The debate on this issue remained the most contested to the last day of the Bill's debates. The government conceded an independent review of the visa arrangement and committed itself to accepting the findings in full. In the event, the Ewins review (UK Government, 2015), carried out by a leading barrister, concluded that the visa arrangement enhanced the prospects of exploitation. The government has since backtracked and certainly not returned to the pre-2010 position. Although the Anti Slavery Commissioner intervened with the government to allow domestic workers on these visas to change employers during a six-month initial stay and those identified through the NRM as victims of modern slavery to stay for two years beyond that six months (IASC, 2016, p. 19), this was not widely regarded as satisfying the government's promise to full implementation of the Ewins review. GRETA's (2016) monitoring report[27] also noted that the government had fallen short of its promise arguing there was a need for inspections of private households to be encouraged and that in particular that changes in employers should be more clearly facilitated. Contracts with those working for diplomats should, they felt, be concluded with Embassy Missions rather than individual diplomats to prevent the latter using diplomatic privilege to escape prosecution.

[27] See footnote 17.

5.7. The Question of Labour Exploitation

As noted above, the issue of labour exploitation and trafficking and forced labour in particular has remained fairly marginal to UK debates about modern slavery, even after the passage of legislation. Although the new GLAA has a wide-ranging remit, its very limited resources make it unlikely that it can have much of an impact and the role of the new director of Labour Market Enforcement seems at least open to question. It is responsible to two government departments, which will make reporting arrangements difficult to manage and its gestation, as a creation of new immigration legislation, suggests that its role will be to focus much more on questions of irregular employment linked to irregular migration, than to hunt down and prosecute the perpetrators of labour exploitation. This links to a wider criticism of the Act that it remains at heart a criminal justice law linked strongly to issues of migration status rather than one focussed most strongly on victim support. In the view of GRETA, much more needs to be done to strengthen the role of the GLAA and parallel inspectorates including in the areas of resources, training and remit. However, trying to stop labour exploitation whilst all remaining government policy encourages it represents the major contradiction at the heart of the Act. It is hardly surprising then that the Salvation Army, responsible for managing victim support during the 45-day reflection period, has reported a four-fold rise in labour exploitation cases over the past four years.

5.8. Data Collection and Analysis

Critical to the implementation of the Act in practice is the question of effective collection and analysis of data. We noted earlier that the formal government estimate of the numbers of those in modern slavery at any one time in the UK was as many as 13,000, a number generally thought to be an underestimate, and that approximately one quarter of that number (just over 3000) were identified in the last full year as passing through the NRM. There has been continuing controversy around the question of 'how many?' and definitive answers will probably never be possible at national or international levels given the hidden nature of the crime. However it is clear that data collection, recording and analysis within the UK is woefully deficient at present. It was only in April 2015 that a separate crime recording category of modern slavery was introduced into police data collection processes and investigations make it clear that many police forces are still not exploiting the significance of this innovation. Compared with the more than 3000 cases known to the NRM, less than one third of that total were logged in police records and an enquiry conducted on behalf of the IASC discovered that some police forces had no record of NRM referrals at all. Interestingly in Northern Ireland, which has just one police force, all modern slavery crimes were recorded in the appropriate category. The police lead on modern slavery has made data recording a priority—as has the ATMG report mentioned above—but there is clearly much to be done, linked to the question of training. GRETA has noted that 'there are gaps in the collection of data on human trafficking, limiting the possibility of analysing trends and adjusting policies'. This includes poor recording in other parts of the criminal justice system and no systemic information on possible child victims of trafficking going missing from the care of local authorities.

5.9. Support for Victims of Modern Slavery

Current arrangements provide for a period of 45 days 'reflection' by alleged victims of modern slavery whilst their cases move from a provisional acceptance of their claim to a final agreement. Once formal acceptance of a claim has been made, victims of modern slavery have a very short period of time (typically two weeks) to make arrangements for establishing themselves in the community. With little knowledge of rights such as for housing and benefits and very little support available in a formal sense (although many NGOs and churches have in particular stepped in to fill the gap), victims may be vulnerable to poverty and isolation and possibly to re-trafficking if their traffickers have not been identified and contained. The issue of support services for victims has thus become an important one. The Human Trafficking Foundation, a prominent charity supported by an advisory network of a hundred or more NGOS, has made this a strong focus for their work, publishing a series of reports arguing for improved care and support (Human Trafficking Foundation, 2014, 2015, 2016). There has yet to be a coordinated or strategic response to this issue and much of the funding for this work has come from charities, leading to something of a postcode lottery as to whether effective support is available. The government has also been pressed to ensure that victims can be treated with a great deal more sensitivity by benefits offices than appears currently to be the case and this is now the subject of a House of Commons enquiry.

6. Conclusions

This all adds up,[28] if not exactly to a damning indictment of the provisions of the Acts and progress since their enactment, certainly to a huge agenda of necessary and continuing political, structural and organisational change. Underpinning it is, as noted, a widespread recognition that the level of training for those now tasked with identifying victims of modern slavery, responding to their needs effectively and equitably, bringing perpetrators to justice and addressing the structural causes of modern slavery involves a huge agenda of training all the

[28] And there are many other issues which have been raised by service providers, researchers and others requiring attention but which are too numerous to be listed here.

way down from senior members of the judiciary, those working in the criminal justice system, social services, health and NGO workers and the police. At present training is ad hoc, patchy and generally unequal to the task.[29]

Lobbying and campaigning around some of the more significant of what are perceived to be weak or incomplete aspects of the Act continues at present and may lead to further changes. To take a few examples from the policy sphere, evidence is emerging about the extent to which companies are responding to the supply chains clause with a significant number of companies either producing weak or 'template' antislavery statements or no statements at all; this is likely to lead to calls for a strengthening of the provision which is, at present, entirely voluntary (see, for e.g., CLT envirolaw, 2017). There is no evidence to date that, as the government hoped, failure to act on this issue would affect the commercial or public reputation of a company.[30] The argument about visa arrangements for domestic workers continues with the government, having failed to keep its promise to implement the Ewins review of the situation, seemingly entrenched (and probably driven to be so by the force of current anti-immigration debates) in its opposition to returning to the pre-2010 position. And the position in relation to the development of universal child advocates remains unclear with government at present unconvinced by the findings of the initial pilot scheme but yet to develop a comprehensive response to what it sees as its failings.

In terms of practice, the failure to develop effective training across the Board has already been noted. The evidence to date suggests that many organisations have yet to fully understand or implement the provisions of the Act; for example, a response to a parliamentary question in February 2017 indicated that six police forces in England and Wales had yet to identify a single victim of modern slavery within their areas.[31] Early research on cannabis farming also suggests that the Crown Prosecution Service and the police in some areas have yet to understand the implications of the statutory defence for victims of modern slavery in this area.[32] Doubtless other issues will emerge over the next few years as policy and practice encapsulated in the Act's provisions are worked through.

It was more than 200 years from the passage of Wilberforce's First Act to the passage of the Modern Slavery Act; based on this assessment, it seems more likely that it will be little more than 2–3 years before this Act returns to the statute book for significant revision. By that time it is hoped that a thorough independent evaluation of the Act may be possible.

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The author declares no conflict of interests.

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[29] The Anti-Slavery Commissioner has recently published comments criticising the Border Force and the Police amongst others, for their failure to identify victims of trafficking on act appropriately on identifying them. See, for example, *Guardian* (2017).

[30] Indeed, despite being heavily implicated in the collapse of the Rana Plaza garment factory in Bangladesh in 2013 leading to the death of 1135 workers, and taking a fairly negative stance in relation to compensation for victims, it appears that Primark's profitability has not been affected by this disaster.

[31] Personal communication from Diana Johnson MP to author, March 2 2017.

[32] Research Briefing No 12 from the Modern Slavery Research Consortium 12 provided to the author from Patrick Burland. Available from the present author on request.

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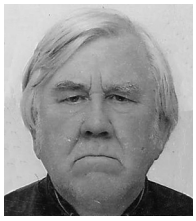

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Article

Trafficking and Syrian Refugee Smuggling: Evidence from the Balkan Route

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Abstract
As of March 2016, 4.8 million Syrian refugees were scattered in two dozen countries by the civil war. Refugee smuggling has been a major catalyst of human trafficking in the Middle East and Europe migrant crises. Data on the extent to which smuggling devolved into trafficking in this refugee wave is, however, scarce. This article investigates how Syrian refugees interact with smugglers, shedding light on how human smuggling and human trafficking interrelated on the Balkan Route. I rely on original evidence from in-depth interviews ($n = 123$) and surveys ($n = 100$) with Syrian refugees in Jordan, Turkey, Greece, Serbia, and Germany; as well as ethnographic observations in thirty-five refugee camps or other sites in these countries. I argue that most smugglers functioned as guides, informants, and allies in understudied ways—thus refugee perceptions diverge dramatically from government policy assumptions. I conclude with a recommendation for a targeted advice policy that would acknowledge the reality of migrant-smuggler relations, and more effectively curb trafficking instead of endangering refugees.

Keywords
anti-smuggling; anti-trafficking; asylum; Balkan Route; forced migration; migrants; refugees; Syrian; smuggling; trafficking

Issue
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1. Introduction

The Syrian refugee wave on the Balkan Route in 2014–2016 has rekindled interest in the intersection of trafficking with migrant smuggling. Not only has the transnational human smuggling operation stretching from Turkey and the Middle East to Western Europe transported over a million people in less than 18 months; but government anti-trafficking efforts have failed to effectively isolate traffickers thriving within the broader category of smugglers. Indeed, smuggler bribes and patron-client arrangements have infiltrated state organs to such a dramatic extent (Reitano, 2015) that many traffickers operate with impunity while low-level smugglers and refugees are persecuted.

This article suggests that this failure is in part a result of a misperception of the role of migrant smugglers: whereas governments predominantly treat them as dangerous criminals enabling trafficking, the refugees themselves perceive them as guides, advisors, and allies. The latter perception—whether we like it or not—must be acknowledged in any pragmatic anti-trafficking policy aimed at aiding refugees. In addition to being exploitative, smugglers are crucial middle-men who shape refugee outcomes where governments fail to do so. Below I offer a description of smugglers' understudied roles in five areas and propose a "Targeted Advise" policy that acknowledges these realities to decrease trafficking risk.

2. Literature Review

Scholars of forced migration have theorized the modern growth of a "'migration industry' consisting of smugglers, traffickers and other 'illegal operators'" (Castles, 2003, p. 15). Against state-centered narratives—and the proclaimed agendas of many national governments themselves—they argued that repressive border management policies are a *cause*, not a consequence, of the expansion of smuggling. "The growth in people trafficking [in the post-Cold War period] is a result of the re-

strictive immigration policies of rich countries" (Castles, 2003, p. 15). Gibney (2006) likewise points out that migratory risks through illegal channels have dramatically increased in significance, bringing private middle-men to the fore. Migratory decision-making has increasingly been shifted from state representatives to "unaccountable actors [such as] smugglers and traffickers," who have been "empowered" by increasingly repressive border management since the 1980s (p. 143). This study explores the consequences of this empowerment.

The literature on forced migration has historically reflected "an overwhelming tendency to focus on the cause of refugee movements within the nation-state rather than at a more systemic level" (Skran & Daughtry, 2007, p. 24). Migration research methods more broadly have been criticized for treating the nation-state as "container" (Faist, 2000) within which migratory decisions are determined. Many approaches to the Syrian refugee crisis have, furthermore, suffered from "methodological nationalism" (Schiller, 2009) in failing to consider the Balkan Route as a transnational entity. In the wake of Yugoslav disintegration, neoliberal reforms and regional EU integration processes, the post-Cold War Balkan Route has served as a dominant bridge for drug, arms and other contraband entering Western Europe from Turkey. Each Route nation serves as a critical bridge country for transnational smuggling operations (see United Nations Office on Drugs and Crime, 2015, and preceding yearly reports). Given the coherence of the Balkan Route as a rooted, historically-robust criminal grid for movement of contraband, ideas, and people (Von Lampe, 2008), investigating the Syrian refugee wave in a single site (typically a European destination country) is limiting.

Alternative approaches have emphasized transnational processes (Portes, 2003; Vertovec, 2004; Wimmer & Schiller, 2003), including the smuggling of asylum-seekers into Europe (Koser, 2007). Though my five-nation sample does not exhaust the sites that constitute the transnational Balkan Route, it is a significant supplement to single-country case-study approaches. By considering common smuggling experiences, state responses to trafficking, and border management policies across bridge countries, I at least *approximate* systemic features of the Balkan Route as a transnational social space.

Notoriously, migration management policies often have counter-intuitive effects. Portes (1997) famously applies Robert Merton's approach to unintended consequences of social action to theorize incoherent, and sometimes counterproductive, unforced migration management (cf. Castles, 2003, p. 25). Scholars and policymakers alike have recognized that anti-smuggling policies are often futile symbolic gestures aimed at political gain (Kyle & Koslowski, 2013; Triandafyllidou & Maroukis, 2012). With the rise of anti-migrant sentiment in Europe, governments were increasingly under pressure to institute bombastic measures aimed not at desired migration outcomes, but at *perceived* strength of anti-migrant commitment. Unintended consequences have grown accordingly: "the countries that complained the most about the existence of border fences and walls, and vowed to bring them down forever, are now busily constructing them" (Park, 2015, p. 11).

On the Balkan Route—the dominant channel by which the Middle Eastern migrant crisis spilt into Europe—anti-trafficking policies were the pillar of migration management. Governments and international non-governmental organizations (INGOs) have elevated the challenge of refugee smuggling to the European level, G-8 summits and United Nations (UN) conferences, warning that it threatens regional security and stability. Indeed, "crackdown" on migrant smuggling has been the defining posture of national governments affected by the European refugee crisis (Albahari, 2015), and the core of multinational efforts by NATO (North Atlantic Treaty Organization) and Frontex to curb immigration (NATO, 2016). Both in rhetoric and policy, smugglers and traffickers have been a preoccupation of governments during this crisis.

On the Turkey-to-Greece segment of the Route, anti-smuggler policies have generated considerable counter-productive effects, including the well-known drownings of 3,078 migrants in the Mediterranean by July 2016 (United Nations News Center, 2016). Indeed, research has documented that thousands of drownings and near-drownings were in effect *caused* by government rescue operations (Heller & Pezzani, 2016). By conflating trafficking with smuggling, emphasizing seizure and destruction of smuggler vessels, and militarizing the Balkan Route, European states and their partners have made an already frail asylum system riskier for migrants (European Council on Refugees and Exiles, 2016).

Meanwhile, many Syrian forced migrants are denied non-smuggler mechanisms for obtaining asylum-seeker and refugee status. Formally, Balkan Route countries uphold international laws. Informally, there is growing concern that the 1951 Convention Relating to the Status of Refugees, the European Convention on Human Rights, as well as the European Schengen and Dublin Accords, were regularly violated during the refugee crisis, both before and after the EU–Turkey agreement (Maurer, personal communication, 2016). The Common European Asylum System has proven difficult to maintain, as it requires migrants to be on the territory of the state in which they wish to seek asylum while "EU law makes it virtually impossible to get to that country safely and legally" (Costello, 2016, p. 12).

Castles, De Haas and Miller (2013) and Watters (2013) have emphasized that meso-level agents such as smugglers have been neglected in forced migration studies, including in the burgeoning literature on "ecomigration" (House, 2007; Reuveny, 2007). To make matters worse, sex and forced labor trafficking is often conflated with migrant smuggling (Paszkiewicz, 2015), though the former is a relatively small subset in the refugee context (International Labour Organization, 2012; Shelley, 2010). While human smuggling into western Europe and

Germany is by no means a new phenomenon (Morrison & Crosland, 2000; Neske, 2006), little is known about when, how and why migrants find and decide to interact with smugglers (for exceptions, see Bauer, 2016; International Organization for Migration, 2015; Liempt & Sersli, 2013).

Bottom-up qualitative investigations of the smuggler-migrant relationship have been particularly rare. Partly due to an unfortunate habit of the literature to minimize or neglect refugee agency, investigations of Syrian refugees rarely employ interview or survey instruments with displaced Syrians themselves. Policies against smugglers are often designed with little empirical insight into how trafficking devolves into smuggling, and what motivates refugees to relate to smugglers as they do. One study purportedly addressing "why migrants risk their lives" via smuggling networks relies on no data from the migrants themselves, inferring their motivations from government policies (Fargues & Bonfanti, 2014). This study is a corrective measure in this urgent research field.

3. Methods

Qualitative data was drawn in 2015 and 2016 in five countries, including destination countries Germany and Jordan, as well as key Balkan Route transit countries Turkey, Greece, and Serbia.[1] Trained researchers conducted in-depth interviews (1–4 hours, average of 1.5; recorded and transcribed) with Syrian refugees ($n = 123$), complementary quantifiable surveys (written) ($n = 100$) and ethnographic observation at thirty-five refugee sites. These sites included refugee camps such as Za'atari in Jordan and Preševo in Serbia, as well as improvised migrant settlements at border crossings. Smuggler-migrant dynamics were the focus of ethnography in urban spaces such as parks, piers, train and bus stations, public squares and areas inhabited by migrants near camps.

At several sites—including Azraq Camp in Jordan and Fluchtlingsunterkunft Borbecker Stase Camp in Germany—we enjoyed rare access unavailable to most investigators and journalists. Restricted access was gained through the institutional support of a sponsoring academic institution with ties to local Ministries and NGOs. A notable obstacle to our original research design was the July 2016 attempted Turkish coup, which aborted our access to camps and jeopardized the safety of our researchers. Similar, lesser political events occasionally prevented us from accessing certain sites, or forced us to re-sample and seek out new chain-referral informants.

The in-depth questionnaire and survey focused on costs of migration, information sources, the subject's background, life in Syria, decision to leave Syria, arrival and transit in foreign countries, perceptions of host populations and governments, and migration methods with emphasis on transactions, contact and relations with smugglers. The male/female ratio, age distribution (from 18 to 65), range of regional Syrian origins, socioeconomic status and education levels were all reasonably balanced. Political allegiances (predominantly anti-Assad) and ethnic background (disproportionately Kurdish Syrian) were understandably tilted, given the differences between Syrian IDPs and refugees. Interviews were almost exclusively conducted in Arabic either directly by a native or fluent researcher or through an interpreter; the exceptions were nine interviews conducted in English and another two in German.

The shorter instrument of the survey—with closed-ended items and scales—was administered and filled out by the researchers, and was completed in 20–40 minutes, gathering data from individuals who were unavailable for the full hour required for in-depth interviewing. Missing values on any given survey item never exceeded 12% of the sample. No two respondents were drawn from the same traveling unit or nuclear family, and none overlapped with the in-depth sample. The survey was intended to complement in-depth interviews with precise quantifiable estimates of such things as smuggler prices, length of migration and other information that would require too much interruption and elicitation during in-depth conversations.

While ethnographic observation was modeled on Allan's (2013) anthropology of Palestinian refugee camps, in-depth interviewing was designed following Hagan's (2008) conversations with irregular migrants across the US–Mexico border. Interview data was extracted through content analysis of transcripts to document the following: failed attempts at border crossings and migration via smugglers; positive, neutral and negative evaluations of smugglers; indications of reliance on smugglers for *anything* other than smuggling—including information, protection, childcare, social capital, emotional support, advice and entertainment; all instances of other Syrians recommending, advising against, or evaluating smugglers; mentions of smuggler-government collaboration, witnessed or perceived; and indications of trafficking, as defined above. Positive, negative, and neutral evaluations of all smugglers and other "middle-men" was compared throughout. Ethnographic observation of the subject's environment often led to secondary "coding by ear" of the audio recordings to supplement the transcripts.

The research team consisted of six fieldworkers and the author, who was Principal Investigator. Researchers underwent extensive training on interview-based and ethnographic methods, and on interacting with sensitive and traumatized populations. Interviewees were sampled—with informants' and experts' assistance—to diversify age, gender, socioeconomic status, traveling unit size, migration route, length of residence in country, and regional Syrian origin. Experts and informants

[1] Full methodological appendix available upon request, including sampling strategy, country subsample differences, list of sites and informants, response rates, exact dates, and limitations.

included government officials, NGO or INGO workers, camp volunteers, and residents. Anonymity and confidentiality were guaranteed in written consent forms, and debriefing carefully invited requests for deletions by the subjects.

4. Results: Smugglers as Guides, Informants, and Allies

Following convention (Aronowitz, 2001; Iselin & Adams, 2003), I differentiate between *smugglers*—those facilitating or seeking to facilitate illegal border crossings—and *traffickers*—who threatened or employed coercion and/or deception towards migrants. Intra-national trafficking is of course possible, but outside the scope of this study. For present purposes, I treat trafficking (i.e., *international*) as a subset of migrant smuggling. In our data, cases of smuggling devolving into trafficking were fortuitously clear because questionnaires explicitly inquired about "anything" being arranged or done by the smuggler "without your consent" and "without your knowledge." Thus, when migrants experienced *any* exploitation (labor or otherwise), or *any* coercive (including nonviolent) or deceptive (including for the migrants' alleged self-interest) behavior on the part of the smuggler, this was operationalized as trafficking. Survey items also inquired directly about labor exploitation, violence, choice, and threat—as further cross-validation.

A central finding is that the overwhelming majority of the subjects (∼75%) did *not* report trafficking experiences:

- only 7.9% of the sample reported being asked to engage in labor at any point during migration;
- 26.8% of the sample reported experiencing deception at the hands of smugglers (compared to 36.6% who reported deception by soldiers, policemen or other state officials);
- 12.2% reported involuntary family separations caused by smugglers (compared to 17.6% who experienced the same caused by government officials).

More generally, the "horror film" stories (as a young respondent memorably put it) about *government* officials' behaviors—both witnessed and anticipated—made reported problems with smugglers appear minor and infrequent. Statements of positive evaluations of smugglers (e.g., "They saved us," or "I owe him my life") numbered in the dozens across the sample. Comparable statements about *any* government or relief agencies ("They give us clothes, food," or "They were good to us at the Camp") were noted a handful of times. This is especially striking given the settings of most interviews.

The subset of trafficking experiences, furthermore, consisted mainly of *relatively* noncoercive and nonviolent violations of trust: minor theft, pursuit of unagreed-upon migration routes, changing dates of departure and arrival to avoid law-enforcement, exaggerating the comfort of the means of transportation, threatening (without realization) to cancel travel arrangements mid-way, lying about life vests, and underestimating number of co-travelers. Exceptions were rare: two respondents reported being threatened by a smuggler with a deadly weapon; and one indicated (albeit ambiguously) that smugglers kidnapped her daughter. Overall, however, even a conservative operationalization of deception and coercion led to the conclusion that *most* of the smugglers did not engage in any prolonged social relationship beyond the voluntary exchange of money for services.

Below I explore six features of the refugee-smuggler relationship, suggesting that intelligent analysis and resulting policy must carefully differentiate traffickers from smugglers in each domain. I conclude with a policy recommendation for a targeted advice campaign to decrease risk of trafficking.

For brevity, each section merely summarizes overall trends and illustrates with ideal-typical examples. All data is from interview transcripts, surveys or ethnographic fieldnotes, unless otherwise noted.

4.1. Trust

Positive evaluations of smugglers permeated the interviews. Subjects overwhelmingly expressed favorable views of smugglers and their handling of the migration; solidarity was often formulated in religious, ethnic, and even familial terms. Strikingly, one woman who nearly died because of her trafficker's negligence ("My job is to put you on the boat," he cynically told her on the phone during a near-death experience *he* caused, "If you drown, this is up to Allah"), nevertheless maintained a sympathy towards him that is thoroughly typical throughout the sample:

> Smuggler for us was very good. I know this smuggler is working in illegal way, but he help us. They help us. Maybe they took some money, but the problem is that they are afraid….He is like us. I don't blame him….This smuggler is our friend, our friend.

On a five-point scale of satisfaction with their smuggler, 73.7% of survey respondents gave the highest score ("very satisfied") to their criminal ally, with several indicating "10" to emphasize their gratitude. Only 16.4% were either "dissatisfied" or "very dissatisfied," of whom several clarified that they were referring to only one smuggler experience (i.e. one leg of the journey), to be differentiated from the main smugglers. Refugees were overall unambiguously opposed to policies targeting traffickers, which they (understandably) perceived as targeting Syrian refugees.

4.2. Access

Subjects primarily found smugglers at public places such as parks, bus/train stations and ports in transit countries (47%) or through a recommendation by Syrian friends

and family or other migrants (33%). The overwhelming majority of word-of-mouth recommendations were ethnic- or kinship-based and reliable. Only 12% of survey respondents indicated that the smuggler found them, and—crucially—*those* subjects were more likely to experience trafficking. Interview respondents who recalled recommendations for smugglers mostly relied on advice from Syrians in their immediate vicinity, secondarily on recommendations from their predecessors who traveled the Balkan Route months or years before them.

Much has been made of the importance of social media in the refugee crisis (Gillespie et al., 2016). It is certainly true that Internet access and cellular phone chargers have empowered subjects to study route maps, to keep in touch with contacts at destination countries, and to learn of incidents at borders and camps. On the whole, cell phones have allowed greater adaptability and quicker reaction to changes in border management. But this conceals an equally-important datum: online information about traffickers hardly matters at all. *Not a single respondent* identified the Internet as a means of finding a smuggler. This migration decision—arguably the most consequential—is decidedly done offline. Thus, measures targeting traffickers online may not be the ideal priority.

