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Human Trafficking and Slavery: Towards a New Framework for Prevention and Responsibility

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Human Trafficking and Slavery:
Towards a New Framework for Prevention and Responsibility

by

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A thesis submitted in partial fulfillment of the
requirements for the degree of

Master of Science
in
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ABSTRACT

Human trafficking and slavery are horrific crimes that require strict penalties for perpetrators and effective protections for survivors, but these crimes are in part facilitated by a system of laws and norms that effectively marginalize certain populations—the “unskilled” migrant. In this thesis I aim to reexamine and reinterpret the problem of human trafficking and slavery in a way that highlights the background conditions to the problem. I argue that the framework used as a conceptual foundation for addressing the problem limits the scope of responsibility. Specifically, the framework fails to acknowledge structural contributing factors I show to be relevant: law, policy, and norms impacting immigration and migrant labor. I assert that the limited scope of responsibility, which focuses heavily on direct perpetrators of the crime, leaves largely unexamined the role of social-structural processes in contributing to the problem. I use the United States as a case study in order to provide a targeted analysis of social-structural processes that contribute to the problem. In this examination of the United States, I focus on agricultural and domestic slavery. In conclusion, I attempt to build a new conceptual framework that calls attention to social-structural processes and includes this understanding in assigning responsibility for the problem. I assert that anti-trafficking efforts must account for the role of social-structural processes and that these contributing factors must be adequately addressed and incorporated into the framework for prevention.

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INTRODUCTION AND METHODOLOGY

Slavery is no longer legally sanctioned anywhere in the world, yet it directly affects millions of people worldwide. Current estimates from various government sources, non-governmental organizations (NGOs), and academics suggest that approximately twelve to twenty-seven million people are enslaved at any given time; it is also estimated that between 600,000 and 2.5 million people are trafficked annually (Llewelyn Leach 2004, 16; Bales 2009, 192; ILO 2012; UNODC 2012; U.S. State Department 2010). Even the most conservative estimates reflect a significant humanitarian problem that demands attention.¹

It is important that we understand the problem correctly: what it looks like today, why it still exists, how it happens, and who/what is responsible. Answers to these questions will shape the framework for prevention and how the problem is addressed. The concept of human trafficking has been critiqued for “its ability to highjack attention away from structural, underlying causes that give rise to exploitation, structural violence, and the coercion of (migrant) workers...” (Kempadoo 2005, ix). I think this results only

¹ Estimates on the prevalence of slavery and human trafficking vary for a number of reasons: differences in definitions, research scope, and the fact that it is most often hidden from plain sight and is thus difficult to investigate. It is important to give attention to such research challenges, but these specific issues will not be addressed in this thesis. Kevin Bales (2005) writes: “The criminalization of slavery leads to a number of problems in measuring slavery, as in any other abusive labor practice. The first problem is the basic fact that criminals conceal their activities, often going to great lengths to do so. Second, following a long history of more visible and legal slavery, societies (as well as researchers, activists, and policy makers) have been slow to clearly define what now constitutes slavery. This lack of an agreed-upon definition of the phenomenon under study is a recipe for confusion at best. Third, crime is best understood in its context, but in some places where slavery occurs, it is not thought of as a crime. ... Fourth, without agreed-upon definitions, it is impossible to collect information systematically so that it can be shared and tested. The standards put forward by the International Labor Organization are a useful innovation, but note that these definitions usually have been developed through negotiation within a political process, rather than through a process of analysis and refinement.” p. 88

because current anti-trafficking discourse and policy have failed to correctly identify the mechanisms that facilitate the problem. It is largely portrayed as a horrific crime. This is not altogether incorrect—it is a crime and it requires critical attention. This crime, however, occurs many times in a particular environment that aids this exploitation. A thorough understanding of the phenomenon will illuminate some of the reasons why millions of people become enslaved. Far from hijacking attention away from structural, underlying causes, when properly understood the issue of trafficking highlights these structural deficiencies.

Due to the complexity of this problem there are several angles of criticism of how the problem is understood and how it is addressed. My focus is on the framework itself.² I argue that the framework used as a conceptual foundation for addressing the problem of trafficking and slavery limits the scope of responsibility for the problem. Specifically, the framework fails to acknowledge the structural contributing factors I show to be relevant to the trafficking problem: law, policy, and norms impacting immigration and migrant labor. My aim is to reexamine and reinterpret the problem in a way that highlights the background conditions to the problem with the goal of forming a new framework for prevention and responsibility. This is important for two reasons. One, it seems essential for prevention efforts that we have a thorough understanding of what is involved in the reproduction of the problem. We will certainly not be able to address all of the contributing factors, but there may be factors that are within range of address.³

² This framework includes the (2000) U.S. Trafficking Victims Protection Act (TVPA) and the (2000) U.N. Trafficking Protocol. I explain the notion of “framework” below.

³ By “we” I mean to include policy makers, the media, the public, academics, and so on.

Two, it is important for the purpose of assigning responsibility. So far there has been a heavy focus on the role of direct perpetrators. This is an incomplete assessment and reveals a general misconception of the problem. In this thesis, I assert that the crime of human trafficking and slavery is in part facilitated by social-structural processes. I argue that law, policy, and norms impacting immigration and migrant labor are part of a basic structure that impacts the lives of migrants in morally significant ways, contributing to the vulnerability of those most at risk for being trafficked and enslaved: the immigrant⁴ (U.S. State Department 2011).

There may be good reasons for the failure to acknowledge the role of certain structural factors in the current anti-trafficking framework. One, it may be because those formulating policy fail to correctly (or fully) understand the problem. Two, they simply do not agree the issues are relevant (this may be due to the first reason, but not necessarily). Or three, they choose to set aside these other issues due to their complexity and/or controversy. Given the comprehensive nature of a social problem like trafficking and slavery, these reasons are understandable. This thesis is an attempt to illuminate these social-structural processes and thus broaden the scope of responsibility to include other factors that produce and reproduce the structures that have a causal role in the trafficking and slavery problem. I will show that these structural factors are relevant and that they indeed contribute to the problem. Furthermore, it is well known to anyone paying attention to the experience of migrants that many are vulnerable to extreme exploitation, particularly the “unskilled” migrant. As for the third reason, it is true that

⁴ See also U.S. U.S. Department of Justice (2000), TVPA, Sec. 102(b)(17).

the framework will need to be targeted and narrowly tailored and cannot possibly aim to address complex issues such as global inequality and international migration. While this is true, it is important that these structural contributing factors at least be acknowledged in the official framework as larger issues relevant to the problem so that they are not set aside and forgotten.

If we are aiming to address a complex social problem, it is important to at least recognize other issues that relate to the problem and that also need attention, no matter their complexity. In fact, some important structural contributing factors are mentioned in this official framework: inequality, lack of opportunity, and gender discrimination— issues that are rightly considered part of the problem.⁵ While addressing inequality, lack of opportunity, and gender discrimination might be beyond the scope of an anti-trafficking policy framework, addressing structural deficiencies and inadequacies of specific law and policy that directly affects only certain populations who are most at risk for trafficking and slavery (the “unskilled” migrant worker) is not beyond the scope of the framework and is in fact directly relevant. I assert that the limited scope of responsibility, which focuses heavily on direct perpetrators of the crime, leaves largely unexamined the role of social-structural processes in contributing to the problem. Even acknowledging that particular migrants are most at risk does not mean that all social-structural processes that contribute to the problem are also acknowledged. That is, it is perhaps assumed generally that the reason why some immigrants are vulnerable is because they are poor or lack job skills or because of their sex (the other contributing

⁵ See U.S. Department of Justice (2000), TVPA, Sec. 106.

factors that are noted in the framework). A broader conception of responsibility would instead draw attention to the role of social-structural processes that contribute to the vulnerability of some migrants. With a myopic focus on the responsibility of direct perpetrators, these social-structural processes that contribute to the problem have been largely unexamined.

There are two key concepts that I rely on in my thesis, namely the concepts of framework and structure. Both require further explanation at the outset. I use the concept of framework to refer to law and policy that is intended to address the problem of trafficking and slavery. The use of this term also encompasses the general conception or understanding of the problem in both public and private realms. The latter informs the former and vice versa. That is, formal law and policy impacts the more general conception of the problem and this understanding also impacts the creation of formal law and policy. I am proposing that the problem needs reconceptualizing and that this would inform a new framework for prevention and responsibility.

