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## Reframing Human Trafficking: From a Criminal Justice Problem to a Social Justice Issue

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## **Introduction**

Human trafficking is a crime that has been documented in all 50 U.S. states as well as around the world. As for other crimes, such as murder, assault, theft, and arson, criminal laws prohibit the act of trafficking persons. These laws both institutionalize the illegality of this behavior and prescribe certain punishment for those who perpetrate the crime. Yet, the response to human trafficking, unlike that to other crimes, cannot be carried out by law enforcement alone. One important reason is the hidden nature of this crime. Whereas in the case of crimes such as murder and theft police are often notified by a victim or another affected individual, human trafficking often does not come to the attention of law enforcement. The reasons are numerous, but paramount is the fact that no one involved in trafficking – not the victim, the trafficker, or the people benefitting from the trafficked person's sex or labor – is likely to call the police to report the victimization. Therefore, although law enforcement has an important role to play in the identification of and response to human trafficking in our communities, it is critical that other institutions – from healthcare providers to local businesses – also take an active role in the antitrafficking movement.

## **Background**

### **What Is Human Trafficking?**

Human trafficking is increasingly recognized as a social problem plaguing communities around the world. Once conceptualized as a criminal justice problem requiring a strictly law enforcement response, human trafficking is increasingly understood to be a social justice and human rights issue, a problem that is large and complex and requiring of a multifaceted social response.

Human trafficking occurs when a person is induced to engage in either a commercial sexual exchange or another form of labor by means of force, fraud, or coercion. In the United States, the definition of human trafficking is largely guided by a federal antitrafficking law, the Victims of Trafficking and Violence Prevention Act (TVPA). Implemented in 2000, the TVPA defines human trafficking as follows:

- (a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not yet attained 18 years of age; or
- (b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to

involuntary servitude, peonage, debt bondage, or slavery.  
(TVPA, 2000)

All 50 U.S. states have passed antitrafficking legislation, although these laws vary in quality and comprehensiveness. Strong antitrafficking laws at the state level are important, however, for the successful identification of human trafficking cases and prosecution of the perpetrators (Barnhart, 2009; Farrell, et al., 2012). Although many crimes are related to the crime of human trafficking, such as prostitution, kidnapping, and harboring, what distinguishes human trafficking from other offenses is the element of compulsion of the victim to engage in labor or a commercial sexual exchange because of force, fraud, or coercion. Examples of force include the display of weapons and the threat of violence against a victim or his/her family. Fraud might involve the promise of a lucrative job opportunity, only to have the victim find out that the working conditions or compensation is not at all what was described. Coercion can take many forms, but one example would be a live-in nanny who is told that she will face harm if she leaves the residence where she works (Kim, 2007).

As is evident in the TVPA definition, human trafficking is generally divided into two major categories: sex and labor. Sex trafficking occurs in a variety of venues and modalities in the United States. According to a 2017 report by the Polaris Project, a pre-eminent nongovernmental anti-human trafficking organization in the United States, escort services account for a large portion of sex trafficking cases in the United States. Escort services involve the facilitation of a paid sex service in which either a victim is brought to the buyer's location (an "out-call") or a buyer comes to the victim's location (an "in-call"). It is common for these exchanges to take place in hotel or motel rooms and to be arranged via Internet websites such as Craigslist.com and Backpage.com. According to the Polaris Project (2017) human trafficking typology, other common venues for sex trafficking in the United States include illicit massage parlors, outdoor street-based locations, residential brothels, pornography, strip clubs, bars, and cantinas (Polaris Project, 2017). A case becomes one of human trafficking when a victim is compelled to perform a commercial sex act through force, fraud, or coercion. At that point, any complicity by the victim is deemed irrelevant (Logan, Walker, & Hunt, 2009).

Like sex trafficking, labor trafficking is prevalent in a myriad of industries in the United States. Domestic servitude is a form of labor trafficking taking place largely in residential settings in which a person is forced to provide housekeeping and child care services, often around the clock. Other industries with documented cases of labor trafficking include

hospitality, restaurants and food service, agriculture, animal husbandry, traveling sales crews, health and beauty services (e.g., nail salons), construction, landscaping, commercial cleaning companies, carnivals and other arts and entertainment venues, forestry, healthcare facilities, and residential facilities (Polaris Project, 2017). Some research has found patterns in the gender of victims exploited across different industries (Owens et al., 2014).

