

Beyond “Criminal” Traffic

Charting a path towards a reckoning in the international human trafficking regime

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My thanks to the Human Trafficking Research Network for allowing me to discuss my paper, *Beyond Criminal Traffic*, at this forum! The notion of “challenging assumptions” is not only something I sought to do in this paper, but a reflection of my own five-year journey researching this topic.

• Challenging Assumptions •

- Role of the researcher's own assumptions
- TWAIL as point of departure
- Genealogy of “trafficking in human beings”
 - Can a regime rooted in colonial assumptions be said to have shaken off or risen past those assumptions?
 - Past challenging *general* assumptions → challenging *entrenched* assumptions

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The first version of this paper looked at the differential preferences of states' with regard to prosecuting trafficking suspects versus restituting trafficking victims. I was struck by the emphasis on prosecution across the board, despite the 3-Ps (prosecution, prevention, protection) ostensibly being equally weighted. My attempts to understand this distinct non-balance took me all the way to the origins of what I now understand to be the white slavery/human trafficking regime. This paper, then, is a genealogy, one that takes a TWAIL lens and considers whether a regime rooted in colonial assumptions can be said to have shaken off or risen past those assumptions?



*[The States represented] ... being desirous of securing to women of full age who have suffered abuse or compulsion, as also to women and girls under age, effective protection against the criminal traffic known as the "**White Slave Traffic**", have decided to conclude an Agreement with a view to concerting measures calculated to attain this object...*

My research sought to understand how the human trafficking regime - widely lambasted for centering prosecution amidst the other Ps (protection and prevention) - came to center the punitive over the restorative or even the restitutive. As you can see, the language in the chapeau of the 1904 White Slave Traffic Convention ostensibly centers protection, but state practice was anything besides. In fact, even this language of protection is couched in the paternalistic.



Despite its poor implementation, seventeen years after its adoption, the Trafficking Protocol leaves behind a trail of collateral damage. It has continued to have negative effects on sex workers, migrants, migrant brides and sexual minorities in countries as diverse as Romania, Bulgaria, Mexico, Sweden, Brazil, Singapore and Myanmar.

Prabha Kotiswaran, "From Sex Panic to Extreme Exploitation: Revisiting the Law and Governance of Human Trafficking," in *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*.

This is a quote from the excellent trafficking scholar Prabha Kotiswaran - note the adverse effects of this Protocol on "sex workers, migrants, migrant brides, and sexual minorities" in particular. Not very protective.

So, what happened? The Palermo Protocol is only one of *several* instruments in the entire regime. But it would be a disservice - and a dishonesty - to call this regime a *human trafficking regime* when what it *actually* is is the white slavery-human trafficking regime. Anything else disguises the roots of this regime, discussion and reckoning with which - I argue - is necessary in order to truly understand the present regime, and understand its harms: as well as, ultimately, what to do with it.

Roadmap

Arguments

Within the context of international law and the particularities of the nineteenth century:

- 1) Multilateral instruments countering THB emerged out of colonial-era gender- and race-relations;
- 2) Ambiguity was designed into the regime such that it entrenched systemic and epistemic violence towards sex trafficking "victims," sex workers, and migrants;
- 3) A more nuanced approach to countering THB is needed in order to decolonialize the WS/THB regime.

Conclusions

Analyzing the genealogy of the WS/THB regime:

- 1) A radical reimagining of international law is required that identifies when the *absence* of law is most useful;
- 2) A harm-reductionist, sex worker-led THB framework must be championed on the international stage;
- 3) International law must actively dismantle the imperial and colonial roots of many of its regimes in order to truly foment progressive global governance.

Methodology

- Analysis of white slavery/THB instruments, utilizing VCLT treaty interpretation guides
 - Reliance on preparatory works and conference notes
 - Engagement with existing literature
- Limited to sex trafficking*

* defined as trafficking in *exploited* sexual labor, not purely sexual labor - something I owe to Ben Chapman-Schmidt, who describes the very term sex trafficking as epistemologically violent

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First argument: Multilateral instruments countering THB emerged out of colonial-era gender- and race-relations;

So much of the history of the white slavery/THB regime is actually a history of colonial-era encounters. There are two such encounters, interwoven. First, state ambitions towards expansion and the accruing of capital necessarily meant encounters between the colonized and the colonizers. This spurt of globalization gave rise to intense social anxieties, that needed to be managed without the expense of imperial growth. Second, a more bodily encounter - miscegenation - which was not only a threat to societal morals, but to colonial morale. Sex meant two things: the threat of emasculation, and the threat of venereal disease (moral hygiene). Both had to be managed and mitigated.



How would the black, the yellow and the brown respect honest women, when they can, for 5 francs or less, approach a woman the same color as the wife of their doctor, officer, general or governor?

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Second argument: Ambiguity was designed into the regime such that it entrenched systemic and epistemic violence towards sex trafficking “victims,” sex workers, and migrants;

This ambiguity - simply changing the name from white slavery to human trafficking, and conflating the two concepts - is crucial in understanding the trajectory of the white slavery/THB regimes. This ambiguity reified the assumptions that underpinned white slavery, without meaningfully reckoning with any of them. As a result, each subsequent instrument inherited the priorities of the last - immigration control, paternalism, moral indictment, etc. This ambiguity is also literal. There is a definitional vagueness that has allowed individual states to define human trafficking however they see fit and - thus - conflate the traffic in exploited sexual labor with sex work, as well as the conflation of human trafficking with human smuggling, the conflation of human trafficking with slavery, and any number of conceptually unclear legal - and criminal - concepts that fly in the face of the fair labelling principle.

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Third argument: A more nuanced approach to countering THB is needed in order to decolonize the WS/THB regime.

What does this mean? What does this look like? We know there is a need, but is there a possibility, a probability of honest-to-goodness decolonialization? Or is this enough of an indictment to make the entire regime obsolete in its almost vulgar attachment to sexist, racist tropes? Even though I make this argument, I cannot be sure what it means. So much of the social sciences has made of decolonization a metaphor, but even what decolonization could mean in this context is unclear.

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Regardless of the answer to the previous questions, there is a prescriptive element to this paper, and a little bit of homework.

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Responding to a lacuna with a deeper lacuna might not seem intuitive, but it may have to be the ultimate goal of truly progressive, truly feminist anti-trafficking activists. An entire body of (racist, sexist) knowledge has been created in response to a “crime” that may well have been imagined, or at least exaggerated, and then artificially augmented by the very policies seeking to combat this crime. That is, by deepening the structural conditions that drive migration, and then criminalizing specific forms of migratory labor, states may well have perpetuated a traffic that was initially inconsequential. Certainly, it is unlikely that we will fully know the truth of it: but why, then, do we allow policy to be built on such deeply problematic, flawed, and incomplete assumptions? Perhaps, then, a law-based solution to human trafficking for sexual exploitation is the same as a normative solution. Perhaps the solution is to recognize when, in fact, the law does not get to have a say.

There is a lot more to this paper that I would love to have discussed, including the various opinions I held on this topic myself before arriving at this present conclusion, so I look forward to Sabrina's intervention and to the Q&A later. Thank you!