4.3. Costs

Smugglers were by far the greatest relative cost of migration (Table 1). Survey respondents indicated a mean of 954.96 Euros given to smugglers per individual (with or without families). Among those not traveling alone, half the sample gave on average less than 1,000 Euros for their family, 38.1% gave between 1,000–5,000 Euros, and 11.9% more than 5,000 Euros (see Figures 1–2). The uppermost reported cost per 16-person traveling unit was as high as 35,600 Euros, while the maximal reported cost per person was 4,000 Euros for a journey from Turkey to Serbia. Disaggregating the average costs per individual per segment of journey (i.e., a single smuggling trip, as opposed to multiple trips by different smugglers or by different transportation means), we see costs increase significantly as refugees get farther to their destination countries. Among those going to Europe (i.e., excluding the Jordan sub-sample), 54% pay between 1–1,000 Euros per person per segment of journey; 25% pay 1,000–2,000; and 21% pay 2,000–4,000.

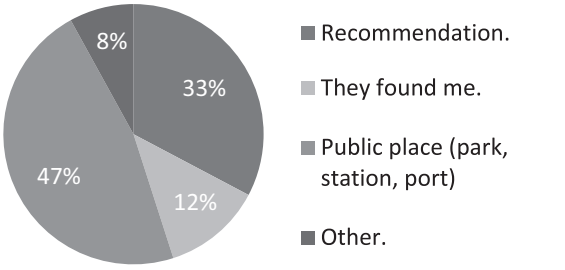

Figure 1. Means of finding smuggler. Note: Means responses also included "Internet," which 0 respondents selected; "Other" included fill-in-the-blank option: answers included "By luck," "By chance," "Accidentally.").

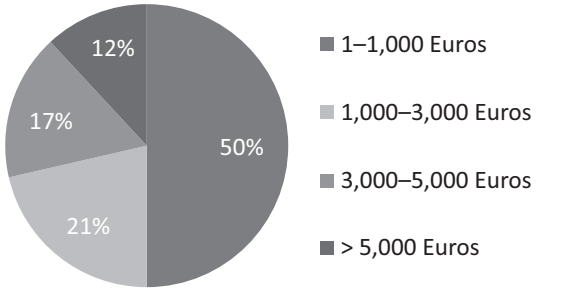

Figure 2. Average smuggling cost per family. Note: Means responses also included "Internet," which 0 respondents selected; "Other" included fill-in-the-blank option: answers included "By luck," "By chance," "Accidentally."

Table 1. Relative migration costs.

Most Common Rankings	**Smuggler + Buses/trains/taxis**	**Smuggler + Buses/trains/taxis + Food**	**Smuggler + Theft/loss of money/resources**	**All Other Ranking Orders**
Percentage of Respondents	25.5%	17.6%	3.9%	53%
	#1 Most Costly	**#2 Most Costly**	**#3 Most Costly**	
Smugglers	76.5%	5.9%	2.0%	
Buses/Trains/Taxis	21.6%	51.0%	2.0%	
Food	2.0%	11.8%	23.6%	
Theft/Loss of Money/Resources	2.0%	7.9%	7.9%	
Medicine/Doctors	0	3.9%	5.9%	
Lodging/Shelter	3.9%	0	0	

Notes: Additional response format categories "Clothing," "Government Fees, Forced Payments," and "Money/resources for family/friends other than migration companions" yielded zero responses. Respondents indicated whether they were major expenses or not, then ranked the top three. Expense category orderings were randomized so that five sets of 15 survey questionnaires had this item with 15 different answer orderings.

Among the refugees who journeyed into Europe, the financial burden of traveling in a family group was greater than traveling alone or with strangers. Traveling with children under 18 or the elderly (over 65) resulted in a higher total cost per family unit. Approximately 75% of respondents in the highest quartile of reported travel costs—that is, three-quarters of those who spent the most money to reach Europe—were traveling with dependents. As may be expected, refugees traveling with as many as seven or eight family members paid more overall than refugees traveling alone.

Finally, the interview subjects who traveled before the March 2016 closing of the Balkan Route apparently paid up to 500 Euros less than their peers who traversed similar paths after the EU–Turkey agreement. Subjects migrating prior to the closing of the Route paid a mean 1,000 Euros for the boat ride (children were uncharged); a few reported paying 600. The mean per leg of journey (i.e., per single smuggling segment between two points) increased on average 33% after the Route closing. The data clearly suggests that anti-smuggler repression simply made smuggling more lucrative. With increased anti-smuggler crackdowns, the boat ride to Europe and the preconditions for it became much riskier—making the entire journey more perilous and expensive. Put differently, smugglers were asked to accomplish a trickier feat; and—from the refugee's perspective—smugglers became more inaccessible and costly.

Consequently, refugee narratives about labor-based trafficking were much more common among those traveling in the post-closure period. Not a single respondent traveling before March 2016 reported trafficking experiences. In contrast, seven reported being offered to work for a trafficker to pay off debt when traveling after the Route closure. Discussed jobs included hairdressing, restaurant serving, construction work, translating and recruiting customers for the voyage. One subject understood the steep price, noting: "They also have to pay the police. The police are also customers for the smugglers."

4.4. Shelter and Care

Counterintuitively, many subjects appeared to have enjoyed a comprehensive, all-inclusive service from their criminal providers *without* experiencing trafficking. They relied on a single smuggler's network of shelter for the full journey from Turkey to Serbia and even Germany. Various safe houses along the way were included in the service—even, occasionally, medical care. Residents and experts in bridge countries readily listed various criminal sites (motels, private houses, outdoor garages, campsites) reportedly used as illicit safe houses for refugees. A local motel/inn where the author resided during fieldwork was one such safe house.

While other subjects slept in public parks for weeks, waiting for their smuggler contact or a new criminal recruiter to approach them with directions for moving on, the ones in smuggler safe houses were ironically better protected from harsh weather, violence by hostile locals, and—arguably—traffickers.

Subjects even described a criminal health care arrangement (though it sounded exceptional). One refugee was quite satisfied with his: "[Smuggler] was good. He had organization. He took care of everything. Full service, everything organized, doctors organized, doctors included in the price. He was very good."

Though this is by no means common, it is striking to contrast with the considerable skepticism about state-sponsored medical resources, including at camps. Far from exaggerating an illness to expedite the trip to Germany, many refugees seemed instead to *hide* it. Scarred by war-related interrogations in Turkey, Syrians feared that revealing any weakness would jeopardize their movement:

> Q. Did you go see the doctors here?
> A1. No, no. No thank you. They will say you are sick, goodbye. I am healthy, I am educated, I will be no problem in Europe.
> A2. Yes, my daughter had a cold. They were very good. She got medicaments, she is better now. But you know, we don't trust doctors. The doctors in [Turkish camp] ask how did you get this injury? Are you for the revolution or for Assad? And then you are finished. You will never leave.

But officials hardly shared this worldview. Well-aware of the elaborate network of criminal hiding and sheltering, border patrolmen, policemen, soldiers, and camp guards were on the lookout in all five countries, particularly Jordan, Turkey, and Serbia. One policeman confessed that the first danger he is worried about is "terrorists and lunatics." The second: "traffickers" who are infiltrating the Camp to recruit customers. Whenever he sees anybody moving around between traveling groups on site, "I send the translator to listen." At the outer gates of his Camp, where migrants waited to board buses, watchful guards chased any potential recruiters, drivers, or motel advertisers away. Comparable measures in effect fail to differentiate between smugglers (who may in fact be reducing risk) from predatory traffickers.

4.5. Trailblazers, Expectations, and Smuggler Adaptation

Cumulative causation and the role of networks in migratory outcomes is a staple of the migration literature (Fussell & Massey, 2004), apparent also in Syrian migration in this study. A sizable minority of in-depth subjects were not pioneer migrants: they are following their family members, friends or countrymen who acted as trailblazers on the Balkan Route. These informants provided encouragement, expectations, suggestions, and smuggler introductions. Such "chain migration" is a familiar phenomenon (Palloni, Massey, Ceballos, Espinosa,

& Spittel, 2001), but primarily in conditions of economic migration and consistency in border management.

Syrian refugees encountered nothing of the sort. The advice given to them by their predecessors related to the Balkan Route of six-to-thirty months before their own journeys. Information on which borders to cross and how, what smuggler prices and services to expect, how many people to travel with, where to sleep, and how to navigate camps, was often outdated.

A consequence of such misleading expectations was increased risk of being trafficked, as smugglers increasingly engaged in deception when describing and offering transportation. Many crossed the Mediterranean with false information from their trafficker about how many people would be on board, and whether there would be a pilot. This was a substantive change from the trailblazer experience:

> Q. How was your father's journey, his travel, compared to yours?
> A. …He have no problems in the sea. Safe. But…we…we had swimming time. My sister fall in water. She fall in…cold water, as ice. You know, so it was bad situation. We have problem keeping her warm, we garbage her shoes, her clotheses. [shaking head]. So, she had swimming time because they let us go alone. My father had a pilot.

Another elderly female subject complained about her trailblazer's advice because it made it sound "easier than it was."

Relatedly, there is evidence for the decline of "One Stop Shop" smuggling. Namely, whereas the trailblazers reportedly relied on a *single* criminal organization, their followers encountered a Route that is inhospitable to this possibility.

> Q. How did you find [the Turkish smuggler]?
> A. Through word-of-mouth. My friends [who left a year earlier] told me. He was recommended. It was for the full travel, from Turkey to Germany. He had drivers for them [in every country]….We thought he would be good.
> Q. But things have changed.
> A. He didn't call us for three weeks after we gave him the money! [imitating] Don't worry, tomorrow. He said in Greece his partner will wait for us, and nothing. Bandits! That's why today people use six, seven, eight smugglers for the full travel. You need to start again, each contact.

Naturally, each new arrival and border-crossing requires migrants to search for new smugglers, exposing them repeatedly to new trafficking arrangements.

More generally, when a set of embarkation and disembarkation points are efficiently used by the smugglers, their experience in transporting their clients guarantees a certain degree of certainty and predictability. When government controls at these points intensify, the smugglers adapt by pursuing other routes to avoid capture. Given their inexperience and ignorance of the new paths, these new routes tend to be longer and more dangerous for the migrants. Hence many subjects paid dearly—not just in money but in physical health—for smuggler adaptations to state crackdowns. Some became victims of trafficking.

Almost all the interviewees (116/123) reported repeated failures at crossing borders—ranging from three to a record thirteen. Dozens were arrested or detained against their will for attempted crossings. Thirty-four subjects were arrested or detained *repeatedly* in Lebanon, Turkey, Greece, Macedonia or within Syria itself, trying to cross borders. Most subjects who passed through Turkey repeatedly failed to get to Greece the first time around. A typical failure resulted in fingerprinting, detention, or deportation to Syria. One subject was separated from her 17-year old son, reunited only six days later. Another woman survived several days of "walking in the mountains from Latakia to Turkey" *on foot* from Syria (some sixty km of hostile terrain), not too far from intensive battles.

Other serious risks to life, health, safety, and integrity of the travel unit were commonplace. These risks primarily came from soldiers, policemen, guards, and other state representatives. Secondarily, they came from smugglers adapting to state crackdown by abandoning their clients.

> A. He [the smuggler] was complaining.
> Q. What did he say?
> A. He said business is bad. People don't have money. Police are stronger. He said before, he could not keep up with all the customers. [imitating smuggler] Thousands every day, not enough boats! With us, he said he needed. He also used cheap boats now. Because he loses them.

Another consequence of criminal adaptations relates to documents. Many Syrian refugees have no documents to begin with. A Camp Coordinator in Preševo estimated that less than 10% of Syrian refugees arrived with passports. Syrians in particular, especially the ones who had been politically exposed as anti-Assad, risk being labeled traitors for wanting to leave the country. "They ask for my passport," a former combatant said incredulously, "Getting a passport is a death sentence." Others, however, gave their documents to the smugglers as collateral: "[I have] no passport. My wife has passport, my childrens. Smuggler wanted passport, I give my passport. If you give them document, you are priority."

4.6. Smugglers as Informants

Given the inconsistency of border management across the Route, refugees are often obstructed from effectively avoiding risk, planning safe travel and interacting

with smugglers in a transparent, relatively safe way. Consequently, subjects became more dependent on smugglers who promised to reduce uncertainty about how and when to cross borders. Dozens upon dozens of risky border-crossings, within-country movements between camps or sites, and voluntary separations or mergers with other traveling groups were done directly because of smuggler advice.

Interviewees sometimes reported not being certain of which country they are currently in, let alone national, linguistic, and other nuances. They rarely if ever knew the difference between EU and non-EU states, where Schengen ends, or what the relevant territorial jurisdictions are. In such circumstances, smuggler information (and its associated offers) ironically appeared to be a stable basis for deciding. As dependence on smugglers for advice increases, the potential for trafficking naturally follows.

Dependence on smugglers for information is exacerbated by belief in the corruption of state organs. "Who can trust them?" asked one subject in Greece. "They want just to arrest us," suggested another in Germany. This perception is not restricted to the migrants. Multiple expert interviewees—including a Secret Service professional who interrogated traffickers deported backward along the Route, a seasoned UNHCR fieldworker, and two government officials in Ministries dealing with border controls—reported that elements of the police, army and government were integral to smuggler operations. One UNHCR expert went even suggested that corrupt police elements prefer to arrest innocent refugees on false charges of smuggling (as indeed happen to a man in the Greece subsample) than to arrest known criminals who bribe policemen.

Finally, smugglers enjoy such a privileged position as information-providers because governments and refugee aid managers diligently *avoid* topics of illegal border crossings. Fieldwork revealed that bridge country refugee camps, transit centers, humanitarian sites and other government-regulated sites emphasize only a narrow selection of information through their material and staff. Typically, the scope is restricted to legalistic and security matters (asylum procedures, national laws) and humanitarian procedures governing the sites (food, clothing, shelter). Daily tasks of camp workers rarely allow for private, secure information exchange that grants migrants honesty without fear of penalty. Staff communicating verbally with migrants focus on their immediate duties, rarely discussing the migrants' lives outside the immediate jurisdiction of the site or camp. Pamphlets, posters, signs, maps, and Wi-Fi hotspot homepages present thousands of words—sometimes in a dozen languages and dialects—of obscure legal verses on asylum law. Refugees are barraged by information they neither need nor understand.

Concurrently, information about smuggling is consistently avoided. Representatives conducting face-to-face informing typically ignore smuggling as a phenomenon for fear of jeopardizing their jobs. The Syrians, naturally, reciprocate in avoiding the topic for fear of compromising their legal status or access to goods or privileges. Mid- and low-level informers, such as interpreters, guides, aid volunteers, coordinators and (above all) security staff consider the phenomenon a taboo subject, or irrelevant to their work. Specialized informers—such as medical doctors and legal advisors—carefully evade the issue when talking to migrants to avoid responsibility for unsound advice. Many NGO-run sites studiously refuse to acknowledge that smugglers exist—sometimes hundreds of meters away from the checkpoint at hand. Others only mention trafficking to deter with grim warnings to migrants not to associate with them.

The findings suggest that this approach is counterproductive. The sampled subjects typically did not care about information given to them by governments and aid staff. Instead, they favored information from each other and—vitally—from smugglers. Rumors about smugglers is decidedly the most important category of information to the migrants themselves. They will pursue it with or without official guidance. Refugees care naught to read obscure passages about their legal rights. They prefer to engage with smugglers despite warnings, with the full knowledge of the trafficking risk they take. Posters on reporting human trafficking pervades refugee sites; yet nothing is communicated about who and where these traffickers are. Information that could save a refugee families' health and lives is frequently withheld from written material for fear of endorsing or encouraging criminals.

5. Conclusions: Targeted Advice Policy Recommendation

From mid-2014 onward, and especially since March 2016, Balkan Route countries have implemented border militarization unprecedented since World War II. At sea, Coast and Border Guards are coupled with Greek, Turkish and international military. On land, massive fences and walls, surveillance cameras, and interrogation facilities supplement police and military units deploying rubber bullets, batons, watch dogs and teargas. Most of these policies—ill-advisedly, I have suggested—do not differentiate between persecution of smugglers and traffickers.[2]

I have suggested that the Syrian refugees' smuggling experience overwhelmingly did *not* include trafficking. The evidence surveyed sheds light on six aspects of the smuggler-migrant relation. First, migrants trust and identity with smugglers, expressing considerable satisfaction with their criminal services. Second, social capital through family and kinship/ethnic ties secured access to smugglers; the refugees mostly sought out the

[2] At certain phases of the Syrian refugee wave, European policymakers acknowledged that smugglers are not the root cause of the problem, allowing for more precise targeting of traffickers. Notably, the transition from operation Mare Nostrum to the Frontex Plus/Triton in 2013–2014 resulted in the arrest of hundreds of traffickers and balanced rescue missions with selective persecution efforts. This encouraging step has, however, been exceptional.

smugglers, not the other way around. Third, while average smuggling costs varied along travel unit size, distance traveled, etc., anti-smuggler repression drove costs up and trafficking was more common for those traveling after the Balkan Route closure than for those traveling before. Fourth, smugglers were often providers of shelter and care, including sometimes medical care that was superior to—and more trusted than—government alternatives. Fifth, the refugees relied on trailblazer information that had become outdated and nullified by smuggler adaptation to state repression. Sixth, the smugglers served as precious informants for critical decisions the migrants took, routinely against competing government and NGO guidance.

What can be done? As indicated, current efforts at information dissemination to refugees offer a narrow scope of information, systematically ignore the topic of trafficking and smuggling, and engage in futile attempts at deterrence. Information aimed at disincentivizing refugees from employing smugglers—whether by withholding information or frightening them—simply does not work. The question is not whether they will take risks through smuggling channels. Rather, it is whether they will take *informed* or *uninformed* risk. It is here that policymakers can improve outcomes.

When it comes to decisions exposing them to trafficking risks, Syrian refugees rely almost exclusively on information from social capital: their trailblazer family members who traveled the Route months earlier, other migrants at the site, and local smugglers and recruiters in public areas. As governments refuse to communicate about smuggling with refugees except when persecuting them, Syrians in turn studiously avoid asking any informed representative, government or civilian, about the migrant smuggler market. The information that leads to their choosing a particular smuggler, a time of migration, a transportation method, and a border crossing is almost never guided by intelligent policy. Consequently, these choices are often ill-advised. They put refugees in physical danger of injury and death, in legal dangers of arrest and deportation, and at risk of becoming prey to traffickers.

A more effective policy should aim at *targeted advice* about smugglers, delivered to refugees directly, honestly and with transparent opportunities for migrants to inquire without fear of penalty. Clear, updated information about the local smuggling—and hence trafficking—landscape can fruitfully be shared in two areas:

— *Smuggler organizations, recruitment sites, and reputations*. Relying on advice from other Syrians, and especially from the smuggling network from the preceding bridge country, denies refugees critical information on alternative smuggling groups, where to reach them, and how to assess them. Typically, no single smuggling operation occupies the market. Rather, one smuggling group may be known to authorities for its use of coercion and deception, its handling of unaccompanied minors, and its engagement in trafficking. Another—equally illegal—may be known to authorities for its nonviolent operation, its relatively reliable service, and its reluctance to cross the line into trafficking. Analogously, some public spaces—parks, ports, bus/train stations—are known to be safer recruiting grounds than others. Police in Greece, Serbia and Turkey gather such information routinely. Other security organs already have informants' networks among smugglers, regularly updating intelligence. In sharing selections of it with migrants, they not only deter refugees from reckless risk-taking out of ignorance; they also obstruct the more egregious trafficking operations that they otherwise fail to dismantle.
— *Border crossing risk comparisons and alternative options*. Even the most educated, economically well-off respondents had limited knowledge of bridge country geography, border crossings, or the nature of neighboring countries' regimes. Having left the Middle East and Turkey, respondents had no idea, for instance, that Greece and Macedonia have dueling border patrols that make certain crossings bloodier and deadlier than others; or that the Hungarian border with Serbia is the most militarized in Europe, whereas the Croatian alternative is more porous and unlikely to end in beatings, teargas and attack dogs; or that certain periods of the month—when trucking volume is high, or when bribed customs officers are on shift—are more hospitable to safe smuggling than others. Knowing these and other facts can mean the difference between asylum and deportation, forced detention and hospitalization, life and death. Policy should aim at clear, visual representations—through maps and figures—of illegal border crossing options and their relative risks. Currently, it is smugglers and traffickers who are *de facto* informants in this area. Their advice is hardly disinterested.
— *Smuggling prices*. Full standardization and transparency in smuggling service costs is impossible. But a meaningful step in that direction would be to publicize and regularly update street prices for smuggler services throughout the country—modeled on Taxi tariffs for specified distances and routes. This is particularly salient for bridge countries. Most governments have excellent estimates of smuggling prices; and even modest ethnographic excursions can help revise price fluctuations. Refugees waste precious resources on moving within a bridge country to reach supposedly cheaper smuggling routes, only to be disillusioned. Others discover that haggling produces significant price differences between their family and their traveling companions. Some suffer deception and local currency manipulations. Many fall prey

to traffickers. Quality, public information on prices would be an elegant and effective intervention to improve matters.

Information aimed at deterrence is largely ineffective, while targeted advice on smugglers can produce direct reductions in trafficking risk. Legalistic material is unpopular and largely inconsequential to Syrian refugees. In contrast, any of the above information—which law enforcement largely possess already—would be treasured and acted on. Finally, such transparent guidance would help refugees take informed, safer risks, thereby reducing the immense *government* costs of ignorant risk-taking: hospitalization, hunger, restlessness, and violent assault.

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Conflict of Interests

The author declares no conflict of interests.

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Article

International Human Trafficking: Measuring Clandestinity by the Structural Equation Approach

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Abstract
Worldwide human trafficking is the third most often registered international criminal activity, ranked only after drug and weapon trafficking. This article focusses on three questions: 1) How can human trafficking be measured? 2) What are the causes and indicators of this criminal activity which exploits individuals? 3) Which countries observe a high (or low) level of human trafficking inflow? We apply the Multiple Indicators Multiple Causes structural equation model to measure human trafficking inflows in a way which includes all potential causes and indicators in one estimation model. The human trafficking measurement focusses on international human trafficking. We use freely available existing data and thus generate an objective measure of the extent of trafficking. Countries are ranked according to their potential to be a destination country based on various characteristics of the trafficking process.

Keywords
human trafficking; international crime; latent variable; measurement; Multiple Indicators and Multiple Causes model; structural equation model

Issue
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1. Introduction

Since human trafficking is the third largest kind of illicit international commerce, after illegal drug and weapon smuggling (U.S. Department of State, 2004), it creates an underground economy of illegal labor markets and businesses where immense profits and great suffering go hand in hand. Profit estimates range from 1 billion dollars (Belser, 2005) to 31.61 billion dollars at any given time (ILO, 2005; Interpol, 2012). This money is augmented by tax evasion and presumably used to finance the illegal businesses that traffic individuals, as well as other associated activities. The trafficked are abused through exploitation and coercion and deprived of the freedom to move or choose their place of living (Gallagher, 2009). Like other transnational criminal activities, it links with the corruption of civil society as it bypasses borders, undermines state sovereignty, and threatens state governance and human security (Shelley, 1999).

The international nature of this crime means that an international response is needed in order to address policy approaches and legal measures successfully, particularly due to the fact that the main problem in this field is the availability of comparable data. A comparable international measure of trafficking intensity is currently still missing. This article provides a first attempt at providing the literature with a new means of measuring human trafficking by using the structural equation approach.[1]

[1] Several attempts have been carried out in order to increase data access in the "Trafficking Statistics Project": the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labor Organization (ILO) built the Counter-Trafficking Module (CTM) Database; the United

The Multiple Indicators Multiple Causes (MIMIC) model is a special case of the structural equation model which uses existing data to derive a measurement of the extent of human trafficking. Thereby an index of human trafficking "based on estimated parameters that relate directly to the causes and indicators" (Dreher, Kotsogiannis, & McCorriston, 2007, p. 445) can be drawn up. This approach has been used in economics by several authors to explore latent phenomena such as the shadow economy (Schneider & Enste 2000, 2002) or corruption (Dreher et al., 2007).

In this article we understand human trafficking in accordance with the international definition of trafficking in persons.[2] This source is not only the first successful international agreement on the common elements and implications of human trafficking, but it also provides an important working basis for the present research.[3] The main elements are the inclusion of all forms of enslavement and the focus on the exploitation of victims through coercion or deception. They acknowledge that most of the victims of human trafficking are made vulnerable by migration, are not willingly enslaved, and that it is a clandestine business of internationally active criminal networks. To render the clandestine phenomenon of human trafficking visible, the objective of this article is to measure human trafficking by addressing the extent of victim exploitation in destination countries based on observed causes and indicators through the MIMIC structural equation approach. This allows us to explore the structural relationship between the causes and indicators of human trafficking, which to the best of our knowledge has not been investigated before.

In order to describe human trafficking as precisely as possible, aspects of both indicators and causes must be included, particularly since these have been neglected by earlier studies, which used multivariate approaches and focussed on factors that may cause human trafficking (e.g. Cho, 2015). The main idea behind the MIMIC model is to examine the relationship between an unobservable variable, e.g. the shadow economy, corruption, human trafficking, etc., and a set of observable variables (causes and indicators) using covariance information (Buehn & Schneider, 2012).[4] The flexibility in estimating the correlations of observable factors is one of the main advantages of the MIMIC approach. We disentangle these relationships and derive an index of the extent of trafficking in persons to destination countries by applying this single latent variable structural equation method. This method provides a detailed analysis of human trafficking, which sheds further light on the mechanism behind the trafficking process.