A method of trafficking that occurs both in the United States and elsewhere around the world is debt bondage, in which a person is compelled to provide labor services free of charge until an acquired debt is paid off. In many instances of debt bondage, it is not possible for people to pay off their debt (Daru, Churchill, & Beemsterboer, 2005). In some cultures, it is normal for debt to be transgenerational, meaning that children can essentially be born into slavery – that is, born into the responsibility to help their families pay off the debt (Bales, 2005). Other types of human trafficking, some of which are more common outside the United States, include forced child labor, the forced recruitment and use of children in armed conflict, forced marriage, drug trafficking, and forced labor in the seafood industry.

### **Scope of the Problem**

A number of methodological challenges arise in formulating a reliable estimate of the number of human trafficking victims in any city, country, or region of the world. Disparities in definitions of trafficking, a problem both within and across borders, is a fundamental challenge. Without consistent definitions about what trafficking is, it is impossible to quantify the scope of the problem properly. Additionally, many prior studies touting estimates of human trafficking are limited by small sample sizes and unreliable data sources (Gozdziak & Collett, 2005). Another challenge is that victimization is largely hidden and does not easily or often come to the attention of law enforcement or other service providers who would be able to identify and record the cases as human trafficking (Farrell et al., 2012). Other issues are that victims often do not self-identify as such, and even if they do recognize an element of exploitation, they are unlikely to self-disclose their plight due to fear.

One of the more trusted studies of the scope of human trafficking worldwide was conducted by the International Labour Organization (ILO) between 2002 and 2011. The findings from this research indicate that there are 20.9 million victims of human trafficking globally. Of these, the ILO estimates that 22% (4.5 million) are victims of forced sexual exploitation, whereas 68% (14.2 million) are victims of forced labor

exploitation. An additional 10% (2.2 million) are subjected to forced work imposed by a state, state military, or rebel armed forces (ILO, 2012). The ILO estimates that more than a quarter of these victims (26%) are children and that both genders are represented, although approximately 55% of all victims are women and girls (ILO, 2012).

### **The Misperception of Trafficking as a Criminal Justice Issue**

We know that human trafficking is one of the most pressing modern human rights issues, not just in the United States but also around the world. One of the most important responses thus far has been an agreement – both across and within nations – that comprehensive antitrafficking legislation is needed. International agreement resulted in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (United Nations, 2000). In addition, the United States passed the TVPA in 2000 and modeled legislation that prioritizes punishment for perpetrators, protection and assistance for victims, and prevention measures. This three-pronged legal approach has served as a model for legislation in numerous other nations (Todres, 2011).

There is broad consensus that this united legal framework was an important step in the work of the antitrafficking community. The passage of legislation that makes a behavior illegal serves an important purpose by establishing social norms and communicating that such behavior is undesirable and, sometimes, immoral. Furthermore, laws can influence the behavior of citizens (Scott, 2000) in a few different ways, including creating an environment of informal social control, in which citizens impose social sanctions on one another (e.g., shaming) for engaging in undesirable behavior, or in which people are deterred from participating in that behavior because of feelings of guilt or shame. In those cases, no law enforcement response is required because the law itself serves to discourage behavior proscribed as criminal.

Yet, the creation of a law is only one step in the process of legal change. As Farrell, Owens, and McDevitt (2014) explain, it is also important that law enforcement agencies learn how to enforce new laws, and it is rare that legislation offers directives on how to do so. Furthermore, it is important that criminal justice organizations adopt institutional responses to promote enforcement (Farrell, Owens, & McDevitt, 2014). In other words, for actual law enforcement to occur, the act of passing a new law is not enough. Various institutional and cultural shifts must follow that allow the criminal behavior to be identified and the new law against that behavior to be enforced.

