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The Commodification of Human Life: Human Trafficking in the Age of Globalization

Yanchuan Liu

I. Introduction

This study seeks to answer three questions. First, to what extent does globalization contribute to the vulnerability of victims of cross-border human trafficking? Next, how have the United States and the Netherlands responded to this phenomenon, and why have the two governments responded in the way they did? Finally, as developed countries tighten their borders out of security concerns when economic inequality continues to attract migrants from developing regions, is there space for the convergence of the interests of destination countries and those of the migrants so that these individuals will have safe, legitimate alternatives to the irregular movement that leads to severe exploitation, such as Trafficking in Human Beings (THB)?

To answer these questions, the essay proceeds as follows. Following the introduction, the second section serves three purposes: it first defines human trafficking; then it distinguishes this concept from human smuggling, with which it is often confused; and finally, it explains why this research paper concentrates on human trafficking. Through an analysis of the link between human trafficking, globalization, and global equality, the third section identifies the context in which THB is taking place. This section also illustrates the methodology of this project. Lastly, the article questions the contradiction between state security and human security by comparing the response of the U.S. with that of the Netherlands to THB. It is important to keep in mind that THB takes place on both domestic and international levels. This project will focus *only* on the latter.

II. Human Trafficking in the New World

Although human trafficking has a long history, the widening inequality at the global level, which encourages millions of disadvantaged people to migrate, and the advances of transportation technology have extended human trafficking to an unprecedented scale. As the International Labor Office points out, in the process of searching for economic opportunities, some migrants are “coerced” into work they did not choose willingly: “They have been deceived about the nature of their work or conditions of their employment contract, they work under threat, are subjected to violence, confined to their workplace or do not receive the wage that was promised to them.”¹ In other words, they become “victims of forced labor,” and they are trafficked “into a situation from which they find it difficult to escape.”²

A. Definitions of Human Trafficking

Although it is difficult to measure the scope of THB due to its intentionally hidden nature, the U.S. Department of State, a government organ that annually reports on transnational THB trends, estimates that up to 800,000 people are trafficked across international borders every year.³ As more human trafficking incidences rise to the surface, attention to this phenomenon has increased. Internationally, a wide range of definitions have emerged. Kamala Kempadoo defines human trafficking succinctly as “the trade and exploitation of labor” under conditions of coercion, fraud, and force.⁴ La Strada International, a coalition of anti-trafficking organizations from nine European countries, defines human trafficking extensively as:

All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harboring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labor, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.⁵

More influential than other definitions, the United Nations, in the 2000 “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” (hereafter the Palermo Protocol), defines human trafficking as exploitation with the purpose of “the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁶

While definitions of THB vary in length and concreteness, the core of human trafficking remains strikingly constant: exploitation, force, coercion, and deception. Another important yet frequently ignored fact about human trafficking is that not all victims end up in the sex industry. As the definitions cited above indicate, many victims are also exploited for the purpose of domestic work, marriage, industrial and agricultural work, and trade in human organs.⁷

B. Human Trafficking and Human Smuggling

The differences between human trafficking and human smuggling deserve a clear emphasis because the two phenomena tend to be easily confused. From a legal perspective, the victim is defined differently in human trafficking than in human smuggling. In an attempt to distinguish THB from human smuggling, Mark Lagon, Director of the Office to Monitor and Combat Trafficking in Persons in the U.S., describes human smuggling as “illicit transfer of someone across sovereign borders, often with the *consent* of the person being smuggled [my emphasis].”⁸ The defining components of human smuggling, therefore, are illegal border crossing and violation of state authority, and the “victim” in a smuggling case is the state.⁹ Human trafficking is, in contrast, violation of “the human right of personal freedom and of personal integrity”; hence, the victim is the trafficked person.¹⁰

THB and human smuggling are also different in practice. Conny Rijken adopts the view that THB consists of two phases: “the recruitment and transport phase,” on the one hand, and “the exploitation phase,” on the other.¹¹ The coexistence of these two phases often blurs the

distinction between human trafficking and human smuggling. In the first phase, the would-be victims may *voluntarily* follow the traffickers in the belief that, once abroad, they will obtain what the traffickers have falsely promised, whether it is well-paid jobs or marriage. As long as the would-be victims are in the recruitment and transport phase, the phenomenon can be categorized as human smuggling. Human trafficking happens at the onset of exploitation, when traffickers or those who receive the victims exploit the victims with force or coercion.

