

5-1-2011

Introduction: Understanding Human Trafficking and its Victims

Won Kidane

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Recommended Citation

Kidane, Won (2011) "Introduction: Understanding Human Trafficking and its Victims," *Seattle Journal for Social Justice*: Vol. 9: Iss. 2, Article 1.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol9/iss2/1>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons.

Introduction: Understanding Human Trafficking and its Victims

Won Kidane

Continuing its great tradition of enriching the scholarly discourse surrounding issues of social and global justice, the *Seattle Journal for Social Justice (SJSJ)* presents a cluster of brilliant, scholarly contributions that address various aspects of the global phenomenon commonly known as “Human Trafficking.” This nebulous sociological and legal concept appears to be more harmful than not. However, it is difficult to define its contours and measure its magnitude.¹ The root causes of the problem are ill-defined and misunderstood. Although there is a growing appreciation of some aspects of the problem, meaningful solutions have proven elusive. A wide range of competing—and even contradictory—national, regional, and international remedial efforts are currently underway.

The most preferred method of combating the problem appears to be the criminalization of some aspects of it. A good example of this effort is Velma Veloria’s concise description of Washington State’s House Bill 1175, which criminalizes human trafficking. Veloria’s piece uses all the laden terminologies that have come to be associated with human trafficking, including “mail-order bride,” “bride-trafficking,” “domestic violence,” “criminal industry,” “a nineteen-year-old pimp,” “sexual exploitation,” and “modern-day slavery.”² Its attempt to define the causes of trafficking is also notable: absolute poverty, violence related to economic instability, conflict, traffickers’ greed, and demand.³ Her comparison of modern trafficking with what she calls “old slavery” is particularly provocative:

In the ‘old slavery’ which operated on principles of legal ownership, the purchase cost of a slave was high and profits were low. There was also a shortage of potential slaves because ethnic

differences were important. Slaves had long-term relationships with their traffickers and were ‘taken care of.’ By contrast, in ‘modern day slavery’ the existing potential surplus of slaves means that the purchase price of slaves are very low and the profits are high.⁴

While Veloria’s general observations—coupled with criminalization as a solution—give the reader food for thought, Karen Bravo’s piece “The Role of the Trans-Atlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse” provides a more comprehensive and systematic appraisal of the subject. Like Veloria, her analysis is fundamentally predicated on the assumption that there is a parallel between the trans-Atlantic slave trade and current trafficking in persons.⁵

Bravo first introduces the reader to the internationally agreed upon definition of trafficking in persons,⁶ and interrogates the comparison that is often made between “old slavery” and “modern day slavery” in the form of human trafficking. Recognizing that the analogy to the trans-Atlantic slave trade is often meant to “appeal to emotions rather than the intellect,”⁷ she suggests that, among others, it would have the effect of “diminution of the horror of trans-Atlantic slavery.”⁸ However, she attributes benign intent to the analogy,⁹ and accepts the similarities of the nature of the “victimization.”¹⁰ She also accepts the suggestion by US officials that the root causes of the problem are a combination of pull and push factors such as poverty and the desire to gain better economic opportunity, respectively.¹¹ She subscribes to the school of thought that argues that greedy transnational criminal enterprises avail themselves of the opportunity created by the vulnerability of the victims and facilitate the trade and exploitation. Although she criticizes national and international authorities for focusing on punitive measures rather than addressing the underlying problem of economic inequality and subordination, she stops short of concluding that the Global North is principally interested in

containing the phenomenon of unauthorized migration rather than assisting the victims.¹²

US Ambassador Miller's description of the problem sheds some light on the perception of the nature of the problem and hence the focus on criminalization. He identifies three challenges: (1) deprivation of human rights and dignity, (2) the spread of disease, and (3) national security and stability. A solution in the form of criminalization addresses challenges 2 and 3, but probably not challenge number 1. Bravo's piece forces the reader to reflect on these issues. She also suggests that racial bias may also play a role in the appreciation of the problem and prescription of preferred solutions. In particular, she argues, rather provocatively, that "[i]t was the specter of the enslavement of white women that most outraged public opinion in the West and spurred to action Western legislators, who had ignored decades-long reports of the enslavement of Asian and African women and children."¹³ The reader is left to puzzle over this suggestion and to ask whether it could be reconciled with the idea that the anti-trafficking laws in the West are designed to contain the Global South, just like ordinary immigration laws. Their focus is allegedly not to help victims, but rather on criminal prosecution.

