

Differential Perceptions and Treatments for Sex Trafficking

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Across the international regime of counter-human trafficking, the rhetoric of the “3 Ps” - prevention, protection, and prosecution - guides much of the action towards ameliorating this non-traditional security threat. This research focuses on the prosecution and restitution of human trafficking and seeks to answer the question “In what ways does the European Union treat sex trafficking, and why?” In doing so, I find that the relationship between the status of sex work in a country and instances of compensation awarded to victims of human trafficking is an insignificant one, but that other variables may affect rates of compensation to victims significantly. I also find that in my dataset, there is no evidence of a significant relationship between type of offense charged and whether victims were awarded restitution for their experiences.

The European Union’s Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states in four distinct articles - Articles 12, 13, 17, and 19 - the importance of compensating victims of human trafficking. A fifth article, Article 15, specifies compensation and legal counsel for child victims of trafficking. Article 12 specifies the responsibility of member states to “ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, include for the purpose of claiming compensation,” thus setting the tone for Article 15’s compensation mechanisms. This is reiterated in Article 17: “Member states shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.”¹

If the treatment of victims of all forms of trafficking is contingent on “the role of victims in the relevant justice system” and “existing schemes of compensation,”² then how many member states of the European Union have frameworks for prosecution consistent with either the Palermo Protocol and/or the aforementioned EU Directive? Moreover, how many states have the appropriate restitution mechanisms under which compensation of victims would be possible? In answering these questions, I am then able to appraise the treatment of sex

¹ Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. *Official Journal of the European Communities* L 101/1 15.4.2011.

² Ibid.

trafficking. Thus, in addition to evaluating EU member states' trafficking frameworks, I also answer major questions concerning sex trafficking more directly. Specifically, I address the ways in which sex trafficking compares to other forms of trafficking in both prosecution and restitution by EU members.

I hypothesize that the legal framing of sex work itself results in different treatments. That is, the status of sex work - legal, decriminalized, or illegal - determines the state's political and moral perspective of sex trafficking, which in turn affects prosecution of perpetrators and restitution for sex trafficking victims.

In evaluating both prosecution and restitution, I consider twenty-three distinct variables, including the legal status of sex work in a given state, whether the state's prosecution mechanism meets the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) standards, whether the restitution mechanism meets GRETA standards, whether the state was a founding member of or acceded to the EU, and whether the state has an appointed Rapporteur for trafficking. Identifying and controlling for these variables creates a good snapshot of the conditions that could lead to a difference in the treatment of sex trafficking among EU member states. It may also help identify prevailing patterns that result in detrimental differential treatment and may give a clue as to policy changes that might be warranted.

This second section of the paper contains a literature review to provides a framework to contextualizes human trafficking in the European Union. I then identify the paper's methodology and conduct an analysis of my findings. Finally, I conclude with the implications of those challenges on future research related to this topic, as well as a discussion of the importance of this research in both scholarly and policy arenas.

Literature Review

From its inception as the "White Slave Trade" at the *fin de siècle* of the 19th century to its contemporary conflation with sex work in some countries, the international counter-human trafficking regime has been tinged with often racial and classist biases and moral posturing. This has worrying implications for the efficacy of counter-trafficking initiatives worldwide. Even under supranational umbrellas, nationally held beliefs about human trafficking – especially the implications of priorities on policy – can still play a role in prevention,

prosecution and protection.³ Ultimately, these biases, perceptions and misperceptions may lead to institutionalized differential treatments of victims of both labor and sex trafficking (known altogether as trafficking in human beings or THB). This literature review looks at the rich body of scholarship that exists on human trafficking more generally and the flaws of the counter-trafficking regime more specifically.

The Historical Rhetoric of Trafficking

There is bitter division within the counter-trafficking regime even today. Dr. Jo Doezema in *Sex Slaves and Discourse Masters* looks closely at the negotiation behind the Palermo Protocols and other counter-trafficking legislations throughout the 20th century – more specifically, the consideration of “sex work” within trafficking and “white slave” discourse. Doezema and other commentators note the ubiquity of two broad blocs that have led the charge in nearly every piece of such legislation on an international level. These camps can largely be construed as (1) abolitionist and (2) labor/regulationist, and both camps have increasingly claimed feminist goals.⁴ During the Palermo negotiations, the former camp – known as the Coalition Against Trafficking in Women (CATW) – viewed human trafficking as being inherently linked to sex work and, as such, sought the abolition of sex work in all its forms. The latter camp, known as the Human Rights Caucus (HRC) or the Global Alliance Against Traffic in Women (GAATW) in official documents, opposed abolitionism and framed sex work as labor. The division of negotiation into these two camps reflects the historical association of the word “trafficking” with gendered violence rather than its full scope, which is intended to cover labor and organ trafficking as well.

It is this historical divisiveness that Doezema takes umbrage with. In her analysis, she takes a feminist-constructivist tack and sees the very notion of trafficking as a constructed myth and one that allows for the policing of women’s morality.⁵ This does not mean that trafficking as a phenomenon does not occur; Doezema’s definition of “myth” refers to an oversimplified reality, one that is able to fit trafficking (and its initial iteration as

³ Janie Chuang, “Exploitation Creep and the Unmaking of Human Trafficking Law,” *The American Journal of International Law* 108, no. 4 (October 2014): 609–49, <https://doi.org/10.5305/amerjintelaw.108.4.0609>.

⁴ Jo Doezema, *Sex Slaves and Discourse Masters: The Construction of Trafficking* (London ; New York : New York: Zed Books ; Distributed in the USA exclusively by Palgrave Macmillan, 2010), 27.

⁵ *Ibid*, 31.

the “white slave trade”) into a comfortable “madonna/whore” dichotomy.⁶ She posits that this dichotomy and the myth behind trafficking is enshrined in the Palermo Protocols, in large part due to the influence of the CATW. The very language in the Palermo Protocol directly mimics the language of the “white slave trade.”⁷ Doezema does not oppose the notion of a counter-trafficking regime, rather she instead urges a re-appropriation of the existing myth around trafficking – towards one that centers sex workers, moves beyond “consent as the yardstick by which prostitution is measured,” and perhaps even the queering of the study of human trafficking.⁸

Liat Kozma’s recent work *Global Women, Colonial Ports: Prostitution in the Interwar Middle East* serves as a good transition from and complement to Doezema’s work. Kozma takes a sex work-centric approach to her scholarship and does not primarily focus on trafficking, though she does address the confluence. Kozma’s socio-historical work positions the League of Nations as being central to codifying internationalist approaches to sex work and sex trafficking more broadly. Methodologically, Kozma attempts to use both top-down and bottom-up approaches to transnationalism. She paints a historiographic picture of interwar sex work in the MENA region. Kozma brings the Advisory Committee for Trafficking in Women and Children (CTW) and the feminist abolitionist movement’s influence thereupon to the fore. She also traces the transition from the “white slave trade” rhetoric to a more holistic reference to “traffic in women”.⁹ She considers the racism and colonial mindset that was a staple of the CTW and Western imperialist feminist movements; the contributing non-governmental organizations were efficient enough that their rhetoric was employed in the 1933 International Convention for the Suppression of the Traffic in Women of Full Age.¹⁰ However, Kozma argues that beyond chastising the people living in mandatory territories for their moral corruptness, the CTW did not attempt to address any traffic in non-white women.

⁶ Ibid., 31, 50.

⁷ Ibid., 116.

⁸ Ibid, 175-176.

⁹ Liat Kozma, *Global Women, Colonial Ports: Prostitution in the Interwar Middle East* (Albany: SUNY Press (State University of New York Press), 2017), 22.

¹⁰ Ibid., 27-28.