C. Why Human Trafficking?

This project focuses on transnational human trafficking for three reasons. First of all, transnational human trafficking is not only an international crime, but it also leads us to critically reconsider globalization itself. Despite the convenience that globalization has promoted in terms of transportation and communication, it becomes important to ask who gains and who loses. Why do human traffickers find it easy to take advantage of people looking for a better life outside their home countries? This question encourages us to examine globalization's varying impacts on different populations.

Second, the analysis of human trafficking may extend our conception of security. In recent decades, there seems to have risen a competition between the paradigm of state security versus that of human security, which is the notion that "security be viewed as emerging from the conditions of daily life, food, shelter, employment, health, public safety."¹² The 1994 Human Development Report seeks to understand human security from seven perspectives: economic, food, health, political, environmental, personal, and community.¹³ State security clashes with human security when individual interests contradict state interests. On the one hand, states exercise border control to pursue their interests while deterring threats. On the other hand, "political instability, civil strife, insecurity, oppression and poor housing, inadequate social services and education facilities for children" have driven many in low-income countries to explore opportunities away from home.¹⁴ Irregular migration arises when destination countries reject migrants, subjecting them to a variety of risks during the course of irregular movement. On 31 March 2009, for instance, two boats carrying undocumented migrants to Italy sank off the coast of Libya, with hundreds missing.¹⁵ While the journey to the destinations is usually imbued with danger, the exploitation that awaits the migrants at their destinations can also be excruciating (e.g., forced labor or prostitution). Therefore, in prioritizing state security, do destination countries put migrants under greater insecurity?

Third, this research may also reveal some characteristics that human trafficking shares with other types of migration. Despite the vulnerabilities that unauthorized migrants have to suffer, popular concern with the security of immigrants, especially illegal ones, tends to be lean. Although many cases of immigration have had a positive impact on the receiving countries, as evidenced by the contribution of migrant workers to Western Europe's economic growth between 1945 and 1973,¹⁶ several Western European countries have witnessed the rise of right-wing populist parties that consider migrant identities a threat not only to processes of integration but also to national identity.¹⁷ With specific respect to the Netherlands, the anti-immigration mentality found expression in the victory of the Lisjt Pim Fortuyn Party, an Islamophobic party, in the elections of 2002, despite the unexpected murder of its leader, Pim Fortuyn. Ulrich Beck attributes the fear of minorities and immigration to the fact that:

National societies...generate and preserve...the quasi-essentialist identities of everyday life, whose self-evidence seems to derive from such tautological formulation as: Germans live in Germany, Japanese in Japan, Africans in Africa. That there are black Jews or Greek Germans—to take just a couple of trivial instances in the quite normal confusion of world society—is seen within this horizon as a limiting case or exception, and thus as a *threat* [my emphasis].¹⁸

That is to say, instead of being worthy of protection, immigrants or minorities have frequently been perceived in populist politics as disturbing, and therefore the insecurities that unauthorized migrants experience during the course of migration have received inadequate sympathy.

III. Context of THB and Methodology

Transnational THB takes place in the context of globalization, which Anthony Giddens defines as “acting and living (together) over distances, across the apparently separate worlds of national states, religions, regions and continents.”¹⁹ Succinct as it is, Giddens’ definition leaves out a crucial component of globalization: commodification, or a “prodigious expansion of capital into hitherto uncommodified areas” in the contemporary phase of capitalism.²⁰

The key to contemporary capitalism is its multinational character and the fact that multinational corporations have greatly increased the range of products transformed into commodities. Even aesthetic elements that people usually associate with culture have been turned into commodities (art) to be bought and sold in the capitalism marketplace.²¹

“Aesthetic elements” are but one example. In the case of ecotourism, whereby tourists visit natural landscapes as consumers, nature is the subject of commodification.²² Even water—the most basic necessity of life—has been redefined as a commodity by multinational corporations. The World Bank and the International Monetary Fund have become “centrally involved in management of public water services in poorer countries.”²³ In the case of human trafficking, it is human life itself that is being commodified.