Professors Benjamin Lawrance and Ruby Andrew give the discussion a regional focus. They examine legislative efforts and legal remedy in Sub-Saharan Africa. Their inquiry is also propelled by colonialism, slavery, and the slave trade analogy,¹⁴ which may have ostensibly contributed to their choice of region. Taking Mauritania's domestic anti-slavery legislative efforts and its poor record of implementation as an example, they methodically document and assess the effectiveness of different models of domestic legislative efforts.¹⁵ By profiling some of these laws, they introduce some level of nuance to the inquiry and, in a way, highlight the simplicity of reducing the problem to the trafficked-victim and the trafficker-perpetrator. However, they criticize the diverse treatment of the subject by African nations. Instead, they advocate for a uniform and more

aggressive “blanket” approach—which is the broadest proscription of conduct and complicity.¹⁶ One interesting factor they import to the discourse is the role of parent complicity and the various ways of approaching the problem. A case in point is the story of a ten-year-old Togolese girl:

There was a woman who came to the market to buy charcoal. She found me and told my mother about a woman in Lome’ who was looking for a girl like me to stay with her and do domestic work. She came to my mother, and my mother gave me away. The woman gave my mother some money, but I don’t know how much.¹⁷

Sadly, there appears to be a consensus that the criminal justice system is the right fit to deal with this mother’s actions. The only dispute was on the length of sentence that the mother deserved. Even Human Rights Watch considers the mother a perpetrator or an accomplice but advocates for “reduced penalties for parents who reasonably but mistakenly believe that aiding and abetting child trafficking, or failing to report traffickers to the police, is in their child’s best interest.”¹⁸

Since the US Department of State started publishing the Trafficking in Persons (“TIP”) Report in 2000, the majority of African countries began to criminalize trafficking, though they continue to define it in different ways. Evidently, such efforts were spearheaded by the Department of State, as the timing of their implementation cannot be a mere coincidence. Professors Lawrance and Andrew are disappointed because the implementation has been unimpressive. Instead, they suggest a more systematic investigation of crimes in the individual countries in addition to developing more robust cross-border cooperation.¹⁹

The reader of this great and informative piece would certainly ask some of the following questions: What should be done to the Togolese mother who agreed to the “trafficking” of her ten-year old daughter? Where does

she fall on the spectrum of victims and perpetrators? At a minimum, do we not want to know more about her before we send her to prison?

Wendy Duong's inquiry also has a regional focus—Southeast Asia—portrayed as a region of victims and victimizers. This is a comprehensive and detailed piece. She characterizes her own work as a combination of “the advocacy speech of an NGO activist and the more structured analysis of an international legal scholar.”²⁰ The recited testimonials are compelling. They highlight the true nature and worst aspects of human trafficking. They are methodically documented in this piece. It primarily focuses on the shortcomings of the law and legal institutions to deal with the problem. Duong endorses the belief that at least four factors contribute to the problem in Southeast Asia: poverty, armed conflict, industrialization (specifically, a widening gap in income), and population growth.²¹ She also notes that culturally ingrained discriminatory practices contribute to the problem.²² The advocacy portion relies on such extreme examples as families selling their daughters to “buy color televisions and video equipment.”²³ Framing the issue in these terms, Duong builds the legal analysis around what she calls the “Human Trafficking Triangle”—an exporter/supplier, an importer, and a consumer.²⁴ The proposed legal solutions are consistent with the previous two pieces: crime control and prosecution. The framework Duong proposes is detailed and systematic. It includes such remedies as engaging international responsibility for states, enacting robust domestic anti-trafficking criminal laws, elevating trafficking to a crime against humanity for international criminal responsibility, and utilizing compensatory regimes including private rights of action in developed countries such as the Alien Tort Statute.²⁵

Heather Montgomery assumes the task of defining child trafficking and child prostitution by focusing on Thailand. She questions the fundamental assumptions and tears down stereotypes while challenging our sensibilities. Consider the following extreme example:

In Northern villages, remittances from prostitutes often mean that parents and siblings do not have to work in the dry season, and have to plant only one rice crop a year. The labor of a daughter-sister who prostitutes herself can spare her family from work as well as provide them with otherwise unattainable consumer goods. Thus prostitutes invest in the conservation of their families and homes. In doing so, they carry out traditional obligations of women to take care of aging parents and younger siblings.²⁶

She focuses on the distinction between trafficking and willful participation and, hence, the most fundamental question of the agency of the “victims.” At the most basic level, she questions the success of the legislative criminalization model as a blanket solution to the problem.²⁷ She demonstrates the various aspects of the problem and, thus, the need for a more nuanced approach.