The concept of structure is difficult to define and definitions can be limiting. My thesis centers on how “social-structural processes” contribute to the problem of trafficking and slavery.⁶ I use the work of Iris Marion Young (2006, 2011) as a foundation for talking about social-structural processes and the attendant idea of structural injustice. Young builds an account of structure by illustrating the concept as a spatial metaphor. Imagine a field or a plane with people occupying various positions in that space. The constitution of these various positions includes properties that may be

⁶ I sometimes refer to these social-structural processes as *social, political, and economic structures* in order to highlight their widespread impact.

shared or different: gender, race, ethnicity, nationality, class, religion, and culture. The connections and relations among these various positions and the way they affect one another through these connections is, according to Young, what constitutes structures. Structures are not static entities, but exist only in action. That is, they are not independent from social actors. Also important to the constitution of these structures is that they are in part socio-historical. In other words, structures are products of previous actions, actions that are both coordinated through cooperation and uncoordinated as by mere interaction. In fact, the conditions under which people act are socio-historical— influenced by past actions, decisions, events, ideas, and so on. Like past actions that impact present conditions, present actions will impact future conditions beyond the immediate. Social-structural processes constrain and enable actions in a recursive and ongoing process. Young asserts:

Structural injustice exists when social processes put large categories of persons under a systemic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as these processes enable others to dominate or have a wide range of opportunities for developing and exercising their capacities. Structural injustice is a kind of moral wrong distinct from the wrongful action of an individual agent or the willfully repressive policies of a state. Structural injustice occurs as a consequence of many individuals and institutions acting in pursuit of their particular goals and interests, within given institutional rules and accepted norms (2011, 52).

The focus on direct perpetrators, to the exclusion of other structural causal factors, is in line with a common model of responsibility used in matters of criminal law: the liability model. A different conception of responsibility is needed in order account for these other factors. Indeed, a new model of responsibility is needed to create a new

framework that correctly identifies who/what is responsible. We must assuredly prosecute criminals within a legal regime that makes it costly to commit these crimes, and this will likely produce a positive deterrent effect and aid prevention efforts. Nevertheless, it is also important to examine the background conditions of the crime. This is important for at least two reasons. One, it is important in the task of assigning responsibility for the problem and this has moral implications, as responsibility suggests there are moral obligations of some kind. Two, to the extent that a more comprehensive understanding of the problem impacts the success of anti-trafficking efforts, a broader conception of who/what is responsible may aid prevention efforts. This second reason focuses on the outcome or effects of anti-trafficking policy. While it might be reasonable to assume that an anti-trafficking framework that also calls attention to (and addresses) social-structural processes that contribute to the problem would aid prevention efforts, I do not extend my argument to make such assertions. That is, I do not make any direct empirical claims that a new framework would be more effective than the current one, even though I think it is reasonable to expect that it would; indeed, my reason for engaging the subject in the first place is to explore ways to reduce the prevalence of the problem. Nevertheless, in this thesis I limit my focus to the first reason, calling attention to social-structural processes that contribute to the problem and for the purpose of assigning responsibility for the problem.

This first part of this project is somewhat empirical. I use the United States as a case study for the purpose of showing how the migrant labor regime contributes to the vulnerability of the “unskilled” migrant worker. I do not show this through data, but

rather through an examination of the laws and policies directly impacting the labor conditions of these workers, as well as social norms that play a role in their social, political, and economic marginalization. The second part of the project, the task of assigning responsibility, is more complex as it implies moral obligations. The notion of “responsibility” has two senses in this discussion. One, responsibility refers to who/what is responsible for the continuation of the phenomenon—its reproduction. Two, responsibility also refers to who/what is responsible in a moral sense for the problem. I believe the two are inexorably linked. All the people who participate in the reproduction of the social, political, and economic structures that facilitate the problem of human trafficking and slavery share a moral responsibility to attend to these structures so that they are less likely to result in injustice. Understanding the process of human trafficking and slavery is essential to the task of assigning responsibility in the second sense. I argue that the current anti-trafficking framework is inadequate because it fails to correctly identify (or pay attention to) all of the macro-social processes that contribute to the problem (responsibility in the first sense), and this has resulted in a misconception of who/what is responsible (responsibility in the second sense). The prevention framework is myopic, focusing heavily on direct perpetrators of the crime at the expense of recognizing other factors that contribute to the problem—failing to make responsible other actors that have a role in these social-structural processes. In this thesis I attempt to build a new conceptual framework that calls attention to social-structural processes and includes this understanding in assigning responsibility for the problem.

I use Young’s “social connection model” (2006, 2011) as a guide for this new

framework, a model that incorporates and engages both senses of responsibility. The social connection model of responsibility for justice is meant to supplement the liability model, as both are necessary in addressing social problems like human trafficking and slavery. Direct perpetrators must be held to account for the crimes they commit, and social-structural processes that can be shown to facilitate these crimes must not be ignored. Young asserts: “Identification of the wrongs that individual actors perpetrate... needs to be supplemented with an account of how macro-social processes encourage such wrongs, and why they are widespread and repeated” (2006, 115). Immigration and migrant labor laws and policy combine to make what I will call the migrant labor regime—a system that, as I will show, affects the lives of some migrants in morally significant ways. This system denies certain populations of migrants—the “unskilled” migrant worker—critical labor protections. These laws and policies, however, are part of a larger structure of social relations and do not exist in isolation. They are themselves shaped by a wide range of social norms and historical processes that continue to evolve over time, some explicit and some implicit and habitual.⁷ Social-structural processes involve both institutional and social rules and norms. These processes and structures have a role in shaping one’s experiences. Sometimes these processes produce structural injustice, where some people’s options are unfairly constrained while others derive significant benefits (Young 2011, 52). There are social-structural processes that contribute to the problem of human trafficking and slavery. In this thesis I aim to

⁷ See Young (2011), especially chapter 2.

illuminate these. It is within this framework that I discuss responsibility for the problem of human trafficking and slavery.

The methodology I apply in this thesis is hermeneutic, with inspiration from critical theory. My approach is to analyze and interpret texts in law and policy, migration studies, and political theory, using these as the basis of a normative critique of the problem of trafficking and slavery and the current anti-trafficking framework. I use the United States⁸ as a case study in order to provide a targeted analysis of social-structural processes that contribute to the problem, including laws, policy, and norms impacting immigration and migrant labor.

The structure of this thesis is as follows. Chapter one will provide a brief introduction to human trafficking and slavery. Chapter two will give special focus to the nature and prevalence of trafficking and slavery in the United States. I discuss both domestic and agricultural slavery and include an examination of social, political, and economic factors (social-structural processes) that increase the vulnerability of these workers. In chapter three I critique the current anti-trafficking framework of the United States and the international community. This chapter also gives attention to the issue of migration as relevant to the trafficking problem. In chapter four I outline a new framework for responsibility using Young's social connection model of responsibility for justice. The discussion in this chapter both helps to clarify the problem and informs a better framework for prevention.

⁸ This analysis may be relevant to other countries, and likely is, though I do not make any specific claims of this kind.

CHAPTER ONE
Human Trafficking and Slavery: An Introduction

Definitions of slavery may vary somewhat, but what is important to its identification is a particular brand of violence, coercion, and exploitation (all three together). Most of us do not need a lesson on the horrors of slavery. We have seen pictures, films, and learned briefly in school about the slavery that existed in the early American Republic. A dictionary definition of “slave” states: “1) a person who is the property of and wholly subject to another; a bond servant; 2) a person entirely under the domination of some influence or person.”⁹ These short definitions are on the right path to understanding what it means to be enslaved, keeping in mind that common definitions of slavery are for the most part from the perspective of traditional/historical slavery— when it was legal, pre-abolition. Focus on ownership is often a main characteristic of these definitions. After abolition, one could not register ownership of a person, as was the case when slavery was legal, but it would be naïve to think that slavery no longer occurred post-abolition, then or now. Indeed, though the prevalence of slavery may have decreased post-abolition (the ratio of enslaved to free persons in the world), slavery today may be more dangerous due to its clandestine nature.