A. Global Inequality and Commodification of Human Life

To the traffickers, people are “highly profitable, low risk, expendable, reusable, and resellable commodities.”²⁴ Many have attributed the commodification of human life to the extensive inequality that we witness today. As Thomas Pogge summarizes, “2,735 million people (44 percent of world population)” consume “only 1.3 percent of the global product” while “the 955 million citizens of the affluent countries” possess “about 81 percent of the global product.”²⁵

Although poverty and poor working conditions have historically been blamed for provoking irregular migration, it is not solely a supply-driven phenomenon. An initiative launched by

former U.N. Secretary-General Kofi Annan in 2003, the Global Commission on International Migration (GCIM) observed that there is a demand in the labor market of developed countries that lures many in low-income countries to embark on the risky journey from home:

In many industrialized states, the increasing competitiveness of the global economy has placed new pressures on both private and public sector employers to minimize costs and to maximize the use of cheap and flexible labor—precisely the kind of labor that migrants, whether they have moved in a regular or irregular manner, are able to provide.²⁶

Given the supply-and-demand relationship, both criminal networks and the lack of access to legal migration increase the vulnerability of unauthorized migrants. The growth of diaspora communities and transnational social networks has also made it easier for people to move illegally from one country to another.²⁷

Limitations on migration, such as restrictive immigration policies, have perpetuated inequality at the global level. Although economic globalization has enabled the free movement of capital, allowing multinational corporations to relocate production to where cost is low, states use migration policies as “nation-state level gate-keeping instruments” to determine who enters and remains in their territory.²⁸ “Outcomes of national political-economic interests,” these policies are “biased towards a fear of otherness yet operating in an increasingly interconnected world.”²⁹ However, when incorporated into immigration policies, this fear of otherness places those “others” at a disadvantage compounded by insecurity.

B. Methodology

This project *intentionally* combines multiple research methods. To avoid a skewed understanding of THB, the study relies not only on government reports and legal documents but also studies by academics and NGOs. The first type of resources involves close reading of legal documents, both international and domestic. Both the United States and the Netherlands have criminalized THB. The U.S. enacted the “The Victims of Trafficking and Violence Protection Act of 2000” (TVPA hereafter),³⁰ whereas the Netherlands outlawed THB via the Dutch Criminal Code 273a. The existence of these anti-trafficking laws offers a guideline for the comparative study of the U.S. and the Netherlands. Second, I make reference to public speeches and press releases of government authorities in order to evaluate official attitudes toward victims of THB. For example, the Dutch Ministry of Justice and a variety of U.S. authorities, ranging from former President George W. Bush to Mark Lagon, Director of the Office to Monitor and Combat Trafficking in Persons, are quoted in this project. To provide examples of THB in the U.S. and the Netherlands, I also utilize works and studies of journalists and NGOs. Finally, I refer to the two interviews that I conducted with Dutch human rights organizations, both of which regaled me with their experiences in the competition between state interests and the security of the victims.

IV. Responses to Transnational Human Trafficking

In the United States as well as in the Netherlands, transnational THB received little attention from lawmakers until the 1990s. According to Conny Rijken, one of the primary obstacles that hinders effective prosecution of human traffickers is the disparity between the application of the law, on the one hand, and the importance of prosecution and the protection of victims, on the other.³¹ Curbing transnational human trafficking requires authorities to clearly define victims and perpetrators, a prerequisite to effective prosecution. Governments, however, often fail to achieve a clear posture toward trafficking victims. From the perspective of states, trafficked people often “have three different roles, namely, they are victims, witnesses, and illegal immigrants.”³² Because the majority of trafficked persons do not possess the appropriate documents that allow them to stay in the destination countries, these people simultaneously fall into more than one of the three categories. This identity confusion oftentimes leads states to perceive *victims* of a criminal act as *offenders* of immigration law. From any legal perspective, a victim is “the person who suffers as a result of the action of another.”³³ For immigration authorities, the victim is specifically defined as “the person who gets the benefit of the action—i.e., entry into the state.”³⁴ As a consequence, the same person “who is one minute in immigration law constructed as a victim of a trafficker may the next minute find herself the object of criminal sanctions for irregular entry.”³⁵ “[M]ore concerned about the infringement of national sovereignty than about the infringement of the personal dignity and integrity of the victims,”³⁶ state officials often respond to human trafficking with the deportation of victims, rather than protection and assistance. This is true, although to varying degrees, in both the United States and the Netherlands. This section examines and compares the anti-trafficking laws of each nation.