In the popular media, trafficking has been equated with “the sexual exploitation of women and girls and their victimization and degradation.”²⁸ This sensationalism, for Montgomery, oversimplifies the problem and “hijacks ‘attention away from structural, underlying causes that give rise to exploitation, structural violence, and the coercion of (migrant) workers.’” By so doing, she links it to the larger problem of global inequality, subordination, and immigration control. Offering a balanced account and systematic interrogation of the existing literature, she introduces the stereotypical middle-aged Western customer of the Thai brothels.²⁹ He gets a lot of attention because he is one of us. Indeed, the media stories are less about the young girls than about the tourist. It is a story that sells very well. But, Montgomery asks, is that the whole truth? Is it possible that the women and girls may have chosen to participate? Are they always underage and unable to consent? Are they always underage and unable to consent? Are most of their clients Western tourists? Do they consider themselves to be victims? Are they always sold by their greedy parents in exchange for small amount of money, which they use to buy TV sets? Do they always contract HIV and die no sooner than their rescue?³⁰ Consider one Thai girl’s opinion: “I had a very good income, worked short

hours, indoors, it wasn't hot. I could shop with my friends during the day, and my skin stayed white. I don't really think it was bad."³¹ But again, there is this advertisement in one Bangkok bar for perspective: "5 fresh virgins; 4 down, one to go."³²

Having taken the reader on an intellectual and emotional rollercoaster, she offers an audacious cultural explanation based on her ethnographic study of child prostitution in Bann Nur. The crux of it reads; "The children continually emphasized that they did not 'sell sex', but rather they went 'out with foreigners' or had 'guests.'" On cultural acceptability, she writes:

[T]hey had an ethical system whereby the public selling of their bodies did not affect their private sense of humanity and identity. When I asked one thirteen-year-old about selling her body, she replied 'it's only my body.' She could make a clear conceptual difference between her body and what she perceives to be her innermost 'self and her personal sense of identity and morality.'³³

Her conclusion is unwavering, however. "Regardless, I remain deeply uneasy about their views and would argue that, whatever the semantics used, appalling sexual exploitation was being inflicted on these children."³⁴ She does not hesitate to say that "both their clients and their parents had recruited, harbored, and facilitated child prostitution, making them traffickers under international law."³⁵

While applauding the positive impacts of the prosecution and punishment of perpetrators through a network of international, regional and domestic criminal laws from Australia to the United States and anywhere in between, she proposes a closer look at other alternatives to helping victims, particularly children. Her message is clear: one size does not fit all. It requires a deeper appreciation of the sources and nature of the problem in the context of the area where it takes place. Paying parents to keep their daughters in school until they turn 18 might work in some societies. In others, parents may need compensation to keep their second or third daughters in school or at home, but not their first, simply because of the

way their society is structured.³⁶ The important message is that whatever approach is taken, it has to be targeted to the needs of particular communities. Her message again reverberates: combating the phenomenon through the criminal laws alone may, in fact, be counterproductive.

Ankita Patel's piece takes the discussion to the realm of United States domestic law. It characterizes trafficking as modern day slavery, heavily relies on TIP statistics, and critically examines the effectiveness of the US Trafficking Victims Protection Act ("TVPA").³⁷ The Act takes a criminal justice approach; it focuses on prosecuting traffickers while rewarding the victims with immigration benefits for their cooperation in the apprehension and conviction of the perpetrators. The avowed comments of the Act are three: Protection, Prevention, and Prosecution. Known in the literature as the "3-P paradigm," according to Patel, the second two "Ps" are subordinate to the first.³⁸ The immigration benefit that the victim may claim is the T-visa. The requirements for eligibility for such a visa tell a story of law enforcement. To be eligible, the person must (1) be a victim of a severe form of trafficking (the form of trafficking involving sexual exploitation); (2) be physically present in the United States and its territories; (3) have complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime, and (4) show that he/she would suffer extreme hardship involving unusual and severe harm upon removal.³⁹

The statistics offer an interesting insight. When Congress enacted the TVPA, it made 5,000 T-visas available each year. Of the 50,000 visas that were available between 2000 and 2010, only 2,300 were claimed. One cannot think of any other United States visa category that is so underutilized except perhaps the visa category that requires the investment of a million dollars and the hiring of fifteen US citizens.⁴⁰ Patel puzzles over these figures and tries to find the answer. Some of the problems stem from the conditioning of eligibility on aiding prosecution. Namely, victims are

fearful of government officials, the possibility of deportation, and the real possibility of retaliation by traffickers.⁴¹ The rate of prosecution has also been unimpressive. Over the same decade, only about 294 suspects were prosecuted.⁴² Patel thus raises the question: what does this say about the effectiveness of the crime control model for combating human trafficking? She then points to the most fundamental question of the relationship between immigration control and trafficking. Indeed, she suggests, although not directly, that cross-border trafficking exists and thrives because of immigration control.⁴³ Sometimes, the victims and the traffickers share an adversary, and that adversary is the border protection agency. When victims' eligibility depends on aiding law enforcement, that requirement creates a risk that the victims are all too often not prepared to assume. Henceforth, Patel concludes: "restrictive immigration practices foster human trafficking."⁴⁴

Patel also seeks explanation from broader structural problems such as poor working conditions, exploitation of undocumented workers, and the anxious relationship between immigrant communities and federal and state law enforcement agencies.⁴⁵ She recommends a human rights model that seeks a victim-centric remedy rather than a perpetrator-centric prosecutorial and punitive model, which she argues has been a colossal failure.⁴⁶

These six brilliant, scholarly contributions focus on different pieces of the human trafficking puzzle. They inform, question, argue, and challenge our assumptions and imaginations and propose certain solutions. Their contribution to the existing literature is profound. The *SJSJ* must be congratulated.