To summarize in advance the essential findings, the MIMIC estimates support the main assumptions as to the determinants and indicators of trafficking in persons. That is, specifically, that richer countries, investment relations, and opportunities for low-skilled labor positively correlate with human trafficking whereas language differences are negatively correlated. Indications of human trafficking inflows are the crime rate, legal measures against human trafficking, and the number of migrants registered in the countries. The human trafficking intensity index shows the prevalence of human trafficking to 142 destination countries for the period 2000–2010.

Section 2 explains the MIMIC model of human trafficking and presents the dynamics between indicators and causes of human trafficking. Thereafter, Section 3 discusses the results, the measurement of human trafficking, and country rankings. Section 4 concludes.

2. The MIMIC Model of Human Trafficking

In 1975, Jöreskog and Goldberger introduced the MIMIC model in economics. It has subsequently been used in numerous studies to measure unobservable variables such as the underground economy (e.g. Buehn & Schneider, 2012, Frey & Weck-Hanneman, 1984; Loayza, 1996; Schneider, Buehn, & Montenegro, 2010), corruption (Dreher et al., 2007), and international goods smuggling (Buehn & Farzanegan, 2012).[5] Many studies further explored determining aspects and the development of underground activity across and within countries (among others Buehn, 2012; Loyaza, 1996).

There are several reasons for the application of the MIMIC model in the context of human trafficking. Firstly, human trafficking is an economically significant criminal activity with huge profits linked to tax evasion. Secondly, international human trafficking receives increased attention in the global policy arena and the international community is willing to fight it. This has already spurred an increase in studies analyzing the underlying processes in law, political science, and economics. However, international trafficking in human beings is a multidimensional, unobserved phenomenon in which the whole process happens in the underground economy and neither traffickers nor victims are easy to identify. A latent variable approach such as the MIMIC is thus well suited to ad-

Nations Office on Drugs and Crime (UNODC) initiated the program against Trafficking in Human Beings (GPAT); and the U.S. State Department publishes the yearly Trafficking in Persons reports comparing countries' legal responses towards human trafficking.

[2] The definition is presented in the *Palermo Protocol* Article 3 (UN, 2000).

[3] Article 3 of the protocol states that "human trafficking is the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs" (United Nations, 2000).

[4] See Appendix for a detailed description of the MIMIC model and the generation of the factors score for the final index.

[5] Additionally, Di Tommaso, Raiser and Weeks (2007) and Kuklys (2004) analyzed institutional change in Eastern Europe and welfare measurement. Buehn and Eichler (2009) explored the connection between smuggling illegal and legal goods, and Buehn and Farzanegan (2013) developed an index of global air pollution.

dress its unobservable nature. Through the simultaneous consideration of key determinants and indicators, light is shed on the presence and magnitude of human trafficking to a country. Thirdly, the ability to estimate the parameters of a single structural equation has greater value than estimating numerous regressions. The MIMIC approach is based on the assumption that causal factors of latent phenomena are not to be considered independently. Human trafficking is a process with many facets in which several factors shape the incentive structure of all the actors involved, i.e. traffickers, victims and governments.[6]

The application of the MIMIC model to human trafficking focusses on the extent of human trafficking in destination countries.[7] We identify what drives people to exploit vulnerable individuals, i.e. the demand structure (pull factors), and what puts people in this vulnerable position, i.e. the potential supply (push factors). In economic terms, human trafficking is located in a market setting where supply and demand are met at the expense of vulnerable individuals. The main reason for the abuse and exploitation of people is global income disparity. Emigration is propelled by economic factors that drive people to migrate and take risks in order to find more prosperous living conditions. In particular, traffickers use their victims' vulnerability and bring them to countries where both the demand for cheap labor and exploitation profits are high. These are the key factors that help identify the indicators and causes of human trafficking to destination countries.

2.1. Indicators

The extent of human trafficking is not directly measurable so indicators have to be identified that are a function of human trafficking in destination countries. To the best of our knowledge we are the first to determine multiple indicators to measure its extent in destination countries. There are many aspects correlated with human trafficking that could partially indicate its prevalence in a country. After extensive research of anecdotal and governmental evidence (e.g. U.S. Department of State, 2010, 2011, 2012, 2013), it becomes apparent that human trafficking has a two-sided nature. Some consequences are visible, but its illegal nature requires most of the action to be covert. We identify four indicators of human trafficking that reflect the intensity of human trafficking in destination countries: (1) the crime rate per 100,000 people, (2) the 3P-index of anti-trafficking policies[8], (3) the number of identified human trafficking victims, and (4) the number of migrants registered in a country. In order to test the relationship between the indicators and human trafficking intensity (η) the following measurement model is implemented:

$$\begin{bmatrix} \text{crime rate}_i \\ \text{3P-index}_i \\ \text{victims}_i \\ \ln \text{migrants}_i \end{bmatrix} = [\beta_1, \beta_2, \beta_3] \times [\eta] + [\varepsilon_1, \varepsilon_2, \varepsilon_3]$$

(Ad1): Awareness within countries plays an important role in the identification of human trafficking. Given that human trafficking is a large-scale illegal business, its infrastructure must be highly developed. The criminology literature supports this claim and stresses the link between the transport of illegal migrants, human trafficking, and organized crime throughout the entire process of deceiving, transporting, and exploiting people (Salt, 2000; Salt & Stein, 1997; Schloenhardt, 2001). The extent of human trafficking in a country contributes to the overall prevalence of crime. Despite the hidden nature of the phenomenon, we are able to reveal it by looking at the occurrence of crime, measured as the level of crime in the country. We use the crime rate per 100,000 people taken from United Nations Surveys on Crime Trends and the Operations of Criminal Justice System (United Nations Office on Drugs and Crime [UNODC], 2008), which is the most complete set of cross-country crime data available.

(Ad2): The legal fight against crime is an indicator of the extent of human trafficking in the country. In order to explain this hypothesis, we look to the theory presented in the literature (e.g. Hathaway, 2007; Simmons, 2000) as to why states sign international treaties and enforce them domestically. This would suggest that countries which more rigorously prevent, suppress, and punish trafficking in persons are incentivized to do so because they have a higher intrinsic motivation for respecting human rights and expect the collateral consequences (such as international reputation and a strong civil society) to be more important than the costs of enforcement. The effect of enforcement on the incidence of violence, however, is not easily determined. In a meta-study which looked exclusively at the drug market, Werb et al. (2011) found that interference in the market for drugs leads to an increase in violent incidents. We apply this argument to the trafficking market and argue that where human trafficking is combated by stronger law enforce-

[6] Assumptions made about the effects of the latent variable have to be considered carefully. Cliff (1983, p. 120) argues that there might be relevant divergence between the observed indicators and the latent phenomenon. This is especially important when interpreting correlations and model estimates established from the latent variable specifications and relating them directly to the unobserved phenomenon. However it should be noted that this is not a major problem here because the model is tested on several different specifications and model applications, which show that the underlying assumptions seem to be valid. Nevertheless, estimation models are no more than approximations of the unknown real social phenomenon and have to be interpreted cautiously, especially when the core component being estimated (HT) is not observable.

[7] Since October 2013, the Walk Free Foundation (2013) has measured the prevalence of people in slavery for 162 countries. This approach is based on risk characteristics of countries at one point in time. In contrast to the human trafficking intensity measure provided here, the measurement does not take into account development over time and is restricted to an analysis of the preceding year rather than of the last decade, and thus comparisons are difficult.

[8] A detailed description of the construction of the 3P-index is available in the article Cho et al. (2014) and online on the project webpage: www.human-trafficking-research.org

ment in terms of prosecution, protection, and prevention, the more incidences of trafficking will be registered in the country. A measure of these anti-trafficking instruments is the 3P-index provided by Cho, Dreher and Neumayer (2014).[9] It is available for over 180 countries for the 2001 to 2013 period. The higher the score a country receives in the 3P-index (on a scale of 3 to 15), the more rigorously the anti-trafficking instruments are implemented. Our argument is supported by the following observations: the *Convention Against Transnational Crime* and the Trafficking Protocol are the results of international observations "that technological advances, combined with the ever-growing inter-dependence of economies, is offering criminal groups unprecedented lucrative opportunities" (Betti, 2001, p. 1). During the negotiations and the implementation of the *Convention Against Transnational Crime* and the Trafficking Protocol, public awareness of the topic increased substantially. Non-governmental organizations intensified public awareness campaigns and media coverage of human trafficking as an international criminal activity became ubiquitous.[10] The increased salience of the topic forced policy makers to react and intensify the fight against it (Burstein, 2003, and sources cited there). In a simple correlation test between the 3P-index and the number of identified victims, we find a positive and significant correlation. We therefore argue that the 3P-index is a good indicator of human trafficking in the country.

Ad(3): The number of identified victims in these countries gives an indication of the true number of victims. Although it is important to note that identification of victims, prosecution of traffickers, and prevention of the crime largely depend on the awareness of the existence of human trafficking in the wider public, as well as in legal institutions (Tyldum & Brunovskis, 2005), this number is an important sign of the existence of trafficking in persons. The indicator of the observed number of victims is a proxy for the total extent of the issue: it is only the tip of the iceberg. This observed number is affected by the quality of the law enforcement institutions in the destination country. Presumably the numbers are larger in countries with better institutions and therefore not necessarily where trafficking is more prevalent. However, the number of identified victims should be larger where the pool of all victims is larger, which suggests a positive correlation between the real extent and identified victims. In its global reports on trafficking in persons (UNODC, 2009, 2012), the UNODC provides the number of identified victims as a share of the total population for a large set of countries.[11]

Ad(4): Finally, as argued before, victim exploitation happens parallel to migration flows and we therefore use the number of migrants (in logs) as an indicator of human trafficking. The number of international migrants is available from the World Bank Development Indicators (World Bank, 2012). In order to obtain data for each year of the sample, we interpolate from the number of refugees as counted every five years by the Office of the United Nations High Commissioner for Human Rights.

2.2. Causes

The structural model includes not only all causes of human trafficking that influence the vulnerability of individuals and thereby pull them towards promising destination countries but also criminal aspects of the phenomenon. Since the application of the common definition of human trafficking in 2000, the number of studies on the causes of human trafficking has increased substantially (e.g. Akee, Basu, Bedi, & Chau, 2010; Cho, 2015; Cho, Dreher, & Neumayer, 2013; Hernandez & Rudolph, 2015).[12] The basic causes used in the modeling process of the MIMIC model are: (1) income per capita in logs, (2) foreign direct investment flows into destination countries (in logs), (3) employment in agriculture as a percentage of total employment in these countries, and (4) language fractionalization within the respective destination countries. The structural model is as follows:

$$[\eta] = [\alpha_1, \alpha_2, \alpha_3, \alpha_4] \times \begin{bmatrix} \text{(log) GDP pc}_i \\ \text{(log) FDI stock}_i \\ \text{employ agri}_i \\ \text{language fract}_i \end{bmatrix} + [\omega]$$

(Ad1): The main economic reason behind the existence of both human traffickers and an easily exploited population is the movement of people from regions of lower labor productivity to those of higher productivity. Thus, the ideal destination country for human trafficking is a high-income country, which can accordingly become a breeding ground for this type of activity. We use income measured by GDP per capita (in logs) taken from the World Bank's (2012) Development Indicators (WDI) as a proxy for the economic pull factor.

(Ad2): It is noted that international investment relations lead to increased cultural, social, and economic interrelation between countries. These are therefore are an additional pull factor for human trafficking, which can be interpreted as the negative externality of increased international connectedness and as being facilitated by different aspects of globalization processes. Interconnect-

[9] We apply the overall index (3P-index) in order to avoid judging the importance of each of the single components. The fight against human trafficking is based on all three equally important aspects.

[10] See Ditmore and Wijers (2003) for details on the negotiations of the Trafficking Protocol. For an example of media coverage see Spiegel Online (2014).

[11] An overview of all variables used can be found in Table A1.

[12] All determinants used in the empirical literature so far are tested in the meta-study by Cho (2015) where she identifies robust causes of human trafficking flows. Contrary to Cho's approach, we focus on causal and indicating variables at the same time and apply the MIMIC model. In this way we add one layer of information to the one she uses. Nevertheless, the push and pull factors identified in Cho's study (2015) have been considered in various tests of our MIMIC model. In the final model we decided to focus on the determinants that have been robustly identified as causes of human trafficking in our setting and are in accordance with the model fit of our estimation technique.

edness facilitates transport via the establishment of international trade routes and investment connections. International crime groups are large-scale business operations that are active in both the official and the informal economies, corrupting officials and legal networks (UNODC, 2010). The variable used is the share of foreign direct investment (FDI) (in logs), which shows these connections (UNCTAD, 2012).[13]

(Ad3): Most cases of human trafficking involve migrant workers in economic sectors such as agriculture and construction (Zhang, 2012). They account for 18 percent of identified cases of human trafficking according to the UNODC (2009). The increased chances of employment caused by the increased demand for cheap unskilled labor increases the attractiveness of countries as destinations for migrant workers (Hernandez & Rudolph, 2015).[14] In addition, high demand in the commercial sex market or other informal markets increases the probability of people being pushed towards these locations (Cho et al., 2013; Danailova-Trainor & Belser, 2006; Jakobson & Kotsadam, 2013). Given the scarcity of data in this area, we are obliged to refrain from using sexual exploitation data and use agricultural employment given as a percentage of total employment, in data provided by the World Bank (2012).[15]

(Ad4): On the other hand, trafficking may be limited by technological advances and personal contacts. These increase the availability of information on migration opportunities and job offers and thus presumably reduce the risk of being trafficked. Therefore information flows should have a restricting effect on trafficking. We employ the language component of the distance-adjusted ethno-linguistic fractionalization index (DELF) developed by Kollo (2012)[16] using the variable in the WDI data set (World Bank, 2012).

Figure 1 shows the respective path diagram and expected relations for the MIMIC model of human trafficking, which combines the measurement and the structural model.

3. Results

Before estimating the MIMIC models, we use multiple imputation with fixed country and year effects to balance the sample and control for unobserved factors. Subsequently, the MIMIC models are estimated using a maximum likelihood estimator with missing values. After testing for the robustness of the specification and evaluating the model fit, the final indices are generated for the years 2000 to 2010. In this way country rankings for every single country-year combination are generated, which makes it possible to assess the development of the extent of human trafficking over time. As discussed above, the decade 2000–2010 saw a rise in quantitative research on human trafficking, encouraged by the United Nations' official definition of trafficking in persons of 2000. Given the availability of data, the years between 2000 and 2010 appear to be the most useful for empirically exploring the major causes and indicators.

Since structural equation modeling (SEM) is confirmative in nature, the significance of variables is only one indication of model quality. When it is considered to-

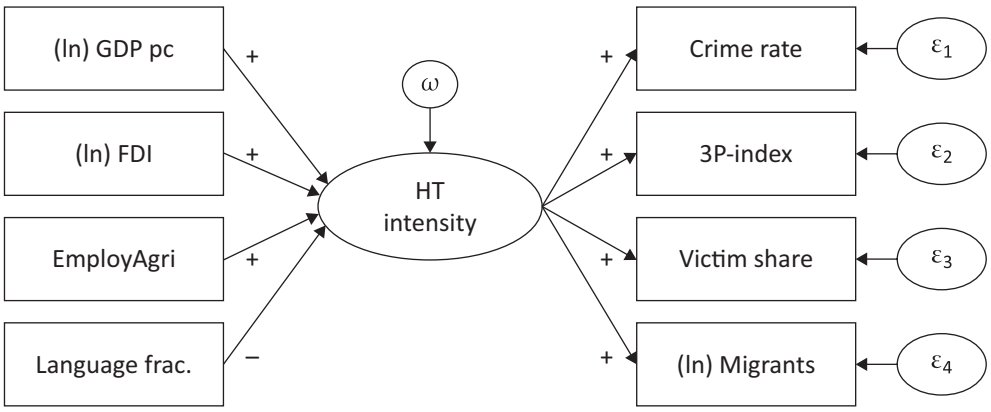

Figure 1. Path diagram of MIMIC models.

[13] It has also been argued that spatial dependence works as a trigger for positive externalities such as the spillover effect of advancing women's rights (Neumayer & De Soysa, 2011). We argue that this link can also act as a transport system for negative externalities, such as international criminal networks transporting human beings.

[14] South-south migrants in particular have to rely on informal support systems rather than welfare benefits in their host countries, which makes them even more vulnerable (Avato, Koettle, & Sabates-Wheeler, 2010).

[15] We refer to Jakobson and Kotsadam (2016) for a detailed discussion of trafficking for sexual exploitation: its causes, indicators, and available data sources. Their analysis shows the scarcity of available data and supports our endeavour to develop a measure of human trafficking.

[16] This index accounts for (dis-)similarities between languages, which are crucial in human trafficking because potential victims are more vulnerable if the destination country's language is different from their own. These new data are an improvement on those of Cho (2015) and Akee, Basu, Chau, & Khamis (2010) who use the ethnic fractionalization index (ELF) of Alesina et al. (2003). The ELF only considers the number of different languages in a country, thereby disregarding the crucial aspect of the distance between languages accounted for in the DELF. This is relevant in the context of the trafficking process. The results are not qualitatively different when the ELF index is employed.

gether with the overall fit of the model, both these aspects are enough to reject or confirm the assumed relationships (Bollen, 1989). The judgment of the quality of the model is based on whether the estimated covariance is equal or close to the true sample covariance.[17]

3.1. MIMIC Estimation Results

Table 1 shows the results of the MIMIC estimation. The fit indicators show a good model fit. In particular, the chi-square statistic with a p-value of 0.02 indicates a good model fit. The results are point estimates. The observed correlation of GDP per capita is positive and significant at the 1 percent level, indicating that wealthier countries are more often the destination of human trafficking. Investment flows into destination countries are also positively associated with human trafficking (at the 5 percent significance level). More international business and investments are correlated with illicit human movement in the form of human trafficking. The robust positive relation observed (significant at the 1 percent level) to the share of employment in agriculture endorses the positive relation between human trafficking and opportunities for cheap employment (low skilled labor), which provides more potential placements for use by traffickers to exploit people. Linguistic fractionalization within countries has a negative and significant relation to trafficking at the 10 percent level. This suggests that less diverse countries pull more human trafficking into the country.

Turning to the measurement model, we find that all indicators match our expectations. One of the indicators of the latent variable has to be normalized and used as an anchor variable for the scale and identification: the crime rate.[18] We follow the literature by using the indicator with the largest standardized coefficient (0.891***) as the anchor variable (e.g. Buehn & Schneider, 2012; Dreher et al., 2007; Schneider et al., 2010). All four indicators are positively related to the extent of human trafficking, which is in line with theoretical considerations and economic intuition. The 3P-index of anti-trafficking policies turns positive and significant at the 1 percent level. This shows the importance of the extent of anti-trafficking policies, which protect victims, prosecute traffickers, and prevent human trafficking, as a reflection of the intensity of human trafficking in the country. The number of identified victims as a share of the population is not statistically significant. The low quality of the data would explain this finding (Laczko & Gozdziak, 2005). Finally and importantly, the share of migrants in the country positively indicates the prevalence of human trafficking (although this relation is not statistically significant at conventional levels).

We have carried out a number of robustness tests to check whether the results are valid under a variety of circumstances (Table 2). The results do not depend on the choice of estimation model and discount the three highest and lowest ranking countries (outliers) (Buehn & Farzanegan, 2012). In order to rule out endogeneity concerns, we have also estimated the results following Dreher et al. (2007) and lagged all quantitative causal variables by one period before estimating the model. We have also followed Dreher et al. (2007) and tested whether it is a problem that some of the indicators could well be causal variables (such as the

Table 1. MIMIC estimates.

Structural model (causes)				Measurement model (indicators)			
(ln) GDP pc	(ln) FDI	Employment in agriculture	Language fractionalization	Crime rate	Overall 3P-index	Victim share	(ln) Migrants
0.978*** (6.656)	0.172** (2.248)	0.438*** (2.786)	–0.124* (1.751)	1	0.438*** (6.000)	0.036 (0.302)	0.118 (1.105)
Number of countries	Chi-square	P-value	RMSEA	Probability RMSEA < 0.05	CFI	TLI	CD
142	27.75	0.02	0.08	0.12	0.90	0.84	0.61

Notes: Absolute z-statistics in parentheses; * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$; The crime rate is chosen as the anchor variable and normalized to 1. If the model fits the data perfectly and the parameter values are known, the sample covariance matrix equals the covariance matrix implied by the model with small Chi-square values. The root mean squared error of approximation (RMSEA) evaluates the fit of the model based on the deviance between the estimated and the real covariance. Brown and Cudeck (1993) assume that RMSEA values smaller than 0.05 imply a good model fit, which corresponds to a probability close to 1. The two fit indices suggested by Bentler (1990) are the comparative fit index (CFI) and the Tucker-Lewis index (TLI). They indicate a good model fit with values close to 1 (Hu & Bentler, 1999). The coefficient of determination (CD) is similar to the R-squared with higher values showing better fit.

[17] Iacobucci (2010) provides a more detailed description of all goodness of fit indices in structural equation modelling. Barrett (2007), who argues that decision rules based on these indicators are arbitrary, provides a critical assessment of the use of goodness of fit indicators. He argues that the chi-square statistic is the "only substantive test of fit for SEM" (p. 815).

[18] The choice of the anchor variable does not change estimation results qualitatively (Bollen, 1989). Tests show that this is true for the setting in this article as well.

Table 2. MIMIC estimates (robustness tests).

		(1)	(2)	(3)
Structural model (causes)	(ln) GDP per capita	1.051***	0.721***	
		(5.497)	(5.688)	
	(ln) FDI	0.112	0.183***	
		(1.039)	(2.869)	
	EmployAgri	0.391*	0.250*	
		(1.801)	(1.867)	
	Language fract.	–0.159	–0.093	–0.127*
		(1.628)	(1.583)	(1.784)
	lagged (ln) GDP pc			0.968***
				(6.686)
	lagged (ln) FDI			0.177**
				(2.333)
	lagged EmployAgri			0.432***
				(2.795)
Measurement model (indicators)	Crime rate	1	1	1
	Overall 3P-index	0.633***	0.706***	0.686***
		(6.773)	(5.053)	(6.014)
	Share of victims	0.038	–0.082	0.035
		(0.319)	(0.567)	(0.298)
	(ln) Migrants	0.289**	0.028	0.117
		(2.432)	(0.220)	(1.107)
Fit statistics	Number of countries	84	136	142
	Chi-square	30.89	28.17	26.96
	(P-value)	(0.01)	(0.01)	(0.02)

Notes: Absolute z-statistics in parentheses; * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$; Explanation of fit statistics see Table 1.

crime rate or migration).[19] The results are qualitatively unchanged.[20]

3.2. Human Trafficking Index

The human trafficking index provides an assessment of human trafficking relative to other countries in all dimensions of the process. As described in Section 2, human trafficking includes all forms of exploitation and all groups of actors involved, traffickers as well as victims. We focus on the destination countries where exploitation takes place. Thus, we conceive of the extent of human trafficking in these countries as a bundle of actions and decisions. This includes the decision of traffickers to send individuals to these countries and exploit them. Additionally, it includes the extent of a market failure which provides opportunities for the exploitation of victims through the demand for cheap labor as well as the share of the population which is vulnerable and marginalized and therefore easily exploited. This shows that creating a clear picture of the extent and dimensions of human trafficking in countries is still very difficult. However, the derived index and subsequent ranking of countries is superior to existing measurements of specific aspects of human trafficking. For example, the tier score of the U.S. Department of State (2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012), which only addresses compliance with U.S. policies, has been criticized as a one-sided approach that reflects political interest rather than the will to produce a transparent independent score of the variety of international policy approaches (Simmons & Lloyd, 2010).[21] By contrast, the underlying data implemented in the construction of our intensity index (human trafficking index) are based on publicly available data of causes and indicators that influence human trafficking by the means which have been described.

The relevance of the measure is assessed in the following Table 3, where we show the pairwise correlations of the human trafficking index with the 3P-anti-trafficking policy index, the tier rank of the U.S. Department of State, and the citation index compiled by the UNODC (2006, 2009, 2012).[22]

[19] These results are available from the authors upon request.

[20] An important issue in using the MIMIC approach is whether the assumption that the variables identify one latent factor holds. Using a principal component analysis (PCA), results show that one component is sufficiently explained by the variation in variables, suggesting that our assumption of one latent factor (human trafficking intensity) holds.

[21] Simmons and Lloyd (2010) criticize the ranking of countries by the Department of State for mirroring the political interests of the U.S.A. and suggest that it eventually serves to get other countries to comply with the norms set out by the country depicted as the world's referee.

[22] We do not include the Global Slavery Index in our assessment here, since it mainly refers to countries where victims originate.

Table 3. Pairwise correlations of human trafficking indices.

	Human trafficking index	Overall 3P-index	Tier rank	CI: destination	CI: origin
Human trafficking index	1				
Overall 3P-index	0.6647*	1			
Tier rank	0.5910*	0.7290*	1		
CI: destination	0.4912*	0.3835*	0.2787*	1	
CI: origin	–0.3868*	–0.0493	–0.1762*	–0.0743*	1

Notes: * $p < 0.01$; The tier rank is reversed and shows higher values the better countries fulfil the Victims of Trafficking and Violence Protection Act (TVPA) standards. CI: destination/origin refers to the citation index compiled by the UNODC. The countries are ranked in a five-category scale with the highest value indicating that the probability of being a destination/origin country is "very high".