A. The United States

In June 2005, then U.S. President George W. Bush expressed his determination to combat human trafficking by referring to natural law: “human life is the gift of our Creator and it should never be for sale.”³⁷ In the same month, Condoleezza Rice, then U.S. Secretary of State, openly condemned human trafficking as “nothing less than a modern form of slavery.”³⁸ Yet human trafficking had received little attention from the U.S. government until the late 1990s, when a series of trafficking cases rose to public attention. In late 1997, two teenage Mexican girls reported to the Mexican Consulate in Miami that they, together with many other Mexican women, had been forced into prostitution by a clan named Cadena. Through debt bondage and violence, the Cadena family kept the women working as “sex machines,” although it had promised them decent jobs before their arrival in the U.S.³⁹ Also in 1997, New York police discovered about fifty deaf Mexicans, who had been brought into the U.S. illegally and forced to sell trinkets for their handlers in the subway. Eventually, twenty people were indicted on charges ranging from slavery to alien smuggling.⁴⁰

The Cadena case and the case of the deaf Mexicans, together with several other discoveries of THB, led Senator Paul Wellstone of Minnesota to bring human trafficking to the attention of the U.S. government. As a result, in 1999, Congressman Chris Smith from New Jersey proposed significant trafficking legislation that would constitute the framework for the TVPA—the first comprehensive anti-trafficking legislation in the U.S.⁴¹

1. From Illegal Aliens to Victims of THB

The TVPA came out on 6 October 2000, with the goal to accomplish what Clinton's administration had called the "Three Ps": prosecution, protection, and prevention.⁴²

Prosecution implies punishment of human traffickers under criminal law. Protection indicates the various forms of assistance available to victims of THB, ranging from housing and medical care to special immigration status. Prevention includes activities like public education and job creation, "intended to keep potential victims out of the clutches of traffickers and away from exploitation."⁴³ Later, in December of the same year, the United States became an official party to the Palermo Protocol.⁴⁴

The birth of the TVPA has improved the ability of the U.S. to combat THB. Before the TVPA, the U.S. had no legislation specific to human trafficking. Human traffickers were indicted for either slavery or commercial sexual exploitation,⁴⁵ but the newly discovered victims of trafficking often faced deportation instead of assistance and protection. The lack of⁴⁶ legislation that defines human trafficking and stipulates how to deal with its victims played into the hands of human traffickers:

Traffickers tell the victim that he or she is in the U.S. illegally and will be jailed or deported if he or she tries to escape from the trafficker. At other times, traffickers confiscate travel documents and identification papers. *The result in either case is that the trafficker has made the victim fear, or has increased their fear, of law enforcement and prison* [my emphasis].⁴⁷

In the Cadena case, "federal agents who participated in the raids reported that a number of the women greeted them not with relief but rather with suspicion and hostility,"⁴⁸ with many of the women believing that they "would be in prison for the rest of our [their] lives."⁴⁹ It took several months of patient work by law enforcement officials to earn the trust of the victims.⁵⁰ Today, with human trafficking and the "Three Ps" clearly defined, human traffickers are less able to maintain their grip over trafficked persons by demonizing U.S. authorities.