¹ See US DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (10th ed. 2010). The 2010 TIP Report says that 12.3 million people have been trafficked in 2010. However, the figures have been contested.

² Velma Veloria, *The Road to H.B. 1175, Making Human Trafficking a Crime in the State of Washington, My Story*, 9 SEATTLE J. FOR SOC. JUST. 549, 549-53 (2011).

³ *Id.* at 552.

⁴ *Id.* at 553.

⁵ Karen E. Bravo, *The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. FOR SOC. JUST. 555, 555 (2011).

⁶ The consensus international definition is contained in the UN Trafficking Protocol. It reads:

For the purposes of this Protocol:

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

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) “Child” shall mean any person under eighteen years of age.

Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25 (II), U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (Vol. I), at 60 (Sept. 9, 2003). Sub section (a) is quoted in Bravo, *supra* note 5, at 558.

⁷ Bravo, *supra* note 5, at 562.

⁸ *Id.*

⁹ Such as ignorance, the desire to attract more attention to the current problem etc. *Id.* at 571.

¹⁰ *Id.* at 572.

¹¹ *Id.* at 571. (quoting ambassador John Miller).

¹² *Id.* at 571-72.

¹³ *Id.* at 577.

¹⁴ See Benjamin N. Lawrance & Ruby P Andrew, *A “Neo-Abolitionist Trend” in Sub-Saharan Africa? Regional Anti-Trafficking Patterns and a Preliminary Legislative Taxonomy*, 9 SEATTLE J. FOR SOC. JUST. 599, 604-11 (2011).

¹⁵ *Id.* at 632. They classify these efforts into: The “Blanket Approach” Human Trafficking Laws, Child Centric Approach, and the Revalidation Approach (amending existing laws).

¹⁶ *Id.* at 652.

¹⁷ *Id.* at 656. (quoting JONATHAN COHEN, BORDERLINE SLAVERY: CHILD TRAFFICKING IN TOGO 23 (Joanne Csete et al. eds., 2003)).

¹⁸ *Id.* (quoting Human Rights Watch (HRW), *Togo: Borderline Slavery: Child Trafficking in Togo*, 15.8(A), 39-40 (April 2003)).

¹⁹ *See id.* at 656-57.

²⁰ Wendy N. Duong, *The Southeast Asian Story: Victims of Human Trafficking as the Forgotten “Prisoners of Conscience”—Some Proposed Legal and Nonlegal Measures*, 9 SEATTLE J. FOR SOC. JUST. 679,680 (2011).

²¹ *Id.* at 699.

²² *Id.* at 700.

²³ *Id.* (citing *Caught in Modern Slavery: Tourism and Child Prostitution in Thailand*, Country Report Summary prepared by Sudarat Sereewat-Srisang for the Ecumenical Consultation held in Chiang Mai, May 1990).

²⁴ *Id.* at 706-08.

²⁵ *Id.* at 711-14.

²⁶ Heather Montgomery, *Defining Child Trafficking & Child Prostitution: The Case of Thailand*, 9 SEATTLE J. FOR SOC. JUST. 775, 789, 15 (2011) (quoting Marjorie A. Muecke, *Mother Sold Food, Daughter Sells Her Body: The Cultural Continuity of Prostitution*, 35 SOC. SCI. MED. 891, 897 (1992)).

²⁷ *See id.* at 776.

²⁸ *Id.* at 778.

²⁹ *Id.* at 779.

³⁰ *Id.* at 780-92.

³¹ *Id.* at 788.

³² *Id.* at 790.

³³ *Id.* at 794.

³⁴ *Id.* at 798.

³⁵ *Id.*

³⁶ *See id.* at 801-02.

³⁷ Victims of Trafficking and Violence Protection Act of 2000, 106 P.L. 386, 114 Stat. 1164 (codified under scattered sections of 8, 18, and 22 U.S.C. (2000)).

³⁸ Ankita Patel, *Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking*, 9 SEATTLE J. FOR SOC. JUST. 813, 815 (2011).

³⁹ *See* Immigration and Nationality Act of 1952 (INA), §101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T) (1952).

⁴⁰ *See* INA § 203(b)(5), 8 U.S.C. § 1153.

⁴¹ Patel, *supra* note 38, at 822.

⁴² *Id.* at 822.

⁴³ *Id.* at 830.

⁴⁴ *Id.* at 829-31.

⁴⁵ *Id.* at 831-34.

⁴⁶ *Id.* at 834-38.