The correlations show that the human trafficking index has a high positive correlation with the 3P-index. Countries that rank high in fighting human trafficking have a higher intensity of trafficking inflows (as assumed in Section 2 and shown in Table 2). Similarly, we see a positive correlation between the tier rank and the citation index of destination countries, as well as a negative correlation to the citation index of countries of origin. One could argue that the correlation between the latter three indices is only modest (0.59 to 0.39, respectively). However, this is attributed to the different aspects of human trafficking that they measure. The tier rank addresses compliance with the TVPA and thus political decisions to fight human trafficking. This is only one aspect of the process of trafficking in human beings and a partial aspect of our intensity index, which also captures country characteristics, as well as the criminal dimension and vulnerability of victims. The same holds true for the citation indices: both indices capture aspects of human trafficking which are visible to society and therefore receive public attention. In the MIMIC model the crime rate, numbers of identified victims, and migration levels are used as indicators and combined with the causes—this ensures that this aspect of the trafficking process is included in the intensity index to provide a holistic picture.

3.3. Country Rankings

Looking at Table 4 we find mainly OECD countries leading the ranking of destination countries. The table shows the twenty top and bottom ranking countries in the years 2001, 2005, 2010. At the lower end of the ranking, we find Asian, Latin-American and Sub-Saharan African countries with a low prevalence of trafficking into their countries.

Unsurprisingly industrialized countries are at the top of the ranking. This is in line with the observations in the UNODC report (2006, p. 17). Countries in North America and Europe, as well as Australia are reported to be the top destination countries for human trafficking. The fact that Scandinavian countries rank so highly indicates that there are hidden activities taking place in these countries which enable traffickers to exploit individuals. This is less surprising than it seems when their geographical location is taken into account, particularly considering that they are often used as role models for institutional quality. They are close to Russia and Eastern European countries, which have lower economic opportunities and, in Russia's case at times, a higher level of persecution of individuals (traffickers and victims alike). Thus, they are very attractive destinations for the vulnerable and desperate in these countries as well as Middle Eastern, African, and Asian nations. It is also in line with the observation that the share of identified victims in these countries is quite high, especially at the beginning of the century.[23]

Looking at major OECD countries, the United States—the country which has pushed initiatives against human trafficking such as the implementation of anti-trafficking instruments—consistently ranks among the top 20 countries and even leads the ranking in 2010. This relatively constant position suggests that despite the United States' intense anti-trafficking efforts and awareness campaigns run locally and internationally, the magnitude of the problem within its borders seems to be stable and has even worsened recently with a higher intensity in 2010 (index value of 79). Finally, Germany ranks among the top ten countries throughout the years, which confirms reports of a high magnitude of human trafficking in the country.

At the lower end of the list are mainly low-income countries, which act as a source rather than a destination for victims of human trafficking. There are some (rather surprising) variations in the ranking of some countries. We attribute these to different aspects of the trafficking process. Firstly, from the perspective of the traffickers, it should make sense to use established trafficking routes. However, as a way of hiding from criminal justice systems, variations in destination countries may serve to reduce the chances of getting caught. Secondly, from the perspective of the victims, the same holds true for migration routes and observed travel patterns. Finally, from the perspective of a state fighting human trafficking, a series of legal successes in one year may serve to make the problem more visible but may not be repeated in the next. In countries such as Brunei Darussalam or the United Arab Emirates, an autocratic state may be able to

[23] The share of victims in Iceland and Norway in 2000 was 10.4 per 100,000 people, which is one of the highest shares of identified victims across all countries during the decade observed.

Table 4. Highest and lowest ranking countries in specific years.

Country	Rank	2001	Country	Rank	2005	Country	Rank	2010
			highest ranking countries					
Belgium	1	(89)	United Kingdom	1	(83)	**United States**	1	(79)
Iceland	2	(87)	Netherlands	2	(81)	Canada	2	(75)
Netherlands	3	(85)	**Norway**	3	(81)	Switzerland	3	(72)
Germany	4	(84)	Belgium	4	(79)	**Norway**	4	(72)
Luxembourg	5	(83)	Sweden	5	(78)	France	5	(72)
Sweden	6	(83)	**Germany**	6	(77)	United Kingdom	6	(72)
Denmark	7	(81)	Denmark	7	(77)	Brunei Darussalam	7	(72)
Switzerland	8	(81)	Luxembourg	8	(77)	Australia	8	(72)
Norway	9	(81)	Australia	9	(75)	**Germany**	9	(71)
Canada	10	(80)	Iceland	10	(75)	Luxembourg	10	(71)
United Kingdom	11	(79)	Ireland	11	(75)	Sweden	11	(71)
Ireland	12	(78)	Switzerland	12	(75)	Belgium	12	(71)
Austria	13	(78)	Austria	13	(74)	Qatar	13	(71)
Finland	14	(76)	France	14	(73)	Israel	14	(71)
France	15	(76)	Spain	15	(73)	Netherlands	15	(71)
Brunei Darussalam	16	(76)	Italy	16	(72)	Ireland	16	(70)
Spain	17	(75)	Portugal	17	(72)	United Arab Emirates	17	(70)
United States	18	(73)	New Zealand	18	(71)	Austria	18	(69)
Australia	19	(73)	**United States**	19	(71)	Italy	19	(69)
The Bahamas	20	(72)	Finland	20	(70)	Denmark	20	(68)
			lowest ranking countries					
Philippines	122	(36)	Peru	122	(36)	Sierra Leone	122	(37)
Kenya	123	(35)	Kyrgyz Republic	123	(36)	Bangladesh	123	(37)
Gambia	124	(34)	Uganda	124	(35)	Yemen	124	(37)
Nepal	125	(34)	Gambia	125	(35)	Vietnam	125	(36)
Uzbekistan	126	(34)	Bolivia	126	(35)	Zambia	126	(36)
Liberia	127	(34)	Nepal	127	(34)	Uganda	127	(36)
Kyrgyz Republic	128	(31)	Kenya	128	(33)	Tajikistan	128	(36)
Mali	129	(31)	Sierra Leone	129	(33)	Cambodia	129	(36)
Iran	130	(30)	Mali	130	(31)	Gambia	130	(36)
Uganda	131	(30)	Madagascar	131	(31)	Kyrgyz Republic	131	(36)
Sierra Leone	132	(28)	Algeria	132	(31)	Tanzania	132	(36)
Senegal	133	(26)	Syria	133	(31)	Mongolia	133	(36)
Sudan	134	(26)	Ethiopia	134	(30)	Lesotho	134	(35)
Malawi	135	(25)	Sudan	135	(30)	Ethiopia	135	(35)
Niger	136	(24)	Senegal	136	(29)	Niger	136	(34)
Burundi	137	(23)	Ghana	137	(28)	Mozambique	137	(32)
Ethiopia	138	(23)	Iraq	138	(27)	Zimbabwe	138	(31)
Tajikistan	139	(23)	Niger	139	(25)	Malawi	139	(28)
Ghana	140	(23)	Burundi	140	(25)	Liberia	140	(27)
Madagascar	141	(20)	Liberia	141	(20)	Burundi	141	(25)
Cuba	142	(12)	Cuba	142	(7)	Madagascar	142	(22)

Note: The columns indicate the ranks of the countries and their respective index scores (in parentheses) on a scale from 1 to 100 in the years 2001, 2005, and 2010.

hide the problem from the public eye more effectively than democratic states with checks and balances.

4. Conclusion

Human trafficking is a global phenomenon of large proportions. People are exploited, live in inhumane conditions, and lack food or access to health facilities, especially in high-income countries. The article disentangles the relationships between indicators and causes of human trafficking by employing a structural equation approach (MIMIC) and ranking 142 countries over a ten-year period according to the prevalence of human trafficking within their borders.

Our approach goes beyond existing studies by including both causal factors and indicators while acknowledging the illicit nature of the phenomenon. The causes mirror the incentive structure for traffickers, which is intended to maximize their chances of making high profits while maintaining a low probability of detection. Furthermore, the causes also capture the vulnerability of trafficking victims by addressing their incentives to move in the first place, a decision which leaves them vulnerable to false promises of better opportunities. By travelling from a poorer country to a wealthier one, individuals are inherently vulnerable: this is especially the case as linguistic fractionalization is negatively related to intensity. The indicators, on the other hand, show the results in countries where illegal trafficking of human beings takes place. Human trafficking is observed in countries with high crime levels, e.g. a larger underground economy running parallel to migration flows. The numbers of identified victims together with the number of migrants are indicators of the phenomenon and describe the visible extent of the problem. The dimensions of the fight against human trafficking (3P-index) quantify the application of anti-trafficking policies within countries.

The pattern of the development of human trafficking over the observed period is in line with expectations. Developed countries rank high and display a large amount of trafficking within their borders. These countries are the primary targets for traffickers, presumably because the potential for large profits is greatest in wealthier countries. The lowest ranking countries are mainly countries in Sub-Saharan Africa, Asia, and Latin America, where many people flee their miserable living conditions and look for other opportunities in more prosperous countries.

In terms of policy implications, we highlight that we have estimated a country-specific measurement. One should keep in mind that human trafficking is a transnational problem and that the fight against this crime is best conducted at both ends of the trafficking route: in both destination and source countries in a coherent manner across policy fields and jurisdictions. Additionally, the allocation of resources on the supranational level, e.g. to Interpol or other international organizations, might be best suited to address and fight all aspects of human trafficking.

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Conflict of Interests

Both authors certify that they have no affiliations with or involvement in any organization or entity with any financial interest (such as honoraria; educational grants; participation in speakers' bureaus; membership, employment, consultancies, stock ownership, or other equity interest; and expert testimony or patent-licensing arrangements), or non-financial interest (such as personal or professional relationships, affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.

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Appendix

Table A1. Data and sources.

Variables	Description	Sources
(log) GDP per capita	GDP per capita in constant US$ (2005)	World Bank (2012)
(log) FDI stock share	Inward and outward FDI stock as percentage of GDP	UNCTAD (2012)
Employment in agriculture (percent of total)	Share of employment in agriculture as percentage of total employment	World Bank (2012)
International migrants (share)	Number of (officially registered) international migrants in the country as share of total population	World Bank (2012)
Refugees by country of origin	Number of (officially registered) refugees in the country per 100,000 of local population	World Bank (2012)
East Asia and the Pacific (region dummy)	Dummy indicating countries lying in East Asia and the Pacific region according to the World Bank	World Bank (2012)
Linguistic fractionalization	Linguistic fractionalization in countries as part of the distance adjusted ethno-linguistic fractionalization index (DELF); 0-1, larger values indicating larger linguistic dissimilarities	Kollo (2012), Alesina et al. (2003)
Crime rate	Crime rate in the country per 100,000 people	UNODC (2008)
OECD membership	Dummy for OECD countries	OECD (2012)
Victims	Number of identified human trafficking victims in destination countries coded by the UNODC in their Global Report on Trafficking in Persons	UNODC (2009, 2012)
3P-anti-trafficking index and sub-components (prosecution, protection, prevention)	Anti-trafficking policy index which shows the application of anti-trafficking instruments in countries; 3–15, larger values indicating more compliance; Sub-components are the policy instruments applicable ranging from 1–5	Cho, Dreher and Neumayer (2014)

Table A2. Country ranking and index (2000–2010).

Country	Rank	2000	Rank	2001	Rank	2002	Rank	2003	Rank	2004	Rank	2005	Rank	2006	Rank	2007	Rank	2008	Rank	2009	Rank	2010
United Kingdom	9	(79)	11	(79)	4	(90)	4	(79)	5	(79)	1	(83)	1	(76)	7	(73)	10	(71)	5	(81)	6	(72)
Netherlands	7	(79)	3	(85)	8	(86)	9	(76)	7	(78)	2	(81)	3	(75)	3	(76)	6	(74)	4	(81)	15	(71)
Norway	12	(78)	9	(81)	3	(90)	1	(81)	1	(96)	3	(81)	8	(72)	8	(73)	7	(74)	2	(83)	4	(72)
Belgium	5	(81)	1	(89)	2	(91)	6	(78)	9	(76)	4	(79)	7	(72)	2	(76)	2	(78)	3	(83)	12	(71)
Sweden	13	(77)	6	(83)	10	(84)	7	(76)	12	(74)	5	(78)	4	(75)	6	(75)	5	(75)	1	(85)	11	(71)
Germany	8	(79)	4	(84)	6	(87)	3	(79)	2	(82)	6	(77)	11	(70)	16	(67)	18	(66)	11	(76)	9	(71)
Denmark	16	(76)	7	(81)	5	(88)	2	(81)	10	(75)	7	(77)	5	(73)	5	(75)	4	(77)	9	(79)	20	(68)
Luxembourg	6	(79)	5	(83)	7	(86)	8	(76)	18	(70)	8	(77)	6	(73)	4	(76)	1	(79)	7	(81)	10	(71)
Australia	17	(75)	19	(73)	18	(73)	14	(74)	3	(82)	9	(75)	16	(68)	13	(68)	13	(68)	8	(79)	8	(72)
Iceland	25	(71)	2	(87)	1	(100)	12	(74)	22	(67)	10	(75)	2	(75)	1	(81)	3	(77)	6	(81)	29	(63)
Ireland	15	(76)	12	(78)	12	(80)	18	(71)	25	(64)	11	(75)	22	(66)	23	(66)	12	(68)	17	(73)	16	(70)
Switzerland	3	(82)	8	(81)	14	(79)	11	(75)	20	(68)	12	(75)	10	(70)	11	(70)	9	(72)	19	(71)	3	(72)
Austria	19	(73)	13	(78)	11	(81)	13	(74)	15	(72)	13	(74)	12	(70)	9	(72)	8	(73)	10	(76)	18	(69)
France	11	(78)	15	(76)	13	(80)	16	(73)	8	(77)	14	(73)	15	(68)	18	(67)	25	(65)	13	(74)	5	(72)
Spain	22	(72)	17	(75)	15	(76)	15	(74)	13	(73)	15	(73)	21	(66)	28	(64)	17	(66)	21	(69)	21	(67)
Italy	21	(73)	22	(71)	20	(72)	10	(75)	6	(79)	16	(72)	14	(68)	22	(66)	22	(66)	18	(72)	19	(69)
Portugal	30	(63)	23	(71)	17	(74)	19	(69)	19	(70)	17	(72)	26	(65)	21	(66)	19	(66)	24	(66)	32	(60)
New Zealand	14	(77)	21	(72)	19	(73)	21	(67)	16	(71)	18	(71)	18	(67)	17	(67)	27	(64)	16	(73)	22	(67)
United States	2	(83)	18	(73)	9	(85)	5	(79)	4	(81)	19	(71)	13	(70)	19	(67)	15	(67)	14	(74)	1	(79)
Finland	23	(72)	14	(76)	21	(72)	35	(59)	28	(63)	20	(70)	9	(71)	10	(72)	11	(71)	12	(75)	26	(65)
Singapore	26	(70)	29	(64)	25	(66)	66	(49)	66	(51)	21	(68)	19	(67)	31	(62)	24	(65)	35	(60)	24	(66)
Lebanon	43	(57)	62	(51)	29	(64)	31	(62)	65	(51)	22	(67)	76	(49)	62	(53)	49	(56)	79	(48)	61	(51)
Canada	4	(82)	10	(80)	16	(75)	17	(72)	14	(73)	23	(67)	17	(68)	32	(62)	26	(65)	15	(74)	2	(75)
Japan	27	(67)	46	(55)	54	(53)	37	(59)	41	(57)	24	(67)	53	(54)	60	(53)	41	(58)	46	(56)	25	(66)
Korea, Rep.	34	(61)	34	(62)	31	(63)	26	(64)	17	(71)	25	(66)	34	(62)	37	(61)	32	(62)	27	(65)	30	(62)
Czech Republic	36	(59)	24	(69)	23	(70)	25	(64)	29	(63)	26	(66)	20	(67)	14	(68)	20	(66)	22	(68)	38	(57)
Croatia	45	(56)	38	(58)	43	(58)	60	(51)	27	(64)	27	(65)	30	(63)	12	(68)	28	(64)	23	(66)	49	(55)
Slovenia	38	(59)	33	(62)	30	(63)	22	(66)	23	(65)	28	(64)	28	(64)	15	(67)	16	(66)	20	(69)	31	(60)
Poland	49	(55)	28	(64)	24	(69)	28	(64)	21	(68)	29	(64)	31	(63)	33	(62)	34	(60)	28	(65)	44	(56)
Turkey	47	(55)	74	(47)	55	(52)	44	(57)	50	(55)	30	(62)	47	(56)	49	(56)	65	(52)	38	(59)	39	(57)
Lithuania	55	(53)	37	(59)	35	(62)	20	(68)	24	(65)	31	(61)	25	(65)	26	(65)	38	(59)	47	(56)	54	(53)
Cyprus	32	(63)	27	(64)	26	(65)	43	(57)	35	(60)	32	(60)	33	(62)	35	(61)	21	(66)	33	(61)	33	(59)
Greece	31	(63)	36	(60)	38	(60)	47	(54)	64	(51)	33	(60)	41	(58)	47	(56)	40	(58)	29	(64)	27	(65)
Israel	20	(73)	32	(62)	27	(65)	50	(54)	42	(57)	34	(60)	36	(61)	41	(59)	42	(58)	26	(65)	14	(71)
Bosnia and Herzegovina	83	(45)	70	(49)	48	(56)	34	(61)	34	(60)	35	(60)	49	(55)	42	(58)	53	(54)	39	(58)	92	(45)
United Arab Emirates	10	(79)	59	(52)	32	(63)	39	(58)	77	(46)	36	(60)	62	(52)	57	(54)	44	(57)	36	(59)	17	(70)
Trinidad and Tobago	51	(55)	31	(63)	36	(61)	41	(58)	59	(53)	37	(59)	29	(63)	27	(65)	37	(59)	62	(53)	57	(52)
Chile	40	(58)	35	(61)	41	(58)	81	(47)	49	(55)	38	(59)	35	(62)	36	(61)	31	(62)	25	(65)	51	(55)
Swaziland	85	(44)	50	(54)	34	(62)	30	(62)	53	(54)	39	(59)	103	(42)	84	(48)	85	(48)	86	(46)	96	(44)
Brunei Darussalam	1	(83)	16	(76)	50	(55)	32	(61)	11	(75)	40	(58)	43	(57)	58	(53)	70	(51)	68	(52)	7	(72)
Congo, Rep.	67	(49)	30	(63)	33	(62)	42	(57)	44	(56)	41	(58)	24	(66)	20	(67)	51	(55)	48	(56)	100	(43)
Belarus	81	(46)	100	(41)	65	(50)	29	(62)	37	(59)	42	(57)	108	(42)	74	(50)	79	(50)	58	(54)	60	(51)
Hungary	42	(58)	26	(65)	39	(59)	45	(56)	55	(54)	43	(57)	27	(64)	24	(66)	33	(61)	31	(62)	46	(55)
Estonia	37	(59)	40	(57)	69	(48)	99	(42)	88	(45)	44	(56)	46	(56)	39	(60)	30	(63)	41	(57)	45	(55)
Maldives	72	(48)	52	(54)	66	(49)	55	(52)	40	(57)	45	(56)	23	(66)	25	(65)	66	(52)	99	(43)	87	(46)
Malta	44	(57)	25	(67)	28	(65)	33	(61)	45	(56)	46	(56)	32	(62)	29	(64)	23	(65)	30	(63)	63	(50)
Albania	78	(46)	83	(45)	44	(57)	38	(58)	38	(58)	47	(56)	79	(48)	73	(51)	69	(52)	51	(55)	72	(49)
Slovak Republic	50	(55)	41	(57)	45	(57)	63	(50)	69	(50)	48	(56)	38	(59)	30	(63)	29	(64)	32	(61)	40	(57)
Thailand	71	(48)	49	(54)	37	(60)	27	(64)	30	(63)	49	(56)	51	(55)	44	(56)	55	(54)	70	(51)	68	(50)
Bahamas, The	28	(64)	20	(72)	22	(72)	23	(66)	33	(60)	50	(55)	39	(59)	34	(62)	14	(67)	34	(61)	50	(55)
Romania	69	(48)	39	(57)	46	(57)	24	(65)	26	(64)	51	(54)	57	(53)	43	(57)	46	(57)	52	(55)	69	(49)
Brazil	70	(48)	71	(49)	64	(50)	59	(52)	52	(54)	52	(54)	64	(52)	70	(51)	67	(52)	72	(50)	66	(50)
Turkmenistan	94	(42)	82	(45)	57	(52)	46	(55)	70	(49)	53	(54)	128	(33)	115	(39)	98	(44)	107	(38)	109	(41)
Tunisia	86	(44)	45	(55)	42	(58)	36	(59)	108	(41)	54	(52)	88	(46)	77	(49)	68	(52)	103	(42)	108	(42)
Colombia	82	(45)	63	(51)	49	(56)	48	(54)	57	(53)	55	(52)	48	(55)	52	(55)	54	(54)	50	(55)	88	(46)

Table A2. Country ranking and index (2000–2010). (Cont.)