Kozma satisfies Doezema's earlier criticism of counter-trafficking rhetoric by viewing sex workers and associated individuals as having autonomy. In her framing, sex workers are beholden to context *beyond* what is imposed upon them institutionally and structurally. She also looks at sex work and traffic through the lenses of migration, medicine, and, unusually, a form of social cartography that maps the geographic implications of the then-burgeoning counter-trafficking regime and vice versa.¹¹

Views on the Counter-Trafficking Regime

Directly tracing the trajectory of the international counter-trafficking regime is Anne T. Gallagher's *The International Law of Human Trafficking*. Gallagher takes an extremely comprehensive approach to the international legal instruments of counter-trafficking, from the regime's nascent beginnings with the League of Nations to a variety of contemporary organizations, including the UN, the EU, and the South Asian Association for Regional Cooperation (SAARC). She also looks at non-treaty instruments of international law, namely customary law and the application of *jus cogens* norms, and the relation to trafficking in human beings. Gallagher is wary about attempts to conflate trafficking with "modern day slavery" (MDS). While acknowledging the emotional weight of slavery as rhetoric (particularly in the United States and EU), Gallagher's main concern is with the immense legal burden that comes with labeling any act that of slavery. As a *jus cogens* norm, slavery is on par with genocide as an egregious violation of international human rights law; however, there are significant differences between trafficking and slavery. Despite the origins of trafficking as "white slave traffic," more contemporary case law has shied away from conflating trafficking and slavery. "Practices similar to slavery" have been included as coming under the definition of trafficking, but Gallagher notes that attempts to "bring trafficking within the international legal prohibition on slavery" may be an example of a "... [manipulation] of international legal" instruments.¹² Gallagher also includes a 1953 UN report detailing six characteristics of slavery: (1) the individual may be made an object of purchase; (2) the master may use the individual, in particular his or her capacity to work, in an absolute manner; (3) the products of the individual's labor become the property of the master without any compensation commensurate to the value of the labor; (4) the ownership of the individual can

¹¹ Ibid., 45.

¹² Gallagher, *The International Law of Human Trafficking*, 142.

be transferred to another person; (5) the status/condition of the individual is permanent in the sense that it cannot be terminated at the will of the individual; and (6) the status/condition is inherited/inheritable.¹³ While Gallagher warns against taking these characteristics as definitive delineation of slavery, one can begin to see differences between slavery and trafficking:

Thus, while trafficking can certainly include elements of or lead to slavery, from an international legal perspective conflating trafficking with slavery is both reductionist and difficult to punish. The weight of a peremptory norm in international law often puts an obligation *erga omnes* on other states to intervene. States would be unwilling to enforce punitive measures against trafficking if it were conflated with a *jus cogens* norm, which would hurt both the intensity of slavery and undermine the efficacy of counter-trafficking measures.

Methodologically speaking, Gallagher looks not just at the text of international statutes, but the *travaux préparatoires* that help contextualize the Palermo Protocol's final text within its negotiations as well as the legacies of preceding treaties. Relevant to the criticisms made by Heli Askola of the monolithic approaches taken to counter-trafficking approaches in *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*, Gallagher examines how trafficking measures could have implications for women's rights and the statutes that govern the treatment of refugees and migrants.

Gallagher outlines some factors that lead to issues of compliance with trafficking. In doing so, she appears to allude to realist, liberal, structural, and constructivist explanations for why states do not comply with international law.¹⁴ The first reason is the inherent complexity of tackling trafficking, and the elusiveness of an easily transposable solution thereto, which makes states less likely to implement compliance measures.¹⁵ It also makes measuring compliance itself more difficult. The second point, "Clarity and Legitimacy of Rules," falls in line with structural and liberal theories of international relations. The rules that govern counter-trafficking measures in international law must be specific and fair; this fairness lends credence to international instruments

¹³ Ibid., 184.

¹⁴ Ibid., 461-462.

¹⁵ Ibid., 464.

and facilitates a spirit of cooperation. Gallagher juxtaposes this with the US's Trafficking in Persons (TIP) Report, which ranks and accordingly sanctions states that do not comply with what the US deems to be appropriate counter-trafficking measures. According to Gallagher, states find the TIP report to be "intrusive, unfair, and even illegitimate."¹⁶ Finally, Gallagher touches on more normative approaches to compliance, such as conditioning states through "the frequency and extent to which state performance is measured" to uphold the norm of counter-trafficking; that is, by improving monitoring mechanisms.¹⁷

Hidden Trafficking Around the World by Stephanie Hepburn and Rita Simon takes a case-study approach to 24 countries that are major trafficking hubs. The countries are grouped using metrics to gauge conflicting trafficking agendas, work visa processes, and "unrest, displacement, and who is in charge." This approach to classifying human trafficking reflects the various situations that can exacerbate or promulgate trafficking – such as work visa loopholes and instability - or interrupt attempts to prosecute perpetrators and protect victims (conflicting agendas). Hepburn and Simon argue that the Schengen system itself enables trafficking: the increase in Bulgarian and Romanian victims (and perpetrators) of trafficking corresponds with both countries' accession to the European Union, further complicating the landscape in regards to controlling potential trafficking.¹⁸

"The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance" by Marija Jovanovic begins on the premise that "the risk of being detained, prosecuted and deported" not only forces victims to remain silent about their struggle, but serves as a control mechanism by which their traffickers can maintain power over them.¹⁹ Jovanovic's conclusion is predicated on the intersection where human rights law on victim protection meets criminal law principles that guide national legislation on the

¹⁶ Ibid., 465.

¹⁷ Ibid.

¹⁸ Stephanie Hepburn and Rita J. Simon, *Human Trafficking around the World: Hidden in Plain Sight* (New York: Columbia University Press, 2013).

¹⁹ Marija Jovanovic, "The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance," *Journal of Trafficking and Human Exploitation* 1, no. 1 (2017): 41–76, 42.

types of offenses to which the non-punishment principle applies, how and when it should be applied, and the “legal effects” thereof.²⁰

Jovanovic’s work informs the need for a standardized definition of exploitation, the application of criminal law concepts of “fair labelling” to distinguish between sex trafficking amongst different vulnerable populations, as well as offenses committed under the condition of trafficking, and the importance of divorcing trafficking justice from immigration considerations. To these ends, the Working Group on Trafficking in Persons, which was instituted to ensure “the effective implication of the [Palermo] Protocol,” said that it was incumbent upon states to “**consider** ... not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation...”²¹ Similar provisions were also laid out in the Council of Europe’s Anti-Trafficking Convention, as well as the EU’s Anti-Trafficking Directive. Regardless, this principle has not become normalized; moreover, the language of non-punishment varies throughout statutes in the counter-trafficking regime, acting as an obstacle to standardization.²²

Jovanovic questions human trafficking law in that it “does not state however which right, if any, is violated by prosecution and punishment of the trafficking victims for acts which other individuals may be justifiably be penalized.”²³ She answers this by suggesting that the offense of trafficking does not need to be invoked when there is proof that exploitation has physically occurred; in fact, all that is needed is an intention of exploitation.²⁴ This clarification is important. An oft-cited criticism of human rights law tends to be its vagueness; a similarly cited criticism of criminal law tends to be its propensity to overcriminalize, particularly in the Anglo-American tradition. The principle of fair labelling allows for the specification of offenses *within reason*. It is the difference between domestic violence and catch-all assault, or between marital rape and generalized sexual assault. Fair labelling allows for proportionality, bridging the *actus rea* of crime with the *mens rea*.²⁵ Moreover,

²⁰ Ibid.

²¹ Ibid., 46; emphasis mine.

²² Ibid., 47-48.

²³ Ibid., 49.

²⁴ Ibid.

