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RUNNING HEAD: Unintended Consequences

Unintended Consequences: Understanding Human Trafficking in the United States

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## I. Introduction

The 2009 blockbuster movie Taken stars Liam Neeson as an ex-CIA agent who single handedly rescues his naive teenage daughter from a Russian sex trafficking ring (IMDB, 2008). Throughout his adventure he manages to kill the scout, seller, and buyers leaving a trail of bodies in his wake. He rescues his daughter and they happily head back to America. While media has some hyperbole attached to its economically driven interests, the real life debate over human trafficking is not much further from Liam's epic tale. Slogans like “A crime that shames us all” and “A crime so monstrous” have created a problem in the traditional Disney formula where there are good guys, bad guys, and no gray area. However, this vision perpetuates a false understanding of trafficking within the United States and throughout the world. The United States is a place with dual identities. Many citizens believe the U.S. is a nation of immigrants with a past based on welcoming the poor and needy. Instead, historical context demonstrates the opposite; the United States is a nation by design. The U.S. federal government has set out conditions for membership and enforced them through violence, excluding slaves from membership, encouraging slaves to leave once membership was available, seeking desirable Europeans for migration, and historically discouraging undesirable populations (Zolberg, 2006). The United States is subject to immigration but also has more control over it than the government lets on. In much the same way, eradicating trafficking is both a complicated and politically driven task.

The purpose of this paper is to understand human trafficking in the United States with a focus on U.S. policy and enforcement. The study of international illegal flows is still in the early stages. In particular, human trafficking is especially difficult to track. Part of the reason for gaps in this area is the difficulty of measuring this phenomenon. First-hand accounts are

nearly impossible to obtain. Furthermore, statistics on human trafficking are still just estimates. Researchers also focus on case studies without being able to generalize to larger patterns of trafficking. “The lack of homogeneity in official sources on the trafficking in humans is so well known to everyone that governmental authorities and scholars alike are united in their efforts to comprehend the many facets of the phenomenon in order, more or less clearly and with as few approximations as possible, to identify” (Savona & Stefanizzi, 2007, 45). Thus, this paper is exploratory in nature. Information was obtained from government documents, nongovernmental organizations, and academic articles. What is trafficking? Is it really a problem? What are the unintended consequences of trafficking legislation? Are current campaigns working? This paper will examine four areas to answer these questions. Part II will draw on various sources to establish the significance of human trafficking as a social problem. Part III will identify the common definitions of human trafficking that guide U.S. policy. Part IV will examine U.S. law and policy on trafficking. Part V will explore U.S. anti-trafficking enforcement efforts and the government’s focus on trafficking as only a criminal problem when it also is a migration problem.

## II. Social Significance of Trafficking

Human trafficking is a significant social problem because it violates human rights and threatens both individual and communal security (Bales, 2005). However, there are a plethora of social issues that involve the same violations but are generally not considered significant. Social problems go through an ‘issue-attention cycle’ that takes place in four stages: pre-problem, alarmed discovery and euphoric enthusiasm, realizing the cost of significant progress, gradual decline of intense public interest, and post problem (Downs, 1972). During the first stage, the public is not aware of the problem. The second stage begins when the masses realize there is a

problem. They then try to rally support to solve the problem. Third, individuals realize that there is a significant cost associated with eradicating the problem. These sacrifices are both monetary and personal (Downs, 1972). Fourth, individuals realize that the cost is too substantial to eradicate the problem. Finally, in the post-problem stage the issue gets pushed to the side. While the public is no longer interested, some permanent entities, such as government programs and offices, have been created to deal with the problem. Human trafficking falls between stages one and two. The issue is significant and has garnered some attention from both the public and government. However, it has not caused the uproar that issues like global warming, poverty, and the AIDS epidemic have.