The word slave derives from Slav, a nationality of European peoples who were commonly enslaved in the early Middle Ages, being sold at markets for their labor power (Meltzer 1993, 3). But slavery existed long before the Middle Ages. In his book, *Slavery: A World History*, Milton Meltzer (1993) describes the early evolution of slavery.

⁹ Dictionary.com. Entry: slave. <http://dictionary.reference.com/browse/slave?s=t>

War, he notes, is as old as civilization itself, and in the aftermath of war captured prisoners were usually killed in ritual sacrifice. Keeping them would require life-sustaining provisions, and in hunter-gatherer times food was a scarce resource. Search for food was the main focus of the day, day in and day out. As farming and technology developed over time, food became more readily available and daily survival a little less difficult. The taking of slaves became possible as the ability to feed them became easier. In other words, it was worth the investment to keep the prisoner for labor (or entertainment or procreation) rather than kill them. Ironically, as people and communities became more “civilized” (e.g., the advent of farming, the invention of more complex tools, etc.) slavery became a viable option to increase security, wealth, or power. But capture of slaves in wartime was not the only method for procuring slaves. As Meltzer notes, “As the desire for slave labor grew, there were always men eager to profit from it. Kidnapping and piracy became good business to meet a scarcity or satisfy a growing demand. The traffic in slaves became one of the earliest forms of commerce. Slaves were sent as commodities to wherever their muscle or skill, beauty or brains, would bring the highest price” (1993, 3).

Slave operations became more expansive and organized over the centuries, and in the sixteenth century the Atlantic Slave Trade began. Spanning nearly four centuries, this social, political, and economic system directly affected more than twelve million people, their families, and communities, with lingering consequences. Most were taken from Africa and shipped as cargo to various destinations, including Europe, the Americas, and the Caribbean. The Atlantic Slave Trade, and the slavery that existed during that time

and for decades after, is generally what people think of when they think of slavery. It was horrific, and it was legally abolished. The League of Nations' 1926 Slavery Convention set out to define slavery for the first time in international law.¹⁰ Article I states: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Article II requires countries ratifying the Convention "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms." Article four of the Universal Declaration of Human Rights (1948) states, "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."¹¹

Even after abolition, slavery continued to affect many people, though its character evolved over time in order to blend into acceptable practice or be hidden from plain sight altogether. Slavery of the past was usually a matter of ownership, de facto and de jure, and can be generally referred to as chattel slavery.¹² While this kind of slavery still exists in some parts of the world (mainly Northern and Western Africa), contemporary forms of slavery often take on a less obvious appearance (Bales 2009, 33). That is to say, contemporary slavery can be subtle in outward appearance, camouflaged by social custom and ordinary practice. In 1956, the United Nations adopted the "Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices

¹⁰ "Slavery, Servitude, Forced Labor and Similar Institutions and Practices Convention of 1926" (commonly referred to as the 1926 Slavery Convention), ratified by the League of Nations.

¹¹ Universal Declaration of Human Rights. <http://www.un.org/en/documents/udhr/index.shtml>

¹² Dictionary.com. Entry: chattel: 1) a moveable piece of personal property; 2) any article of tangible property other than land, buildings, and other things annexed to land; 3) a slave. <http://dictionary.reference.com/>.

Similar to Slavery” (United Nations 1956). The preamble takes notice of previous international attempts at addressing slavery and concedes that despite these efforts “slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world.” It submits that what is required is a “supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery....” This 1956 Convention was the first major step forward in elaborating on what “slavery” is and what “institutions and practices similar to slavery” ought to encompass. Kevin Bales suggests that in order to combat slavery today we must begin to see and understand slavery through a contemporary lens (2009, 16). That is, we must be open to identifying slavery in all its forms, not just in the way we see slavery as it existed in the past (chattel slavery). In order to do this we must define more clearly what it means to be enslaved, and better understand the process of enslavement.

The vast majority of slaves in the world today suffer in social and economic relationships that take the form of one or some combination of the following: debt bondage, contract slavery, forced labor, and forced prostitution (U.S. State Department, 2010). I will discuss each in more detail below. And while it is important to understand each separately, it is perhaps more important to understand that the phenomenon of slavery is rarely neatly packaged and clearly labeled. Slavery (what it is) is ultimately identified not in strict categories, but in experiential conditions: control, violence, and extreme exploitation occurring together.

Exploitation is perhaps the most elusive of the three. Exploitation exists on many

different levels and to varying degrees; sometimes exploitation is overt, sometimes it is extremely subtle. Those highly critical of capitalism as a sociopolitical system argue that the very nature of capitalism involves exploitation and that many workers are caught in a clever kind of wage slavery disguised as free labor. Although this (Marxist-inspired) observation was part of the discussions and debates during the abolition movements of the nineteenth century¹³, it is not the kind of exploitation that is characteristic of slavery, strictly speaking.

The kind of exploitation involved in slavery is much more extreme and sometimes includes sexual exploitation. Extreme economic exploitation involves payment that is considered grossly unfair in light of the labor performed or involves a total lack of payment.¹⁴ This sometimes involves fraudulent accounting or contract violations. Sexual exploitation in slavery, whether in cases of forced prostitution or for more casual personal use, is exploitative on a much more intimate level: the person endures rape, sometimes over and over again. Sexual exploitation in conditions of slavery is a type of exploitation that need not involve direct profit gained by the perpetrator. That is, an enslaved worker in a clothing factory may also be exploited sexually by factory owners

¹³ See *The Anti-Slavery Debate: Capitalism and Abolitionism as a Problem in Historical Interpretation* (1992) for more on protests of wage slavery in the era of abolition in the nineteenth century. There are legitimate concerns about unfair compensation in the capitalist wage system, concerns that deserve sincere attention, but slavery strictly speaking must be distinct from these issues. David Brion Davis (1992), one of the foremost scholars of historical slavery, writes: “[W]hen radical American reformers later contended that the wage system was slavery, that conventional marriage was slavery, and that submission to any government using coercion was slavery, their rhetoric surely diluted the charge that Negro slavery in the South was a system of exceptional and intolerable oppression. ... Likewise, an indispensable term such as ‘holocaust’ becomes trivialized when it is extended metaphorically to every atrocity or instance of ethnic oppression.” p. 173.

¹⁴ I take for granted that economic exploitation in the case of slavery is always extreme, so I will proceed to refer to it as economic exploitation.

who use her for sex, not commercially to make money but for personal use. In this case, her condition of enslavement includes sexual exploitation even though the perpetrators are not prostituting her to make money. Even this instance of sex slavery involves a kind of economic exploitation, albeit in a more indirect way. Sex is in fact traded for money every day all around the globe. If the factory owner, for instance, were to use a for-hire prostitute for personal use he would have to pay for that service. Using a slave for sex means not only that he is avoiding payment (an indirect profit), but it also means that the slave is losing money (an indirect profit loss) she could have earned had her service been performed under different conditions— as a voluntary prostitute in control of the use of her body and the transaction, collecting payment for services rendered. Of course, direct economic exploitation is prominent in cases of commercial sex slavery. Brothel owners or pimps, for instance, directly profit off their sex workers. In fact, the business of forced prostitution is arguably the most profitable of all slave operations, net profit margins at nearly 70%¹⁵ (Kara 2009, 19).

In addition to exploitation, the qualities of control and violence also come with similar stringent requirements and complexities in the discussion of what slavery is. As with exploitation, control and violence also exist on many different levels and to varying degrees. Understanding these elements is crucial to the identification of slavery, as opposed to other situations or conditions that are also exploitative, controlling, or violent in some way. Its proper identification is, as with a new parasite infecting its host, the first

¹⁵ Kara compares this to Google's net profit margin in 2006: 29%.

step towards its effective demise. I will now explore different forms of slavery as they exist in the world today and as they are commonly defined.

Forms of Slavery

Debt Bondage

The 1956 Convention lists debt bondage as “a practice analogous to slavery.” It defines debt bondage as:

The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined (United Nations 1956).