2. Contentions about the TVPA

Although the TVPA has given the U.S. government more legal ammunition to combat THB, it has also been contentious in two ways. First, the TVPA allows the issue of the "T visa" that permits trafficking victims to remain in the U.S., but only on the condition that they "have complied with reasonable law enforcement requests for assistance in any investigation."⁵¹ This requirement gives rise to several possible prospects that are disadvantageous to victims:

In the event that a trafficker is not located, that law enforcement does not pursue a case, or that law enforcement determines that a victim is not necessary for the investigation or prosecution of a trafficker, the victim will have difficulty in obtaining law enforcement endorsements required under the Act to become certified and therefore eligible for services.⁵²

Thus the TVPA is designed, to a significant degree, for the purpose of providing incentives to trafficked persons to collaborate with law enforcement in trafficking crimes.

Second, in addition to combating THB in U.S. territory, the U.S. government is also trying to lead the campaign against human trafficking at the international level. As Anthony DeStefano describes, the United States is “behaving like a moral leader” and “using its clout and dollars to set an agenda.”⁵³ On behalf of the U.S. government, Condoleezza Rice claimed that “the United States has a particular duty to fight this scourge because THB is an affront to the principles of human dignity and liberty, upon which this nation was founded.”⁵⁴ According to Mark Lagon, the United States has committed over \$528 million to fund international anti-trafficking programs since fiscal year 2001, including a special \$50 million presidential initiative.⁵⁵

Yet there is another side of the story. The TVPA allows the Department of State to judge the efforts that foreign countries make in combating human trafficking. Conscious of the fact that mere evaluation may not generate adequate incentive to increase anti-trafficking efforts, the U.S. Congress in 2003 decided that “countries that do not make significant efforts to confront slavery face the threat of losing non-trade-related, non-humanitarian forms of U.S. assistance.”⁵⁶

The influence of this measure has turned out to be two-sided. On the one hand, many countries that were criticized by the U.S. for not meeting the obligation to curb human trafficking have reacted strongly against U.S. accusations. Their responses involve more anger at the oftentimes imprecise evaluation than strengthened incentives to reinforce their anti-trafficking efforts. Saudi Arabia, for example, simply rejected the criticisms of the U.S. State Department on Saudi efforts to combat THB, without showing any intention to reinforce its efforts.⁵⁷ The head of the department for countering human trafficking in Tajikistan, Firuz Sattorov, accused the U.S. of failing to note the constructive measures taken in his country, complaining that, “the international community is not aware of the positive processes taking place in the country.”⁵⁸ Likewise, Malaysia also responded unfavorably to its classification as a Tier-3 human trafficking offender by the U.S. government, calling the evaluation “unfair and unreasonable.”⁵⁹ While incensed by the ranking, Malaysia’s true concern lies in the possibility of being “subject to certain sanctions by the U.S. such as withholding non-humanitarian, non-trade-related foreign assistance.”⁶⁰ Malaysian authorities also worried that these sanctions could lead to U.S. opposition in terms of assistance from the International Monetary Fund and World Bank.⁶¹

On the other hand, U.S. opinions on several occasions also motivated some countries to strengthen their anti-trafficking efforts. Japan was, for example, pressured to “step up measures to fight human trafficking after the U.S. State Department in a report in June [2004] downgraded its assessment on Japan and put the country on a special watch list.”⁶² In response, Japan not only revised its penal code to specifically criminalize human trafficking, but it also became “stricter in going after perpetrators of human trafficking and [will] provide protection for victims by exempting them from standard deportation procedures.”⁶³ With the emergence of these changes, Deputy Chief Cabinet Secretary Masahiro Futehashi *ambitiously* stated that, “it is important to ensure the plan is implemented and produces concrete progress so that Japan will not be criticized as a major host country for trafficking.”⁶⁴

If we put aside criticisms of unreasonable rankings, the U.S. appears sincere in its intention to curb human trafficking at the international level. When evaluating each country’s progress in

fighting human trafficking, the U.S. seems impartial in front of its strategic partners, such as Saudi Arabia and Japan. During his visit to Georgetown University in April 2008, Mark Lagon drew attention to the fact that countries subjected to U.S. economic sanctions for failing to effectively combat human trafficking not only included traditional enemies such as North Korea and Cuba, but also U.S. strategic partners in the Gulf Region such as Saudi Arabia.⁶⁵

