A Deterrence Model to Curbing Human Trafficking in the United States

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Michelle Crawford Rickert

Human trafficking is squarely a criminal justice problem. In order to eradicate human trafficking the traffickers need to be deterred from engaging in the business of trafficking in people. From a law and economics perspective, optimal deterrence is reached when a sentence or fine is just greater than the probability of getting caught multiplied by the benefit to the criminal. Utilizing this model, the proposed presentation will attempt to demonstrate how to sufficiently deter the trafficker by increasing probability of prosecutions through local laws, increasing the fines and sentences of traffickers once convicted, and increasing the certainty of detection through increased law enforcement training and public awareness campaigns. Additionally, this presentation will address the issues that the deterrence model does not deal with as readily including organized criminal units which are vertically integrated, and cultural trafficking of domestic servants, both of which likely deserve departure from this model to account for motivational factors.
A Deterrence Model to Curbing

Human Trafficking in the United States

by:
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Photographs Tyler Nicole Crawford

Illegible to be found.
Human Trafficking is an International Business
Criminal Justice Problem

- As Kathleen Davis of Polaris Project explains, human trafficking is a criminal justice problem.
- The TVPA takes a proper victim-centered approach: Prosecution, Prevention, Protection.
Economics of Optimal Deterrence of Crime

“Individuals rationally decide whether to engage in criminal activities by comparing the expected returns of crime with the returns of legitimate business”

Nuno Garoupa, “The Economics of Organized Crime and Optimal Law Enforcement” (citing Becker, 1968)
Optimal Criminal Deterrence

- Lord Shawness (and Beccaria) “Some Judges preoccupy themselves with methods of punishment. This is their job. But in preventing crime it is of less significance then they like to think. Certainty of detection is far more important than severity of punishment.”

- Bentham: “the more deficient in certainty of punishment the severer it should be”
Optimal Deterrence Theory

- **Decrease Crime:** $\uparrow$ probability of detection and/or $\uparrow$ severity of punishment = $\downarrow$ a particular criminal activity

- **Allows for non-detection:** If the risk for non-detection is great then the sentence should be harsher to sufficiently deter
Optimal Punishment

- **Price Discrimination and Uncertainty:** Criminal only “pays” if they are caught and convicted otherwise it is free. He/She does have to factor in “nuisance arrests.”

- **Rational Actor:** will weigh these factors and determine the risks

- **Risk Aversion:** Some criminals are more risk adverse than others
Sentencing at times needs to be Tempered

Efficiently proportioned legal rule: precise enough to make the crime unprofitable, allowing for the risk of non-detection. For example, if the value of the theft is $100 and the probability of detection is 1/3, then the optimal penalty would be a fine of approximately $301, or just enough to make the theft unprofitable.
White Collar Phenomena

- **Downward Departure for White Collar Criminals:** the theory is that juries are less likely to convict if the penalties are too high.
- **But:** Juries do convict and give high awards if there is a moral component (see the Tobacco Settlements; Martha Stewart).
Go Through the Looking Glass

• To uncover the victims of human trafficking and modern day slavery and to deter their captors

• Thousands of victims in the U.S. yet they are hidden from view which creates a challenge for investigators and prosecutors
Increasing Probability of Getting Caught/ Certainty of Detection

• Victims are not standard
• Psychological trauma from daily mental abuse & torture, depression, stress-related disorders, disorientation, phobias and panic attacks
• Feelings of helplessness, shame, humiliation, shock, denial or disbelief
• Cultural shock from finding themselves in strange country
Increase the Certainty of Detection

• **Train Local Law Enforcement:** The more time and money that is spent on police and court personnel the easier it is to discover offenses and convict the offenders.”

• **Public Awareness:** first contact with the victims

• **Civil Society:** cannot rely on government alone NGO’s play an important role
Increase the Penalties

• **Higher (within reason):** Sentences and Fines need to be higher if the cases are difficult to prosecute or detect.