Sometimes referred to as bonded labor, debt bondage is the most common form of slavery today. Debt bondage amounts to a kind of advance of money with repayment being serviced through the debtor’s labor. On its face this does not seem to be problematic, as long as reasonable terms are established and abided by. In fact, many migrants who came to colonial America did so under a system such as this: indentured servitude, or peonage. Some of them were treated with respect and were free to leave their station of work when their travel and other related debts were paid off—their migration to the New World made possible with this advance of money. Others, however, were trapped in debt bondage, the victims of unscrupulous people who took advantage of their vulnerability. Through false accounting, exorbitant interest rates, extortion, or unreasonable collateral, repayment is never actually possible and the victim is forever indebted, sometimes passing on the debt to subsequent generations. In the

latter instance, when the labor power of the victim is used as collateral for the debt, the trap of bondage is established. Bales explains: “Since all the labor power of the debtor is the collateral property of the lender until the debt is repaid, the debtor is unable to ever earn enough to repay to debt by his or her own labor” (2005, 59). After the Thirteenth Amendment (1865) abolished slavery in the United States, the freedom of many “freed” slaves was complicated due to the continued practice of debt bondage. Kara notes: “After the abolition of slavery in most countries during the nineteenth century, debt bondage became a substitute method for procuring slave-like labor for agriculture plantations in Africa, the Americas, and the Caribbean” (2009, 22). The Thirteenth Amendment, in fact, outlawed slavery and involuntary servitude, rather than indentured servitude or peonage specifically.¹⁶ “Indenture” refers to an official certificate or contract that binds a person to work for another in order to fulfill a specific agreement, often one that involves money or labor. Indentured servitude therefore suggests that the agreement is voluntary, or at least that some degree of consent was given-- a contract entered into. Involuntary servitude involves force or coercion, at least force or coercion that is more overt. This careful wording left the general practice of money-lending somewhat unchecked, as many ex-slaves purchased land on credit or engaged in sharecropping with wealthy landowners. To be sure, many enter voluntarily into debt, but debt bondage, strictly speaking, involves coercion and fraud.¹⁷ Arrangements such as

¹⁶ The Thirteenth Amendment of the U.S. Constitution: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

¹⁷ Some might argue that present-day practices of the credit industry sometimes use similar tactics: unreasonable interest rates, vague wording of contracts, changes to contracts that lack proper informed consent, etc. For instance, people may enter freely into a seemingly reasonable mortgage, but end up

sharecropping left many at the mercy of former slave owners. Bales notes: “Farm owners would ‘hold’ the sharecroppers’ pay, and they were forced to make all their purchases from a ‘company store,’ using tickets or orders rather than money. When their annual contracts expired, they found that the crops they raised did not pay the debts they owed. Although it was often apparent that these ‘debts’ were imaginary or impossibly inflated, the penalty for non-payment was jail” (2009, 13-14). Many times it went beyond fraudulent accounting. Historian Jacqueline Jones observes that by 1900, “as many as one-third of all sharecropping farmers in Alabama, Mississippi, and Georgia were being held against their will” (Bales 2009, 13).

Without the presence of legal ownership, debt bondage continued without much notice. Despite international law and laws in the United States, debt bondage still occurs today, in the United States and many parts of the world (Bales 2005, 61). Kara notes: “Bonded laborers currently toil in numerous industries, including carpet weaving, brick molding, jewelry, pottery, stone quarrying, cigarettes, timber, fireworks, and numerous agricultural products” (2009, 222). Debt bondage is most common in South Asia, especially India, “thanks in large part to the country’s historical caste system” (Kara 2009, 271). Approximately six out of ten slaves in the world are bonded laborers in South Asia.

Debt bondage is complicated. At first there is the trade of labor for money, a transaction characteristic of nearly every employment relationship. What occurs after

bound to an agreement that will in reality take lifetimes to satisfy. Recent U.S. legislation, 2010 Dodd-Frank Act, addressed such issues: see <http://www.marketwatch.com/story/senate-defeats-filibuster-threat-on-bank-bill-2010-07-15> for a brief summary. Such safeguards are rarely present in communities where debt bondage runs rampant, where fraud is ignored or even accepted as cultural norm.

this first transaction then is a perversion of the process. Would-be bonded laborers go to moneylenders for financial assistance, for an advance of money much in the same way people in some countries go to the bank to take out a loan or apply for a line of credit. Reasons for needing such assistance varies: a wedding or funeral to pay for, medicine needed for a sick family member or similar family crisis, or even environmental disaster. In some cases, to alleviate debts owed to the moneylender, parents give up their children, either as a cash trade or in order for the child to provide labor as payment. What is crucial to debt bondage, what sets it apart from an ordinary employment or credit arrangement, is force (threats of violence or literal bondage, for instance), fraud (fraudulent accounting, for example), and exploitation.

There are other situations involving debt bondage wherein the would-be bonded laborer never initially borrows money from anyone but is instead tricked into the debt. This is highly common among victims of human trafficking. Human trafficking is a complex phenomenon and cannot be easily defined; it is, roughly, a process by which some people become enslaved. Some victims are kidnapped outright, but others may give their consent to enter into employment situations, some risky and some perfectly acceptable and “normal.” One may be tricked into conditions of debt when they are coerced into paying for transportation costs and living expenses that were never part of the employment agreement at the start. Debt bondage can thus be entered into “freely” when someone goes to a moneylender for a loan, or it may instead become the reality of a person who was at first offered real employment but then is subsequently never paid and not allowed to leave, either through violence or its threat.

Without the obviousness of recognized legal ownership, alongside shackle and whip, slavery today often exists as a unique combination of conditions. This brief introduction to the case of debt bondage, or bonded labor, illustrates how slavery can occur on a continuum of coercion and violence, as not all cases are clear cut and easily identified. Most cases involve a mixture of various coercive techniques and various conditions of bondage. I will say more about debt bondage in the chapter that focuses on the United States, as many cases involve an element of this type of enslavement.

Contract Slavery

Contract slavery is the second largest form of slavery today and is also the most rapidly growing (Bales 2009, 34). Like debt bondage, this kind of slavery begins with a mutual agreement between employer and laborer as an exchange of money for labor (or labor for money). Unlike debt bondage, a large advance of money is not the reason for the employment arrangement. The arrangement instead involves a guarantee of wages for a guaranteed job. This kind of contract work is a common type of employment arrangement and takes place in industries such as agriculture, engineering, writing, education, and manufacturing. Contract slavery is most often found in Brazil and Southeast Asia, but it is also found in places like the United States, Europe, and Canada (Bales 2009, 34).

What occurs in the case of contract slavery is also illustrative of how slavery exists on a continuum of coercion and violence and how different forms of slavery can combine to exist in the same instance. Though there is a contract establishing the

employment arrangement, slavery begins when this arrangement is violated through a variety of means. Laborers may be held against their will through violence or the threat of violence (including the threat of violence towards family members) and forced to work under this threat (this constitutes forced labor); laborers may never be paid anything beyond subsistence (minimal food and scanty living conditions for the purpose of just barely keeping them alive and able to work, which most closely resembles chattel slavery); laborers may be forced, under threat of violence, to pay for travel and other living expenses incurred, despite this not being part of the contract, written or verbal, at the start of the employment relationship (this constitutes debt bondage); and, laborers may have their passports and identity documents confiscated upon arrival at the job site or even en route, thereby discouraging escape and making successful escape less viable. The confiscation of such documents does not constitute enslavement—though it may be illegal—but it is part of the creation of a hostile environment that helps to enable coercion and control.

It is perhaps because contract slavery can be camouflaged as legitimate that it is so widely occurring and the fastest growing type of contemporary slavery. Without proper labor regulations and oversight, workers are at risk for extreme exploitation and even enslavement. Sometimes underground networks are paid to deliver workers to businesses wanting cheap labor; this is one overt method of human trafficking. Contract slavery can also occur subtly or covertly, after legitimate employment is underway. This affects undocumented and documented workers and documented alike. Contract slavery, as I have illustrated, usually presents as a combination of various forms of slavery (most

especially debt bondage), and at the same time can be easily camouflaged as legitimate employment. I will also revisit this kind of slavery in the next chapter, which focuses on the United States. In that chapter, I illustrate how the current environment of migrant labor in the United States makes it easy to exploit and enslave workers.