²⁵ James Chalmers and Fiona Leverick, “Fair Labelling in Criminal Law,” *Modern Law Review* 71, no. 2 (March 2008): 217–46, <https://doi.org/10.1111/j.1468-2230.2008.00689.x>.

instruments of human rights law should seek to codify freedom from trafficking as central to human dignity. At the moment, the only similar right referenced is freedom from slavery – a *jus cogens* or peremptory norm - which has not helped the debate on whether trafficking in human beings should be “rebranded” as modern day slavery (MDS).²⁶ As discussed, Gallagher addresses the lack of “precise contours” between slavery and trafficking - specifically the “legal pressure to bear” in qualifying something as slavery.²⁷

Interestingly, one of Jovanovic’s main arguments – that criminal law should be involved in THB so as to “establish [the non-punishment principle’s] rationale and articulate rules of its practical application” – is met with a strong pushback in Janie Chuang’s *Exploitation Creep and the Unmaking of Human Trafficking Law*, which takes a human rights approach to counter-trafficking efforts. Chuang also makes a strong case against conflating MDS with trafficking in human beings, and the subsequent moral campaigns and panics created thereby. She further rebukes the very drafting of the Palermo Protocol on two grounds. The first ground of contention is the U.S.’s internalization of the enforcement role that was left unassigned in the Palermo Protocol. She posits that the United States, beginning with President Bill Clinton and especially during the George W. Bush administration, normalized the aforementioned morality campaigns and the perpetrator-focused justice that Jovanovic also criticizes, which do nothing to improve the conditions that allow for people’s vulnerability to trafficking.²⁸ Second, regarding Jovanovic’s criminal law argument, Chuang criticizes the centrality of law enforcement personnel to the drafting of the Palermo Protocol. The law enforcement personnel in question were divorced from human rights law as an institution, due to the Protocol being under the auspices of the United Nations Office on Drugs and Crime.²⁹ As such, the Palermo Protocol is antithetical to the non-punishment principle: the entire

²⁶ Jovanovic, “The Principle of Non-Punishment of Victims of Trafficking in Human Beings,” 50-51

²⁷ Anne Gallagher, *The International Law of Human Trafficking* (New York: Cambridge University Press, 2010), 178; Jovanovic, “The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance”, *ibid.*

²⁸ Janie Chuang, “Exploitation Creep and the Unmaking of Human Trafficking Law,” *The American Journal of International Law* 108, no. 4 (October 2014): 609–49, <https://doi.org/10.5305/amerjintlaw.108.4.0609>, 610; 617.

²⁹ *Ibid.*, 615.

regime of human trafficking starts from a flawed premise that prioritizes perpetrator-based justice over victim-based justice, a premise that is further reinforced by the United States.³⁰

Much of the literature on trafficking in human beings tends to be centered on the United States. Even scholars critical of the current THB international regime take a US-centric approach to narratives. Huiquan Zhou's "Towards a Comprehensive Response to Victims of Sex Trafficking" outlines three "waves" of responses to trafficking, and how each wave was informed by the zeitgeist of the time: from the first wave's turn-of-the-century fears of urbanization and patriarchal breakdowns that resulted in statutes like the Mann Act, to the second wave's response to the free-love informed proliferation of commercialized prostitution and pornography, and resultant abolitionist movements, to the rapid globalization that served as a backdrop to the third wave's institutional and transnational statutory responses.³¹ Zhou's suggested solutions are threefold: he advocates for the protection of minors involved in commercial sexual activities, the prosecution and punishment of traffickers, and the provision of services to victims "however defined."³²

Differential Treatments of Trafficking

Heli Askola's *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union* focuses specifically on the sexual exploitation of women in the European Union. *Legal Responses* is primarily a qualitative evaluation of how the EU's organizational structure lends itself, or not, to counter-sex trafficking efforts. Through her analysis of Italy, Sweden, and the Netherlands, Askola identifies three different approaches to sex work, and how those approaches to sex work correlate to counter-sex trafficking efforts. The approaches are illegal but vaguely tolerated sex work, decriminalization of sex work, and legalization of sex work. She acknowledges that there is no empirically established correlation between (ir)regulated sex work and sex trafficking, but that the case countries have tailored their approach to sex work (or lack thereof) to represent their legal approaches to counter-sex trafficking efforts.

³⁰ Ibid., 639.

³¹ Huiquan Zhou, "Towards a Comprehensive Response to Victims of Sex Trafficking," in *Globalization: The Crucial Phase*, ed. Brian Spooner (University of Pennsylvania Museum of Archaeology and Anthropology, 2015), 319–42, <http://ezproxy.uniandes.edu.co:8080/login?url=https://muse.jhu.edu/book/38249/>, 321–323.

³² Ibid.

Askola's book rests on two major assumptions: first, that as of 2007, a comprehensive approach to sex trafficking did not yet exist, and second that destination countries, especially those with access to the EU as a forum, can do more and are well-equipped to do more in the fight against sex trafficking.³³ Askola argues that the reason discussions of THB can get so heated and controversial is because THB is an issue located at the center of myriad other issues.³⁴ States and policymakers can often fall into the trap of creating solutions based on a singular frame of analysis, such as only attempting a migration-based solution to a migration-based analysis, whereas even a singularly migration-based analysis should see a nuanced, multi-pronged solution.³⁵ The sex industry is, as far as can be measured, the most common denominator amongst all instances of sex trafficking. Sex work itself cannot be policed by the European Union; one must only look at Doezema's entire work and her discussion of the Palermo Protocols negotiation to know how complicated streamlining an approach to sex work can be.³⁶ As such, "ancillary" issues such as migration must constitute the scope of counter-sex trafficking on an organizational level; and any specific policies regarding sex work must be left to individual member states.³⁷

Askola takes a feminist approach to her study, centering issues of gender on the greater THB debate. Her conclusion rests on seeing prostitution – or rather, the system it resides in – as the product of men's economic clout, which subjugates and commodifies women. She also notes the neoliberal structures that posit prostitution as a viable alternative to poverty, and that by the very act of choosing not to address the demand of sexual services on an institutional level, the European Union is in fact complicit in the propagation of sexual exploitation (though that does not preclude it from being part of the solution).³⁸ The EU must be sure that its counter-trafficking measures are not anti-immigration measures, as many attempts to counter trafficking actually (in)advertently imposes punitive measures on them in the short term, which is a feature across EU member states regardless of

³³ Heli Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*, Modern Studies in European Law (Oxford; Portland, Or: Hart, 2007), 1.

³⁴ *Ibid.*, 2.

³⁵ *Ibid.*, 3.

³⁶ Gallagher, *The International Law of Human Trafficking*, 29: "It was agreed, for example, that the travaux préparatoires would indicate that the Trafficking Protocol addresses the issue of prostitution only in the context of trafficking, and that these references are without prejudice to how States address this issue in their respective domestic laws.;" Doezema, *Sex Slaves and Discourse Masters*, 27.

³⁷ Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*, 6.

³⁸ *Ibid.*, 187.

approaches to sex work.³⁹ In the long run, Askola notes that while “The relationships between development, migration and trafficking are indirect, complex, poorly explore and imperfectly understood” the most potent means of reducing the threat of trafficking is to empower women within structures that do not inherently undermine and marginalize women, and thus – or perhaps after – reducing global wealth disparities.⁴⁰ This involves “gender mainstreaming” within and outside of the European Union at a comprehensive level, not just rhetorical. The EU is well-positioned to accomplish this due to its soft power influence the world over.⁴¹ Askola calls for challenging the neoliberal structures that have permeated the EU, as well as hegemonic masculinity (and, I would posit, heteronormativity which informs hegemonic masculinity) and its subsequent demand for sexual services on a commodified, globalized level.⁴²

Although *Human Trafficking and Migration Management in the Global South* moves away from the EU in its scope, it is still important scholarship that also highlights the usefulness of smaller research samples in making generalizable assumptions. It also directly highlights how victims of trafficking may be treated differently depending on their societal positions and how they are perceived. Stephanie Nawyn et al analyze counter-trafficking measures in Turkey, which has played a key role in serving as both a point of transit en route to the EU for refugees as well as a place of resettlement itself. They reinforce the idea that many victims of THB are more afraid to come forward to law enforcement with details of their experience than they are afraid of their actual traffickers.⁴³ Nawyn et al also take a similar tack to Chuang, choosing instead to look at THB through the lens of labor exploitation rather than human rights or criminal law. This may satisfy Doezema’s earlier expressed dissatisfaction with empirical studies of sex trafficking. Nawyn et al suggest that “state regulatory regimes” often create conditions of exploitation that migrants are unable to escape. For instance, like with most countries with

³⁹ Ibid., 170.

⁴⁰ Ibid., 174.

⁴¹ Ibid., 176-177.

⁴² Ibid., 180, 183.