Country	Rank	2000	Rank	2001	Rank	2002	Rank	2003	Rank	2004	Rank	2005	Rank	2006	Rank	2007	Rank	2008	Rank	2009	Rank	2010
Morocco	93	(42)	113	(38)	78	(45)	56	(52)	67	(50)	56	(52)	70	(50)	76	(50)	83	(48)	98	(43)	98	(43)
Russian Federation	52	(54)	75	(47)	97	(41)	77	(48)	83	(46)	57	(52)	44	(57)	55	(55)	78	(50)	67	(52)	37	(57)
Kazakhstan	60	(51)	55	(53)	60	(51)	51	(53)	46	(56)	58	(52)	71	(50)	63	(52)	59	(53)	43	(56)	41	(57)
Latvia	46	(55)	51	(54)	53	(53)	53	(52)	43	(57)	59	(51)	42	(58)	46	(56)	50	(56)	40	(58)	43	(56)
Ecuador	79	(46)	64	(51)	94	(42)	125	(36)	134	(30)	60	(51)	66	(52)	61	(53)	73	(50)	66	(52)	71	(49)
Botswana	75	(47)	60	(52)	61	(51)	52	(53)	63	(52)	61	(51)	74	(50)	105	(43)	95	(45)	95	(43)	62	(51)
Bulgaria	87	(44)	88	(44)	80	(45)	54	(52)	31	(61)	62	(51)	40	(59)	38	(60)	35	(59)	42	(57)	80	(47)
Mexico	48	(55)	48	(55)	75	(46)	87	(46)	90	(45)	63	(51)	59	(53)	45	(56)	60	(53)	54	(54)	52	(54)
Qatar	18	(74)	43	(56)	47	(56)	111	(40)	117	(37)	64	(51)	55	(54)	71	(51)	39	(59)	59	(54)	13	(71)
Bahrain	33	(62)	42	(56)	58	(52)	80	(47)	106	(41)	65	(51)	63	(52)	64	(52)	36	(59)	45	(56)	35	(58)
Panama	61	(51)	54	(53)	63	(50)	86	(46)	82	(46)	66	(50)	45	(57)	51	(55)	43	(57)	49	(55)	55	(52)
Armenia	114	(37)	101	(41)	81	(44)	49	(54)	102	(42)	67	(50)	68	(51)	67	(52)	72	(50)	76	(49)	102	(43)
Ukraine	95	(42)	93	(43)	108	(39)	64	(50)	95	(44)	68	(50)	78	(49)	75	(50)	76	(50)	89	(45)	91	(45)
Zambia	121	(35)	77	(47)	87	(43)	57	(52)	60	(53)	69	(50)	83	(48)	89	(46)	96	(45)	83	(46)	126	(36)
Dominican Republic	77	(47)	4	(45)	82	(44)	107	(41)	104	(42)	70	(50)	67	(51)	68	(52)	57	(53)	84	(46)	70	(49)
Cambodia	127	(33)	103	(41)	113	(38)	75	(48)	101	(42)	71	(49)	91	(45)	72	(51)	92	(46)	81	(47)	129	(36)
Gabon	59	(51)	87	(44)	102	(40)	109	(41)	36	(60)	72	(49)	89	(46)	102	(44)	90	(46)	85	(46)	47	(55)
Costa Rica	68	(49)	61	(51)	83	(44)	69	(49)	86	(46)	73	(49)	58	(53)	66	(52)	48	(56)	60	(54)	74	(49)
Azerbaijan	118	(36)	91	(44)	91	(43)	119	(37)	120	(37)	74	(49)	65	(52)	86	(47)	86	(48)	90	(45)	77	(48)
Tanzania	124	(34)	108	(40)	71	(48)	92	(44)	92	(44)	75	(48)	97	(44)	98	(44)	113	(39)	106	(40)	132	(36)
El Salvador	104	(39)	79	(46)	100	(40)	67	(49)	93	(44)	76	(48)	54	(54)	59	(53)	58	(53)	74	(49)	107	(42)
Honduras	115	(36)	86	(45)	104	(40)	115	(39)	123	(36)	77	(48)	60	(53)	53	(55)	62	(53)	69	(52)	116	(39)
Venezuela, RB	62	(51)	58	(52)	95	(42)	134	(32)	137	(27)	78	(47)	84	(48)	85	(47)	80	(49)	78	(48)	56	(52)
Georgia	99	(41)	120	(37)	126	(32)	90	(45)	75	(47)	79	(47)	50	(55)	54	(55)	64	(52)	55	(54)	85	(46)
Argentina	56	(53)	53	(53)	72	(47)	97	(43)	84	(46)	80	(47)	56	(54)	80	(49)	52	(54)	65	(52)	53	(54)
Vietnam	129	(32)	90	(44)	77	(46)	85	(46)	62	(52)	81	(47)	80	(48)	56	(54)	74	(50)	73	(50)	125	(36)
Macedonia, FYR	66	(49)	56	(53)	40	(59)	40	(58)	51	(54)	82	(46)	52	(54)	50	(55)	61	(53)	57	(54)	59	(51)
Saudi Arabia	35	(60)	94	(43)	68	(48)	73	(48)	100	(42)	83	(46)	87	(46)	95	(44)	84	(48)	63	(53)	34	(58)
Chad	112	(37)	110	(39)	92	(42)	79	(47)	81	(46)	84	(46)	127	(34)	129	(32)	131	(33)	118	(35)	118	(39)
Belize	57	(52)	44	(56)	119	(35)	108	(41)	68	(50)	85	(45)	37	(60)	40	(59)	47	(56)	64	(52)	65	(50)
China	98	(42)	66	(50)	51	(54)	58	(52)	76	(47)	86	(45)	99	(43)	97	(44)	101	(44)	91	(45)	67	(50)
Malawi	139	(23)	135	(25)	133	(27)	133	(33)	107	(41)	87	(45)	93	(44)	104	(43)	112	(39)	133	(31)	139	(28)
Indonesia	76	(47)	104	(41)	96	(41)	68	(49)	61	(52)	88	(45)	86	(47)	65	(52)	87	(47)	71	(51)	78	(47)
Philippines	101	(41)	122	(36)	86	(44)	70	(49)	48	(55)	89	(45)	69	(51)	82	(48)	106	(41)	96	(43)	83	(46)
Mauritius	54	(53)	68	(49)	56	(52)	84	(46)	73	(48)	90	(45)	82	(48)	79	(49)	63	(53)	56	(54)	48	(55)
Burkina Faso	65	(49)	115	(38)	74	(47)	74	(48)	71	(49)	91	(44)	117	(39)	109	(42)	117	(37)	53	(55)	75	(48)
South Africa	41	(58)	76	(47)	70	(48)	72	(49)	96	(43)	92	(44)	90	(45)	83	(48)	77	(50)	75	(49)	42	(56)
Mozambique	135	(29)	116	(38)	109	(39)	110	(40)	121	(37)	93	(44)	112	(41)	99	(44)	109	(41)	108	(38)	137	(32)
Mongolia	123	(35)	109	(39)	111	(39)	94	(44)	126	(35)	94	(44)	85	(47)	87	(46)	91	(46)	97	(43)	133	(36)
Namibia	90	(44)	97	(42)	101	(40)	103	(42)	72	(48)	95	(44)	72	(50)	90	(46)	99	(44)	119	(35)	79	(47)
Malaysia	39	(59)	57	(52)	89	(43)	93	(44)	103	(42)	96	(43)	100	(43)	81	(49)	71	(51)	82	(47)	36	(58)
Guyana	108	(38)	80	(46)	116	(38)	140	(23)	124	(35)	97	(43)	61	(53)	69	(51)	82	(49)	94	(43)	120	(38)
Kuwait	24	(71)	69	(49)	79	(45)	76	(48)	116	(38)	98	(43)	139	(30)	139	(25)	81	(49)	100	(43)	23	(67)
Oman	29	(64)	47	(55)	59	(52)	61	(51)	122	(36)	99	(43)	95	(44)	96	(44)	56	(53)	44	(56)	28	(63)
Uruguay	73	(48)	65	(50)	73	(47)	71	(49)	128	(34)	100	(42)	73	(50)	48	(56)	45	(57)	37	(59)	64	(50)
Yemen, Rep.	113	(37)	112	(38)	84	(44)	62	(50)	132	(32)	101	(42)	125	(35)	116	(39)	118	(36)	122	(34)	124	(37)
Paraguay	103	(39)	102	(41)	99	(41)	106	(41)	112	(39)	102	(42)	107	(42)	92	(45)	93	(45)	93	(44)	97	(44)
Pakistan	111	(37)	117	(37)	118	(36)	122	(37)	32	(61)	103	(42)	110	(41)	111	(41)	130	(33)	110	(37)	101	(43)
Cote d'Ivoire	63	(50)	95	(42)	88	(43)	124	(36)	80	(46)	104	(41)	113	(40)	120	(37)	114	(38)	123	(33)	86	(46)
Nigeria	97	(42)	119	(37)	117	(37)	114	(39)	54	(54)	105	(41)	101	(43)	119	(37)	105	(42)	92	(44)	81	(47)
Moldova	116	(36)	118	(37)	110	(39)	100	(42)	105	(42)	106	(41)	111	(41)	100	(44)	97	(45)	87	(46)	106	(42)
Uzbekistan	125	(34)	126	(34)	135	(25)	78	(47)	94	(44)	107	(41)	122	(35)	117	(38)	107	(41)	101	(42)	112	(40)
Bangladesh	133	(30)	121	(36)	90	(43)	96	(43)	47	(56)	108	(41)	109	(42)	114	(39)	120	(36)	116	(37)	123	(37)
Benin	64	(49)	73	(47)	52	(54)	95	(43)	89	(45)	109	(41)	96	(44)	101	(44)	108	(41)	61	(53)	90	(45)
Guatemala	80	(46)	72	(48)	67	(49)	65	(50)	91	(45)	110	(41)	94	(44)	107	(42)	102	(42)	88	(45)	76	(48)

Table A2. Country ranking and index (2000–2010). (Cont.)

Country	Rank	2000	Rank	2001	Rank	2002	Rank	2003	Rank	2004	Rank	2005	Rank	2006	Rank	2007	Rank	2008	Rank	2009	Rank	2010
Papua New Guinea	89	(44)	99	(41)	93	(42)	83	(46)	87	(45)	111	(40)	134	(32)	130	(32)	125	(35)	127	(32)	110	(41)
Nicaragua	107	(39)	81	(45)	114	(38)	112	(40)	99	(43)	112	(39)	75	(49)	78	(49)	89	(47)	105	(41)	119	(39)
India	96	(42)	114	(38)	105	(40)	91	(45)	39	(58)	113	(39)	115	(39)	124	(34)	127	(34)	114	(37)	84	(46)
Iran, Islamic Rep.	58	(52)	130	(30)	128	(31)	121	(37)	85	(46)	114	(39)	121	(36)	132	(31)	126	(35)	129	(32)	58	(51)
Zimbabwe	110	(37)	96	(42)	98	(41)	120	(37)	115	(38)	115	(39)	105	(42)	110	(41)	122	(36)	120	(34)	138	(31)
Jordan	88	(44)	78	(46)	107	(40)	116	(39)	127	(34)	116	(39)	81	(48)	88	(46)	75	(50)	80	(47)	93	(44)
Cameroon	84	(45)	92	(43)	76	(46)	89	(45)	118	(37)	117	(38)	126	(34)	135	(29)	129	(34)	132	(31)	99	(43)
Egypt, Arab Rep.	120	(36)	105	(41)	112	(39)	135	(31)	139	(27)	118	(38)	118	(38)	103	(44)	104	(42)	111	(37)	121	(38)
Lesotho	131	(32)	85	(45)	85	(44)	82	(46)	97	(43)	119	(37)	102	(42)	108	(42)	94	(45)	112	(37)	134	(35)
Sri Lanka	91	(43)	107	(40)	106	(40)	88	(45)	78	(46)	120	(36)	114	(40)	118	(38)	110	(40)	113	(37)	89	(46)
Tajikistan	136	(28)	139	(23)	134	(26)	128	(35)	111	(40)	121	(36)	106	(42)	106	(42)	119	(36)	117	(35)	128	(36)
Peru	92	(43)	98	(42)	120	(35)	130	(34)	131	(32)	122	(36)	77	(49)	91	(45)	88	(47)	77	(48)	73	(49)
Kyrgyz Republic	132	(31)	128	(31)	124	(32)	98	(43)	79	(46)	123	(36)	104	(42)	112	(41)	115	(38)	115	(37)	131	(36)
Uganda	130	(32)	131	(30)	121	(35)	118	(38)	114	(38)	124	(35)	119	(37)	122	(35)	128	(34)	109	(38)	127	(36)
Gambia, The	117	(36)	124	(34)	127	(31)	137	(30)	129	(33)	125	(35)	116	(39)	121	(37)	116	(38)	121	(34)	130	(36)
Bolivia	102	(41)	89	(44)	129	(30)	127	(35)	135	(29)	126	(35)	92	(45)	94	(45)	100	(44)	102	(42)	95	(44)
Nepal	126	(33)	125	(34)	125	(32)	105	(41)	58	(53)	127	(34)	137	(31)	140	(23)	140	(21)	139	(24)	117	(39)
Kenya	106	(39)	123	(35)	123	(33)	129	(35)	56	(54)	128	(33)	131	(32)	126	(33)	137	(30)	125	(33)	104	(43)
Sierra Leone	128	(33)	132	(28)	131	(29)	131	(33)	125	(35)	129	(33)	120	(37)	123	(35)	133	(32)	136	(27)	122	(37)
Mali	122	(35)	129	(31)	122	(34)	102	(42)	109	(40)	130	(31)	133	(32)	131	(31)	136	(30)	134	(30)	115	(39)
Madagascar	140	(23)	141	(20)	139	(21)	126	(36)	113	(39)	131	(31)	129	(33)	113	(40)	123	(36)	137	(24)	142	(22)
Algeria	74	(48)	106	(40)	103	(40)	101	(42)	138	(27)	132	(31)	135	(32)	137	(29)	124	(36)	128	(32)	82	(46)
Syrian Arab Republic	100	(41)	111	(38)	115	(38)	113	(40)	133	(31)	133	(31)	123	(35)	125	(34)	121	(36)	130	(31)	103	(43)
Ethiopia	141	(23)	138	(23)	132	(29)	136	(30)	98	(43)	134	(30)	132	(32)	134	(30)	139	(25)	138	(24)	135	(35)
Sudan	109	(38)	134	(26)	137	(24)	141	(23)	136	(28)	135	(30)	130	(33)	127	(33)	132	(32)	135	(28)	113	(40)
Senegal	105	(39)	133	(26)	138	(22)	138	(26)	74	(48)	136	(29)	140	(29)	133	(31)	134	(32)	124	(33)	94	(44)
Ghana	134	(30)	140	(23)	140	(19)	117	(38)	130	(33)	137	(28)	136	(32)	136	(29)	138	(27)	140	(22)	114	(39)
Iraq	53	(54)	67	(49)	62	(50)	104	(41)	140	(24)	138	(27)	124	(35)	128	(32)	111	(39)	104	(42)	105	(43)
Niger	119	(36)	136	(24)	130	(30)	132	(33)	119	(37)	139	(25)	138	(31)	138	(28)	135	(31)	131	(31)	136	(34)
Burundi	142	(18)	137	(23)	136	(25)	123	(37)	110	(40)	140	(25)	142	(9)	142	(6)	142	(12)	141	(21)	141	(25)
Liberia	138	(24)	127	(34)	141	(14)	139	(24)	141	(14)	141	(20)	98	(43)	93	(45)	103	(42)	126	(32)	140	(27)
Cuba	137	(27)	142	(12)	142	(1)	142	(17)	142	(13)	142	(7)	141	(9)	141	(7)	141	(19)	142	(5)	111	(41)

Note: The rank details the country rank of each country in that year according to the index value in parentheses. Countries are ranked according to their score in 2005.

MIMIC Model and Factor Score for Latent Variable

Jöreskog and Goldberger (1975) developed the formal specification of the approach for one latent variable. It encompasses a system of two equations: first showing how the unobservable variable in the measurement equation model determines the examined endogenous variables; and second how the latent variable and its causes interact. The model is formally characterized in the following way. The independent indicators are denoted by y_i ($i = 1, \dots, m$) and η is the latent variable (i.e. human trafficking) such that:

$$y_i = \beta_i \eta + \varepsilon_i \tag{A1}$$

The $1 \times m$ parameter vector $\beta_i = \{\beta_1, \beta_2 \dots, \beta_m\}'$ embodies the coefficients which indicate the estimated alteration in the respective indicators after a one unit change in the latent variable. The error terms ε_i, $i = 1, \dots, m$ have mean zero and covariance matrix Θ_ε. The correlation across indicators is exclusively determined by the common factor η. Equation (1) is a confirmatory factor analysis model for the observable indicators $y = (y_1, y_2, \dots, y_m)'$ including the common factor η and the unique factor ε_i. In the covariance matrix Θ_ε, the diagonal elements are represented in the $1 \times m$ vector τ.

Moreover, the latent unobservable variable η can be linearly decomposed in the following way:

$$\eta = \boldsymbol{\alpha}' \boldsymbol{x} + \omega, \tag{A2}$$

where $\alpha = (\alpha_1, \alpha_2, \dots, \alpha_s)'$ are parameters, $\boldsymbol{x} = (x_1, x_2, \dots, x_s)'$ is the vector of observable exogenous causal variables and a stochastic error term ω. The model described in equation (1) is also called a measurement model of the observed endogenous indicators determined by the latent variable. Any correlation between the elements of *y* results from the association with η. The indicators are assumed to be partially independent between all indicator pairs *i and j* setting all diagonal elements of Θ_ε equal to zero. The second component of the model is a structural equation (2) that characterizes the relationship between the latent variable and its causes.

The structural parameters α are not directly estimable due to the latent nature of the objective variable. Equation (1) is inserted in equation (2) in order to derive the reduced form which connects the observable variables from (1) and (2) via the equation

$$\boldsymbol{\gamma} = \boldsymbol{\Pi}' \boldsymbol{x} + \boldsymbol{y}. \tag{A3}$$

This is a multivariate regression model which includes the endogenous indicators $\boldsymbol{y} = (y_1, \dots, y_n)'$ and the exogenous causes $\boldsymbol{x} = (x_1, x_2, \dots, x_s)'$ of the latent factor η. The reduced form coefficient matrix has the rank $(m \times s) = 1$ and is given by $\boldsymbol{\Pi} = \alpha\beta'$. The $(1 \times m)$ reduced form disturbance vector reads as $\boldsymbol{\gamma} = \boldsymbol{\beta\omega} + \boldsymbol{\varepsilon}$ and has the error covariance matrix:

$$\Theta_\omega = \mathrm{E}[(\beta\omega + \varepsilon)(\beta\omega + \varepsilon)'] = \sigma^2_\omega \beta\beta' + \Theta_\varepsilon. \tag{A4}$$

The variance (σ^2_ω) of the stochastic error term has the characteristic structure of the covariance matrix of a factor analysis model. This error covariance matrix is constrained similarly to $\boldsymbol{\Pi}$ because it is the sum of a one-rank matrix and a diagonal matrix. Therefore one of the elements of the factor loading vector $\boldsymbol{\beta}$ has to be constrained in order to identify the model (Bollen, 1989).[24] The choice of which indicator is normalized determines the scale of the latent variable but it does not affect the results of the measurement. We follow the literature and use the indicator with the largest factor loading (Bollen, 1989).

Accordingly, the estimation procedure and the identification of the model are derived by relations of the observable data, $z = (y'x')'$. The $(m + s) \times (m + s)$ covariance of the underlying model defined by equations (1) and (2) shows the relationship in terms of their respective covariance:

$$\Sigma(\varphi) \begin{bmatrix} \beta(a'\Phi_x\alpha + \sigma^2_\omega)\beta' + \Theta_\varepsilon & \beta\alpha'\Phi_x \\ \Phi_x a'\beta & \Phi_x \end{bmatrix}. \tag{A5}$$

Where φ is the vector of independent but correlated parameters β, a, Θ_ε and σ^2_ω. The elements on the main-diagonal are $\mathrm{E}[yy'] = \beta(a'\Phi_x\alpha + \sigma^2_\omega)\beta' + \Theta_\varepsilon$ and $\mathrm{E}[xx'] = \Phi_x$ and the off-diagonal components are $\mathrm{E}[xy'] = \beta a'\mathrm{E}[xx']$. Applying this information for the population, parameters are derived resulting in an estimate of the best approximation of the sample covariance matrix of the observed causes and indicators, $\hat{\Sigma} = \Sigma(\hat{\varphi})$. This pattern is driven by the unobservable variable.

Given (5), identification depends on the information in the matrix and whether it is sufficient to provide a unique set of values in φ. The set of mean parameters will then be identified if $q - p \geq 0$, with $q = ms$ observable moments in terms of structural parameters and $p = m + s$, which is shaped by the off-diagonal elements. If this condition holds, the remaining parameters on the diagonal will be identified. In combination, this implies that the necessary condition for identification

[24] Following the literature (e.g. Buehn & Farzanegan, 2012; Dreher, Kotsogiannis, & McCorriston, 2007), this approach is used here: one of the coefficients of the coefficient vector β is fixed to an a priori value, such that the unit of measurement for the unobserved term is normalized relative to one of the indicator variables. Another possibility is applied mainly in factor analysis where the latent variable is standardized to have unit variance (e.g. Di Tommaso, Raiser, & Weeks, 2007).

of all parameters is given by:

$$p \leq \frac{1}{2}(m+s)(m+s+1). \tag{A6}$$

Estimation of $\Sigma(\varphi)$, $\hat{\Sigma} = \Sigma(\hat{\varphi})$ is obtained if the parameter and covariance values are chosen in such a way that the difference between the estimate and the true sample covariance **S** of the causes and indicators is minimized using the following objective function:

$$F = \ln|\Sigma(\varphi)| + \mathrm{tr}[S\Sigma^{-1}(\hat{\Sigma})] - \ln|S| - (m+s),^{25} \tag{A7}$$

which is a likelihood function assuming a multivariate, normal distribution. The sufficient rule for the MIMIC model to be identified is $m \geq 2$ and $s \geq 1$ (Bollen 1989: 331). Perfect fit would be achieved if the true sample covariance were equal to the estimated covariance, $\boldsymbol{S} = \Sigma(\hat{\varphi})$. This is evaluated using several indices specified below.

After identification of the relationship between the variables and the estimation of the parameters, the latent scores of η for each country can be specified assigning factor scores using the mean vector and variance matrix of the fitted model. This method was suggested by Jöreskog (2000) and uses more structural information than a simple linear application.[26] For this reason the factor score is used for the generation of the final country ranking. The **factor score for the latent variable** is generated in the following way:

$$\tilde{\eta} = \hat{\Sigma}'_{z\eta}\hat{\Sigma}_{zz}\hat{\mu}_z + \hat{\mu}_\eta \tag{A8}$$

with $z = (y'x')'$ the vector of all observable causes and indicators from equation (3), $Z = (z'\eta')'$ the vector of all variables of the model, $\hat{\mu}_Z = \hat{\mu}_z\hat{\mu}_e ta$ is the fitted mean of Z and

$$\hat{\Sigma}_Z = \begin{pmatrix} \hat{\Sigma}_{zz} & \hat{\Sigma}_{z\eta} \\ \hat{\Sigma}'_{z\eta} & \hat{\Sigma}_{\eta\eta} \end{pmatrix}$$

is the fitted variance. Thus, the factor score is the fitted mean prediction of the latent variable, similar to prediction of the dependent variable in regression models and weighted by minimizing the objective function (7). The score of the latent variable is subsequently obtained by implementing these weights, the estimated coefficients of the measurement and the structural model in equation (8). Finally, the model is applied to measure the extent of human trafficking in destination countries. The graphic representation is a path diagram. The respective path diagram of the MIMIC model of human trafficking can be found in the article.

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[25] The maximum likelihood estimator with missing values (mlmv) is implemented into STATA's sem command in order to account for the missing values in the observable data (Jöreskog, 1973). Since the maximization of the log likelihood does not depend on the complete information of individuals, the estimator also considers all partially complete data in the estimation process. This procedure is similar to multiple imputation and provides unbiased estimates (Baraldis & Enders, 2010).

[26] The linear prediction is specified as well and gives similar results with a rank correlation of larger than 85 percent.

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Article

Child Labor Trafficking in the United States: A Hidden Crime

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Abstract
Emerging research brings more attention to labor trafficking in the United States. However, very few efforts have been made to better understand or respond to labor trafficking of minors. Cases of children forced to work as domestic servants, in factories, restaurants, peddling candy or other goods, or on farms may not automatically elicit suspicion from an outside observer as compared to a child providing sexual services for money. In contrast to sex trafficking, labor trafficking is often tied to formal economies and industries, which often makes it more difficult to distinguish from "legitimate" work, including among adolescents. This article seeks to provide examples of documented cases of child labor trafficking in the United States, and to provide an overview of systemic gaps in law, policy, data collection, research, and practice. These areas are currently overwhelmingly focused on sex trafficking, which undermines the policy intentions of the Trafficking Victims Protection Act (2000), the seminal statute criminalizing sex and labor trafficking in the United States, its subsequent reauthorizations, and international laws and protocols addressing human trafficking.

Keywords
adolescent; child; child trafficking; crime; human trafficking; labor trafficking; involuntary servitude; USA

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1. Introduction

Human trafficking has received international and domestic attention as a "growing problem," when in fact, the exploitation of people has been an unfortunate reality for ages. In the United States, the term "human trafficking" has been codified under the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) (2000) and the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations (2003, 2005, 2008, 2013). The policy intentions of the TVPA, in parallel to the United Nations' Palermo protocol, are to protect victims, to prosecute perpetrators, and to prevent both labor and sex trafficking of all persons, including children and adults, citizens and foreign nationals. The TVPA created new crimes to help prosecute perpetrators under the United States federal criminal code, including "forced labor," "trafficking with respect to peonage, slavery, involuntary servitude, or forced labor," and "sex trafficking of children, or by force, fraud or coercion." These new statutes attempt to expand anti-slavery statutes, particularly involuntary servitude (*Sale into Involuntary Servitude*, 1948), and include a broader range of tactics perpetrators use to compel and coerce individuals to perform labor or services, including sexual services. Most notably, the TVPA expands previous interpretations of coercion to include physical harm, but also psychological and financial harm. These tactics can include psychological manipulation, deceit, trickery, false information, financial exploitation, and abuse of the legal process. This legislation also provides various mechanisms to protect victims through appropriation of funds for specialized services for victims, protections under criminal and immigration systems for victims, immigration relief for undocumented victims, as well as appropriations for research to better understand the dynamics of human trafficking in the United States. All states in the United States have passed similar laws, criminalizing both sex and labor trafficking.

The challenges of identifying prevalence estimates of human trafficking, both sex and labor, are well documented (Finklea, Fernandes-Alcantara, & Siskin, 2015; Stransky & Finkelhor, 2008), and estimates measuring occurrences of human trafficking in the United States vary substantially (Gibbs, Hardison Walters, Lutnick, Miller, & Kulckman, 2015; Goodey, 2008). The Polaris Project, which manages the National Human Trafficking Resource Center Hotline (NHTRC) as part of a partnership with the United States government, reports that in 2015, 5,973 cases of human trafficking were reported. The majority of calls to the NHTRC over the last five years continue to be for sex trafficking, with 33% of all sex trafficking reported cases made to the hotline involved children versus 16% of labor trafficking reported cases involving children. Between December 2008 and March 2017, 1,090 cases of labor trafficking involving at least one minor have been reported to the NHTRC, indicating 20% of labor trafficking cases reported to the NHTRC since it began operating involved minors (E. Gerrior, personal communication, May 15, 2017).

While the United States anti-trafficking statutes have codified crimes of both sex and labor trafficking, sex trafficking continues to dominate the narrative of human trafficking in the United States, particularly around children. Sex trafficking investigations and prosecutions of children continue to outnumber trafficking of children for labor (Bureau of Democracy, Human Rights, and Labor, 2016). One cannot presume that tips, investigations, or prosecutions alone reflect actual cases. The long history of various forms of labor exploitation, including indentured servitude, involuntary servitude, debt bondage, and more recently, labor trafficking cases in the United States demonstrate that these cases, in fact, do exist, and that there may be other reasons for the lack of identification, reporting, investigations, and prosecutions of such cases. Additionally, there is a clear contrast in the numbers of cases reported by governmental and public agencies, versus non-governmental organizations that needs to be explored. In a 2011 study, non-governmental organizations reported identifying more labor cases, with 64% of the victims served being victims of labor trafficking, and 10% as victims of both labor and sex trafficking. Law enforcement, in contrast, the same year reported identifying 83% of their caseload as sex trafficking cases (Banks & Kyckelhahn, 2011).

There have been an increasing number of legislative bills and initiatives introduced to combat human trafficking, primarily targeting the sex trafficking of United States citizen youth. The bills address financing services for youth who are trafficked, increase enforcement measures against those who purchase sex from children and teenagers, and ensure that youth who are purchased don't find themselves penalized, and instead are treated as victims. These are all worthy and promising measures, but all ignore the plight of children who are trafficked for labor in the United States. The dearth of research and measures to identify child labor trafficking will likely have an effect of undermining efforts to respond to child labor trafficking occurring in the United States. This article seeks to provide context of the plight of child labor trafficking victims in the United States by first providing an overview and examples of child labor trafficking cases in the United States. It then addresses the deficiencies in policy, data collection, and research addressing the phenomenon of child labor trafficking, and concludes with recommendations of how to better protect and respond to child labor trafficking victims in the United Sates. While the article focuses exclusively on the experiences of the United States, the observations, discussion, and recommendations may be helpful to other parts of the world.