Forced Labor

Forced labor, as a form of slavery, affects approximately 12.3 million people worldwide (ILO 2012). Slavery that cannot be identified as debt bondage or contract slavery often falls under the category of forced labor. In Africa, approximately 100,000 child soldiers are forced to labor as porters, spies, messengers, cooks, sex slaves, human mine detectors, and armed combatants (Bales 2009, 114-115). These children are procured through abduction or sometimes sold by their parents.¹⁸ This is usually referred to as the category “child soldiers” but it is also a type of forced labor. There are cases in the United States where migrant farm workers are forced to harvest crops at gunpoint and are locked away during the night to prevent escape. In many parts of the world, young girls and women are forced to labor in homes as maids or nannies, or forced into prostitution by being held in brothels or violently controlled by pimps on the streets.

In some parts of the world, forced labor is part of the culture and accepted as a way of life for those born into social marginalization, as in the caste systems of India. The people of the lowest caste are denied basic goods, such as access to land, education, and decent employment (reminiscent to the treatment of blacks during Reconstruction

¹⁸ Again, sometimes the line is blurred. When a child is sold by their parents it may be to pay off a debt, which could be categorized as debt bondage.

and for decades after), and are sometimes forced to labor without compensation. In the West African country of Ghana, the system of trokosi (meaning “wife of the gods” or “slave of the gods”) enslaves between 5,000 and 20,000 women and young girls (Bales 2009, 97).

Forced labor has an extensive history, with varying degrees of violence, coercion, and exploitation. Like debt bondage and contract slavery, forced labor is not a static category. In general, cases of slavery where there is no debt to be repaid or a contract to abide by we can label forced labor. Forced prostitution sometimes falls under this general category.

Forced Prostitution

Forced prostitution, or what is commonly referred to in the media as “sex trafficking,” involves the promotion and exchange of sex services for money. Sex is the “goods or services” being exchanged for money, over and over again, and this “product” is inseparable from the sex slave (as opposed to products resulting from agricultural or manufacturing labor, like tomatoes or rugs or bricks). It is the ultimate commodification and objectification of female sexuality.¹⁹ Forced prostitution can occur alongside debt bondage, contract slavery, or forced labor, but is specifically an instance of slavery that involves sex and sexual exploitation for financial gain. Like other instances of slavery, the victim may in fact receive some form of payment (e.g., money, room and board), but what is key, like the other forms of slavery, is extreme and violent coercion and

¹⁹ Boys are sometimes trafficked in this way, but the vast majority of sex slaves are female.

exploitation. The Council of Europe proposed this as the definition of forced prostitution: “[the] act, for financial gain, of inducing a person by any form of constraint to supply sexual services to another person” (Hirsch 1996, 23). Whether in a brothel, a strip club, on the street, in the fields or forest, or in any number of situations and environments, victims of forced prostitution are violently controlled and forced to provide sex “services.” Beyond this psychological trauma is the physical harm that can result: HIV, AIDS, HPV (human papilloma virus) and cervical cancer, PID (pelvic inflammatory disease), the dangers of pregnancy and abortion, and numerous other sexually transmitted diseases. In addition to life-threatening disease, there is the general trauma of being raped on a daily basis, for months or years. Ex-slave Harriet Jacobs (1861) said, “Slavery is terrible for men; but it is far more terrible for women. Superadded to the burden common to all, they have wrongs, and sufferings, and mortifications peculiarly their own” (Mankiller et al. 1998, 191). While some people become enslaved by virtue of common custom, some are trafficked into slavery. This will be described in the next section.

Human Trafficking

The process by which some people become enslaved is understood as human trafficking, which can be understood as somewhat analogous to the historical trans-Atlantic slave trade²⁰ (Bravo 2007). The trans-Atlantic slave trade was for the most part

²⁰ Bravo (2007) asks: “Is the analogy to the trans-Atlantic slave trade and slavery relevant? Is it useful? Is it misused? Can it contribute to understanding of modern trafficking in humans or lead to mechanisms to combat human trafficking in the twenty-first century? It is my hypothesis that those who have used the analogy to date have failed to explore it more than superficially, or to adequately map out both the

a highly visible and overt phenomenon: slave raids or trades in African villages, large ships off the port being loaded and unloaded of their human cargo, and slave auctions taking place in the middle of town squares. Trafficking today, by contrast, is a complex process and can be rather subtle and difficult to identify.

The 1926 Slavery Convention defines the slave trade as:

[A]ll acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves (Bales 2005, 44).

Human trafficking was most recently defined in the 2000 United Nations

Trafficking Protocol:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation 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 (United Nations 2000).

This protocol, which supplements the United Nations Convention Against Transnational Organized Crime (2000), “provides the first clear definition of trafficking in international law” (United Nations 2002). The first part of this definition addresses

similarities and differences between the two systems of exploitation. As a consequence, the ability to effectively combat the modern traffic in human beings has been compromised both internationally and domestically by a failure to recognize and act upon the *structural* roots of the modern trade. ... [T]he analogy... can be relevant if explored more deeply- there are similarities not merely in individual plights but in the deeper *structures* of the world economic system and the factors that caused and fostered the rise of both phenomena.” p. 211-212, my emphasis.

movement, no matter the distance: recruitment, transportation, transfer, receipt, and controlling the free-movement of people through harboring. The second part addresses how the first part is achieved: through force, threat of force, coercion, abduction, fraud, deception, abuse of power, and even includes the possibility that the victim gives consent. This second part is necessary since the movement of people, in general, cannot by itself be illegal or morally problematic. The second part of the definition (force, fraud, deception, etc., except for abduction) is also by itself not necessarily illegal (though may be unethical). In everyday life we may encounter force, coercion, fraud, deception, and abuse of power at varying levels of severity, some instances rising to the level of criminality and other instances hardly noticeable. What is crucial then to this definition of human trafficking is both the third part, “for the purpose of exploitation,” and the requirement that all three parts must take place together.

There is a tendency to use the terms slavery and human trafficking interchangeably. Depending on the context this may not be problematic, but it is important to understand certain distinctions. As Kevin Bales explains: “One common misconception is that another major form [of slavery] exists, called ‘human trafficking.’ Trafficking is simply a mechanism or conduit that brings people into slavery. It is one process of enslavement itself...” (2009, 35). This confused terminology is evident even within a single document: the Trafficking Victims Protection Act of 2000. The purpose of this U.S. legislation is to “combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude....” Section 102 of the Act then states: “The purposes of this division are to combat trafficking in persons, a contemporary manifestation of

slavery...” (U.S. Department of Justice 2000). In the first statement, human trafficking is the process by which one can become enslaved. In the second, human trafficking is slavery. Again, depending on the context this may not be problematic. However, if we understand human trafficking as slavery we may only look for instances of trafficking in our efforts to eradicate slavery. This is a mistake, as not all cases of slavery involve trafficking. Most importantly, to focus only on slavery, as an instance of exploitation, is to fail to fully appreciate the complex ways in which people become enslaved.

Trafficking specifically refers to the illegal sale of goods and services, for instance, drugs, arms, people, or sex. In business terms, a trafficker might be analogous to a broker or distributor, although in human trafficking cases it is usually not so straightforward. A dictionary definition of trafficker is a person who “promotes or exchanges goods or services for money.” Forced prostitution is a special case for many reasons, as I will explain later, and is one form of slavery that can also be considered an instance of trafficking where prostitution (the exchange of sex for money) is illegal. The term “sex trafficking” is often used when discussing forced prostitution in the media. In cases of voluntary prostitution, where prostitution is illegal, simple definitions can be complicated by the fact that the prostitute would be considered a sex trafficker: she is illegally selling sex, even if she is doing so voluntarily on her own accord. This blurred line of definitions and meanings (in the case of forced prostitution or any instance of slavery) is not important to the experience of the victim, but it can lead to confusion in anti-trafficking efforts. Like slavery, in all its manifestations, understanding human trafficking requires a deeper probe beyond basic definitions, and important to its proper

identification is, again, a particular brand of violence, coercion, and exploitation.