To tackle the problem, we must understand the basics of human trafficking. Each year approximately for million persons are trafficked throughout the world for different purposes (UN, 2008). That number is the amount of those moved recently and does not include those who were trafficked earlier and are still stuck in situations of slavery. There are over twenty seven million slaves in the world, many of whom were trafficked (Batstone, 2007). Up to eighty percent of victims are female. Fifty percent are under eighteen years old. “Most of the slaves come from countries such as Albania, Belarus, China, Romania, Russia, and Thailand, while the most frequent destinations for traffickers are in Asia, followed by the advanced industrial states of western Europe and North America and a number of states in the Middle East” (Kapstein, 2006). There are many different reasons why individuals are trafficked. Statistics show that thirty two percent participate in involuntary servitude, forty three percent in sex trafficking, and the number forced into military action has not been quantified.

The work that is done by an involuntary servant varies according to the region and demand. These servants do a range of work including agriculture, housekeeping, childcare,

factory work, and mining. Generally, people are trafficked from less affluent nations to the developed world to perform tasks – such as farming and housekeeping – that the middle class is not willing to do. Factory work – like garment and goods production – is predominantly a problem in Asian countries. Mining and resource cultivation most significantly affects Africa where the region is notorious for forced production of diamonds, coffee and cocoa. However, these are just generalizations to paint a picture of trafficking worldwide; these crimes against humanity can happen in any country. Sex trafficking includes prostitution, stripping, mail order marriage and performing in pornography and other sexual entertainment. Military action is another horrendous aspect of trafficking. Victims are generally young children who are kidnapped, brainwashed, and forced to fight in a militia. Some of the actions include killing, rape and torture. Regardless of what industry they are forced into, all of those trafficked live in poor conditions. They lack proper food, shelter, medical care, and self determination.

The acquisition of victims is done in a number of ways. The most aggressive is kidnapping and abduction. Tourists are taken off of cruise ships, snatched out of markets, and drugged at clubs. Native women and children are taken from their homes and in commute. Many times individuals are taken and sold to a large trafficking ring by a trusted acquaintance or relative. Also, after major tragedies, traffickers prey on the displaced. Next, traffickers coerce individuals by promising work as a waitress, receptionist, or factory worker. Traffickers front payment and then victims are forced to work until they are told that they have repaid their debt (Alumuring, 2009). Many workers labor with no end in sight. Others are forced into prostitution with no prior knowledge or consent. Another deceptive way of obtaining sex workers is by holding ‘model searches.’ Organized crime rings capture girls by promising them lucrative modeling contracts and freedom to travel the world. Finally, desperate families sell their

children in hopes of making money to support themselves. Some are aware of what will happen to their children, others are not.

Human trafficking is significant to the world community. It is an international issue. “Virtually every country in the world is affected by trafficking for sexual exploitation or forced labour” (UNODC, 2007). The world is becoming smaller. “Countries today no longer neatly divide into sources and destinations of migrants. Many countries are both: part of their population leaves while at the same time illegal immigrants flock in. Better information about opportunities elsewhere and cheaper, more frequent communications with friends and relatives abroad open many eyes and spur the motivation to try one's luck somewhere else” (Naim, 2005, 90).

The impacts of trafficking are social and physical. First, the social impacts of trafficking on victims are extremely detrimental. Clearly, physical and sexual abuse, deprivation of sanitary living conditions and living in a constant state of fear all add to the stifling of emotional development of victims. Sex workers as young as 6 years old are forced to service 10 customers per day. Forced servants and soldiers work for 14 hours per day and are beaten for the smallest indiscretion. Sadly, when a brothel or factory is discovered in the United States, the victims are held in prisons and detainment centers. Because they are here illegally, they are treated as criminals themselves. Authorities assume that the victims chose to be here and interrogate them. Authorities do not understand the fear that victims have of their master. Many refuse to talk about the trafficking ring for fear that they will be punished if they go back to their master. Those who survive the whole ordeal are sent back to their countries or refugee camps without counseling, money or basic necessities. If a victim escapes their situation, many of them live in fear that their captors will find them again. Others go home only to be shunned by their family

and village for being sexually impure. Regardless, they are back in the poor situation that led them to be trafficked in the first place. These social impacts not only affect those who are trafficked, but also their future or already existing children. Since women and children are kidnapped from generally the same areas, villages and towns live in constant fear.