• **Fines:** Human Trafficking is a business and through the use of fines one can make the business too expensive to run efficiently.
Need State Laws and Federal Laws

• Increase prosecutions (more manpower and more training)

• Can stack human trafficking charges with other crimes to get proper deterrence effect

• Fill gaps in the federal law

• Decreases profit margin of the offenders
Education of the Public is Key

• Increase probability of detection: with public awareness, victims are more likely to be detected by neighbors, etc.

• Incentivize corporations to self police (chocolate)

• Understand the issues: To make sure all public outcry is for the victims (some in the public in Hawaii actually sided with labor traffickers who grew particularly good crops)

• Help get legislative support
EXCEPTIONS TO THIS THEORY

- Organized Crime
- Cultural Trafficking
- Diplomatic Immunity
Organized Crime in the Business of Human Trafficking

• International in Nature: Crimes committed in different countries

• Profitability: Human trafficking just as profitable as drugs but the penalty is not as great

• Diversification: Nigerian, Albanian, Turkish, Japanese, etc. work in multiple venues
Organized Crime in the Business of Human Trafficking

• **Mafia Wars on Facebook:** On of the highest levels in the game is participating in human trafficking.

• **Gambino Family:** Due to the money making potential even the Gambino family is getting involved in the sex trafficking of minors.
Organized Crime: Does not respond to traditional deterrence models

- Vertical integration and divisions of labor changes risk averseness of players.
- Couple this with the internal organizational sanctions for disobedience for “ratting”
Organized Crime

- **Increase Fines**: Problem after a certain amount it doesn’t increase deterrence
- **Risk Neutrality**: organized individual act as risk neutral even if alone they would be risk adverse
- **Avoiding Detection**: organized criminals are ahead of the game
- **Corruption**: Economies of Scale and Access to Information allows \( \uparrow \) corruption
Cultural Trafficking

• Some cultures still see the servant/master as a cultural right
• Traffickers need to understand criminal nature of the act for deterrence theory to work
• In this circumstance education on the criminality needs to be the focus, and there should be publicity as to the sentences people are receiving for the crime
Contact Information

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It is also a crime.

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- **Rational Actor:** will weigh these factors and determine the risks

- **Risk Aversion:** Some criminals are more risk adverse than others

Becker (1968)
The optimal criminal sanction is a penalty that is just sufficient to deter the criminal from engaging in the harmful activity. If the sanction is any harsher, then a criminal may not be constrained from committing a greater offense. For example, if both rape and murder are punishable by death, the rapist who had committed the first crime would not be constrained from also committing the second.

**Efficiently proportioned legal rule:** precise enough to make the crime unprofitable, allowing for the risk of non-detection. For example, if the value of the theft is $100 and the probability of detection is 1/3, then the optimal penalty would be a fine of approximately $301, or just enough to make the theft unprofitable.
For certain crimes in order to increase the actual punishment it is actually better to decrease the sentence.

“Nevertheless, pursuing trafficking in persons crimes continues to present special challenges to federal investigators and prosecutors. Since the primary eyewitness to and evidence of the crime is typically the trafficking victim, the first step in pursuing these crimes is usually to identify victims. Yet these victims are often hidden from view, employed in legal or illegal enterprises, do not view themselves as victims, or are considered to be criminals or accessories to crimes (e.g., prostitutes or smuggled aliens) subject to incarceration or deportation. A nongovernmental organization, average citizens, or even state and local law enforcement working in the community may be the first point of contact for a trafficking victim, rather than federal law enforcement.