⁴³ Stephanie J. Nawyn et al., “Human Trafficking and Migration Management in the Global South,” *International Journal of Sociology* 46, no. 3 (July 2, 2016): 189–204, <https://doi.org/10.1080/00207659.2016.1197724>, 192.

decriminalized or legalized sex trade, migrants cannot legally engage in sex work and as such are subject to greater scrutiny and given fewer rights than Turkish nationals.⁴⁴

The authors apply the framing of labor exploitation to sex trafficking, not to sex work, to allow for an examination “of the exploitation of migrants ... without treating sex trafficking as completely unlike other types of labor,” thus allowing for more effective theorizing of the connections between sexual and other types of labor exploitation.⁴⁵ The authors describe the characteristics of a labor exploitation framework. The first characteristic is “[focusing] on the neoliberal global economy that produces global economic inequality.” The second characteristic sees “policing as a form of controlling labor, particularly at nation-state borders.” This is particularly relevant to repatriation policies in the wake of migrant flows and with the “rescue” of trafficking victims, and the subsequent fear of law enforcement. Finally, the authors suggest that “the potential exists for trafficking victims to improve their situation with greater experience in the labor market” without having to rely on rescue, thus undermining the MDS narrative that Chuang and other scholars condemn.⁴⁶

Nawyn et al conduct interviews with 24 women to gauge experiences with law enforcement and sex work.⁴⁷ They focus solely on migrant women, reflecting the broader belief in THB scholarship that sex trafficking is a gendered phenomenon, and construed three generalizable results from the interviews conducted. The first result, titled “Government Centralization and Conflict over Migrant Rights” describes how the burgeoning Turkish decisions to take a more victim-centered approach to counter-trafficking measures were retracted in 2011, which tied in with increasing conservatism on the part of the Erdogan regime as well as the influx of Syrian refugees to the country.⁴⁸ The authors claim that reports of detected trafficking victims have lessened accordingly. The authors also point out that many migrants, especially Syrian migrants, are particularly susceptible to labor trafficking as the policy focus has been on sex trafficking; furthermore, any labor crackdowns

⁴⁴ Nawyn et al., “Human Trafficking and Migration Management in the Global South,” 192.

⁴⁵ Nawyn et al, 193.

⁴⁶ Nawyn et al, 193.

⁴⁷ Nawyn et al, 196-197.

⁴⁸ Nawyn et al, 197.

result in the closure of the offending facility, with no efforts made to recompense Syrian workers.⁴⁹ The final result, “Promising Developments in the Law” offers somewhat hollow optimism that efforts are being made. Nonetheless, Nawyn et al acknowledge that the efforts to provide stability for Syrian migrants have been meagre at best and, at times, have forced migrants to look for better fortune elsewhere.⁵⁰

Prediction, Risk, and Best Practices

In the edited volume *The Illegal Business of Human Trafficking*, Joana Daniel-Wrabetz and Rita Penedo posit a novel approach to predicting instances of trafficking. The chapter, “Trafficking in Human Beings in Time and Space: A Socioecological Perspective” focuses on the creation of a “sociological model of vulnerability” using geographical information systems (GIS), particularly focusing on “social invisibility and vulnerability.” This concept of invisibility is similar to the “blank/blind spots” explored in Heerdink’s work.⁵¹ Unlike other scholars of trafficking in human beings, Daniel-Wrabetz and Penedo deconstruct poverty as a primary determinant factor of trafficking in human beings, as well as the push/pull model of THB in general.⁵² Instead, they posit that poverty and vulnerability simply contextualize rather than determine THB. Using the UNODC Background Paper for the Vienna Forum 2008, they define vulnerability as “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities.”⁵³ However, the authors also argue that there should be a definition reflective of “conceptual differences between what can be vulnerability to trafficking” and “vulnerability to other forms of exploitation or victimization.”

⁴⁹ Nawyn et al, 199-200.

⁵⁰ Nawyn et al, 201.

⁵¹ Joana Daniel-Wrabetz and Rita Penedo, “Trafficking in Human Beings in Time and Space: A Socioecological Perspective,” in *The Illegal Business of Human Trafficking*, ed. Maria João Guia (Springer International Publishing, 2015), https://doi.org/10.1007/978-3-319-09441-0_5; Suzanne L. J. Kragten-Heerdink, Corinne E. Dettmeijer-Vermeulen, and Dirk J. Korf, “More Than Just ‘Pushing and Pulling’: Conceptualizing Identified Human Trafficking in the Netherlands,” *Crime & Delinquency*, September 5, 2017, 001112871772850, <https://doi.org/10.1177/0011128717728503>, .

⁵² *Ibid.*, 2.

⁵³ *Ibid.*

Amber Horning's exploration of risk factors can help conceptualize this difference, particularly as her work addresses trafficking as a consequence of globalization.⁵⁴ Taken collectively, the definition of vulnerability is "a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved" and that the vulnerable are predisposed to vulnerability through their gender, "...poverty, lack of democratic cultures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination [...]"⁵⁵ These definitions of vulnerability focus on the victim; but as Anne Gallagher explores, the UNODC's Model Trafficking Law (2009) encourages a "a focus on the state of mind of the perpetrator, rather than of the victim."⁵⁶ This definition of vulnerability allows less room for victim-blaming in legal and criminal rhetoric.

A helpful proposal made by the authors is that vulnerability be categorized across three wider metrics: personal (preexisting), situational (created or maintained), or circumstantial (created or maintained).⁵⁷ These metrics complement Suzanne Kragten-Heerdink's demarcation of domestic and cross-border trafficking.⁵⁸ Interestingly, the authors cite a study that indicates gender discrimination may not be "significant in determining either inflows or outflows of human trafficking" – this extends to other related factors such as women's education.⁵⁹ However, it is also difficult to take such conclusions at face value, given that policy priorities inform victim identification.

It should be noted here that Daniel-Wrabetz and Penedo – and, indeed, many scholars - rely heavily on internationally aggregated rates of THB. Unfortunately, it is extremely difficult to substantiate aggregated rates of human trafficking provided by different international organizations or governments due to definitional discrepancies. Often, bonded labor, constructions of slavery and smuggling, and even sex work are added to

⁵⁴ Amber Horning et al., "The Trafficking in Persons Report: A Game of Risk," *International Journal of Comparative and Applied Criminal Justice* 38, no. 3 (July 3, 2014): 257–80, <https://doi.org/10.1080/01924036.2013.861355>.

⁵⁵ Daniel-Wrabetz and Penedo, "Trafficking in Human Beings in Time and Space: A Socioecological Perspective," 2.

⁵⁶ Gallagher, *The International Law of Human Trafficking*, 33.

⁵⁷ Daniel-Wrabetz and Penedo, "Trafficking in Human Beings in Time and Space: A Socioecological Perspective," 3.

⁵⁸ Kragten-Heerdink, Dettmeijer-Vermeulen, and Korf, "More Than Just 'Pushing and Pulling.'"

⁵⁹ Daniel-Wrabetz and Penedo, "Trafficking in Human Beings in Time and Space: A Socioecological Perspective," 3.

estimations of THB.⁶⁰ Scholars recommend more accurate means of aggregating the “dark figure” of human trafficking, such as multiple systems estimations as recommended by a recent UNODC report, but pending a universal implementation of these models, scholars must be wary of using such numbers at face value.⁶¹

Suzanne Kragten-Heerdink et al re-conceptualize models of trafficking in “More Than Just ‘Pushing and Pulling’: Conceptualizing Identified Human Trafficking in the Netherlands.” Using a quantitative approach, the authors analyze 768 cases of trafficking in the Netherlands over four years. The authors identify three forms of exploitation: sexual, nonsexual (which includes labor trafficking), and “trafficking for the purpose of the removal of organs.”⁶² In addition to these three metrics, the authors introduce four routes of traffic: arrived cross-border trafficking, departed cross-border trafficking, domestic trafficking and traversed cross-border trafficking. Kragten-Heerdink et al use these terms in addition to “country of recruitment” and “country of exploitation” in order to pivot from what they consider reductionist push/pull models, which assume economic conditions solely predispose countries to either sending or receiving migrants.⁶³ The phrase “transit country” similarly serves a reductionist purpose, as it implies that transit countries cannot be countries of recruitment or exploitation. The phrase “traversed cross-border trafficking” rectifies this reduction.