The year 2000 was a significant year. In addition to the United Nations Trafficking Protocol and the U. S. Trafficking Victims Protection Act, the United States initiated the “Trafficking in Persons Report.” This is an annual report compiled by the U.S. State Department that details the state of trafficking and slavery around the globe. In this report, countries are ranked into one of three tiers. These tier rankings are to reflect not only the state of slavery and trafficking in each country but also what that country is doing to address the problem (prevention, prosecution, victim assistance, etc.). Until 2010, this report did not include the United States. The inclusion of the United States in this assessment is an important step toward understanding that slavery and human trafficking are problems that occur globally and have complex causes that are not limited to certain countries or races or cultures. The evolution of this report is promising. The latest report in 2011 shows great strides in understanding the many elements of this social problem—focusing on issues that were before entirely neglected (e.g., immigration and migrant labor laws). Its overall focus reflects a better conception of modern slavery and, in turn, more effective anti-trafficking policy approaches. For example, since 1998 the U.S. government has advocated a policy structure of the “3P” paradigm: prosecution, protection, and prevention—always in that order and always with heavy focus on prosecution. The 2011 report changes the sequence of the 3Ps, putting prevention first, and highlighting it throughout the document. This change is subtle, but significant.

Within the Department of Homeland Security, human trafficking is introduced under the heading of Border Security: “According to U.S. Immigration and Customs

Enforcement, although many people think of the sex trade when they think of human trafficking, this crime also occurs in such labor situations as domestic servitude, labor in a prison-like factory, and migrant agricultural work” (Customs and Border Control 2012). In the next chapter I discuss human trafficking and slavery in the United States. This discussion will focus on domestic slavery and agricultural slavery and the social-structural processes that contribute to the vulnerability of those who are trafficked and become enslaved, including laws, policy, and norms impacting immigration and migrant labor.

CHAPTER TWO

Human Trafficking and Slavery in the United States

Human trafficking and slavery occur in the United States, including forced prostitution, forced labor, debt bondage, and contract slavery in diverse industries such as manufacturing, hospitality, agriculture, domestic work, and construction (U.S. Department of State 2011). Recent estimates by the U.S. State Department suggest as many as 15,000-17,000 people are trafficked in the United States annually, immigrants being most at risk (U.S. Department of State 2006 and 2011). This might give us pause, for the United States is assuredly a country that has systems in place to prevent this kind of extreme exploitation. Cynthia Wolken suggests, however, that these crimes do not occur in social and political isolation:

When the circumstances that allow for and support the forceful theft of human labor are deconstructed, human trafficking is squarely located within the larger context of workers' rights, immigrant rights, and human rights. The extreme exploitation that is human trafficking would not be possible without the less recognized, more insidious exploitation of women and racial minorities that takes place in our communities everyday without challenge or consequence. If those who make and carry out policy are purposefully failing to make this connection, it is largely because we have allowed it (Wolken 2006, 409).

This chapter is a case study of the problem of human trafficking and slavery—an examination of the ways in which social-structural processes contribute to the problem. These processes include laws, policy, and norms that impact immigration and migrant labor. In this chapter I discuss two types of slavery prevalent in the United States: domestic and agricultural slavery. It is in this chapter that I begin to build an account of injustice that is structural, as these social-structural processes play a role in the

marginalization of migrants who labor in domestic and agricultural work. This marginalization increases their vulnerability to extreme exploitation, including trafficking and slavery. I also examine how border security and immigration controls contribute to the vulnerability of undocumented migrants.

Domestic Slavery

Domestic slavery is one of the more common types of slavery in the United States, making up roughly the second highest number of trafficked persons and more than a quarter of all enslaved persons (Bales 2009, 18). It involves one or more forms of slavery previously described: debt bondage, contract slavery, and forced labor. It can also involve sexual exploitation, rape, and sex slavery. Domestic workers are predominately female and are employed to perform a variety of household duties, including child and elderly care.²¹ Perpetrators of this crime may not necessarily intend to enslave their domestic employees. As the International Labor Organization (ILO) states: “Domestic work per se is of course not forced labor. But it can degenerate into forced labor when debt bondage or trafficking is involved—or when the worker is physically restrained from leaving the employer’s home or has his or her identity papers withheld...” (Chew 2005, 76).

The employment of domestics, as they are frequently called, has a long history in the United States. It was common practice for centuries, during legal slavery and for generations after. When slavery was legal, these workers tended to be chattel slaves or

²¹ Slavery involving domestic duties such as cleaning and laundry can also occur in a more commercial setting like the hospitality industry, affecting hotel maids for instance.

indentured servants afforded varying levels of freedom. Domestic workers in the past were predominately people of African descent. They were ‘the help.’ Domestic workers in the United States today are often foreign-born. Wolken notes: “Almost all of these victims are women and service providers have identified the overwhelming majority of victims as women of color. The intersectionality of race and gender is a result of the historic devaluation of race—and disempowerment of women of color” (Wolken 2006, 431). Dorothy Roberts, in “Spiritual and Menial Housework,” writes, “It is true that housework has always been women’s work, but polishing floors, scrubbing clothes, and tending to children for pay has been Black and other minority women’s work” (Wolken 2006, 426).

Class also plays a part in contemporary manifestations of domestic slavery. In cases where both the victim and the perpetrator (most often the female head of household) are women of color, as in a recent case²² involving World Bank, United Nations, and diplomatic employees, “victims are often racial and/or ethnic minorities in their countries of origin or recruited from groups with lower socioeconomic status than the trafficker” (Wolken 2006, 431).

Domestic workers are usually very isolated from the outside world, due to the nature of their working conditions. These two factors (being a migrant and isolated) create an environment ripe for exploitation. Wolken explains:

“Women trafficked into household labor are perhaps the most vulnerable of all those trafficked because they are often women of color, racial minorities in their country of origin, have little to no English language proficiency and, in many instances, are older. They are often geographically isolated in suburban areas and allowed no contact outside

²² Swarna v. Al-Awadi (2006)

the house. Most likely their captor(s) has told them many lies about the dangers they will face if they try to leave..." (Wolken 2006, 434).

Their isolation, however, is in part created by the lack of labor protections afforded to the category of domestic labor. But this type of slavery does not affect all migrant domestic workers the same. Race and class are again relevant. "Au Pairs," for instance, who come to the United States with a J-1 visa are not at risk in the same way as those who come to the U.S. on an A-3, G-5, or B-1 visa, due to the labor protections and monitoring built into the J-1 visa category that are generally absent from the other visa categories. Au pairs are primarily young white girls from middle class families from Western Europe. The J-1 visa is essentially a cultural exchange program (it is categorized as "Exchange Visitor Program") focused on the domestic duty of childcare. The young woman (age 18-26) provides live-in childcare in exchange for room and board, a stipend, and partially paid college education opportunities. Bales explains the process of coming to the United States with a J-1 visa to be an au pair:

With a J-1 visa each au pair or nanny is flown to New York for an orientation session and is introduced to a group of other nannies who will be located in the same geographical area. In this way, the women can form a network of friendships and have contacts from their own country whom they can call if they want. After joining their host family, the nanny attends another orientation program to learn about educational opportunities, community resources, and contact for a local support network. The nanny and her employers are required to discuss their situation with a counselor every month to report any problems and resolve disputes (2009, 36).