Associating efforts to combat trafficking in humans with foreign aid, however, inevitably politicizes the entire anti-trafficking project. In mid-October 2007, for instance, U.S. President George W. Bush approved the lifting of some sanctions imposed on North Korea under the TVPA. Ironically, in the same year, the U.S. Department of State had classified North Korea as “the third-worst nation in the world in terms of human trafficking because Pyongyang hasn’t made any effort to improve the situation.”⁶⁶ Rather than a true reflection of North Korea’s progress in reducing human trafficking, “the lifting of sanctions indicates the U.S. intention to open its doors for more exchanges and better relations with North Korea.”⁶⁷ Thus, under the seemingly disinterested leadership that the U.S. is trying to take in fighting THB, the White House is simultaneously pursuing its political interests.

3) Immigration Law and Irregular Movement

Irregular migration into the U.S. provides insights into the third research concern: whether states can provide safe and legal means of immigration without compromising national security. Since the U.S. became known as a country of freedom and prosperity, illegal immigration has always been an important concern for American officials. Does more restrictive immigration control reduce irregular movement? GCIM concludes that, in an attempt to “defend their sovereignty and security,” states have devoted enormous amounts of resources to stem irregular migration, “with *limited* success [my emphasis].”⁶⁸ In fact, studies on migration have found that more restrictive immigration laws tend to exacerbate illegal migration. A case study on the U.S.-Mexico border by Patricia Fernandez-Kelly and Douglass S. Massey, for example, concludes that tighter immigration control not only increases the costs and risks of border crossing but also decreases the likelihood that unauthorized immigrants will return home, simply because reentry will be difficult.⁶⁹ Meanwhile, “beefing up the Border Patrol may not have reduced the inflow of unauthorized immigrants.”⁷⁰ In sum, the more immigration policies prioritize state security over human security, the more necessary for the immigrant to take risks. With regard to THB, tightened border control does little more than make it a more dangerous and lucrative criminal activity.

B. The Netherlands

THB in the Netherlands is more complicated than in the U.S. for two reasons. First, human trafficking in the Netherlands is sensitive to EU expansion. As the EU reaches out to Eastern Europe, legal migration to the West from the new member states has become convenient. In response, human trafficking networks shifted their focus to non-EU member states. As traditional sources of victims (such as Poland, Hungary, and Romania) joined the EU, Ukraine and Albania have emerged as the new primary source countries of trafficked persons.⁷¹

Second, the Netherlands legalized prostitution for “persons age 18 or older who engage in the

practice voluntarily” in 2000,⁷² empowering each Dutch city council to issue permits to people who are willing to work in prostitution. With such a permit, a prostitute is allowed to work within one specific area of the city (e.g., “the red light district” in Amsterdam) but not elsewhere. The Dutch government lifted the ban on prostitution in an attempt to reduce organized crime, assuming that such a move would discourage people from engaging in illegal activities. The legalization of prostitution does not, however, mean the end of illegal prostitution. Involuntary prostitution still takes place outside government-supervised districts and, of course, without government regulation.⁷³

It is important to keep in mind that, like in the U.S., THB in the Netherlands is not limited to the sex industry. The Dutch legal system has a history of understanding human trafficking narrowly, in terms of sexual exploitation: “It is...prohibited to recruit or to bring someone across the border with a view to sex work. To profit from all this is also punishable.”⁷⁴ Between 1911 and 2000, the Netherlands relied on Article 250ter or Article 250a of the Criminal Code to prohibit trafficking of women and girls for prostitution.⁷⁵ Year 2000 saw the legalization of prostitution, which created a distinction between legal and illegal prostitution, with only the latter punishable. In 2002, Article 250a was extended to include all forms of sexual exploitation, such as “the forced involvement of adults and the exploitation of children in erotic pornographic scenes.”⁷⁶ In 2005, the Netherlands replaced Article 250a with Article 273a, broadening the scope of human trafficking beyond prostitution and sexual exploitation to include “forced labor or services, slavery, or slavery-like practices.”⁷⁷ The expansion of the definition of THB allowed the Netherlands to meet “a number of international treaties, conventions and decisions,” bringing “its criminal legislation up to date and focused.”⁷⁸