Having a nuanced metric by which to assess any country avoids tunnel vision. Kragten-Heerdink et al also allow for the possibility that, given the globalized nature of the world, porous borders could allow for trafficking within and between a specific set of countries that are so close together so as to functionally constitute domestic trafficking. Such situations have been dubbed (near-)domestic trafficking.⁶⁴ Most European countries

⁶⁰ Daniel-Wrabetz and Penedo, 5; Ronald Weitzer, “New Directions in Research on Human Trafficking,” ed. Ronald Weitzer and Sheldon X. Zhang, *The ANNALS of the American Academy of Political and Social Science* 653, no. 1 (May 2014): 6–24, <https://doi.org/10.1177/0002716214521562>, 7-8; Ronald Weitzer, “Human Trafficking and Contemporary Slavery,” *Annual Review of Sociology* 41, no. 1 (August 14, 2015): 223–42, <https://doi.org/10.1146/annurev-soc-073014-112506>, 225-227; Chuang, “Exploitation Creep and the Unmaking of Human Trafficking Law,” 613, 642.

⁶¹ Jan J.M. van Dijk et al., “A Multiple Systems Estimation of the Numbers of Presumed Human Trafficking Victims in the Netherlands” (United Nations Office on Drugs and Crime, National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, n.d.), https://www.dutchrapporteur.nl/binaries/An%20estimation%20of%20the%20numbers%20of%20presumed%20human%20trafficking%20victims%20in%20the%20Netherlands_tcm24-282339.pdf.

⁶² Kragten-Heerdink, Dettmeijer-Vermeulen, and Korf, “More Than Just ‘Pushing and Pulling,’” 4.

⁶³ Kragten-Heerdink, Dettmeijer-Vermeulen, and Korf, 4.

⁶⁴ Kragten-Heerdink, Dettmeijer-Vermeulen, and Korf, “More Than Just ‘Pushing and Pulling,’” 14.

have fairly porous borders that allow for relatively unimpeded movement, which means that trafficked individuals may be sourced from one country and taken to what is technically another country, but due to the porous borders, may not constitute a substantial enough difference. This corroborates other scholars' positions that freedom-of-movement agreements such as the Schengen Agreement constitute risk factors for trafficking.

Ultimately, Kragten-Heerdink et al. suggest nine possible combinations of THB: arrived cross-border sex trafficking; departed cross-border sex trafficking; domestic sex trafficking; traversed cross-border sex trafficking; arrived cross-border trafficking for nonsexual exploitation; departed cross-border trafficking for nonsexual exploitation; domestic trafficking for nonsexual exploitation; traversed cross-border trafficking for nonsexual exploitation; and trafficking for the purpose of organ removal.

The authors posit that “the absence of a specific identified trafficking situation may reflect [...] a blind spot” in the policy of the country.⁶⁵ This model can also help identify underrepresented victims of trafficking, while simultaneously solving many of the issues brought up by other scholars regarding the difficulty of mapping routes of traffic.

Much of Amber Horning's “The Trafficking in Persons Report: A Game of Risk” takes a different critical approach, attempting to steer the US State Department-issued Trafficking in Persons Report (TIP Report) away from the push-pull factor dichotomy. In this way, Horning, Daniel-Wrabetz and Penedo, and Kragten-Heerdink have similar priorities in their work. Horning posits that using the concept of “risk” could counter the threat of human trafficking across multiple variables, given that risk is inherently at the forefront of decisions made in a globalized world. According to Horning, considering risk helps with the prevention of trafficking; it allows for “incorporating risk assessment, and funding broad-based initiatives [that] may prove to be essential to effectively combating human trafficking.”⁶⁶ While not directly her own work, Horning cites Beck and Giddens and their assertion that society is moving from an “industrial” to a “risk society” with the onset of rising individualism and new uncertainties – a “reflexive modernization” that allows people to reflect on ones place in society and how to

⁶⁵ Kragten-Heerdink, Dettmeijer-Vermeulen, and Korf, 20.

⁶⁶ Horning et al., “The Trafficking in Persons Report,” 258.

change accordingly.⁶⁷ Risks in the era of reflexive modernism are entirely manufactured, and created by the “accelerating and unpredictable developments of globalization” – something that Liat Kozma also points out early in her work, albeit regarding sex work and traffic.⁶⁸

The addition of sociological theory to trafficking prevention is important. Horning also looks at economic theories of risk: in particular, economist Frank Knight’s distinction between risk and uncertainties. Uncertainties are defined as “situations with unknown outcomes, but also unknown probability distributions.” This helps explain, for instance, why so many people risk treacherous routes of migration: the risks may be high, but the hypothetical rewards may justify the risk. Risk, meanwhile, has “unknown outcomes but known probability distributions.” Rather than being a deterrent, uncertainty or risk may itself be a driving force or push factor depending on an individual’s “tolerance for error.”⁶⁹ Finally, Horning looks at constructivist theory of sociology, wherein objective views of risk are themselves secondary to the standard operating beliefs of individuals regarding risk.⁷⁰ Horning, finally, settles on a working definition of risk wherein “a risk factor is a factor associated with a particular behavior or event that is causally or predictively related to it, according to the best available research.”⁷¹

The meat of Horning’s work lies in her suggestions for the TIP Report. While this is necessarily US-centric, the tiers and methodology suggested could be easily adaptable to other countries’ or institutions’ mechanisms for the oversight of traffic. Horning’s first recommendation is the inclusion of structured, organizational, or governmental risk factors into tier-rankings; this is especially useful in countries where corruption is widespread, as corruption has been cited as a risk factor by other scholars.⁷² She also suggests a fourth categorization, that of “nations with a prolonged presence in other countries” that either occupy or have a military presence in, provide

⁶⁷ Horning et al., 259; Anthony Giddens, *Runaway World: How Globalization Is Reshaping Our Lives* (New York [u.a]: Routledge, 2003); Ulrich Beck, *Risk Society: Towards a New Modernity*, Theory, Culture & Society (London ; Newbury Park, Calif: Sage Publications, 1992).

⁶⁸ Horning et al., 259; Kozma, *Global Women, Colonial Ports*, 160.

⁶⁹ Horning et al, 260.

⁷⁰ Horning et al, 261.

⁷¹ Horning et al, 261.

⁷² Horning et al, 262.

aid to, or even have a large corporate presence in another country.⁷³ This is a novel approach to risk assessment, one that may cause large shifts in tier rankings of more domestically stable countries. Even non-state actors, such as UN peacekeepers, have been accused of sexually exploiting locals they are meant to protect, as peacekeepers are under the jurisdiction of their country of origin.⁷⁴

The major takeaways from this literature are as follows. First, there is a correlation between the size and protraction of migration flows in a surrounding region and risk of individual trafficking. Second, restrictive immigration policies and weak border controls can proliferate both labor and sex trafficking. Third, the globalization of the sex industry means that standards for regulation can vary widely, allowing for exploitation. Fourth, any assessment of risk should distinguish between alterable and unalterable risk (i.e., crime and corruption versus migration). Finally, more research is needed on the confluence between risk and human trafficking with the ultimate goal of creating a “matrix connecting types of risk to categorization.”⁷⁵

Differential Perceptions and Treatments for Sex Trafficking: A New Method

The driving question of this research is in what ways does the EU treat sex trafficking, and why? As such, this research focuses on the European Parliament’s Directive 2011/36/EU as a representation of the EU’s policy as a whole. The directive is the main actionable EU legislation that pertains to both combatting human trafficking and protecting victims of human trafficking. Additionally, rather than looking at the EU’s treatment of human trafficking, I have singled out sex trafficking, which is more commonly known and has substantially more data available on it.⁷⁶ Moreover, sex trafficking elicits more visceral, morally-driven reactions from both laypeople and legislators alike, not least due to the very discourse around sex and concerns around women and children’s sexual purity. I hypothesize the status of sex work in a state is more likely to have a relationship with sexual exploitation rather than labor exploitation, even if sex work is considered legitimate labor in many of my sample countries.

⁷³ Horning et al, 263.

⁷⁴ Paisley Dodds, “UN Child Sex Ring Left Victims but No Arrests,” AP News, April 12, 2017, <https://www.apnews.com/e6ebc331460345c5abd4f57d77f535c1>; Steward M. Patrick, “Sexual Abuse by Peacekeepers: Time for Real Action,” *Council on Foreign Relations* (blog), August 6, 2015, <https://www.cfr.org/blog/sexual-abuse-peacekeepers-time-real-action>.