Laws criminalizing human trafficking put a great deal of responsibility for responding to human trafficking incidents on law enforcement agencies, which is problematic. As has been previously explained, human trafficking may not be reported to the police for many reasons. These include victim fear of traffickers, victim fear of law enforcement, lack of victim self-identification, (obvious) unwillingness on the part of traffickers or those who benefit from the trafficking (e.g., sex buyers or those profiting from unpaid labor) to report the crime to police, the covert nature of human trafficking, victims' feelings of connection to or dependency upon their traffickers, and other victim vulnerabilities.

Because cases of human trafficking are so infrequently reported to authorities, police must use proactive investigative techniques to investigate these crimes. However, policing practices, particularly during times of limited budgets, are largely reactive (Farrell & Pfeffer, 2014). Routine patrol and responsive dispatch are often prioritized over proactive investigations, which can be very time- and resource-intensive. Therefore, we cannot rely solely on law enforcement to identify victims of human trafficking.

Although law enforcement plays a critical role in enforcing antitrafficking laws, investigating cases of human trafficking, and bringing traffickers to justice, police officers cannot be the only eyes and ears looking for victims. In the course of their victimization, many trafficking victims will not come into contact with law enforcement officers. They are more likely to encounter healthcare providers, social service providers, immigration attorneys, landlords, hotel staff, neighbors, labor and building inspectors, and other local business employees. A framework in which a broader swath of citizens was responsible for identifying human trafficking cases would increase our identification of victims and also greatly assist law enforcement experts, allowing them to focus their limited resources on case investigation rather than identification.

### **Human Trafficking as a Social Justice Issue**

Human trafficking is a social justice issue on many levels, ranging from individual to societal. At an individual level, the methods of coercion that traffickers use to control their victims fundamentally violate basic human rights and human dignity (Logan, Walker, & Hunt, 2009). These methods may include physical violence, threats of harm to family or other loved ones, the brandishing of weapons, confiscation of identification or immigration documents, physical and emotional isolation, rape, and other forms of sexual assault. Basic human rights dictate that no one, no matter

his or her characteristics or place of origin, should have to endure such abuse. Furthermore, for a number of reasons, victims may be initially identified and regarded as offenders rather than appropriately identified as victims (Gallagher, 2002), and this situation often leads to processing through the criminal justice system rather than immediate access to victim services.

At a larger level, human trafficking is a social problem that highlights social disparity. As human trafficking by definition involves the stripping away of a person's liberty, freedom, and dignity, it is an issue that, left unaddressed, weakens the moral and social fabric of communities and societies at large. Fundamentally, human trafficking involves the powerful exerting control over those less powerful, and exploiting vulnerabilities that are societal in nature, such as poverty and inequality within or among nations (Gallagher, 2002). Although the problem of human trafficking is currently receiving a great deal of attention and seems to be a topic of concern for community members, the media, policymakers, and government entities, it cannot be adequately addressed unless the underlying social disparities – discussed in this chapter – are a focus of the response. Current efforts to address the demand for trafficked persons, to rescue and rehabilitate victims, and to hold traffickers and exploiters liable under adequate laws are important but not preventative. An honest exploration of the social nature of individual vulnerability to human trafficking victimization justifies a very different approach to the prevention of the trafficking of human beings (Brysk & Choi-Fitzpatrick, 2012).

## **Implications of the Misperception**

### **Social Implications**

*Undermining the significance of the underlying risk factors for victimization.* An important implication of the misperception that human trafficking is a criminal justice problem is undermining of the significance of a number of global political and economic realities that contribute to the vulnerability of potential trafficking victims (Gallagher & Holmes, 2008). That is, when we conceive of human trafficking as a criminal problem requiring a criminal justice response, we lose sight of the way that social structures, economies, and political realities can put people at risk for human trafficking. Taking these realities – such as poverty, civil unrest, the marginalization of specific populations, and forced migration patterns – into consideration can certainly help antitrafficking advocates work to prevent the trafficking of human beings. A criminal justice response is

necessary but happens after the crime has taken place. To prevent human trafficking from occurring, we must remember the many social factors that contribute to the problem in the first place.