Moreover, trafficking in persons cases are difficult to pursue because they are multifaceted, complex, and resource intensive. Federal agencies have to determine whether those identified as potential victims have in fact been trafficked and then secure their cooperation in order to pursue the investigation and prosecution of the traffickers. Victims may be reluctant to testify because of trauma, fear, loyalty to the trafficker, or distrust of law enforcement. Moreover, a single case may involve one or hundreds of victims, requiring housing, food, and other services from federal agencies; diverse offenses, such as violent crime, labor exploitation, sex crimes,
alien smuggling, organized crime, and financial crimes; and collection of significant evidence from overseas." Id. at 2.
Increasing Probability of Getting Caught/ Certainty of Detection

- Victims are not standard
- Psychological trauma from daily mental abuse & torture, depression, stress-related disorders, disorientation, phobias and panic attacks
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“Pursuing Trafficking investigations and prosecutions also need the support of state and local law enforcement who may be in the best positions to find trafficking victims because of their familiarity with their respective jurisdictions, and the nongovernemental organizations, from whom victims more readily seek assistance.” GAO at page 11.

Royal Canadian Threat Assessment: Human Trafficking is a crime that occurs behind legal fronts, and is difficult to find without proactive matters by law enforcement.
Increase the Penalties

• Higher (within reason): Sentences and Fines need to be higher if the cases are difficult to prosecute or detect

• Fines: Human Trafficking is a business and through the use of fines one can make the business too expensive to run efficiently

Sentences: Came across a news article among the many that were very similar, and the trafficker received 2 years in jail and a fine of $15,000 for labor case that went on for almost 15 years. From an economic standpoint if one is a risk neutral person this is worth the risk to do this for the return of having someone’s free labor for 15 years.

Fines: Think about the tomatoes growers the reason they at times use slave labor—keeping workers without pay and without letting the worker change jobs—2 reasons 1) cost of tomatoes being keep artificially low by some of the main fast food chains; 2) greed. If we increase the cost to those traffickers once they are caught then that crime will no longer pay it would be worthwhile to pay the usually migrant wage.

It will be difficult to measure if certain penalties are working because of course the victims are not readily identifiable but also because the traffickers can be charged and convicted of other crimes related to the trafficking offenses such as money laundering, kidnapping, immigration violations etc.
Need State Laws and Federal Laws

- Increase prosecutions (more manpower and more training)
- Can stack human trafficking charges with other crimes to get proper deterrence effect
- Fill gaps in the federal law
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Education of the Public is Key

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Exceptions to this Theory:

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- Diplomatic Immunity

The Russian human trafficking problem is complex related to organized crime, is related to labor issues, and regional conflict; thus, it is difficult to gather information on the issue. Sally Stoecker and Louise Shelley, *Human Traffic and Transnational Crime: Eurasian and American Perspective* (2005).

As the United Nation’s Interregional Crime and Justice Research Institute Training Guide explained when human trafficking is part of organized crime it is typically transnational and concerns many crimes in different jurisdictions.

The organized crime might start in Ukraine, Russia, Bulgaria and spread all over Europe or to the U.S and Canada (esp massage parlors and escort services in the Montreal area). Human Trafficking in Canada: A Threat Assessment.
Kathleen Davis, Organized Crime and Human Trafficking, The North Star Blog. When discussing an interview with an FBI agent who was formally undercover with the Gambino family it was noted that, “While undercover, Garcia had noted the mafia in strip clubs and some involvement in prostitution, but he had never come across sex trafficking of children. He noted that the Italian mafia had a certain “ethics”—if there is such a thing among criminals—that prohibited any involvement or harm of women and children. For him and others, sex trafficking was a new low for the mafia, and it was clearly about finding new avenues for profit.”
Organized Crime: Does not respond to traditional deterrence models

- Vertical integration and divisions of labor changes risk adverseness of players.
- Couple this with the internal organizational sanctions for disobedience for “ratting”

Think of this like the prisoners dilemma, but the players do have some information as to what will happen to them if they “rat.”
Garoupa’s conclusion is to not necessarily increase law enforcement policy when it comes to organized crime because what really fixes the problem is destroying the business. If you merely increase enforcement if becomes “a competition of who is tougher, who is more frightful. As a consequence, the loss of welfare can be too great.”
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Example is bringing in a Haitian Restavek.
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