2. Who Are Child Labor Trafficking Victims in the United States?

2.1. Brief History of Child Labor Exploitation and Trafficking

There is a long, unfortunate historical legacy of children (boys and girls) being exploited for labor in the United States. In early American history, much labor was organized under a system of bonded labor known as *indentured servitude*. This typically lasted for several years, and it was often a means of using labor to pay the costs of transporting people—including large numbers of children and youth from England northern Europe—to the thirteen colonies of the early Untied States. An indentured servant was a worker under contract to an employer for a fixed period of time, typically 4–7 years, in exchange for their transportation, food, clothing, lodging and other necessities. The mortality rates for these servants were very high. Their periods of indenture were often extended for various reasons, such as fines and costs in association with "maintenance" (food, shelter, etc.; Mintz, 2006). By the 18th century, courts and legislatures racialized slavery to apply nearly exclusively to Black Africans and people of African descent, and occasionally to Native Americans. Young people, alongside adults, toiled in the fields and inside homes as domestic slaves. In 1862, President Abraham Lincoln issued the "Emancipation Proclamation" executive order, which was followed by the adoption of the 13th Amendment in 1865, officially abolishing and prohibiting slavery and involuntary servitude.

Case law and policy grappling with the definition of involuntary servitude post-13th Amendment in the United States demonstrates that children were not immune to labor exploitation and forms of slavery. One of the earliest examples were the practices of padrones during the early 18th century. The *padrones* were men who lured young boys away from their families, brought them to large cities in the United States, and put them to work for their personal profit. These children were stranded in large, cities in a foreign country, and given no education or other assistance toward self-sufficiency. Without such assistance, without family, and without other sources of

support, these children had no choice but to work for their masters or risk physical harm. In one of the early cases addressing this practice of exploiting children for personal profit, *United States v. Ancarola* (1880), Ancarola traveled to Italy, tricked parents with false statements promising a better life, and persuaded them to send their children to the United States. He subsequently held seven boys, ages 11–13, in confinement in New York City and subjected them to compelled labor of begging and playing musical instruments. The court found that there was evidence that the intention of Ancarola was to employ the children as beggars or street musicians, "for his own profit," "to the injury of their morals, subject to his control," and they could not properly be considered rendering him "voluntary service." The court also stated that these children were incapable of exercising will or choice affirmatively on the subject. In 1874, Congress enacted a resolution, known as the "Padrone statute" "to prevent [this] practice of enslaving, buying, selling, or using Italian children" (*Sale into Involuntary Servitude*, 1948, 18 U.S.C. § 446). While most notable cases in the United States involving *padrones* were Italian, youth from other countries, including Greece, China, Japan, and Mexico, were also recruited and exploited in the United States under similar tactics.

Children forced to work in homes as domestic servants and on farms in agriculture continued to exist, even in the post-chattel slavery era. In the formative involuntary servitude case *United States v. Lewis* (1986), all of the defendants named belong to a cult named the "House of Judah." As part of the rules of the cult, corporal punishment was deemed "proper and necessary." The House of Judah organized a compound in Western Michigan, which included a farm. At the compound, children were not allowed to attend public school, and could only attend school at camp and forced to work on the compound and follow strict rules, with guards patrolling the perimeter of the camp. There were incidents in which children were burned as punishment, and beatings were common for those who tried to run away or didn't do assigned work. Boys as young as 8 or 9 were severely beaten, and at least one boy was beaten to death. The schoolteacher was beaten and forced to show her wounds to the students, as were parents. Defendants argued that children living with parents could not become the slaves of someone else, that they were in the care and the "property" of their parents and could not therefore become the "property" of others. The court ultimately held that due to the "pervasive climate of fear" existing in the camp, including children forced to watch their parents and teacher shamed and abused, the children were indeed victims of involuntary servitude.

2.2. Child Labor Trafficking Today

2.2.1. United States Citizen Children

Forced peddling, as in the *Ancarola* case, is no exception in modern-day America. Labor traffickers often target homeless youth because they lack access to shelter, food, and personal connections (Gibbs et al., 2015). Often promises of paid, legitimate employment are not realized. A survey conducted by the National Network for Youth (2015) found that door-to-door trafficking sales rings had targeted runaway and homeless youth. These youth were lured by the promise of housing, employment, and food, but found themselves living in overcrowded motel rooms with other labor-trafficked youth, receiving little or no pay, and given unreasonable sales quotas. For example, in 2011, 24 children and young adults were lured to Orlando, Florida, with promises of honest wages. Instead, they were crammed into the back of a van, driven around, and forced to sell cheap items and candy bars door-to-door and outside of gas stations. They worked 10-hour days and were transported in unsafe conditions to unfamiliar neighborhoods. Their exploiters rationed their food and water. Police ultimately arrested two men in connection with this operation on labor trafficking charges (Gallup, 2013). Local human rights activists and the Polaris Project, a national nongovernmental organization running the NHTRC, state these sales crews targeting young people are a growing regional trend (Center for the Advancement of Human Rights, 2010). Research has demonstrated that begging networks may conceal labor trafficking and exploit runaway youth, foster care youth, and other vulnerable populations also at risk of sex trafficking (Dank, 2011). In 2014, of the 9% of the reported cases to NHTRC involving child labor trafficking, the top forms of labor trafficking were (1) traveling sales crew, (2) begging, and (3) peddling (Polaris Project, 2015).

2.2.2. Children Who Are Not United States Citizens

In addition to cases involving United States citizen children engaged in forced and coerced labor, foreign-born and undocumented children are also subject to involuntary servitude, debt bondage and peonage. In 2014, 66% of child victims who received "eligibility letters" by the federal government as potential or confirmed child trafficking victims were labor trafficking victims (Attorney General, 2014). These cases include children being forced into domestic servitude as nannies or housekeepers, forced labor in agriculture, work in restaurants and factories. Some children enter the United States legally, others with fraudulent visas, and others are unauthorized. For example, in *United States v. Udeozor* (2008), a woman and her husband brought a 14-year-old child from Nigeria to the United States using their daughter's passport. They were subsequently convicted of involuntary servitude after recruiting and retaining the Nigerian girl as a house slave, where she was a victim of forced labor and repeated physical, psychological, and sexual abuse and assault for four years.

Unaccompanied immigrant children arriving at the United States border are another vulnerable population to labor trafficking. After a surge in 2014, and a brief drop

in arrivals in 2015, the number of immigrant children increased again until the second quarter of 2017 (US Administration for Children and Families, 2017). Often, unaccompanied children become victims of labor trafficking after the child or the child's family incur a large debt to cover the cost of their passage to the United States (Loyola University Chicago, 2016). What starts out as smuggling quickly becomes labor trafficking when debt falls to the child to repay. The child may be forced to work off his or her debt in restaurants, agriculture, construction, domestic work, manufacturing, or criminal acts at the hands of drug cartels and gangs—jobs that are dangerous, isolated, and highly exploitative. In some cases, these children are criminalized for acts they were forced to perform by their traffickers, including drug sales and smuggling (Montalvo, 2012).

Another example of labor trafficking of foreign-born youth comes via competitive sports. In 2015, the Department of Homeland Security raided the Faith Baptist Christian Academy South in Ludowici, Georgia, and discovered thirty young boys, mostly Dominican, who had been living in the campus gym since 2013 and sleeping on the floor. The boys had been recruited to America with the promise of a high school education and a college scholarship (Harper, 2015). In another similar case, four teenage basketball players from Nigeria were lured to the United States with the promise of college scholarships to play basketball. One boy ended up homeless in New York City, while the other three children were placed in foster care in Michigan (Harper, 2016).

Recent research suggests that trafficked children have suffered higher incidents of neglect and of physical and sexual abuse prior to the trafficking. In one study, at least one-third of young people receiving services as trafficking victims had been previously involved in the child welfare system and nearly two-thirds of one non-governmental clients had been involved in the juvenile justice system (Gibbs et al., 2015). This research should be explored to determine the social determinates and context that can affect a child's vulnerability. A history of abuse or neglect, limited or lack of access to education, economic security and employment, positive social networks, health, safety, and housing are often precursors to subsequent exploitation and human trafficking.

Another risk factor emerging in the literature is homelessness. A recent study surveying over 600 homeless youth in the United States and Canada reports that nearly one in five homeless youth were or are victims of either sex or labor trafficking, and in some cases, both (Loyola University New Orleans, 2016). 8% of the respondents identified as being trafficked for labor, with the majority (81%) reporting forced drug sales. The drug sales occurred both by familial networks and coercion as well as organized crime and gang activity. Runaway and homeless youth are at high-risk to both labor and sex trafficking due to their age, likely history of trauma, displaced living situations, and lack of access to support networks. Many have limited means to forms of employment and economic security, and are often duped into exploitative work after being promised a legitimate job.

These cases of identified child labor trafficking in the United States, both historical and contemporary, also demonstrates that there is much diversity in how labor trafficking manifests itself, and that there is no single child labor trafficking "profile" of a victim or a perpetrator. Trafficked minors include young children and adolescents; children of any race and culture; United States citizen and non-United States citizen; children traveling to the United States alone, and those accompanied by their family; boys and girls.

3. Limitations of Efforts to Combat Child Labor Trafficking

Despite evidence of child labor trafficking occurring in the United States, efforts to both identify and prevent child labor trafficking victims continue to be stymied for a variety of three intersectional reasons: lack of research and data collection, legislation and policies prioritizing sex trafficking, and lack of proper training of first responders and child serving organizations, leading to ineffective operational responses to identify such cases. These issues are not singular, and as demonstrated below, often intersect with one another.

3.1. Limitations of the Research

Effective data collection is critical in advancing the policy intentions of federal anti-trafficking laws and efforts to protect children from exploitation. Good data creates research-informed policies and improved services for children who are victims of child trafficking. While there have been modest improvements in data collection measures for child trafficking since the passage of the TVPA, these efforts are primarily focused on sex trafficking. Furthermore, at present, few methodologically rigorous, empirically-based research studies concerning labor trafficking exist, as most focus exclusively on child sex trafficking. Quantitative data or measures of child labor trafficking prevalence and characteristics in the United States are very limited. It mostly exists via three forms: (a) Prosecutions of forced labor or involuntary servitude cases (which often do not disaggregate information between adults and children), (b) NHTRC tips or cases reported, (c) letters of eligibility (for humanitarian benefits and services) issued by federal authorities to foreign national children who are potential or confirmed cases of human (labor or sex) trafficking, and the case files associated with the youth provided letters of eligibly for services (which are limited only to foreign national children), and service provider data and case files. To date, there has been only one study solely addressing child labor trafficking in the United States by anthropologist, Elzbieta Godziak (Gozdziak & Bump, 2008). The study is almost 10 years old, with primary data limited to the experiences of 17 survivors and 26 key informants. The re-

search methods included review of the child's case files and interviews with service providers working with the trafficked youth.

Important progress has been made to document labor trafficking in the United States, but it continues to largely focus on adults. The Urban Institute's major research report on labor trafficking reviewed a sample of 122 closed labor trafficking victim service records from service providers in four United States cities, but the majority were adults (Owens et al., 2014). The National Institute of Justice also supported research on this topic, showing that approximately 30% of migrant workers in San Diego were exploited for labor, but this research also exclusively focused on the experiences of adults (National Institute of Justice, 2013).

Part of the problem is the lack of data sets distinguishing children from adults, as well as child labor trafficking from sex trafficking. In the most recent Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States (2013–2017), the United States government recognized the lack of data on services for child trafficking victims and called for research to establish baseline knowledge of human trafficking and victim services. The Department of Health and Human Services (HHS) has launched a multi-year initiative to standardize human trafficking data and to integrate questions on both commercial sexual exploitation *and* forced labor into the Runaway and Homeless Youth Management Information System, which is a promising initiative that may create better data on child labor trafficking. The Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States (2013–2017) created an action plan to study the prevalence of commercial sexual exploitation of children in the United States, but notably did not create a parallel action plan related to labor trafficking of children. Rather, as indicated earlier, the labor trafficking research initiatives continued to focus predominately on adults (Owens et al., 2014).

One example of how to better gather quantitative data on child labor trafficking is creating a mechanism to formally collect such data, not just in criminal justice systems, but public child serving systems such as child protection. In the state of Illinois, the Illinois Safe Children's Act (2010), amended the Illinois Abused and Neglected Child Reporting Act (ANCRA, 1975), which defines intake and investigation of child abuse and neglect reports within the state of Illinois to include an allegation of "human trafficking of children" as defined under the TVPA and the Illinois anti-trafficking legislation. It combines both sex and labor trafficking as a form of child abuse and neglect. This allegation of human trafficking ("#40/#90") defines abuse via allegation #40, including labor exploitation, commercial sexual exploitation, the production of pornography or sexually explicit performance. The second, allegation #90, includes incidents involving neglect or any blatant disregard of a caregiver's responsibility that results in a child being trafficked (Illinois Department of Children and Family Services, 2015). Incidents of allegations #40/#90 are captured in a statewide databased, and available via the Child Abuse and Neglect Tracking System (CANTS) in Illinois. This crucial measure—the creation of a child abuse and neglect allegation via the state child protection system—provides for the possibility of conducting important research on the prevalence and characteristics of investigated allegations of child trafficking, including child labor trafficking, within a state (Havlicek, Huston, Boughton, & Zhang, 2016).

Because human trafficking is defined as a specific form of child maltreatment in the Illinois child protection system, it becomes possible to identify and describe investigated allegations of human trafficking in Illinois. A recent study, and currently the only one of its kind, used administrative data from the Illinois Department of Children and Families Services (DCFS) to compare the prevalence of investigated allegations of human trafficking (Havlicek et al., 2016). The study shows that between 2012–1015, 41% of children with at least one investigated allegation of maltreatment prior to allegation of human trafficking have an allegation of sexual abuse, and 52% have an allegation of physical abuse, with multiple types of maltreatment in case records preceding an allegation of human trafficking. The study suggest that more than one out of four children in the study with an investigated allegation of human trafficking had an entry in out-of-home care. This demonstrates that most of the children who had an investigation of child trafficking in Illinois experienced multiple forms of abuse and neglect prior to being trafficked, and that children placed in foster or residential care facilities face higher risk of being trafficked.

There are clearly limitations to this approach. First, it still does not disaggregate child labor and sex trafficking, and combines them both. A study that relies solely on the number of investigated allegations of sex and labor trafficking in one state has significant limitations for broader conclusions, However, the possibilities of further study and analysis of this population using this particular model are profound. The fact that labor trafficking was included in the data collection is a crucial first step. Additionally, if we know that certain patterns of abuse (or abusers) put children at higher risk of human trafficking, more effective and targeted prevention and intervention measures can be explored. Without such data, and specifically data on both child labor and sex trafficking, this is not possible. The Illinois data could be even more improved if it distinguished sex trafficking from labor trafficking to better understand any differences or similarities of the prevalence and characteristics of each form of human trafficking. More states should explore similar avenues of collecting data on both the prevalence and analysis of child sex and labor trafficking interactions with state child protection systems. This can be done by incorporating data collection measures in state anti-trafficking laws, exploring existing data collection measures by public (and private) child serving systems, and using Illinois'

case example, amending state level child abuse and neglect laws to include both child sex and labor trafficking, triggering a new data set to better inform research, policies, and practices related to child trafficking.

3.2. Limitations of Current Legislation and Policy

The academic and governmental research focus on sex trafficking is paralleled in legislation and policy intended to identify and serve child victims of human trafficking. Since the passage of the TVPA, subsequent legislation on both state and federal levels to combat trafficking measures fail to recognize child labor trafficking. While most legislation refers to "human trafficking" more broadly—which should include both labor and sex trafficking of all persons, adults and children—in practice, use of this broader term relegates child trafficking to a subset of human trafficking whereby the children who are trafficked for labor remain hidden and invisible. Additionally, data collection mandated by laws and policies addressing human trafficking more broadly also fail to acknowledge the need for improved data collection on forced labor and child labor trafficking. For example, the Preventing Sex Trafficking and Strengthening Families Act (2014) mandates that child welfare agencies report the numbers of children in their care, placement, or supervision who are identified as sex trafficking victims to the HHS (Preventing Sex Trafficking and Strengthening Families Act, 2014). This is groundbreaking legislation that mandates every child protection agency in the country to better identify and collect data on child trafficking, but focuses *exclusively* on sex trafficking. Similarly, the Justice for Victims of Trafficking Act, which seeks creates additional protections child victims, amends the Child Abuse Prevention and Treatment Act to include provisions to identify and assess "known or suspected victims of sex trafficking" (Justice for Victims of Trafficking Act, 2015). While these provisions are positive steps in the broader anti-trafficking movement to continue to develop data collection tools, procedures, and policies to identify and respond to child sex trafficking in the United States, they virtually ignore child labor trafficking. They also miss opportunities to create important data collection mechanisms for child labor trafficking.

While the TVPA and its subsequent reauthorizations prohibit labor trafficking and forced labor, efforts to prosecute these crimes by local governments and states are still deficient. State-level policies, including Safe Harbor laws currently in over 20 states, decriminalize juvenile prostitution, allow some prior sentences to be vacated, and amend the definition of child abuse to include child trafficking (Polaris Project, 2015). While these are promising measures to improve identification and intervention services for child sex trafficking victims, including creating opportunities to collect data on the prevalence and response to sex trafficking of minors, these laws have no impact for children who are victims of forced labor or labor trafficking. Almost all of these Safe Harbor laws provide protections *only* for sexually exploited youth, while children engaged in forced labor and labor trafficking remain unidentified and vulnerable to penalties (e.g., for peddling, engaging in forced criminality, or working while unauthorized or undocumented), detention, and further trauma. States should consider the Illinois model, by using their Safe Harbor statutes to protect children who are victims of both labor and sex trafficking, and to amend child protection statutes to create datasets to better understand the dynamics of both child labor and sex trafficking.

3.3. Limitations of Current Labor Laws

Documented case examples of child labor trafficking indicate that industries and businesses that traditionally hire children and youth can be improved to protect children and to provide a way for children in need to seek assistance. For example, child labor standards in agriculture can be improved to prevent the sale of children for the purpose of forced labor and labor trafficking (Loyola University Chicago, 2016). Outside of agriculture, the standard minimum age for work is 16. There are no similar restrictions protecting children working in agriculture. In agriculture, employers may hire children ages 14 and 15 to work unlimited hours outside of school, with no parental consent requirement (Loyola University Chicago, 2016). While protecting child farmworkers from dangerous and exploitative work is the responsibility the Department of Labor (DOL) and the Environmental Protection Agency, there is, however, currently no specific budget line to support DOL child labor law enforcement (Bureau of Democracy, Human Rights, and Labor, 2016). Without adequate monitoring and enforcement, children are at greater risk of labor exploitation and possibly labor trafficking.

In addition to increasing regulation and monitoring of child labor in the agriculture industry, further examination of corporations' abuse of the J-1 visa program, which was designed to foster cultural exchange and to provide technical training opportunities for foreign college-age students, is needed. Employers do not have to pay payroll taxes on J-1 workers, leading some employers to treat the program as a source of easily exploitable and cheap labor. In one instance, two sisters from the Dominican Republic who were recruited to work in customer service at a luxurious Tennessee hotel found themselves living in the hotel's stables, caring for the horses as well as tending to guest rooms. Their sponsor refused to approve their requests to work elsewhere. Indebted and isolated, they felt that they had no option other than to leave and seek work elsewhere, thereby jeopardizing their J-1 status (Loyola University Chicago, 2016; Southern Poverty Law Center, 2014). This is just one case example of several other documented cases abusing the J-1 program in the United States. More regular monitoring, investigations, and audits could limit the systemic abuse of this program.

3.4. Limitations of Criminal Justice and Immigration Systems

While research on labor trafficking—for both adults and children—in the United States is still limited, the seminal study on this topic, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, concludes that labor trafficking cases are "not prioritized" by both local or federal law enforcement in the United States (Owens et al., 2014). The study notes that many law enforcement agents, particularly local law enforcement, have limited knowledge of the statutory framework for forced labor. Training for law enforcement continues to emphasize sex trafficking, which leads to continued misidentification or lack of identification of labor trafficking of both adults and children.

Prosecutors have narrowly interpreted the TVPA and the TVPRA—and consequently left several categories of victims of forced labor at risk of exploitation and unable to access protections afforded to them as victims of such crimes. Whereas child victims of sex trafficking are not required to prove they were compelled in any way to perform a commercial sex act, victims of child labor trafficking under federal and state statutes must prove "force, fraud, or coercion," with the burden of proof resting with the child. A number of factors inhibit identification of such cases: both a child's fear of deportation, the effects of severe trauma, or being expressly coached to deny any foul play may prevent him or her from being forthcoming with government officials. In some cases, a child may not even know he or she has been trafficked until after being released from custody to the traffickers. In other cases, familial piety or deference to adults may make a show of "force" or "coercion" more challenging, particularly as these terms assume a certain level of agency children may not have. To put another way, children, because they are children often do what adults ask them to do.

Furthermore, current anti-trafficking laws do not distinguish children from adults in the context of labor trafficking. A 12-year-old child must submit evidence and prove eligibility for protection in the same manner as a 30-year-old adult. Developmentally, children are presumed less likely to have the ability to identify and evaluate their options; a child may only be able to identify one option in a situation where an adult would be able to identify multiple options (Beyer, 2000). Also, "because adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face" (*Conn v. Heinemann*, 2007). Therefore, the requirement that child labor trafficking victims prove force, fraud, or coercion—as an adult would—fails to recognize that a child is likely to perceive and react to situations differently than an adult. Research from the fields of child development, child psychology, and anthropology, among other disciplines, should inform better practices to approach child labor trafficking cases from a developmentally and culturally informed perspective to demonstrate how "coercion" or "force" may play out differently with a 7-, 12-, or 16-year-old versus an adult. Simply put, a child may follow a "rule" or order by an adult just because an adult told them to. Requiring child victims of labor trafficking to prove that these statutory elements on par with an adult in order to receive protection inevitably makes protection very difficult to obtain especially when the trafficking experience may not conform to the most traditional model.

Moreover, most unaccompanied immigrant children lack legal representation in the immigration process and once released, they receive little assistance and have access to few resources. As a result, these children risk reentry into the abusive cycle of labor trafficking upon release from custody (VanSickle, 2016). Without legal representation, many unaccompanied immigrant children struggle to obtain protection under the law. When invoked, the TVPA and TVPRA provide several protections under the law. These protections include eligibility for short term immigration relief, including parole and continued presence, and longer term immigration relief, including a T-nonimmigrant Visa which allows trafficking victims to stay in the United States if they would suffer "extreme hardship involving unusual and severe harm" if returned to their home country (Victims of Trafficking and Violence Protection Act, 2000).

3.5. Limitations of Current Training Models

Emerging research demonstrates that child labor trafficking victims often encounter at least one, if not several, systems that fail to identify them as victims of child trafficking (Gibbs et al., 2015). These systems include local, state, and federal law enforcement, child welfare and child protection, juvenile justice, education, and social service providers (Covenant House, 2013). The research in the state of Illinois, for example, shows that children with allegations of child trafficking experienced at least four previous encounters with the child welfare system (Havelich, 2016). While the United States government has increased training efforts addressing child trafficking to a larger cohort of first responders and stakeholders since the passage of the TVPA (e.g. Bureau of Democracy, Human Rights, and Labor, 2016), very few training efforts include content addressing *both sex* and labor trafficking and forced labor of children. Many trainings targeting first responders and researchers continue to refer to victims of "human trafficking" generically but provide case examples that emphasize sex trafficking, or just focus exclusively on sex trafficking, and often use case examples of adults. Very few address the needs of children or address child labor trafficking at all.

This lack of training or misinformation about child trafficking significantly impacts the ability to identify and respond to child labor trafficking cases (Farrell et al., 2012). Most law enforcement, particularly local law enforcement, do not have the knowledge or capacity to identify labor trafficking (Farrell et al., 2012). Most in-

vestigatory or specialized units dedicated to responding to human trafficking have foundational training in vice (or sex crimes), which limit their abilities to identify and respond to labor trafficking cases. Moreover, most law enforcement agents have challenges in defining federal anti-trafficking laws, and experience challenges discerning when "hard work" becomes a labor violation or labor trafficking (Owens et al., 2014). This has profound impact not just on victim identification, but also on data collection by critical first responders.

4. Conclusion

The phenomenon known as involuntary servitude, slavery, and more recently, "labor trafficking," is unfortunately not new in the United States or throughout the world. While there continue to be new criminal statutes, laws, and policies promulgated to address this crime, child labor trafficking continues to persist with little efforts to identify, respond to, and build critical knowledge of this crime. Data collection measures under current anti-trafficking legislation, as well as existing intake systems by child welfare and law enforcement agencies, rarely include child labor trafficking. Without more mechanisms in place to conduct better data collection and research, efforts to understand both the prevalence and characteristics of child labor trafficking in the United States will continue to be hindered. Training curricula and programs currently lack sufficient data, knowledge, and identification practices to inform first responders to identify and respond to child labor trafficking cases. This impacts the ability to conduct empirically based research on the prevalence and characters of the problem, as well as how to respond to and protect survivors of child labor trafficking.

All public and private agencies collecting anti-trafficking data, particularly those serving vulnerable youth, should be reviewing their intake procedures and data collection measures to ensure child labor trafficking data is collected alongside child sex trafficking. All existing and future policies and legislation purporting to better respond to child trafficking should be reviewed to ensure that the definition of human trafficking explicitly includes *both* labor and sex trafficking, Moreover, policies should consider how to incorporate mechanisms for systems and providers to identify, collect data, and build capacity to respond to both child sex and labor trafficking. This could include the example of the state of Illinois, where the child abuse and neglect statutes include both labor and sex trafficking as a form of abuse and neglect, which is collected as part of a statewide database. Training curricula should be vetted by both law enforcement and non-governmental experts with experience with child labor trafficking cases to develop more sophisticated and accurate curricula and educational materials describing incidents of child labor trafficking. Local law enforcement, especially, needs better training on how to identify and investigate these cases, particularly as they are often the first responders in the community. Both governmental and civil society stakeholder should ensure that when public awareness, outreach, training, capacity building, or policy efforts are made to address child trafficking, both labor and sex trafficking are emphasized. Otherwise, the efforts to protect the most vulnerable members of our society will continue to be stymied.