⁷⁵ Horning et al., “The Trafficking in Persons Report,” 276.

⁷⁶ Weitzer, “New Directions in Research on Human Trafficking.”

Further, I hypothesize is the legal framing of sex work itself results in differential treatments of victims of sex trafficking. The null hypothesis is that there is no significant relationship between a state's legal framing of sex work and differential treatments of victims of sex trafficking.

It is also prudent to define human trafficking. For the purpose of this research, I use the definition from Directive 2011/36/EU, taken from the Palermo Protocol, and is as follows:

"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.

I also want to note the importance of the following:

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.

In addition, the EU generally includes forced begging in its definition of labor trafficking. For the cases analyzed in this research, instances of forced begging are classified as labor trafficking offenses.

Prosecution refers to how suspects charged with human trafficking are sentenced, and the extent to which the state's prosecution mechanism satisfies the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) periodic evaluations. Restitution mechanisms are similarly assessed and refer to whether and the extent to which victims of human trafficking are compensated for the damages caused to them.

Both prosecution and restitution mechanisms are assessed based on GRETA's state-by-state evaluations. However, as GRETA does not use quantitative metrics for evaluation, I categorize the variables based on a content analysis of the most recent available GRETA evaluations of a given state. Each state's restitution and prosecution mechanisms are deemed present (yes), partially present and/or in need of some improvement (somewhat), or absent and/or in need of major improvement (no). Categorization is based on the number of

recommendations for improvement made by GRETA and the perceived urgency of the improvements made by GRETA (see Appendix A for further explanation on this).

The legal status of sex work is, simply, the extent to which sex work is legal in the state, if at all. While “legal” and “illegal” are an easy enough dichotomy to use, many commentators have noted the spread of the “Nordic model” – i.e., decriminalizing sex work so that the demand for sex work and procurement of sex workers are criminalized and prosecuted, not the provision of sexual services. This is intended to protect sex workers and allow victims of sex trafficking to come forward without fearing legal consequences, and is inherently gendered in its approach to protecting sex workers – and, some argue, has an abolitionist aim.⁷⁷ I further divided legal sex work into legal and regulated and legal and unregulated sex work. Regulated sex work is the institution of laws governing how sex work can be conducted and often allows sex workers access to social security privileges specific to their profession. Legal but unregulated sex work means neither sex workers nor clients are penalized for services rendered, however, the state or municipality in question does not have rules governing the transaction.

Finally, “differential treatment” in this context refers to any discernable ways in which victims of sex trafficking are treated differently – in the process of prosecution but especially in the restitution process – from victims of other forms of trafficking. I do not necessarily seek to gauge variations in victim treatment within a specific circumstance. It is my aim to identify the ways in which victims of sex trafficking are subject to differential treatment (that, likely, has adverse effects on how they are restituted as victims of a crime).

Methodology

Sample cases were taken from the United Nations Office on Drugs and Crimes’ Human Trafficking Knowledge Portal Case Law database. Not all states contribute equally to this database. As such, of the EU countries that had in fact contributed to this list, those that had provided more than 10 viable cases were selected first. These states were then narrowed down based on a reasonable balance between sex to labor trafficking cases.

⁷⁷ Jay Levy and Pye Jakobsson, “Sweden’s Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Sweden’s Sex Workers,” *Criminology & Criminal Justice* 14, no. 5 (November 2014): 593–607, <https://doi.org/10.1177/1748895814528926>, 603.

For instance, if a state had 15 total cases, of which 3 were labor trafficking and the remaining 12 were sex trafficking, that state was disqualified due to the imbalance between the two case types. However, a country with 15 total cases where 6 were sex trafficking, 7 were labor trafficking, and 2 had instances of both sex and labor trafficking would be considered for the final sample. Finally, I only looked at cases where the sentencing occurred after the state in question had acceded to the European Union, as the state may not have been held to the same standards as other EU states before that.

Rather than using data from all countries that fit the aforementioned criteria, I chose one country each representing legal and regulated, legal and unregulated, decriminalized, and illegal outlooks on sex work. The final countries chosen were Germany, Belgium, Sweden, and Romania (listed with respect to the previously noted outlooks on sex work). State prosecution and restitution mechanisms were appraised based on the most recent available GRETA evaluation for that state. At the time of writing, GRETA had yet to publish its reports from Germany and Sweden's second round of evaluations. Some instances of the chosen cases do not feature any form of human trafficking as the final offense charged. However, a form of human trafficking was always one of the offenses brought to the fore.

Using SPSS, I conducted quantitative tests to cross-tabulate variables and identify potential relationships. I used Cramer's V tests when both variables were categorical, and conducted Chi Square tests to assess the significance of the relationship. In instances where I assessed categorical and continuous variables, I ran an Analysis of Variance (ANOVA) with a 95% confidence interval. However, those instances have not been included in this paper. For Cramer's V, I used the following to assess strength of relationship:

Table 1. Metric for assessing strength of relationship

Absolute Value of Measure	Statement about Strength
<.25	Weak
.25-.50	Moderate
>.50	Strong

The independent variable is the legal status of sex work in the state and the dependent variables are whether prosecution mechanisms meet GRETA standards and whether restitution mechanisms meet GRETA standards. I also sought to analyze whether restitution was ordered and other independent variables to find

potential relationships outside my hypothesis. Definitions for each variable and the respective values employed can be found in Appendix A. In total, I control for 23 variables. For ease of reference, a table of these variables – without additional explanation - can be found in Appendix B.

Findings

There was no significant relationship between the status of sex work in a given country as my independent variable and whether the state awards victims of human trafficking compensation as my dependent variable. Any relationship that did exist between the two variables was weak, at a Cramer's V score of .226. As such, I was unable to reject my null hypothesis. The descriptive statistics for this can be found in Appendix C.

Table 2. IV = status of sex work in a given country; DV = whether the state awards victims of human trafficking compensation

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	5.301 ^a	4	.258
Likelihood Ratio	6.121	4	.190
Linear-by-Linear Association	1.752	1	.186
N of Valid Cases	52		

a. 3 cells (33.3%) have expected count less than 5. The minimum expected count is .50.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.319	.258
	Cramer's V	.226	.258
N of Valid Cases		52	

After crosstabulating whether the state conforms to standards of restitution per GRETA requirements and whether the state awards victims of human trafficking compensation, I found no significance, but noted that the strength of the relationship was .26, therefore moderate. The descriptive statistics for this can be found in Appendix D.

Table 3. IV = whether state conforms to standards of restitution per GRETA requirements; DV = whether the state awards victims of human trafficking compensation

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	3.517 ^a	2	.172
Likelihood Ratio	4.097	2	.129
Linear-by-Linear Association	3.443	1	.064
N of Valid Cases	52		

a. 2 cells (33.3%) have expected count less than 5. The minimum expected count is .58.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.260	.172
	Cramer's V	.260	.172
N of Valid Cases		52	

Finally, with whether the state conforms to standards of prosecution per GRETA requirements and whether the state awards victims of human trafficking compensation, I found no significance and a very weak relationship at a Cramer's V of .118. The descriptive statistics for this can be found in Appendix E.

Table 4. IV = whether state conforms to standards of prosecution per GRETA requirements; DV = whether the state awards victims of human trafficking compensation

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	.727 ^a	2	.695
Likelihood Ratio	1.210	2	.546
Linear-by-Linear Association	.077	1	.782
N of Valid Cases	52		

a. 2 cells (33.3%) have expected count less than 5. The minimum expected count is .50.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.118	.695
	Cramer's V	.118	.695
N of Valid Cases		52	

When crosstabulating the type of offense actually charged and whether the state awarded victims of human trafficking compensation, no significance was found and the relationship was only weak. This further negates any possibility – at least within this dataset – of there being connection between the type of exploitation and whether compensation would be awarded to victims of trafficking, with the exception of Germany.