Second, the physical effects are substantial. Victims are more vulnerable to HIV, tuberculosis, pelvic inflammatory disease, unintended pregnancy, unsafe abortion, chronic illness, beatings, rape, sodomy, cuts, burns, broken bones, exposure to unclean water and food, lack of medical care and high mortality rates (Stewart & Gajic-Veljanoski, 2005). Sex workers will usually die within three years of being trafficked. Both sexual and communicable diseases are passed from patron to worker back to patron. This means that an entire factory or camp of workers can contract the same illness. Men also bring diseases to their wives and children. Clearly, trafficking is a significant problem both globally and within the United States.

### III. Human Trafficking Defined

There are some social issues – such as AIDS/HIV, poverty, and starvation– that are easy to identify. Whether it is a disease or starvation, the problem is clear. Unfortunately, human trafficking is not so easily defined. In order to define human trafficking, it is essential that we examine what it is (and is not) and the various types of trafficking.

In a nutshell, human trafficking is slavery. While definitions vary from government to government and from NGO to NGO, there are two agreed upon components that define human trafficking (Mason, 2008). First, trafficking involves recruitment and transportation. The victim must be brought into the situation through force, fraud, or coercion. This can be across borders or within the same country. Second, the trafficking victim must be held in slave-like conditions.

This includes being exploited and coerced. Coercion comes in the form of violence to the victim, the victim's family, or simply threats of violence.

It is also essential to understanding that human trafficking and human smuggling are not the same thing. Those who are smuggled consent to the movement over state and national lines. A clear example of this is the use of coyotes to cross the U.S./Mexico border. While trafficking and smuggling are not the same, they are closely linked. Many times, individuals are lured by smugglers to be brought into a specific country with promises of guaranteed work. Unfortunately, traffickers pose as smugglers to receive the consent of these migrants. Once the victims have been brought into the destination country, they are then exploited and enslaved. The usual pattern includes coercion and lying to the trafficking victims. The trafficking victim's papers are then confiscated, they are subjected to violence, and forced into slavery. Thus, an effort to be smuggled turns into being trafficked. (UNODC Global Patterns, 2007)

The most commonly discussed type of human trafficking is forced prostitution. This is evidenced by the focus of both the media and the United States federal government. There has been an onslaught of sex worker trafficking victims in different media in recent years. These include movies (Taken, Eastern Promises, Human Trafficking), television (special episodes on Law & Order: SVU and CSI), and books (A Crime So Monstrous). However, human trafficking goes beyond sex crimes. It also includes forced labor, domestic servitude, mail order brides, exploitation of migrants, pornography, and sex tourism. Some also argue that the harvesting of organs for sale is a form of human trafficking.

#### IV. United States' Human Trafficking Policies

The United States federal government has made some efforts to eradicate trafficking both within their borders and worldwide. Trafficking is a complex issue that involves both crime and migration issues. This section will explore policies that deal with trafficking in these two areas.

In 2000, the U.S. passed the Trafficking Victims Protection Act (TVPA). This is the most significant piece of trafficking legislation in the United States. It is the first federal comprehensive plan to focus on human trafficking. This act has three main components: prevention, protection, and prosecution (Polaris, 2008).

First, drafters of the TVPA assert that prevention is key to mitigating human trafficking. There are a few important areas that are integral to the prevention aspect of the TVPA. First, the TVPA created a federal task force to oversee and coordinate the division, evaluate the progress and effectiveness of both the United States and other countries with human trafficking, expand data collection, facilitate communication and coordination between countries, research the sex tourism trade, and advocate with NGOs and other governments to end trafficking (US State Department, 2000). The annual Trafficking in Persons report is a significant document that is produced by this task-force. The Office to Monitor and Combat Trafficking was created to assist the task-force. The office created a director to help the Secretary of State with the collection of human trafficking data. The final part of prevention includes social programs. It is important to note that these prevention mechanisms are broadly defined with no specific details about what they will look like in action.