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The purpose of this article is to emphasize the importance of improving efforts to address *both* labor and sexual exploitation of all children, regardless of nationality or legal status, in advancing the policy intentions of United States anti-trafficking laws, and to specifically highlight the deficiencies of United States anti-trafficking efforts to combat child labor trafficking. Survivors of both labor and sexual trafficking face many of the same challenges, and neither should be prioritized as a matter of policy or implementation. I would like to acknowledge the important work NGOs, academic centers, service providers, and advocates who work with or on behalf of children who are victims of both sex and forced labor. I wish to thank my colleagues Maria Woltjen and Kelly Kribs of the Young Center for Immigrant Children's Rights at the University of Chicago. Their work and advocacy on issues of unaccompanied minors has informed my research and writing on this topic. I also wish to extend my gratitude to my Graduate Assistant, Dorothy McLeod, for her excellent research and editing assistance. Finally, I wish to thank my own children, Maeve and Mason, who's love and presence are a daily reminder of the importance to protect children's rights.

Conflict of Interests

The author declares no conflict of interests.

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Article

Identifying Victims of Human Trafficking at Hotspots by Focusing on People Smuggled to Europe

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Abstract
Research has shown that smuggling of migrants is associated with human trafficking. Hence, victims of human trafficking amongst smuggled migrants should be identified by EU Member States at hotspots established by the European Commission, to overcome the migrant and refugee crisis. Identified victims should be given a visa and a programme of protection to escape their traffickers. In order to achieve these objectives, research suggests that EU law on migrant smuggling should be amended and the Temporary Protection Directive should be applied to smuggled persons when there is an indication that they may be victims of human trafficking. This approach should be adopted by the EASO in cooperation with police forces investigating smuggling and trafficking at hotspots.

Keywords
European Union; human trafficking; smuggling; Temporary Protection Directive

Issue
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1. Introduction

This article addresses the issue of identification of victims of human trafficking at hotspots. For this purpose, it analyses the connections with the smuggling of migrants, because it is thought that many people smuggled into Europe from Africa and the Middle-East become victims of human trafficking either during their trip or after they reach the EU. Consequently, EU Member States should undertake interviews with migrants and investigations on human trafficking, to understand whether smuggled migrants have been accomplices of criminal networks or have simply paid for a service provided by criminal networks or, indeed, whether they have been trafficked during their journey to reach Europe or are at risk of being trafficked due to their undocumented, and hence vulnerable, status. It is the EU Member States' responsibility to undertake interviews and investigations and this article will argue that domestic law enforcement authorities should undertake interviews and investigations at hotspots with the support of the European Asylum Support Office (EASO). Hence, the article will analyse whether hotspots are places which can provide protection to victims of human trafficking who have been previously smuggled by criminal networks from origin and transit countries. In order to achieve this objective, this section will show how people smuggling is perpetrated from Africa to Europe and the role smuggled migrants have whilst they cross different countries to reach Europe.

Smuggling of migrants is a complex crime which can take place from Sub-Saharan Africa to Europe (European Commission, DG Migration & Home Affairs, 2015, pp. 13–14). The crime is committed, by air, by land, and by sea. Smuggling by air is perpetrated by document fraud and the Nigerian Immigration Service (NIS) has reported that the price of fake documents via air from Nigeria has increased dramatically since the introduction of biometric identifiers within Nigerian passports in 2006 and improved capacity to detect fraud at the Nigerian air border (European Commission, DG Migration & Home Affairs, 2015, p. 41).

Smuggling of migrants by land can take place through a variety of locations in Africa and Europe. The European Commission DG Migration & Home Affairs has conducted a study on selected routes by land; from Turkey into Bulgaria, from Ethiopia into Sudan and then onto Libya, from Pakistan to Iran and to Turkey and from Greece to Macedonia, and subsequently to Serbia and Hungary (2015, p. 38). The research revealed that the journey by land can take a long time as some of the routes smugglers use to reach Europe, have to be taken by walking through the desert and through the use of vehicles such as pick-ups or trucks. In the central Sahara, smuggling by land is controlled by smuggling organisations able to transport around two or three dozen passengers. The transport is organised by smugglers from different ethnic groups including Tuareg or Tebu, Hausa and Arab groups. Criminal groups are able to transport people from Sub-Saharan Africa to Libya. Journeys can take several days, weeks or months due to vehicle break down or unstable situations in many African countries. The report has shown that on many occasions migrants have been abandoned in the desert in Niger and in 2015, 48 migrants died in Niger on their way to Europe. Smuggling by sea can take place via the Mediterranean. According to the figures of the International Organisation for Migration (IOM, 2017), in between January and May 2016, 191,134 migrants reached Europe by sea compared to 5,352 who arrived in Europe by land. In 2015, 1.015,078 migrants arrived in Europe via the Mediterranean (United Nations High Commissioner for Refugees [UNHCR], 2016). The routes which are used to reach Europe via the Mediterranean are: the Eastern Mediterranean route from Turkey to Greece across the Aegean Sea followed by a journey on foot through the Western Balkans to reach their final destination in the EU; the central Mediterranean route from North Africa to Italy and the western Mediterranean route from Morocco or Algeria to Spain (Frontex, 2016). It has been estimated by Frontex that in 2015 migrants and refugees crossing the central Mediterranean route, were mainly from Eritrea, Nigeria and Somalia. In 2016, the UNHCR published new figures which showed that migrants crossing the Mediterranean were mainly from Syria, Afghanistan, Iraq, Pakistan, Iran, Nigeria, Gambia, Somalia, Cote d'Ivoire and Guinea. On the basis, of this data, it can be deducted that the inflows include refugees, asylum seekers and economic migrants.

It has been reported that most of the migrants travelling from Africa to Europe, seek and obtain the support of criminal organisations. In 2014, it was estimated that 80% of migrants were supported by criminal organisations (The Global Initiative Against Organised Crime, 2014). In 2016, a report published by Europol showed that more than 90% of migrants who leave their countries of origin irregularly are facilitated by smugglers' networks (Europol, 2016). Hence, smuggling networks are becoming stronger and are able to control the irregular routes. Despite these statistics, there is not a clear picture of the scale of the organised criminal groups that smuggle migrants. According to the report published by the DG Migration & Home Affairs, smuggling of migrants is a very well organised crime where criminal groups are hierarchically structured and connected with other criminal groups such as the Italian Mafia (2015, pp. 47–51, 53–54). It has also been reported that criminal groups liaise with corrupted police officers in transit countries (p. 49). However, the Migration Envoy, Europe Directorate, and FCO in the UK reported that currently, no large-scale organised criminal groups are perpetrating the smuggling of migrants (p. 49). Clearly, there is inconsistency between this information which demonstrates that the crime of smuggling of migrants is not yet well-known. The lack of knowledge can make it difficult to understand the links between smuggling and trafficking and can leave many victims of trafficking unidentified.

2. Connections between Smuggling and Human Trafficking

Understanding connections between smuggling and trafficking can reduce the latter crime by reducing the chances of people who are smuggled becoming victims of trafficking during their journeys and once they reach Europe. It has been reported that there are three ways by which a smuggled migrant can become a victim of trafficking (Triandafyllidou & Maroukis, 2012, p. 191). One way is due to the fact that when the migrant has reached their final destination the tie with the smugglers does not end at the end of their trip. Even after the end of their journey, migrants can become victims of trafficking as they may be obliged to repay the price of their trip. Nevertheless, this practice does not seem to be in use anymore on the southern Mediterranean route, as migrants are expected to pay the price of their journey in advance before they travel from Egypt and Libya (European Commission, DG Migration & Home Affairs, 2015, p. 46). Another way by which smuggling can become trafficking is when the migrant is still travelling to reach his or her final destination and is trafficked either for the purpose of sexual exploitation or forced labour or drug smuggling (Triandafyllidou & Maroukis, 2012, p. 192). There are also reports which show that women become victims of torture and rape whilst travelling from the Sub-Saharan Africa (European Commission, DG Migration & Home Affairs, 2015, p. 20). These reports have been confirmed by recent investigations conducted by Italian public prosecutors in Palermo (Italy) in the Glauco case I (Fedotov, 2016), who successfully detected a criminal network which smuggled migrants from Libya, Eritrea, Ethiopia, Sudan and Israel to Sicily (*Procura della Repubblica presso il Tribunale di Palermo*, 2014, p. 16). Subsequently, the same organisation smuggled migrants to Northern Italy and eventually to Sweden, Germany, Norway, the Netherlands, France, Austria, Australia and Canada (p. 2). During the investigations, public prosecutors found that migrants had been kidnapped, tortured and raped (pp. 41–61). In addition, kidnapped migrants

had been kept in detention in Libya until their families, contacted by the organisations, paid the ransom for their release. One of the migrants from Eritrea witnessed that the criminal network was able to contact his mother in Eritrea and ask for the payment of US$3300 in exchange for his release (p. 43). In prison, migrants have been forced to witness torture of other migrants and they have been forced to stand on their feet while they were beaten and tortured by electric discharge. Public prosecutors stated that these cases fall within the scope of human trafficking as the consent, which was initially given, had lost its validity since it was no longer free, unconditional or reversible (p. 13).

The final way in which smuggling can become trafficking is enslavement which arises out of employment opportunities during the migrant's trip (Triandafyllidou & Maroukis, 2012, p. 192). Usually, migrants start to work in sweatshops or in the construction sector and soon realise they are trapped. In other cases, migrants whilst *en route*, become part of the smuggling business to be able to pay part of their journey. These cases should be clearly investigated and distinguished from cases of smuggling where these violations of human rights do not occur.

Research conducted from 1990 to 2015, in the Italian region of Apulia, has revealed that the smuggling of migrants is not always connected to trafficking and that it is not always centralised and highly organised criminal networks which smuggle people (Achilli, 2015, p. 4). Smuggling groups analysed by this particular research, are characterised by heterogeneity and, in the Eastern Mediterranean, they mainly consist of family-based businesses (p. 5). It has also been reported that for many irregular migrants, smugglers are the only way to escape from poverty and other dangerous situations (p. 6). In other terms, smugglers may be providing a service without exploiting migrants and asylum seekers who, conversely, may work for smugglers as recruiters, intermediaries and in other positions (p. 7). Hence, investigating whether migrants have been victimised by smugglers and traffickers is very important, in order to understand links between smuggling and trafficking and to be able to address these criminal activities. Certainly, as public prosecutors in Palermo highlighted, smuggling and trafficking can be defeated by EU policy on legal migration as this policy could reduce demand by people who otherwise would not be able to leave their countries of origin when they are in a situation of danger or poverty (p. 10). In the meantime, migrants who risk becoming victims of trafficking should be protected, by adopting a policy which is addressed specifically to them.

The European Commission has published the European Agenda for Migration and has identified as a priority the fight against migrant smuggling and trafficking of human beings (European Commission, 2015b, p. 9). For this purpose, it has highlighted how important is to address the root causes of irregular migration and to cooperate with third countries to fight against criminal networks (pp. 7–8). It has also emphasised that EU agencies can support Member States to identify smugglers, to investigate and prosecute them, as well as to freeze and confiscate their assets. However, the Agenda seems to concentrate on security rather than on the protection of victims of trafficking. Conversely, identifying victims and obtaining their support in investigations, can make the difference in the fight against these crimes because the victims can act as witnesses against smugglers who eventually become traffickers, as police officers and public prosecutors in Italy have clearly shown (Ventrella, 2010, pp. 196–201, 208–213). The Agenda on Migration has established hotspots to support frontline Member States to manage migrants, asylum seekers and refugees' arrivals, and to address smuggling and trafficking (European Commission, 2015b, pp. 6–18). The next section will focus on EU policy to overcome the migrant and refugee crisis, and on hotspots in order to evaluate whether EU policy including external relations to deal with the migrant and refugee crisis, permit the identification of victims of human trafficking within those who have been smuggled.

3. The Hotspots Approach

3.1. Introduction

The migrant and refugee crisis in the EU is a multifaceted problem which should be tackled by multifaceted actions oriented not only to asylum seekers and refugees, but also to economic irregular migrants because, as the UNHCR reported, in Europe there are mixed migration flows, made up of refugees and economic migrants who use the same routes and rely on the same smugglers (2007). However, identifying exactly how many people are refugees and how many are economic migrants looking for a better life in Europe, requires information about the cause of migration which is lacking (Fargues & Bonfanti, 2014). Statistics on migrants at sea stop when they land and no one really knows what they do once they land and what their fate is. Hence, it is important to focus on the root causes of migration to identify the categories of migrants who leave their countries of origin, in order to implement adequate global actions to prevent them from leaving in poor conditions and risking their lives. The need for global action is confirmed by the High Representative Vice President (HRVP) Federica Mogherini, who stated that the EU is dealing with a migration and refugee crisis that should be tackled by global action because 'It is a regional crisis: it's not only a European crisis, it is a regional crisis…and a global crisis, too…' (2015). The HRVP asserted that in order to address this emergency, it is essential to strengthen cooperation between Member States on the basis of 'five different elements'. The first element should focus on the protection of asylum seekers as they are entitled to refugee status. The second element should consist of managing EU borders by fully respecting human rights. The third element should be to fight against smugglers and traffick-

ers by operating in the high sea against smugglers at sea. Actions against smugglers and traffickers should also be taken on the mainland when the crime affects the Western Balkan route. The fourth element should address the EU external action and strengthen the partnership with third countries, especially countries of origin and transit to create economic development and job opportunities. Finally, the HRVP stated that the crisis could be overcome by addressing the root causes of migration. Mogherini asserted that this crisis can be overcome by cooperating with transit and origin countries not only on readmission and return agreements, but also on the economic developments and opportunities in these countries. Through this proposal, the HRVP confirmed that the problem involves not only asylum seekers and refugees, but also economic irregular migrants and this is why EU external actions should be promoted to address and tackle the root causes of economic irregular migration by economic developments. Improving economic conditions of countries of origin would give many people the option not to leave their countries unlawfully and to avoid having to trust criminal organisations which eventually may exploit them.

However, in September 2015, the Council established two provisional Decisions (Council of the European Union, 2015b, 2015c), based on Article 78(3) TFEU, which states that provisional measures can be adopted by the Council when one or more Member States are confronted by emergencies 'characterised by a sudden inflow of nationals of third countries'. The countries affected by such emergencies were Greece and Italy (para. 9). According to these decisions, only asylum seekers with 75% or more of the asylum recognition rate will be relocated (para. 20). At the moment, relocated people have mostly been nationals from Syria, Eritrea, Iraq, Central African Republic, Yemen, Bahrain and Swaziland (European Migration Network, 2015, p. 2). In addition, the European Commission reported that Member States have offered relocation to only 2000 people and only twelve Member States have relocated them, whilst five Member States have not relocated any individuals, although in 2017 other migrants have been relocated and the situation has improved compared to 2016. (European Commission, 2016a, p. 11, 2017). Moreover, what of the people who do not score 75% of the asylum recognition rate? What is their fate? They risk being returned to their countries of origin even if they may face violations of their human rights (Webber, 2015). In addition, what about investigations of smuggling and trafficking? There may be many cases of victims of trafficking from other African countries, as shown in the previous section, who risk remaining without protection and being vulnerable to becoming victims of trafficking again. No EU measures address this problem. The EU continues to focus on security and this is confirmed by the fact that it has adopted a military operation called EUNAVFOR MED to combat the smuggling of migrants by sea, which has the power to arrest smugglers and dispose of vessels but does not have jurisdiction over investigations (Council of the European Union, 2015a). The EUNAVFOR MED has been identified as 'a police mission with military means' (Den Heijer, Rijpma, & Spijkerboer, 2016), focused on security rather than border management. The limited scope of EUNAVFOR MED cannot support Member States in identifying victims of trafficking amongst smuggled migrants. In addition, Human Rights Watch has reported that EUNAVFOR MED, by diverting vessels in the sea, may contribute to violation of human rights, *refoulment* and may push migrants and smugglers to engage in even more dangerous journeys (Human Rights Watch, 2015). Hence, EUNAVFOR MED is another measure adopted to secure EU borders as opposed to protecting vulnerable migrants from trafficking. The EU has also established hotspots to identify asylum seekers and distinguish them from other categories of migrants. The former should be provided protection whilst the latter should be returned to their countries of origin or residence. The next sections analyses hotspots and argues that these are not places where victims of human trafficking are identified and thus, they should be reformed.

3.2. The Establishment of Hotspots

The EU adopted the hotspots approach in 2015, to ensure that the EASO, Frontex and Europol work with frontline Member States to identify, register and fingerprint migrants (European Commission, 2015b, p. 6). Individuals who claim asylum will undergo the asylum procedures and will be assisted by the EASO, the others will be assisted by Frontex which will support Member States to return all irregular migrants. In addition, the Commission stated that 'Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks'. The Commission highlighted that hotspots shall 'ensure screening, identification and fingerprinting' (European Commission, 2016a, p. 11) of irregular migrants reaching the EU from its external border. Fingerprinted and registered migrants will be channelled either through 'the national asylum system', 'the European relocation system' or 'the return system'. The system will be automatic and aimed at returning as many irregular migrants as possible in an emergency situation (European Commission, 2016a p. 8; Ippolito, 2016). Hotspots have been established in Greece and Italy (European Commission, 2015c, 2015d). In Greece, 5 hotspot areas have been identified; Lesvos, Leros, Kos, Chios and Samos, although only Lesvos is carrying out the identification, fingerprinting and registration of migrants and asylum seekers (European Commission, 2015c, p. 5). In Italy, 6 hotspot areas have been identified; Lampedusa, Pozzallo, Porto Empedocle/Villa Sikania, Trapani, Augusta and Taranto. The European Commission has reported that hotspots are fully operating in Greece and in Italy, apart from Kos in Greece and Porto Empedocle and Augusta in Italy (European Commission, 2016b).

The different agencies have different roles. Frontex provides operational cooperation at the request of Member States (Statewatch, 2015, p. 1). Actually, Frontex's scope has been enhanced by Regulation 2016/1624 which established the European Border and Coastguard Agency (European Parliament & Council of the European Union, 2016b). The new Regulation states that the European Border and Coastguard Agency has to ensure the management of border crossings at the EU external border, including:

> addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it. (Article 1)

At hotspots, Frontex supports Member States in registering and screening irregular migrants, although the main responsibility for fingerprinting and EURODAC registration remains Member States' responsibility (Directorate-General for Internal Policies, 2016, p. 27). Frontex also supports Member States in returning irregular migrants not entitled to asylum and in dealing with unclear situations. Frontex gathers information from migrants about routes and the modus operandi of criminal networks with the information being subsequently shared with Europol (pp. 27–28). Europol supports Member States in investigations concerning the smuggling of migrants by sea and related crimes (Statewatch, 2015, p. 2).

EASO supports Member States to process and facilitate the analysis of asylum applications through joint processing with the objective of channelling asylum seekers into the appropriate asylum procedures (Directorate-General for Internal Policies, p. 28; Statewatch, 2015, p. 2). The main task of EASO is to assist Member States in relocating asylum seekers who are entitled to refugee status.

Eurojust strengthens cooperation and coordination between Member States in the investigation and prosecution of those carrying out cross-border crimes (Statewatch, 2015, p. 1). These agencies operate at hotspots where there is a high level of migration pressure and where there are mixed migration flows generally linked to the smuggling of migrants. At hotspots, Member States submit a request of support to the European Commission and to the relevant agencies. The work at hotspots is coordinated by an EU Regional Task Force (EURTF) where EASO, Europol and Frontex deploy their staff. Eurojust may also consider deploying their staff to the EURTF (Statewatch, 2015, p. 3).

Hotspots have been criticised because the relocation of people in need of international protection depends on the nationality of the asylum seeker. (Directorate-General for Internal Policies, 2016, p. 30). The process is very quick as one of the aims of hotspots is to identify, register and process migrants quickly in order to determine whether migrants can be entitled to asylum or they have to be returned to their countries of origin or residence. Screening at hotspots could result in the separation of 'good' refugees from 'bad' economic migrants and leave many people in an unsafe situation without giving appropriate consideration to their claims (Webber, 2015).

The EU Agency for Fundamental Rights has criticised hotspots as there is the risk of a surge in collective expulsion (2015, p. 12). Certainly, hotspots have improved the registration of arrivals in Greece and the European Commission has pointed out that hotspots in Greece have improved the fingerprinting rate from 8% to 78% and 100% by March 2016 (Directorate-General for Internal Policies, 2016, p. 36). However, it has been reported that the focus of hotspots in Greece 'has been on identification, registration and border control (p. 37). The same can be noted of hotspots in Italy where the majority of staff deployed to hotspots are from Frontex, which is in line with the main aim of hotspots which were initially created to identify and register migrants (p. 38). EASO presence in Italian hotspots is very limited and Europol is completely absent. People coming from non-qualifying countries such as Gambia, Nigeria and Senegal, are treated as non-refugees and there is no mechanism in place to permit these migrants to apply for international protection even if they do not come from qualifying countries (p. 40). Caritas Europa has reported:

> People coming from Sub-Saharan African countries that are considered safe are with deportation orders as soon as they arrive on the Italian territory. They are not informed on asylum possibilities and the authorities present in the hotspot…, do not give them the opportunity to claim asylum.' (Caritas Europa, 2016)

Migrants should always be given the opportunity to apply for international protection even if they do not qualify for relocation (Directorate-General for Internal Policies, 2016, p. 44). Their application should be assessed impartially and on a case-by-case basis with migrants only being returned when it has been assessed that their return will not be in breach of the principle of *non-refoulement* and of the proportionality check. It is emphasised that EASO should be given a new mandate in order to facilitate the adequate functioning of the Common European Asylum System (CEAS). In this article, it is thought that their mandate should include the identification of victims of human trafficking amongst smuggled migrants as these people are in need of international protection even if they do not come from countries eligible for relocation.

3.3. Identification of Trafficking Victims at Hotspots

Hotspots do not address human trafficking and smuggling by identifying victims and providing support, although the Commission stressed how important is to identify victims of human trafficking at hotspots (Eu-

ropean Commission, 2015b, p. 6). The Commission stressed that smuggling and trafficking should be fought by cooperation with transit countries 'to prevent and detect smuggling activities as early as possible' (European Commission, 2015a, p. 18) as well as by maximising cooperation with Europol and Eurojust in detecting trafficking. No attention has been given to how victims of trafficking should be identified amongst smuggled migrants. The EU Select Committee of the House of Lords stated that 'It is very disappointing that no meaningful proposals have been made to address assistance to vulnerable smuggled migrants' (House of Lords European Union Committee, 2016, p. 31).

There is evidence showing that criminal networks have exploited the migration crisis to target vulnerable migrants with over 60% of unaccompanied children missing and being at serious risk of becoming victims of human trafficking (European Commission, 2016a, p. 16). Furthermore, Europol has indicated that many criminal networks smuggle refugees with the intention to exploit them in the sex trade or to use them as forced labour. Many migrants left at the hotspots could be recruited by traffickers for such purposes and transferred to other Member States. In the UK, for example, there is a high rate of human trafficking for labour exploitation which prevails over trafficking for sexual exploitation (Anti-Trafficking Monitoring Group, 2013, p. 18; Cepeda & Sánchez, 2014). Research has revealed that forced labour is linked to trafficking and that many undocumented migrants who entered the UK via smuggling or trafficking routes, have become victims of trafficking for the purpose of sexual exploitation and forced labour (Clark, 2013, p. 62; Dwyer, Lewis, Scullion, & Waite, 2011, p. 16). Hence, it is important to understand how smuggled migrants become victims of trafficking and transferred to the UK for such purposes. In order to achieve this objective, investigations should be initiated at hotspots. This is because the Commission stressed that the first step to protect victims and prevent trafficking is to identify actual or potential victims at the hotspots (European Commission, 2015b, p. 6). Actual or potential victims should be 'made aware of their rights and that the necessary cooperation should take place with the police and judicial authorities in order to ensure that traffickers are identified and prosecuted.' This is not being put in place at hotspots and migrants have reported that victims of torture and other forms of violence hosted in Greece do not receive any information either about their situation, their legal options or about their rights (Pro Asyl, 2016, p. 29). It seems to be that because migrants initially gave their consent to be recruited by smugglers, that this justifies the domestic authority's neglect of them and the lack of investigation of the possible links between smuggling and trafficking.

Investigations on the smuggling of migrants undertaken in Palermo, for example, have revealed that public opinion and some stakeholders working in the field of smuggling and trafficking, mistakenly emphasise that the consent, initially given by migrants, should be the reason to blame victims of human trafficking for having ended up being exploited (*Procura della Repubblica presso il Tribunale di Palermo*, 2014, pp. 12–13). The public opinion and some stakeholders use to distinguish between culpable consent and innocent consent by shifting the burden of proof to the victim and by considering an innocent victim a being only those who can demonstrate that they were forced into being trafficked for the purpose of sexual exploitation, forced labour or other forms of trafficking. The victim is culpable when he or she has chosen to emigrate irregularly (p. 13). In other words, the decision to leave their country irregularly is the reason why the victim is not innocent but culpable. Furthermore, public opinion and some stakeholders do not consider the fact that exploiters may have misled migrants to obtain the consent to be smuggled, prior to the smugglers becoming traffickers as a result of the exploitation, torture, rape and use of other forms of coercion against vulnerable migrants (p. 12). Hence, public prosecutors emphasised that it is important to investigate all the different phases of smuggling, in order to understand whether this criminal activity is connected to a possible human trafficking.