Table 5. IV = type of offense actually charged; DV = whether the state awards victims of human trafficking compensation

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	2.661 ^a	6	.850
Likelihood Ratio	3.417	6	.755
Linear-by-Linear Association	.745	1	.388
N of Valid Cases	52		

a. 8 cells (66.7%) have expected count less than 5. The minimum expected count is .12.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.226	.850
	Cramer's V	.160	.850
N of Valid Cases		52	

Analysis

While I was unable to reject my null hypothesis, I believe this research is nonetheless valuable for what it demonstrates. First, the limited dataset that I was working with may have contributed to the lack of significance I found in running my crosstabulations. Had I been able to acquire more sample countries for each status of sex work that I use in my research, my findings may have been far more significant. Second, the moderate relationship between whether a state conforms to standards of restitution of prosecution per GRETA requirements and whether the state awards victims of human trafficking compensation is worth exploring further with a wider variety of EU member states. This could also be replicated for countries in other regions of the world that have acceded to treaties that set out criteria for restitution mechanisms.

Third, the weakness of the relationship as shown in Table 4 is also fascinating. Janie Chuang, for instance, has expressed skepticism that strengthening prosecution results in greater justice for victims of human trafficking.⁷⁸ Further exploration of this relationship could help confirm or deny that skepticism. Fourth, analyzing the variables related to the states in question is interesting on its own (found in Appendix F). Despite having the lowest HDI of the sample states and criminalizing sex work, Romania is the only state whose prosecution mechanisms are in line with GRETA expectations. Sweden, an “exporter” of the Nordic Model of sex

⁷⁸ Chuang, “Exploitation Creep and the Unmaking of Human Trafficking Law,” 642.

work decriminalization, is the only state that “somewhat” meets GRETA expectations of restitution – and, incidentally, is the only country of the four with a dedicated Rapporteur for THB.

Fifth, there does not seem to be any relationship between the type of exploitation charged and whether a victim received compensation. This was an unexpected finding, as in the preliminary stages of my research many individuals I interviewed expressed dissatisfaction with what they perceived to be the unfavorable recompensing of one exploited group over the other. This could also just have been a consequence of having a limited dataset. Sixth and finally, in analyzing the cases prosecuted in Germany, I was struck by the fact that compensation would be awarded to the victim based on whether they had incurred bodily harm in the process of their trafficking. This included instances of sexual assault or battery more broadly. I then isolated and ran crosstabulations on only the cases prosecuted in Germany (Appendix G). I found that when my independent variable was concurrent charges of significance and my dependent variable was whether restitution was awarded to victims, the relationship was significant at a value of .007. The relationship was very strong, with a Cramer’s V of 1. These findings indicate that the awarding of restitution based on bodily harm in Germany is more than incidental. The same crosstabulations, replicated for other countries, were all insignificant (albeit with varying degrees of strength). These can be found in Appendices H, I, and J respectively.

The international counter-trafficking regime is inundated with scholarship taking different tacks to human trafficking, as varied as the factors that contribute to the proliferation of THB itself. However, much of the scholarship is at odds with itself, as reflected in Gallagher’s work on the international regime, in Doezema and Kozma’s work on the construction of trafficking as a crime, and in Chuang’s frustration with the prevailing rhetoric and criminal law approach to trafficking. Certainly, it is important for scholarship to challenge and better itself. However, the discrepancies in scholarship on trafficking are also mirrored on a policy level between *and* sometimes within states. Future scholarship and research on human trafficking should bear in mind that muddying the waters of what constitutes human trafficking can have very serious policy consequences. Instead of clarifying models for prosecution and restitution, the muddied waters make states less accountable to universally accessible justice for victims.

A concrete example of this is found in Hepburn and Simon’s work. They conclude that the gravity of human trafficking can only be understood by using “A more inclusive term [...] modern-day slavery” as trafficking, which is defined as requiring movement.⁷⁹ This attempt to find a more inclusive term undermines the true complexity of human trafficking and falls back on a storied attempt to appeal to morality, as the very word “slavery” evokes a sense of guilt and outrage in the public – rightly so. Both Gallagher and Chuang speak to this, with the latter pointing out the potential for diluting the *jus cogens* norm of slavery and raising the bar for prosecuting the crime of trafficking disproportionately. Zhou is another example of the use of unclear terminology, particularly in providing solutions for THB. One of his solutions calls for the provision of important services to victims “however defined.”⁸⁰ The vagueness of “however defined” is problematic as it allows too much leeway for states to discriminate against certain group of victims, particularly those without legal statuses or individuals who may have committed illegal acts while under conditions of exploitation. Moreover, Zhou does not clarify a threshold for acceptable rehabilitative services, compensation, or visa status provision.

This ties in with the importance of using concrete language in legislation governing trafficking in human beings. While certainly the vagueness of language in international legislation is what allows for legislation to be passed without much contention in the first place, there are real consequences that result from loopholes. In EU Directive 2011/36/EU, the language surrounding compensation and restitution to victims is entirely contingent on “...the role of victims in the relevant justice system...” or “...existing schemes of compensation...”⁸¹ This language can reduce the urgency of updating state mechanisms for restitution and give states a free pass on appropriately restituting victims as they can claim that to do so would not be in “accordance with the role of victims” in their justice system. To begin with a flawed set of expectations precludes appropriately victim-centered justice.

⁷⁹ Hepburn and Simon, *Human Trafficking around the World*.

⁸⁰ Zhou, “Towards a Comprehensive Response to Victims of Sex Trafficking,” 323.

⁸¹ Official Journal of the European Communities, “Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA,” Pub. L. No. L 101/1 (2011).

On the point of victim-centric justice, the German case is of particular note. Despite having the highest HDI of any of the states in this sample (and in the world), Germany's compensation of victims of THB is contingent on bodily harm. This is egregious as it qualifies degrees of harm within a crime that is inherently harmful. However, if we hold true that under the definition of human trafficking in the aforementioned EU directive, consent (regardless of when in the trafficking process it is given) on the part of the victim is nullified, then it follows that *all* instances of sex trafficking are sexual assault. Thus, victims of sex trafficking are entitled to compensation under the German justice system by virtue of the erasure of their consent.

Finally, and crucially, this research reveals the importance of states contributing to databases of human trafficking case law. Short of relying on interpersonal connections to gain access to case law for each country, future research on such a topic necessitates using publicly accessible databases. If these databases are not kept up-to-date and at least equitably contributed to by states, then future research on this topic will suffer. Transparency in the treatment of THB and the victims thereof will only yield positive results for states and legislators that truly want to improve the access to justice for victims of trafficking in human beings. True justice for victims of trafficking – restorative, rehabilitative, life-affirming – must be victim-centered.

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Appendix A

Variable	Definition	Values
Country of prosecution	The country where the case was prosecuted and sentenced	1 – Belgium; 2 – Germany; 3 – Romania; 4 - Sweden
Country of exploitation	The country where the exploitation occurred (may be different from country of prosecution; may also be multiple countries; not always clear)	String
Legal status of victim	Whether the victim was an EU or foreign national	1 – EU national; 2 – Foreign national; 3 – unclear; 4 – Multiple – EU and Foreign
Gender of victim	Not always clear	1 – Female; 2 – Male; 3 – Other; 4 – Multiple; 5 – Unclear
Gender of suspect	Not always clear	1 – Female; 2 – Male; 3 – Other; 4 – Multiple; 5 – Unclear
Minority/majority status of victim	Whether the victim was above or below the age of consent in the EU/prosecuting state (not always clear)	1 – Adult; 2 – Minor; 3 – Unclear; 4 – Multiple
Victim's country of origin	Where the victim is originally from (may be multiple as there may be more than one victim; not always clear)	String
Suspect's country of origin	Where the suspect is originally from (may be multiple as there may be more than one suspect; not always clear)	String
Type of exploitation	Whether the exploitation in question was sexual, labor-oriented or featured elements of both	1 – Sexual exploitation; 2 – Labor exploitation; 3 – Both sexual and labor exploitation
Offense charged	What charge the suspect was finally sentenced with (may be different from human trafficking)	1 – Sex trafficking; 2 – Labor trafficking; 3 – Both sex and labor trafficking; 4 – Other
Restitution ordered	Whether the judge ordered that the victim be compensated	1 – Yes; 2 – No; 3 - Unclear
Amount of restitution ordered	The amount of compensation owed to the victim either by the state or the suspect(s) (in the case of multiple victims, this is the total amount owed to all the victims; reported in Euros)	0 – 0; 1 - <1000; 2 – 1000-5000; 3 – 5000-10000; 4 – 10000-50000; 5 - >50000