Second, the TVPA emphasizes protection of victims. Victims of trafficking in the U.S. are eligible for benefits. These benefits are administered through nonprofit organizations (referred to as service providers) on behalf of the government. They usually include housing, counseling, job placement, protection from trafficker, and medical assistance. Since many

victims are not authorized to be in the United States, resident status is crucial to helping victims. Thus, victims can apply for a T Visa. This specific type of visa is for victims of severe trafficking and their immediate family members. In order to be eligible, an individual must demonstrate that they are a victim of severe trafficking, are present in the United States because of trafficking, have cooperated with law enforcement's investigation and prosecution of a trafficking incident, and can demonstrate hardship if they return to their home country(US State Department, 2000). Minors do not have to cooperate with investigations to receive the visa. Permanent residency can be granted after holding a T Visa for three years.

Third, prosecution of both uncooperative countries and traffickers is outlined. The United States will not give non-humanitarian, non-trade aid to countries that actively involve themselves in trafficking. This means that a country that is ignoring the problem can be economically sanctioned. Part of this international oversight includes the research and publication of the Trafficking In Persons report. Also, human trafficking is now a federal crime. Generally, traffickers will be jailed for up to 20 years, pay a fine, or both (US State Department, 2000). Perpetrators are also subject to mandatory restitution of losses to their victims. This includes victims exploited for both sexual and other labor activities.

In 2003, the TVPA was amended. The major improvements made in 2003 include authorizing approximately \$200 million to combat trafficking between 2003 and 2005, ending contracts with vendors who use trafficking (whether for labor or sexual exploitation), allowing trafficking victims to sue their traffickers in civil court, and allowing local officials to get involved in anti-trafficking efforts (Polaris, 2007). The most significant improvement enabled family members of trafficking victims to receive the same benefits as the victims. The most controversial addition took funding away from all nongovernmental organizations who advocate

the legalization of prostitution (Chocan, 2006). In 2005, the TVPA was extended to authorize approximately \$300 million to combat trafficking. Additionally, programs were created to help U.S. citizens who are victims, increase punishment against government officials and contractors, and require studies on trafficking (Polaris, 2007).

In addition to the relatively new anti-trafficking law that focused on trafficking as a crime, U.S. immigration policies also deal with trafficking. The Immigration and Naturalization Act is the most significant piece of modern immigration legislation in the United States. It outlines the immigration principles and laws that shape the United States' stance on immigration. This section will focus on the parts (or lack of parts) of the INA that deal with human trafficking.

The Immigration and Nationality Act does not explicitly mention human trafficking at any point. Exploitation through trafficking is alluded to in act 278:

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien, in pursuance of such illegal importation, shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other (USCIS, 2008).

It is important to note that exploitation for labor and servitude are not discussed in this immigration statute. The focus is not on exploitation, but on the sexual nature of the act. Since trafficking is a significant migration issue, one would assume that the INA would be full of information and laws pertaining to trafficking. However, that is clearly not the case.

## V. U.S. Policy Enforcement

The implementation and enforcement of the Trafficking Victims Protection Act has had some unintended consequences. There have been some nominal improvements. For example,

the TVPA established that trafficking can occur solely through psychological coercion without any physical harm or threat of physical harm to the victim. The TVPA also provided some law enforcement tools for investigating trafficking domestically and abroad via the Trafficking In Persons report. Perhaps the best thing that came out of the TVPA is that it made human trafficking an important issue for the United States government.

Unfortunately, like most young legislation, the TVPA has not been implemented in a comprehensive manner. First, the TVPA and other U.S. anti-trafficking policies have a narrow scope (Chang & Kim, 2007). The U.S. is focused on sex crimes and specifically against prostitution. The conflation of voluntary prostitution and trafficking creates problems. It pushes other forms of trafficking to the side and negates rights for trafficking victims. The trend of heightening punishment for prostitution because it causes trafficking is dangerous. There is no empirical link between voluntary prostitution and trafficking. Stripping funding from organizations who advocate the legalization of prostitution has hindered, not helped anti-trafficking efforts.