While the notion of a cultural exchange program might sound exciting, the job of an au pair is nonetheless a domestic one and difficult. But the program comes with

certain stipulations and protections which are monitored and enforced. The J-1 au pair program requires: one full weekend (Friday evening through Monday morning) off each month and a minimum of two weeks paid vacation each 12 month exchange term; no more than 10 work hours per day and not more than 45 hours per week; a private bedroom; a weekly stipend payment; three meals per day; to be included whenever possible in family meals, outings, holidays; and a written agreement (contract) detailing the expectations and obligations of both parties. The parties are also required to meet with a counselor each month, as Bales described, to work out any problems that arise. All of this is laid out clearly on a government website.²³

There are no such provisions for domestic workers in the other visa categories. For “other” domestic workers the conditions are very different. The A-3 visa is for household employees of diplomats. The G-5 visa is for domestic workers attached to the households of employees of international institutions such as the International Monetary Fund (IMF), the World Bank, and the United Nations (UN). The B-1 visa includes domestic workers who “belong” to people with permanent residency abroad. Workers with such visas are “linked” to named individuals. That is, they come to the United States to work for particular people and are tied to that person without the ability to leave lest they be deported. The Au Pair J-1 program is of course similar, in that the young woman comes to the United States to live with a specific host family. The program requirements and monitoring, however, are much different. “Most of the 4,000 of these visas [A-3, G-5, B-1] given annually go to employees in developing countries who are

²³ <http://j1visa.state.gov/programs/au-pair#hostsemployers>

brought here to work as maids, chauffeurs, groundskeepers and nannies. With little or no oversight of the labor conditions these employees encounter in the United States, trafficking and slavery have become rampant” (Wolken 2006, 422). Once they pass customs they are generally on their own, with no follow-up from government agencies. For the people with B-1 visas, no records are kept on their whereabouts. And since diplomats cannot easily be charged with criminal or civil violations (via diplomatic immunity), domestic workers with A-3 visas are at the mercy of their employers even more.

Break the Chain Campaign is a grass roots organization started by the Institute Policy Studies in 1997 to address the abuses inherent in the visa programs affecting migrant domestic workers.²⁴ An anti-trafficking framework that focuses on border security is totally useless for the prevention of this kind of slavery. Carol Pier, of Human Rights Watch, says:

The special visa program allowing international agencies and embassies to sponsor the workers is at the heart of the problem. It leaves migrants very vulnerable to serious abuse.... Most workers do not speak English and do not know where to go or how to complain. But if they do complain, and they're still with their employers, they risk being fired, losing their legal status and being deported (Bales 2009, 38).

²⁴ See www.breakthechaincampaigndc.org/our-history/ “The Institute Policy Studies started Break the Chain Campaign (BTCC) in 1997 after an expose in the Washington City Paper by IPS Fellow Martha Honey (entitled “Capital Slaves”), which chronicled the lives of women living in virtual slavery while working as domestic servant for officials of the World Bank and other international agencies.” See also: <http://www.washingtoncitypaper.com/articles/6480/capital-slaves>

As Bales notes: “The situation cannot change without a serious redirection of the government’s priorities away from the ‘employer’ and toward the oversight and protection of the domestic worker” (2009, 38). If some 4,000 migrants are coming to the United States legally each year as domestic workers, and if there are known vulnerabilities inherent in these visa programs, it seems obvious enough that these vulnerabilities ought to be at once corrected. Bales suggests, “If foreign diplomats want servants, let them hire servants from employment agencies like everyone else” (2009, 39). Or, at the very least, amend federal and state law in order to protect all domestic workers in the United States from violent abuse. With lax labor regulations and no monitoring of these workers, it is easy for the employment relationship to evolve into one that is highly exploitative, sometimes rising to the level of slavery.

Jennifer Chacon points to what seems obviously simple, yet what is also largely absent from the U.S. anti-trafficking agenda: “The role of U.S. law in perpetuating trafficking simply has not been adequately addressed” (Chacon 2006, 2991). The exploitation of domestic workers is well known to those paying attention to the working conditions of migrants in the United States. In June 2001, just a year after the first TIP report, Human Rights Watch issued a comprehensive 58-page report on the widespread abuse of domestic workers. The report calls attention to the “tens of thousands” of people, mostly women, who have come to the United States in the past decade to work as live-in domestic workers. It notes that these workers endure abuse, humiliation, degradation, and in the worst cases exploitative conditions including forced labor. The report highlighted the special visa programs for domestic workers and how they are

designed and administered in a way that “facilitates” the abuse and exploitation of these workers. Domestic workers under this visa system face impediments to challenging abusive conditions and filing legal complaints, and with no systems of monitoring in place these workers are left to suffer in silence. Most importantly, the report notes that the U.S. government has failed to respond to these known problems with adjustments to the law in order to protect the rights of these workers (HRW 2001).

In addition to the Break the Chain Campaign formed in 1997, the Domestic Workers Alliance was formed in 2000 to address the abuse of domestic workers in New York. In 2007 that New York based alliance helped form a national alliance: the National Domestic Workers Alliance (NDWA). The NDWA website states the alliance is “the nation’s leading voice for an estimated 2.5 million domestic workers in the United States, most of whom are women” (NDWA 2012). The work of this organization was pivotal in the landmark 2010 New York Domestic Workers Bill of Rights, legislation that addresses hours, pay, and working conditions.²⁵ It remains to be seen what changes, if any, will be made to these visa categories or to the status of domestic labor in national labor laws.

Agricultural Slavery

Agricultural slavery is another common type of slavery in the United States that predominately affects men. Like domestic slavery, agricultural slavery involves one or more of the different forms of enslavement: debt bondage, contract slavery, and forced

²⁵ <http://www.domesticworkers.org/ny-bill-of-rights>; see also <http://www.organizingupgrade.com/2011/01/lessons-from-domestic-workers-victory/>

labor. Agricultural slavery affects both undocumented and documented workers and is one of the three largest forms of slavery in the United States, though it fails to get much attention. “In a country where the plight of millions of migrant workers—suffering the nation’s lowest wages and worst conditions—fail to hold the public’s attention, agricultural slavery finds no place at all” (Bales 2009, 51).

Like domestic slavery, a focus on border security (to presumably “prevent and deter” trafficking²⁶) does nothing to help the enslaved farm worker who is in the United States legally on a work visa. And for the undocumented worker, tightened border security increases the dangers of migration and the risk of trafficking (for a number of reasons I will detail in the next section), as does the mere fact that one lacks legal status. Yet there is a high demand for access to this cheap and flexible labor force, documented and undocumented alike, and it is also highly marginalized. And for the slim attention that “modern-day slavery” gets in the United States, the focus is rarely on instances that don’t involve sexual exploitation. Wolken, in explaining the reasons for writing her article, “Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework,” says:

I chose to write this article as a voice for those who are being left out of the discourse.... I am writing this article in response to all those who, upon learning of my anti-trafficking program for rural agricultural states, ask only about the Russian women in seedy brothels... rather than the person who might be mowing their lawn, building their house, or harvesting their food. But most of all, I am writing this article for all the Latino migrant workers to whom I have provided outreach who could not even begin to identify a trafficking situation because they understand an employer’s use of force, fraud or coercion—the elements of a typical

²⁶ http://www.cbp.gov/xp/cgov/border_security/human_trafficking/stories_info/overview.xml

trafficking situation—as simply an occasional occupational hazard they must endure for the privilege of working (2006, 409).

For the migrant farm worker, laboring in the fields of rural America, this marginalization is quite literal. Agricultural slavery is especially common in the southeastern part of the United States. With its strong immigrant presence and an economy largely dependent on agricultural production, Florida has become a “mecca” for trafficking and slavery (Wolken 2006, 420). One Department of Labor official referred to parts of Florida as “ground zero for modern slavery” (Bales 2009, 254). When we explore the environment regulating migrant farm labor, the reasons why Florida is “ground zero” for modern slavery become clear.