1. Illegal Aliens or Victims of THB?

Although Dutch legislators seem to be making consistent progress in the campaign against THB, they have not forgotten to aim for a balance between assisting trafficked persons and protecting the Dutch social order—sometimes at the expense of those aliens. Like their counterparts in the U.S., Dutch officials tend to interpret human trafficking (a criminal act as well as a human rights violation) as a type of illegal immigration. In a 2004 proposal to strengthen the campaign against THB, then Minister for Immigration and Integration of the Netherlands Rita Verdonk asserts that criminalizing human trafficking will “contribute to the fight against illegal aliens” because “the criminal approach of human trafficking will tackle the infrastructures behind illegal immigration” and “the detection and prosecution of human trafficking will in turn provide relevant information to tackle illegal aliens.”⁷⁹ Although this proposal clearly shows the Dutch government’s inclination to adopt a “criminal approach” to human trafficking, stopping this criminal act is not considered an end in itself but a means to “tackle illegal aliens”—the ultimate aim of the government officials.

In reality, even a completely criminal approach to THB is insufficient. Without understanding human trafficking as a human rights issue, the Dutch government has failed both to adequately assist the victims and to effectively destroy human trafficking networks. First, with respect to the victims, many are afraid to talk with the police about their experience for fear of retaliation. Many victims are trafficked by sophisticated Mafia-type organizations that maintain strong influence in the victims’ countries of origin. Cooperating with the Dutch police

in the Netherlands is very likely to pose a direct threat to the victims' families at home. As one victim who testified against her trafficker has said, "I have moved house three times already, but I still get anonymous phone calls saying, 'You owe us. We'll get you.' They always know where I am. What can the police do? They can do nothing."⁸⁰ Consequently, many victims of THB choose to remain silent about their experience and are detained as "illegal aliens"—violators of Dutch immigration law.⁸¹

Second, using the campaign against THB as an instrument to remove "illegal aliens" frequently encumbers efforts to destroy trafficking networks. As Rijken argues, "that the absence of victims and thus the absence of the best witnesses frustrates criminal proceedings against the traffickers is not taken into account at the moment of expulsion."⁸² This has been evidenced by the immediate deportation of documentless foreigners following Dutch police raids on houses where these people had accommodations; they had little time or chance to be identified as victims of human trafficking. The proposal submitted by the Minister for Immigration and Integration also emphasizes that "illegal residence will not be punishable because the detention resulting from this actually prolongs the alien's stay in the Netherlands, whereas it is the Government's primary objective to terminate the stay of the illegal alien."⁸³ The Dutch government's arbitrary attitude toward illegal aliens ensures the efficiency of their removal from Dutch society and, at the same time, jeopardizes the efforts to prosecute human traffickers and assist the victims.

Unfortunately, even deportation is not an option for some individuals. The Netherlands has been unable to identify Chinese victims of THB, for instance, because the Chinese government denies that any of its citizens would travel abroad without a legal document.⁸⁴ After weeks of detention for traveling without valid documents, these women will be released to the streets with a government request to leave the country within days. Usually these people linger on the streets or, worse, fall back into the grip of abusive criminals until they are arrested again as illegal aliens.⁸⁵

At the time of this writing, the Dutch government seems to have realized that immediate deportation of trafficked persons may cause difficulties in the prosecution of traffickers. Consequently, the Ministry of Justice and the Ministry of Health are collaborating on a pilot project "to see if victims of human trafficking can safely be provided with shelter and how this can best be organized for the long term."⁸⁶ In my interview with CoMensha, a Dutch human rights NGO that cooperates closely with the government, the policy advisor spoke highly of this government move:

One of our current frustrations is the lack of proper and adequate shelters for victims of human trafficking...[Yet] one of our current successes is that two Dutch Ministries are working to realize categorical shelters for victims of trafficking. CoMensha started advocating for this in 2004.⁸⁷

Yet the motivation behind the Dutch government's attempt to achieve categorical shelters for victims of THB is still fully in line with the expectation for the victims to cooperate in investigations, a necessary step in the destruction of the illegal immigration infrastructure. A press release from the Ministry of Justice makes no attempt to hide this intention: "They [victims of human trafficking] will...be offered a peaceful and safe environment, which should

help them make up their mind to decide whether or not to report the offence or to cooperate with the police in a criminal investigation against human traffickers.”⁸⁸ Even made categorical, shelters will still function as rewards for victims’ cooperation with Dutch authorities.