Second, only a small number of traffickers have been prosecuted relative to the government's own estimates of thousands of victims trafficked in the U.S. annually. Given the government's proclaimed focus on prosecution, the number of prosecutions has only slightly increased since the passage of the TVPA. "As of March 2003, there were only 128 open trafficking investigations" (Chocan, 2006, 17). While prosecution of traffickers is very difficult, this small number of cases shows a clear problem with the enforcement of the TVPA.

Third, protection mechanisms are not easily obtained. T-Visas are surprisingly expensive. Costs include a \$200 application fee, \$50 application fee per family member, \$50 fingerprint fee, and a \$192 waiver for being inadmissible (NILC, 2002). That is a substantial amount of money

for anyone, much less a victim of trafficking. Even if victims file for temporary status, they are often turned away. “In fiscal year 2004, the Department of Homeland Security received 520 applications for T non-immigrant status, approved 136, denied 292, and as of July 2005, continued to consider ninety-two. In short, as of the end of 2004, fewer than 500 people had received T-visas”(Chocan, 2006,17). While the State Department has acknowledged that they had not invested enough in this area, there was still little improvement as of 2005. Further, there is an overemphasis on prosecution at the expense of prevention and protection. “The provisions governing eligibility for T-visas demonstrate the primacy of prosecution over protection. As previously noted, T-visa are available to those who 'comply with any reasonable request for assistance in the investigation or prosecution of acts of trafficking” (Chocan, 2006, 20).

The enforcement of the Immigration and Nationality Act and subsequent immigration laws has been mixed at best. While some traffickers have been intercepted via immigration laws, the United States' immigration infrastructure has actually increased the problem of trafficking. First, since the 9/11 terrorist attacks, the United States has strengthened its borders. This includes both physical barriers and increased evaluation during the visa/citizen process. Though one would think that tighter borders would decrease trafficking, it has actually done the opposite. Smuggling has both increased and become more dangerous. “Due to more restrictive immigration policies in destination countries and improved technology to monitor border crossings, willing illegal migrants rely increasingly on the help of organized people smugglers” (Interpol, 2008). This dependence has allowed traffickers to more easily lure desperate migrants for exploitation.

The United States also acknowledges that immigration policy impacts trafficking throughout the world. “Despite these countries' reliance on foreign labor, stringent immigration

provisions combined with a bias against foreign workers often create a structure conducive to trafficking in persons” (TIP, 2008, 31). While this argument is beginning made about countries in the Middle East, it should also be applied to the United States. The U.S. is not acknowledging that its strict borders are aiding human traffickers. This denial is the political part of human trafficking. Governments focus on the evil individuals involved in the crime so that they do not have to acknowledge the unintended consequences of their policies. “References to the abuses conducted by individual actors – brutal traffickers and exploitative employers – obscures the importance of formal citizenship/legal status, and the role of the state in constructing vulnerability through denial of legal status” (Anderson & Andrijasevic, 2008, 144).

Second, U.S. immigration policy has few protections for migrants. “Immigration controls produce groups of people that are ‘deportable’ and hence particularly vulnerable to abuse”(Anderson & Andrijasevic, 2008, 144). The focus on trafficking has allowed both the government and citizens to ignore abuse of migrants. While migrants have some legal recourse for abuse, most do not attempt it for fear of deportation (Human Rights Watch, 2007). Additionally, trafficking victims must prove that they were subjected to a severe form of trafficking (TVPA, 2000). Basically, until and unless a migrant is trafficked, they are not going to receive any significant help. Not only is this abuse bad by itself, it creates vulnerability to trafficking. There is little legal recourse for exploited migrants, so they are forced into situations where they are more likely to be trafficked.

Third, U.S. Immigration and Customs Enforcement keep trafficking victims silent. It is clear that helping trafficking victims is not the focus of ICE. “Human trafficking and human smuggling represent significant risks to homeland security. Would-be terrorists and criminals can often access the same routes and utilize the same methods being used by human smugglers.