How should victims be identified at hotspots? How should victims be separated from smuggled people who have not become victims of human trafficking? It is thought that the identification should be undertaken by approaching and interviewing smuggled migrants. Hotspots should be improved, in order to protect vulnerable smuggled migrants. Early identification systems should be launched to give assistance to smuggled migrants who have been trafficked or are at risk of being trafficked due to their particular circumstances which should be evaluated on a case-by-case basis.

The Group of Experts on Action against Trafficking in Human Beings (GRETA) established by the Council of Europe to monitor how State Parties of the European Convention on human trafficking apply it (GRETA, 2014) emphasised that, in order to identify victims amongst irregular migrants, a priority should be to adequately train border police officers, asylum officials, members of staff of reception centres for asylum seekers and irregular migrants, as well as judicial bodies in charge of issuing expulsion (GRETA, 2015, p. 31). GRETA reported that in some Member States such training does not take place (GRETA, 2013, p. 31). The Commission highlighted that this is the reason why the prosecution and conviction of human trafficking 'remains worryingly low' (European Commission, 2016c, p. 10). The Commission also emphasised that whilst it is important for Member States to investigate and prosecute traffickers, they need to develop regular training for investigators, prosecutors and judges (p. 11). There is too much burden on victims and on their testimonies during criminal investigations and the Commission has reported that often victims are refused assistance by domestic police (pp. 10–11). Victims are often misidentified as criminals and prosecuted rather than protected (European Commission, 2015b, p. 6).

3.4. The Legal Obligation to Protect Victims of Human Trafficking

Member States have a legal obligation to protect victims of human trafficking. According to the Council of Europe Convention on Action against Trafficking in Human Beings (2005, Article 10(1)), victims shall be identified by competent authorities of State Parties and protected. The Trafficking Directive (European Parliament & Council of the European Union, 2011) requires that Member States implement early identification mechanisms of assistance, in order to protect victims of human trafficking (Article 11(4)). Member States shall ensure that victims receive legal representation, legal counsel and access to specific schemes for the protection of witnesses, based on individual risk assessments, in accordance with domestic law and procedures. Victims shall be protected against victimisation which may occur when they are interviewed and when they give evidence in court (Article 12 (2,3 and 4)). The European Court of Human Rights (ECHR) has expressly recognised that State Parties have the positive obligation to protect victims of trafficking which, is considered a form of slavery and prohibited by Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1963) as well as to prosecute the perpetrators (*Rantsev v. Cyprus and Russia*, 2010, para. 282–283; *Siliadin v. France*, 2005, para 112). The ECHR has been very strict on this point and has sanctioned Greece because they didn't protect a victim of human trafficking as they didn't undertake investigations into the trafficking and didn't prosecute criminals in a reasonable time (*L.E. v. Greece*, 2016). However, how should people be protected if they haven't made any claim? Many smuggled migrants, apparently not entitled to asylum, may be victims of human trafficking. Research has shown that victims of human trafficking usually do not make claims, unless police and non-governmental organisations adopt specific programmes of protection for them (Ventrella, 2010, pp. 208–213). It has been reported that victims of trafficking may not make claims because they may suffer from post-traumatic stress which can cause loss of memory and thus, they may forget the names of their traffickers (Triandafyllidou & Maroukis, 2012, pp. 183–186). Another reason they may not claim is because they fear the juju ritual, common amongst victims from West Africa and Sub-Saharan Africa and which prohibits victims from revealing what happened during their journey. It must be added that victims of human trafficking for sexual exploitation, for example, may not make any claims because they feel guilty for having been exploited (pp. 183–186). Victims may also not make claims because they fear retaliation (Ventrella, 2010, pp. 208–213). Police officers and members of humanitarian organisations interviewed in Rimini and Siracusa (Italy) have explained that victims they approached, refused for a long time to make claims as they feared retaliation (pp. 197–199, 208–212). When victims decide to testify, they and their families in their countries of origin, have received threats and as a result, it has been reported by police, that members of their families in their countries of origin have been murdered, a fact which demonstrates the strength of the connections between criminal networks in different countries. Hence, it is important that Member States take their responsibility to identify victims beyond the fact that they may not claim their status and at a very early stage, immediately after migrants reach the hotspots, by avoiding the automatic return of migrants who do not make claims but who may be victims of human trafficking. Member States have to take their responsibility on the basis of the law examined in this section and on the basis of Article 4 Protocol 4 ECHR which prohibits collective expulsion and which can permit the early identification of victims. The ECHR has obliged Member States to examine the situation of all migrants who land in Europe no matter whether or not they are migrants or 'genuine' asylum seekers (*Becker v. Denmark*, 1975; *Conka v. Belgium*, 2002; *Hirsi Jamaa and Others v. Italy*, 2012; *Khlaifia and others v. Italy*, 2015). On the basis of the ECHR case-law, Member States shall disembark all migrants and hear them singularly. In other words, when migrants have been rescued, they have the right to be heard on a case-by-case basis, even when they are not entitled to asylum. Hence, when migrants approach the hotspots, they should be heard by EASO in cooperation with trained personnel and domestic police which should take the opportunity to identify victims of trafficking amongst smuggled migrants. The Commission clearly stated that the hotspots approach requires that the EASO, Frontex and Europol work together to identify asylum seekers and irregular migrants (European Commission, 2015b, p. 6). However, in terms of smuggling and trafficking, the Commission only states that 'Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks'. No parts of the EU Agenda on Migration focuses on how EASO can support the identification of trafficking victims amongst smuggled people. Conversely, the EASO's mandate should be enhanced to permit their staff to identify victims of human trafficking amongst smuggled migrants and to provide them with international protection. This is why it is very important to give EASO a stronger mandate as emphasised by the Directorate-General for Internal Policy Department.

Actually, the identification of trafficked people in between smuggled migrants is made difficult, not only by the hotspot approach but also by the EU Return Directive (European Parliament & Council of the European Union, 2008) and case-law of the Court of Justice of the European Union (CJEU) on this Directive.

4. Incompatibility in between the EU Return Directive and the Right of Victims of Human Trafficking to Be Identified

Migrants who have been smuggled and who are not asylum seekers, refugees or victims of human trafficking,

have to be returned to their countries of origin or permanent residence. The return of irregular migrants is established by the EU Return Directive (European Parliament & Council of the European Union, 2008). Prior to their return, migrants, have the right to be heard, otherwise Member States competent authorities would be in breach of Article 4 Protocol 4 ECHR and subsequent ECHR case-law.

The CJEU has ruled on the right of migrants to be heard prior returning to their countries of nationality or of residence (*Kamino International Logistics*, 2014, para. 29; *Mukarubega*, 2014, para. 43). Settled case-law has established that the respect of the right of defence and of the right to be heard can be restricted if this is in compliance with the general interests pursued by an adopted law measure, unless the objectives of the measure are 'a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed' (*Alassini and Others*, 2010, para. 63; *Boudjlida*, 2014, para. 43; *G. and R.*, 2013, para. 33; *Texdata Software*, 2013, para. 84). The objective of the Return Directive is 'the effective return of illegal-staying third-country nationals to their countries of origin' (*Boudjlida*, 2014, para. 45). For this purpose, the return decision must be adopted as soon as domestic authorities determine that the stay is illegal (para. 46; *Achughbabian*, para. 31).

The return decision must be taken in compliance with Article 5 of the Return Directive and thus, 'the best interest of the child', 'family life' 'the state of health of the third-country national concerned'; 'and the respect of *non-refoulement* have to be respected and, for this purpose, persons concerned must be heard (para. 49). Domestic competent authorities shall provide all information relating to their particular situation in order to justify why a return decision cannot be issued in their case (para. 50). Victims of trafficking can be protected under Article 5 if they make claims and if, after investigations based on the Trafficking Directive and the Council of Europe Convention against human trafficking, it is concluded that their return would be a violation of the principle of *non-refoulement*. In all cases not contemplating the exceptions of Article 5, the competent authorities do not have the legal obligation to disclose evidence in advance prior to interviewing to the illegal stayers or to grant them a reflection period (paras. 53–59). The right to be heard prior the adoption of a return decision, shall permit the domestic competent authority, to undertake an investigation only on the matter concerning return of the illegal stayer and to give a decision where reasons are adequately stated so that the person concerned will be able to bring legal action against the decision (para. 59). The CJEU neglects victims of trafficking who do not make claims, as it does not permit smuggled migrants who might have become victims of trafficking during their journey, to be given a reflection period. The CJEU is in compliance with Article 5 as this provision does not recall legal instruments on human trafficking and on people smuggling. Early identification mechanisms established by law on human trafficking, are not recalled by Article 5. The problem is that the Return Directive leaves too much discretion to Member States in identifying the categories of migrants who fall within the scope of this Article. Such discretion is allowed because the EU Return Directive is focused only on returning migrants and in order to achieve this purpose, the Directive risks contributing to the neglect of trafficked people who do not make claims. The return of irregular stayers should be adopted only when police authorities and the EASO at hotspots are satisfied that there are no victims of trafficking amongst the illegal stayers to be returned. Unfortunately, a new Draft Regulation aims to increase return of irregular migrants and the adoption of this legal measure may be even more detrimental to the victims of human trafficking (European Parliament & Council of the European Union, 2016a). Conversely, at hotspots, the Temporary Protection Directive (Council of the European Union, 2001) should be applied by national authorities and the EASO working within the hotspots.

5. The Temporary Protection Directive and Its Application at Hotspots

The Temporary Protection Directive has the objective 'to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries' (Article 1). As Ineli-Ciger pointed out, the Temporary Directive has an 'added value' (2016, p. 20) which is 'its flexible eligibility criteria and its broad personal scope' (p. 20). It can be noted that because of its flexibility, it does not require that irregular migrants claim to be victims of human trafficking. By comparing the Temporary Protection Directive with the recast Directive on the reception of applicants for international protection (European Parliament & Council of the European Union, 2013), for example, it can be noted that whilst Article 21(1) of the recast Directive states that victims of human trafficking can be considered vulnerable persons, after they have made an application for international protection, the Temporary Protection Directive does not require that irregular migrants make an application and thus, a claim. The Temporary Protection Directive can be applied when there is a surge in the number of arrivals. Peers pointed that 'the grounds in the temporary protection Directive are clearly non-exhaustive' (Peers, 2015, p. 573). This is because Article 2(c) states that displaced persons are third country nationals or stateless persons who may fall within the scope of the Geneva Convention 'or other international or national instruments giving international protection'. Peers stressed that, on the basis of this provision, temporary protection could be afforded to persons fleeing environmental disasters. On the basis of this interpretation, it can be asserted that the Temporary Directive Protection can also be applied to smuggled migrants when there are circumstantial indications that they have been victims of human trafficking who have not made claims. The reason for this interpretation is be-

cause victims of human trafficking are in need of international protection. This approach can be extended to smuggled migrants as they may be entitled to a visa on the basis of the Residence Permit Directive (Council of the European Union, 2004). Article 3(2) states that 'Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration' (Council of the European Union, 2004). Certainly, the issue of a resident permit to people who have been smuggled is optional and not compulsory as it is in the case of victims of trafficking. However, if applied in connection with the Temporary Protection Directive, it can become compulsory as it could be the only way to identify victims of trafficking amongst smuggled people. Indeed, if victims of trafficking do not make any claims, by granting a visa to smuggled people who may have been victims of trafficking, the EASO in cooperation with domestic police, can have the opportunity to identify victims of trafficking at the hotspots. This is because smuggled migrants will not be automatically returned to their countries of origin as requested by the EU Return Directive. Hence, even if victims of trafficking do not make any claims, it will be possible to identify them. Without applying the Temporary Protection Directive, many victims of trafficking may never be protected. This is because Article 4(1) of the Directive states that 'the duration of temporary protection shall be one year'. It also states that the duration 'may be extended automatically by six monthly periods for a maximum of one year' and, according to Article 4(2), for another year. This means that the EASO and police forces may have up to three years to identify victims of trafficking amongst smuggled people. This is exactly what they need as previous research conducted in Rimini has shown that police forces, in cooperation with local humanitarian organisations, took many years to completely defeat the crime of trafficking in that city because the identification of victims was very difficult. Victims were reluctant to claim and report traffickers due to the fear of retaliation (Ventrella, 2007, pp. 80–85).

Can a similar approach be a pull factor? Ineli-Ciger (2015) argues that the Directive on temporary protection has not been activated because Member States fear that it could create a pull factor because many smuggled people may make false claims to obtain a visa in Europe. It is thought that this is very unlikely as smuggled people who have not been victims of human trafficking clearly state this fact. They consider smugglers their only hope to reach Europe and they accept to pay the price for their journey as they think the activity of smugglers is a service that should be paid for (Achilli, 2015). The problem exists when there are people who do not speak out and do not make any claims. The Commission has reported that victims are hesitant to cooperate with investigative authorities 'and this can still jeopardise their access to assistance and support' (European Commission, 2016d, p. 43). In past research undertaken in Siracusa (Italy), police officers and public prosecutors stated that people who have been victims of human trafficking do not make claims. However, if there are people who make false claims, it is a task and ability of police and public prosecutors to understand the person is not a victim but just a false claimant and these principles apply for all crimes (Ventrella, 2007). Hence, a different approach at hotspots is possible.

6. Conclusions

This article has dealt with connections between the smuggling of migrants and human trafficking. The article has stressed that not all smuggled people are victims of trafficking. Migrants who take the decision to leave their countries of origin, look for smugglers and are aware they are providing a valuable service for them which has to be paid for. However, there are categories of migrants who become victims of human trafficking during their journey from Africa to Europe. Despite this, they have the right to be heard by national authorities of Member States, as Member States have to comply with the prohibition of collective expulsion, EU law and CJEU case-law do not facilitate the identification of victims of human trafficking amongst smuggled people. Now that hotspots have been established, it is time to adopt legislation to facilitate the identification of victims of human trafficking, otherwise, the crime will not be defeated and vulnerable migrants will continue to become victims. This approach should be adopted at hotspots created in Italy and Greece and new hotspots should be created in Turkey where victims of human trafficking should be identified amongst smuggled migrants.

Law on people smuggling should insert provisions which state that Member States shall take the responsibility to identify victims of human trafficking within hotspots and in cooperation with the EASO whose mandate should be increased to permit the identification of victims of human trafficking by identifying them at hotspots. In addition, EASO and domestic police should evaluate whether the Temporary Protection Directive should be applied when there is circumstantial indication that people who do not make claims have become victims of human trafficking during their journeys.

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Commentary

Entrepreneurship and Innovation in the Fight Against Human Trafficking

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Abstract
There has been much discussed and written on the benefits of entrepreneurship education, as well as the importance of early access to this type of learning. But how can entrepreneurship education train and inspire the next generation of anti-trafficking leaders? How can entrepreneurship also be a driver for prevention and a source of economic stability for those at-risk and survivors of human trafficking? At present, there are entrepreneurs and entrepreneurs-in-training at multiple age levels coming from a variety of backgrounds, incomes, and circumstances who will develop groundbreaking strategies and solutions in the fight against trafficking. These current and future entrepreneurs can also provide fresh perspectives to those in government and business while building more effective tri-sector coalitions and partnerships that address human trafficking. This article explores how and why entrepreneurship can be a key vehicle for social change and innovations in combating human trafficking, along with providing a multi-ingredient recipe of prosperity for those most vulnerable.

Keywords
business; education; entrepreneurship; human trafficking; secondary education; youth

Issue
This commentary is part of the issue “Perspectives on Human Trafficking and Modern Forms of Slavery”, edited by Siddharth Kara (Harvard Kennedy School, USA).

1. Introduction

As stakeholders look to new and innovative solutions in the fight against human trafficking, the crucial role of the private sector has been recognized. With this recognition, training a new generation of business leaders in anti-trafficking strategies has become even more critical as one significant component to address this very complex issue. Entrepreneurship education in business school curricula, for youth and within other programming, can also play a meaningful role in tackling human trafficking as a means of prevention to those at-risk to trafficking; survivors of human trafficking; and a new wave of entrepreneurs who are blazing a trail in anti-trafficking innovations. While the concept of entrepreneurship education within the anti-trafficking space has yet to generate research and wide-spread evaluation as to its overall impact, it deserves attention as an emerging strategy to confront a multi-faceted global challenge.

The global scope of human trafficking is widely debated, and different data sets exist within the anti-trafficking field. The International Labour Organization estimates that close to 21 million men, women, and children are held in conditions of forced labor (International Labour Organization, 2012). These adults and children are trapped in unimaginable conditions and forced to endure extreme torture and deprivation. The majority of these victims are enslaved in various sectors, such as construction, manufacturing, and seafood processing (International Labour Organization, 2012). The International Labour Organization further estimates that out of the 21 million suffering, 68% are victims of labor exploitation and 22% are victims of sexual exploitation (International Labour Organization, 2012). Therefore, it is vital to engage the business community in this global fight.

Human traffickers are in the business of making profits and large profits in the billions annually (International Labour Organization, 2014). Human trafficking is just one part of a lucrative global illicit economy. Therefore, the importance of fighting the global crime of human trafficking with the legitimate economy is imperative (Shelley & Bain, 2015). In the past decade, different initiatives have

emerged in order to engage, assist, and convene those in the private sector to look more deeply into how business and business leaders can make a significant impact in the anti-trafficking movement. From the travel and tourism industry launching critical campaigns against sex trafficking to the financial sector utilizing data analysis tools to track the financial transactions of traffickers, the private sector has begun to make headway (Bain, Metallidis, & Shelley, 2014). Anti-trafficking public policy addressing the private sector has developed through laws like the California Transparency in Supply Chains Act of 2010 (United States Department of Labor, n.d.) and the UK Modern Slavery Act of 2015 (Modern Slavery Act, 2015). Since the importance of business has been identified, it is even more essential to train the next generation of business leaders and entrepreneurs how to think and act critically and effectively around the issue of human trafficking.

In training this next generation of business leaders, entrepreneurship education has been integrated into curricula at business schools globally in addition to traditional corporate management training. Top entrepreneurship programming has developed in schools in the USA, UK, Spain, France, and China (Financial Times, n.d.). Centers, initiatives, research, and core programming now exist and include the Center for Entrepreneurial Studies at Stanford University's Graduate School of Business; the Harvard Business School's Social Enterprise Initiative; Babson College's undergraduate and graduate curricula; and the Entrepreneurship Centre at the University of Oxford's Saïd Business School. In defining entrepreneurship for this next generation of business leaders, the word entrepreneurship has a wide variety of meanings. Definitions often include words like "fulfilling a need" or "opportunity" or "risk-taker." According to John Hagel of Deloitte's Center for the Edge in a recent *Harvard Business School Review* post, a more effective definition of an entrepreneur might be "someone who sees an opportunity to create value and is willing to take a risk" (Hagel, 2016). Entrepreneurs see a world of endless possibility and the possibility for dynamic and systemic change for the world's most pressing challenges. Entrepreneurs use "creative and innovative approaches to create value for stakeholders and society" (Neck, n.d.). Entrepreneurs, through their educational training, also have an understanding of business and business models to advance their global work and outlook.

Early entrepreneurship education at the primary (elementary education) and secondary school (high school or final years of statutory education) levels also creates a path to future changemakers. It has been noted that teaching business skills and entrepreneurship at an early age builds confidence, leadership, critical thinking, financial literacy, communication skills, and most importantly, encourages a passion for a cause and/or social change. This type of "learning opens a child's world to something greater than themselves," and by learning these basic skills at an early age, colleges and universities can then further develop the abilities of these students with their own entrepreneurship curricula (Studdard, Dawson, & Jackson, 2013). Early entrepreneurship education can also provide a path to success for women and underrepresented groups, and programs like the Network for Teaching Entrepreneurship (NFTE) provide programming for low-income and at-risk students (Studdard et al., 2013).

If today's entrepreneurs-in-training begin to think analytically around issues like human trafficking, groundbreaking approaches have the ability to materialize and grow. Entrepreneurship education has the dual capacity to create the next leaders of the anti-trafficking movement and/or can also hold the key to lasting economic stability for those who are survivor leaders and at-risk for this horrific crime.

2. Human Trafficking, Education, and Entrepreneurship: The New Wave of Changemakers

Entrepreneurship education and entrepreneurs focused on addressing human trafficking are emerging globally. In recent years, entrepreneurs have developed a number of start-ups, nonprofits, and ventures to tackle this egregious human rights abuse. Many of these entrepreneurs are working on a tri-sector level: engaging governments, the private sector, and civil society as a coalition for good. Entrepreneurs are coming from a diversity of backgrounds such as business, government, technology, the arts, and academia. Founders are also of all ages. Importantly, survivors of human trafficking have become entrepreneurs ensuring that they are never at-risk for trafficking again.

One example of incorporating anti-trafficking strategy into entrepreneurship education is the Human Freedom Entrepreneurial Leadership Program within Babson College's Initiative on Human Trafficking and Modern Slavery. Started in 2016, this new program teaches secondary school (high school) students a curriculum of basic human trafficking awareness, statistics, cases, supply chains, and the role of business and entrepreneurship in the fight against trafficking. The curriculum is taught within a broader after-school entrepreneurship program in multiple schools (public, private, parochial, international, and charter) in the Boston, Massachusetts, USA metro area. Students have the option of crafting entrepreneurial endeavors to tackle human trafficking whether as a single start-up or as a separate business that will seek to combat human trafficking within its supply chains. Students then compete in a pitch competition for the Davis Spencer Freedom Innovation Award which includes seed money for the most researched, unique, and developed entrepreneurial endeavor (Sweeny, 2016). The spring 2016 winning team, two students from Fontbonne Academy in Milton, Massachusetts, USA, created the nonprofit, Guardian, to educate pre-teen girls on Internet safety as a means of sex trafficking prevention. The students developed an extensively researched

plan to include public and private sector partners to further develop their curriculum and programming. The students hope to launch their program in gateway cities (economically challenged Massachusetts urban centers with untapped potential) in Eastern Massachusetts, USA.

Entrepreneurs from a variety of backgrounds and ages are impacting the anti-trafficking movement across the globe. Her Future Coalition (formerly Made By Survivors), a social enterprise based in the USA, has made groundbreaking changes with their global work that began in 2005 (Bhardwaj & Goldberg, 2014). The founders, mobilized to action after learning about the horrors of sex trafficking in Nepal and India, developed a business model to ensure that trafficking survivors were economically empowered as entrepreneurs themselves and not at-risk for trafficking again. Made By Survivors worked with other suppliers and partners to sell products made by these survivor-entrepreneurs to those in the USA and beyond. Now, Her Future Coalition is working to expand shelter services for survivors and those at-risk, as well as education and lasting employment.

Other entrepreneurs are tackling global supply chains, technology, and the business sector itself. Remake, a California-based social enterprise, utilizes a platform to foster humanity within fashion markets. Through this "storytelling platform," Remake seeks to build a social and consumer movement around stopping human trafficking within fashion supply chains (Binkowski, n.d.). The Mekong Club, an organization based in Hong Kong, developed to specifically support and assist the private sector in the fight against human trafficking in Asia. The Mekong Club has crafted specific networking groups to work toward common goals and collaboration, while offering business expertise in supply chains and operations (Miquiabas, 2015). Marinus Analytics, founded by a graduate of Carnegie Mellon University, developed a software tool to mine the Internet to detect data on human trafficking operations (Gannon, 2015). This software tool, Traffic Jam, began as a senior honors thesis which later led to further research and data analytics in the fight against trafficking. Marinus takes a multi-stakeholder approach to anti-trafficking strategy, working with the NGO community, private sector, government, law enforcement, and academia to combat this crime. Due to Traffic Jam, 120 victims of trafficking have been rescued in the USA, and the tool is now employed by 75 law enforcement agencies (Tartan Board, 2015).

Other organizations have launched initiatives to support entrepreneurship. The Organization for Security and Co-operation in Europe (OSCE) has launched a project to support local anti-trafficking efforts, including economic opportunities for survivors of human trafficking in the Ukraine (OSCE, 2015). This project is an example of a joint government/civil society partnership toward a common cause. This project, also funded by the Canadian and Norwegian governments, gives NGOs the opportunity to conceive new social enterprises that train and employ survivors of human trafficking, enterprises such as a greenhouse business, a canteen, and a workshop (OSCE, 2015).

3. Conclusion

As global crime and the illicit economy continue to evolve, it is vital that key stakeholders look at fresh and innovative thinking to solve these complex challenges. Entrepreneurs and survivor-entrepreneurs can play a significant role in blazing a trail of change across the anti-trafficking movement and confronting the issue of human trafficking from a variety of angles. Business schools globally have an opportunity to make a meaningful dent in human trafficking by encouraging coursework on the topic including looking at it through a corporate and entrepreneurial lens. Educators and programming at the primary and secondary school levels also can be at the forefront of global change in this area. By training earlier and earlier, youth entrepreneurs can be on a direct path by the time they reach university level and well on their way towards success and change in the anti-trafficking field.

The role of business must also continue to be highlighted in anti-trafficking discourse and public policy discussions, as well as initiatives to engage more and more sectors in this global fight. Corporations, governments, and civil society are working together in a number of anti-trafficking initiatives. Entrepreneurs have the gifts to be the conveners, the connectors, and the changemakers who will work on a tri-sector level and work alongside corporations, governments, and within civil society to assist in innovative approaches and tactics. Traffickers have created their own business models, and now it is time for the anti-trafficking movement to push further ahead in innovation to force true systemic transformation.

Conflict of Interests

The author declares no conflict of interests.

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About the Author

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