*Inadequate identification of victims.* Placing responsibility for the identification of human trafficking victims primarily on law enforcement agencies is not the most effective way to find victims and connect them with support services. Institutions such as hospitals and other community healthcare providers are likely to encounter human trafficking victims. Recent studies have estimated that between 28% and 50% of trafficking victims in the United States came into contact with healthcare professionals during the course of their victimization (Grace et al., 2014). Properly training staff in a myriad of industries and services to know what red flags to look for, what questions to ask, and what course of action to take if they believe someone may be a victim of human trafficking will greatly increase our collective identification of human trafficking victims in our communities.

### **Legal Implication: Taking a Case-Centered Rather Than a Victim-Centered Approach to the Problem**

Solving criminal cases and bringing perpetrators to justice are central to the mission of law enforcement. Although these processes are certainly important in human trafficking cases, they are not always more important than the desires and needs of victims. When law enforcement officers are called upon to identify and serve human trafficking victims, they often put the case first. This is not always in line with what is in the best interest of the victim, who may be suffering from trauma, health problems, homelessness, or immigration difficulties. The victim's presenting needs may not include a desire to see the perpetrator prosecuted, which sometimes creates a conflict between the victim's desires and the law enforcement mandate.

### **Dangers of the Misperception: "Not My Job" Mentality**

Although it is widely agreed among citizens that human trafficking is a problem, most people do not recognize that it is happening in their own communities. Even if they do acknowledge that human trafficking can happen in their own communities, people, including law enforcement officers, may be misinformed about what the realities of human trafficking look like or what they might actually encounter.

In a 2008 national survey of more than 1,600 state, local, and municipal law enforcement agencies, the majority reported that human

trafficking was either rare or nonexistent in their communities (Farrell, McDevitt, & Fahy, 2008). One implication of this misperception is that these agencies do not prioritize training in the identification of human trafficking cases because human trafficking is perceived to be a problem elsewhere, but not in their own jurisdictions.

Some of the problem stems from Hollywood movies and television shows that portray human trafficking in a certain light; often, white victims have been abducted from their homes (Todres, 2009) and are passively waiting to be rescued (Srikantiah, 2007). Although a portion of human trafficking cases do look like this, most are not quite as obvious and clear-cut. Some victims have run away or been pushed out of their homes. Some do not speak English. Some have a lengthy arrest record. The discrepancy between what an officer imagines a human trafficking victim looks like and how a victim might actually appear can create a problem for victim identification.

Additionally, particularly when it comes to the identification of labor trafficking victims, it is common for law enforcement officers to believe that this responsibility is beyond the scope of their job mandate. Part of the problem may be that the enforcement of labor code violations really is outside the scope of the duty of police officers. But more frequently, the officers tasked with responding to human trafficking are located within vice units of law enforcement agencies, and therefore, even though law enforcement representatives may recognize that labor trafficking is a problem in their jurisdictions, they do not consider the investigation of these cases to be within the realm of their responsibility (Farrell et al., 2012).

## **Methods to Address the Misperception**

### **Reframe Human Trafficking**

When we move away from a criminal justice perspective of the problem of human trafficking, many more avenues are opened for non-criminal justice professionals to become involved in the prevention of human trafficking in our communities. We should consider how our collective approach to prevent human trafficking might operate according to a social justice framework or a public health framework.

### **Reconceive Law Enforcement as Partners in the Fight Against Trafficking**

Law enforcement agencies obviously have an extensive commitment to their communities that extends well beyond identifying and responding to

human trafficking cases. Although they serve as critical partners in the fight against human trafficking, we cannot rely on them to be the eyes and ears of our communities. Law enforcement's primary role should be to investigate suspected and substantiated cases of human trafficking. The rest of us, in whatever industries we work, should learn how we might interact with potential victims and learn the best ways to respond.

### **Increase Community Awareness**

The most important thing we can do is to educate community members about what human trafficking looks like, how to proceed if they believe they may know someone who is possibly a victim, and whom to call to report potential human trafficking cases. Such community education has two main benefits: First, by increasing general awareness of the problem of human trafficking, we reinforce the social norm that the enslavement of others – whether through outright labor exploitation or through the purchase of sexual services – is wrong. Second, we broaden the net of people who may be able to identify a victim, thus making our communities safer with more robust defenses against traffickers.

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