Concurrent charges	Any significant charges the suspects were charged with aside from human trafficking (if charged)	0 – None; 1 – Sexual assault & violence; 2 – Assault & battery; 3 – Organized criminal network; 4 – Forgery/fraud; 5 – Child trafficking; 6 – Migrant smuggling; 7 – Procuring/purchase of sexual services
Route of trafficking	Per Kragten-Heerdink et al, what route the trafficking instance followed ⁸² (not always clear)	1 – Arrived cross-border; 2 – Departed cross-border; 3 – (Near-)domestic; 4 – Traversed cross-border; 5 – Unclear
Number of victims	How many victims were exploited (not always clear)	String
Number of suspects	How many suspects were ultimately charged with human trafficking (not always clear)	String
Legal status of sex work	What the state’s legal perception of sex work is (for the purposes of finding relationships, “Legal” included both regulated and unregulated sex work)	1 – Legal/unregulated; 2 – Decriminalized; 3 – Illegal
Quality of prosecution mechanism*	The extent to which the state’s prosecution mechanism for human trafficking satisfies GRETA evaluations	1 – Yes; 2 – No; 3 – Somewhat
Quality of restitution mechanism*	The extent to which the state’s restitution mechanism for human trafficking satisfies GRETA evaluations	1 – Yes; 2 – No; 3 – Somewhat
HDI	The state’s most recently reported HDI ranking	String
Government type	The type of government of the state in question (reduced to a basic label for ease of assigning values)	1 – Parliamentary; 2 – Semi-presidential
Role of state within the EU	Whether the state is a founding member of or acceded to the EU	1 – Founding member; 2 – Acceded state
Appointment of Rapporteur	Whether the state has appointed a special Rapporteur for trafficking in human beings	1 – Yes; 2 – No

* The quality of the prosecution and restitution mechanisms based on “Yes,” “No,” and “Somewhat” are based on my reading of the latest GRETA reports for each country. These metrics are admittedly relative and based on,

⁸² Kragten-Heerdink, Dettmeijer-Vermeulen, and Korf, “More Than Just ‘Pushing and Pulling.’”

first, the number of recommendations for improvement made by GRETA and, second, the perceived urgency of the improvements made by GRETA. While this is not as rigorous an evaluation as would be ideal, it nonetheless encapsulates the spirit of GRETA's evaluations until such a time that GRETA provides a more stringent, quantifiable method of evaluation

Appendix B

Variables in italics are categorical. Variables that are underlined> are continuous. All variables with asterisks were entered as strings and did not have values assigned in SPSS.

Case-related	<i>Country of prosecution</i>	<i>Gender of suspect</i>	<i>Type of exploitation</i>	<i>Concurrent charges</i>
	<i>Country of exploitation*</i>	<i>Minority/Majority status of victim</i>	<i>Offense charged</i>	<i>Route of trafficking</i>
	<i>Legal status of victim</i>	<i>Victim's country of origin*</i>	<i>Restitution ordered</i>	<u>Number of victims*</u>
	<i>Gender of victim</i>	<i>Suspect's country of origin*</i>	<u>Amount of restitution ordered*</u>	<u>Number of suspects*</u>
State-related	<i>Legal status of sex work</i>	<i>Quality of restitution mechanism</i>	<i>Government type</i>	<i>Appointment of Rapporteur</i>
	<i>Quality of prosecution mechanism</i>	<u>HDI</u>	<i>Role of state within the EU</i>	

Appendix C

Descriptive statistics IV = status of sex work in the state; DV = whether restitution was awarded to victims of THB

		Status of sex work in the state				
		Legal/unregulated	Decriminalized	Illegal	Total	
Whether restitution was ordered	Yes	Count	10	11	7	28
		% within Status of sex work in the state	41.7%	73.3%	53.8%	53.8%
	No	Count	12	4	6	22
		% within Status of sex work in the state	50.0%	26.7%	46.2%	42.3%
	Unclear	Count	2	0	0	2
		% within Status of sex work in the state	8.3%	0.0%	0.0%	3.8%
Total	Count	24	15	13	52	
	% within Status of sex work in the state	100.0%	100.0%	100.0%	100.0%	

Appendix D

Descriptive statistics IV = whether state conforms to standards of restitution per GRETA; DV = whether restitution was awarded to victims of THB

			Whether state conforms to standards of restitution per Directive		Total
			No	Somewhat	
Whether restitution was ordered	Yes	Count	17	11	28
		% within Whether state conforms to standards of restitution per Directive	45.9%	73.3%	53.8%
	No	Count	18	4	22
		% within Whether state conforms to standards of restitution per Directive	48.6%	26.7%	42.3%
	Unclear	Count	2	0	2
		% within Whether state conforms to standards of restitution per Directive	5.4%	0.0%	3.8%
Total	Count	37	15	52	
	% within Whether state conforms to standards of restitution per Directive	100.0%	100.0%	100.0%	

Appendix E

Descriptive statistics IV = whether state conforms to standards of prosecution per GRETA; DV = whether restitution was awarded to victims of THB

			Whether state conforms to standards of prosecution per Directive		Total
			Yes	Somewhat	
Whether restitution was ordered	Yes	Count	7	21	28
		% within Whether state conforms to standards of prosecution per Directive	53.8%	53.8%	53.8%
	No	Count	6	16	22
		% within Whether state conforms to standards of prosecution per Directive	46.2%	41.0%	42.3%
	Unclear	Count	0	2	2
		% within Whether state conforms to standards of prosecution per Directive	0.0%	5.1%	3.8%
Total	Count	13	39	52	
	% within Whether state conforms to standards of prosecution per Directive	100.0%	100.0%	100.0%	

Appendix F

Country	Sex work	Prosecution mech.	Restitution mech.	HDI	Type of govt.	EU role	Rapporteur
Belgium	Legal*	Somewhat	No	22	Parliamentary	Founding	No
Germany	Legal	Somewhat	No	4	Parliamentary	Founding	No
Romania	Illegal	Yes	No	50	Semi-presidential	Acceded	No
Sweden	Decrim.	Somewhat	Somewhat	14	Parliamentary	Acceded	Yes

* denotes legal but unregulated status of sex work

Appendix G

Cases prosecuted in Germany. IV = Concurrent charges of significance; DV = whether restitution was awarded to victims of human trafficking

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	12.000 ^a	3	.007
Likelihood Ratio	15.276	3	.002
Linear-by-Linear Association	.074	1	.786
N of Valid Cases	12		

a. 8 cells (100.0%) have expected count less than 5. The minimum expected count is .33.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	1.000	.007
	Cramer's V	1.000	.007
N of Valid Cases		12	

Appendix H

Cases prosecuted in Belgium. IV = Concurrent charges of significance; DV = whether restitution was awarded to victims of human trafficking

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	3.964 ^a	4	.411
Likelihood Ratio	4.669	4	.323
Linear-by-Linear Association	1.235	1	.267
N of Valid Cases	12		

a. 9 cells (100.0%) have expected count less than 5. The minimum expected count is .17.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.575	.411
	Cramer's V	.406	.411
N of Valid Cases		12	

Appendix I

Cases prosecuted in Romania. IV = Concurrent charges of significance; DV = whether restitution was awarded to victims of human trafficking

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	.066 ^a	2	.967
Likelihood Ratio	.066	2	.967
Linear-by-Linear Association	.056	1	.812
N of Valid Cases	13		

a. 6 cells (100.0%) have expected count less than 5. The minimum expected count is .92.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.071	.967
	Cramer's V	.071	.967
N of Valid Cases		13	

Appendix J

Cases prosecuted in Sweden. IV = Concurrent charges of significance; DV = whether restitution was awarded to victims of human trafficking

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	1.668 ^a	3	.644
Likelihood Ratio	1.612	3	.657
Linear-by-Linear Association	.124	1	.724
N of Valid Cases	15		

a. 7 cells (87.5%) have expected count less than 5. The minimum expected count is .53.

Symmetric Measures

		Value	Approximate Significance
Nominal by Nominal	Phi	.333	.644
	Cramer's V	.333	.644
N of Valid Cases		15	