U.S. Immigration and Customs Enforcement's Human Smuggling and Trafficking Unit works to identify criminals and organizations involved in these illicit activities"(USICE, 2008). Further, the conflation of trafficking and smuggling shows a fundamental misunderstanding of the problem. Though overlapping, these are two very distinct forms of people movement. Those involved should not be treated in the same ways. Additionally, ICE raids help traffickers keep their victims vulnerable. As part of the coercion process, traffickers tell their victims that if they try to escape they will be arrested. Trafficking victims do not understand local laws and think they are subject to deportation and punishment because of their unauthorized immigration status (anti-slavery, 2004). Images of ICE busting down doors and arresting the undocumented just give fodder to this deceptive fire. This fear keeps trafficking victims, who might be able to escape, subject to their abusers. "For it allows the sidestepping of the question that is key for activists but that states want to avoid: what is the role of immigration controls in heightening vulnerability to exploitation and abuse?" (Anderson & Andrijasevic, 2008, 141). ICE raids are seen as a way to fight crime and terrorism instead of looking at the consequences of these actions.

Finally, The creation of the 'illegal immigrant' has enabled a second class to exist within the United States. In her book Impossible Subjects: Illegal Aliens and the Making of Modern America, Mae Ngai examines the issues faced by illegal immigrants in the United States. She outlines the historical creation of the illegal immigrant and how illegal immigration became a dominant problem within the United States. She argues that the state has had a heavy involvement in the regulation and creation of 'illegals.' The United States federal government has included many different ethnic groups in their creation of the illegal immigrant. These groups include Japanese, Mexican, and Filipino populations. These groups have historically

been dehumanized in various ways including being labeled as wetbacks, prostitutes, and sexually deviant and being held in internment camps (Ngai, 2005). Historically, the undocumented have been mistreated by the government and citizens. However, recently the problem has grown to hysterical proportions. “Meanwhile, out on the edges of the debate—edges that are coming closer to the mainstream every day—bigots pour all their loathing of Spanish-speaking people into the word. Rant about ‘illegals’—call them congenital criminals, lepers, thieves, unclean—and people will nod and applaud. They will send money to your Web site and heed your calls to deluge lawmakers with phone calls and faxes. Your TV ratings will go way up” (Downes, 2007). When questioned by ICE, a guilty until proven innocent attitude prevails. Many times this comes from the fact that the trafficked had initially chosen to come here illegally. Thus, this demonization of ‘illegals’ allows ICE agents to dismiss the abuse of trafficking victims as punishment from the Karmic Immigration Gods: you chose to be smuggled here illegally, you put yourself in harms why, you got what you deserved. One may argue that immigration agents are not maliciously hurting the undocumented (trafficked or otherwise), but only upholding U.S. immigration laws. However, the systematic dehumanization of migrants allows mistreatment to escalate. This slippery slope has occurred in the past, as demonstrated by Ngai.

## VI. Conclusion

Human trafficking is quickly outpacing both drugs and arms trade as the fast growing illegal flow. The United States has made some efforts to engage this problem. Yes, some changes have been made. However, these improvements have been inflated while the shortcomings have been ignored. While the TVPA is a noble attempt at helping solve the problem, it is lacking in enforcement and implementation. Additionally, while there is a section in the Immigration and Naturalization Act that prosecutes traffickers, it is clear that trafficking

migration laws are more about enforcing homeland security than about intercepting traffickers and rehabilitating victims. Trafficking is both a crime and a migration issue. However, the political nature of both homeland security and immigration has blinded government policies to the need for not only prevention, protection, and prosecution, but also interception of traffickers in commute. Unfortunately, the heated immigration debate and fear mongering has allowed the United States federal government to distance itself from its own hand in the proliferation of trafficking. Until the United States approaches human trafficking holistically to include both parts of the issue, the problem will continue to only be solved in the movies, Liam Neeson-style.

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