2. Contentions about a Victim’s Right to Receive Assistance

As in the United States, trafficked persons in the Netherlands have no access to government-provided shelter or other forms of assistance unless they agree to cooperate with the police in criminal investigations. The Dutch government’s intention is clear: victims of THB may not receive assistance for having been victimized, but they can be rewarded with what they need for participating in the fight against “illegal aliens.” It is believed that “if victims were given some time for reflection, and provided with appropriate care and support, they would be more likely to report their traffickers.”⁸⁹ Specifically, Dutch anti-trafficking legislation designed a “B9” procedure whereby suspected victims of human trafficking (after being informed by the police of “the possibility of reporting the crime to the police or otherwise cooperating with the criminal investigation or prosecution”) are entitled to a three-month reflection period in the Netherlands. Notably, it is also stipulated that “the reflection period shall only be granted in these cases if the public prosecution department and the police agree to it.”⁹⁰ In other words, the victims are supposed to use these three months to decide whether to collaborate with the police, a decision that may put their families or themselves in danger, or to be sent out of the Netherlands as *illegal aliens*.

Victims who agree to testify will receive extended temporary stay status, which comes with various support services, “such as housing, medical and legal services, counseling, language and integration courses, financial assistance,”⁹¹ and so forth. Yet even some of these rewards are poorly distributed. Under Dutch law, at the end of their contribution to the investigation and prosecution, victims may also apply for permanent residence on humanitarian grounds, “but this has been so narrowly construed that it is very rarely ever used successfully to attain permanent residence for trafficked persons.”⁹² The Dutch Foundation of Religious against Trafficking in Women, an NGO known for awareness raising, spoke directly of the government’s unwillingness to view THB from the victim’s perspective: “The government’s interest,” according to the coordinator, “is to stop people from migrating.”⁹³

VI. Conclusion

In the context of economic globalization, the nation-states’ continued sovereign control over immigration has denied many the opportunity to migrate legally and safely. As a consequence, potential immigrants may seek to reach their destinations through illegal channels, thereby giving rise to irregular movement. Human trafficking is a particular type of such movement in that it commodifies human life, making it sellable, exploitable, and disposable.

As destination countries of trafficking in persons, both the U.S. and the Netherlands tend to define victims of this transnational crime as illegal immigrants who deserve immediate removal. With the establishment of anti-trafficking laws, the two governments are increasingly able to see the trafficked persons as victims, but they do not view THB from the victim’s perspective. Thus, priority is often given to the destruction of the criminal infrastructure behind

THB over assistance to trafficked persons. This explains the fact that whether the victims will receive shelter and other forms of government assistance depends on their willingness to cooperate with the authorities. The U.S. has even associated anti-trafficking efforts with foreign policy, occasionally using foreign aid sanctions as a tool to pursue U.S. national interests. In the competition between state security and human security, the states are obviously in the lead.

How necessary is the competition between state security and human security? Is there space for their convergence? Excessively restrictive immigration policies have had little impact on the incentive to migrate. Rather, they are effective in making irregular migration more dangerous for the migrants, on the one hand, and more lucrative for criminal organizations, on the other. The key issue in coming years will be whether a balance can be found between state security and human security. As we increasingly understand security from a human angle, we simultaneously de-emphasize the role of national boundaries in the security concept. Human security concerns the most basic conditions of daily life, such as food, shelter, employment, health, and public safety. It transcends national borders and geopolitics, which characterize the concept of state security. As far as THB in the context of globalization is concerned, only an approach that is balanced between the two types of security is likely to be sufficient in protecting the vulnerable and prosecuting the culpable. Globalization and commodification, after all, defy national borders.

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