The United States has a long history of procuring foreign labor in times of labor shortages. Specifically, this history involves cycles of labor recruitment that is sometimes then followed by mass deportation brought on by economic and political factors. Some have referred to this as the “revolving door” function of U.S. immigration enforcement, “whereby the INS would effectively ‘open’ and ‘shut’ the boundary depending on the needs of domestic interests” (Nevins 2002, 35). In his book, *Operation Gatekeeper: The Rise of the “Illegal Alien” and the Making of the U.S. Mexico Boundary*, Joseph Nevins explores the social, political and economic underpinnings of this revolving door. He contends that policy has been inextricably tied to social norms regarding race, nationality, class, and gender. This backdrop is important to the present discussion on agricultural slavery. During legal slavery and for the decades that immediately followed, most agricultural workers were African and Bahamian. Today,

agricultural workers are primarily Latino (Bales 2009, 48). This can in part be traced to the Bracero Program, a series of laws and agreements between Mexico and the United States beginning in 1942 for the procurement of temporary foreign labor. The initial agreement ended in 1947, but the program continued in agriculture under different laws, including the H-2A temporary work visa. Also called the “guest worker program,” the H-2A program²⁷ began in 1943 “to provide workers for the southern sugar cane fields” (Bales 2009, 69). The history of immigration in the United States raises many important questions that deserve special focus. What is especially important to recognize for my purposes is that the procurement of Mexican labor during the bracero program initiated steady migratory flows that continued after its official end in 1964. Approximately 4.5 million jobs were filled by Mexican citizens during the bracero program and the H-2A visa program is still in effect (Southern Poverty Law Center 2007). There is no quota limit for the H-2A visa—employers can “import” an unlimited number of workers, as long as they can reasonably demonstrate that they tried to fill the jobs with U.S. citizens. The percentage of foreign-born workers in the United States tripled between 1970-2010, and immigrants today make up 16 percent of the U.S. workforce. In 2010, 47 percent of the 40 million foreign born persons in the United States reported Hispanic or Latino origins” (Migration Policy Institute 2012).

We have in the same breath welcomed and shunned the migrant worker.

“Depending on the interest group and the larger socio-economic and political context, international migrant labor represents both a threat to and an opportunity for ‘the nation’”

²⁷ The program was extended that same year to include temporary nonagricultural workers under the H-2B visa.

(Nevins 2002, 16). Nevins points out that the “emergence of the Bracero Program in 1942 and the INS’s assistance in recruiting contract labor... for U.S. growers on the one hand, and the agency’s Operation Wetback in 1954 on the other, are the most obvious examples of the historically contradictory practices of the Border Patrol” (2002, 35). But this revolving door was also managed by private “powerful agricultural interests” who “played a significant role in producing and maintaining a yawning gap between state rhetoric championing strong boundary policing, and actual state practice” (Nevins 2002, 35). This is evident in the 1952 Immigration and Nationality Act (INA 1952) which made it illegal to harbor, transport, or conceal an extralegal immigrant (the first law to prohibit the smuggling of unauthorized migrants), while at the same time “expressly excluding employment of an undocumented person from the definition of ‘harboring an alien’” (Chacon 2006, 3004). This was the “Texas Proviso,” a concession to growers in Texas. Chacon rightly asserts: “The decision not to treat employers as ‘harborers’ signaled a complete disregard for the role that employment opportunities play in drawing migrants into the country” (2006, 3004). This provision acknowledged the use of undocumented labor, safeguarding employers and allowing the system to profit from this labor, while at the same time criminalizing the “illegal alien.”

It was not until the Immigration Reform and Control Act (IRCA) of 1986 that employers were prohibited from “willfully or knowingly” employing undocumented workers (IRCA 1986). Yet this did not end the use of undocumented labor, as it “placed a significant share of enforcement in the hands of employers themselves” (Chacon 2006, 3006). Wayne Cornelius writes, “The impact of employer sanctions on the use of

undocumented immigrant labor has been negligible due to the proliferation of fraudulent documents, which employers are not legally obligated to verify” (1998, 141). In addition to the obvious conflict of interest in allowing employers to enforce this law for themselves, the precarious position of undocumented workers in the United States leaves them especially vulnerable to exploitation. The cases of *Sure-Tan v. National Labor Relations Board*²⁸ and *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*²⁹ made clear that undocumented workers had little recourse in recovering wages and were not afforded protections under the National Labor Relations Act³⁰. In the Hoffman case, the Court reasoned that allowing undocumented workers the recovery of unpaid wages would only “encourage future violations” of immigration law. Justice Brennan dissented in the *Sure-Tan* case, stating: “Once employers, such as petitioners, realize that they may violate the NLRA with respect to their undocumented alien employees without fear of having to recompense those workers for lost back pay, their ‘incentive to hire such illegal aliens’ will not decline, it will increase.” Workers are not only made vulnerable to exploitation but are also punished, while employers get away with nonpayment or underpayment of wages and have an increased incentive to do so. Chacon reasons: “[E]mployers have an incentive to hire undocumented workers in

²⁸ *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883,891 (1984)

²⁹ *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 151 (2002)

³⁰ National Labor Relations Act (1935) 29 U.S.C. § 151-169; Agricultural workers (even documented workers) are expressly excluded from the NLRA, see Sec. 2(3) “The term ‘employee’... shall not include any individual employed as an agricultural laborer...” Employees “in the domestic service of any family or person at his home” are also excluded. See <http://www.nlr.gov/national-labor-relations-act>: “Congress enacted the National Labor Relations Act to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy.”

violation of immigration laws, to provide them with inadequate pay and workplace protections in violation of labor laws, and to report them to immigration officials when these workers attempt to organize or seek better working conditions” (Chacon 2006, 3006-7). This is a labor regime that effectively encourages and protects forced labor. For the undocumented worker, the legal protections are virtually absent. These workers are very much at the mercy of their employers, and without much recourse lest they risk deportation and blacklisting³¹.

For the documented guest worker the situation is not much better, and this is also due to a lack of worker protections. The very political and competitive nature of the food system encourages an agricultural labor regime that is cheap and flexible, and this is assisted by the social, political, and economic arrangement of the H-2A visa. As previously stated, agricultural workers are excluded from the protections in the National Labor Relations Act (NLRA) of 1935. This Act gave non-exempt employees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .”³² It also prohibited employers of such non-exempt employees from engaging in a number of “unfair labor practices,”³³ including interfering with, restraining or coercing employees in

³¹ Blacklisting a migrant worker is the practice of putting them on a list of workers who are unfit for rehire due to their “noncompliance” with current working conditions (i.e., speaking out, attempting to organize, etc.) Since employers, in theory, have access to an unlimited number of H-2A workers, they can easily replace workers who do not acquiesce to the arrangement.

³² NLRA Sec. 7

³³ NLRA Sec. 8

the exercise of their rights, firing an employee for organizing or filing charges against the employer for abuses or discrimination “in regard to hire or tenure of employment” of a worker who is a member of any labor organization. These are rights that would greatly benefit farm workers. Agricultural workers are also generally excluded from the Fair Labor Standards Act (FLSA 1938; Chacon 2006, 3000). This Act entitled nonexempt workers to a minimum wage and overtime pay, with some exceptions. It also established standards for recordkeeping and child labor. Fortunately, investigations in the early 1960’s into the working conditions of agricultural laborers culminated in the passing of the Farm Labor Contractor Registration Act (FLCRA) in 1963. Several congressional inquiries found that:

[F]armworkers were routinely cheated out of their wages. Contractors sometimes simply absconded with money owed to their workers, leaving migrants thousands of miles from home without funds or transportation. In other cases contractors would deny owing wages due, undercount hours worked or units harvested, or retroactively reduce the piece rate or wage rate paid to the worker. After paying farmworkers, some contractors would make inflated deductions from the farmworkers' earnings for housing, food, equipment rental, transportation, taxes, or interest on personal loans. Contractors often managed to recoup wages paid to the farmworkers by forcing them to purchase all necessities at inflated prices from company stores or from storekeepers with whom the contractors maintained kickback arrangements (Fisher 1981, 534).³⁴

These conditions include debt bondage and contract slavery. *The Farm Labor Contractor Registration Act* was aimed at addressing these (and other) abuses and ending the "exploitation and abuse by irresponsible crew leaders."³⁵ The Act, however, “was

³⁴ See Fisher’s article (1981) for a listing of these congressional hearings and reports: “A Defense of the Farm Labor Contractor Registration Act” 59 TEX. L. REV. 531 (1981)

³⁵ S. REP. No. 202, 88th Cong., 1st Sess. I, reprinted in [1964] U.S. CODE CONG & AD. NEWS 3690, 3690

completely ineffective and virtually unenforceable” (Fisher 1981, 535). Congress adopted amendments in 1974 in order to remedy some of the shortcomings. Amendments included incorporation of a broader definition of farm labor contractor,³⁶ recordkeeping requirements, and the power to the Department of Labor to monitor and investigate the activities of farm labor contractors. The 1974 Amendments also gave farmworkers “a private right of action in the federal district courts without regard to diversity of citizenship, exhaustion of administrative remedies, or amount in controversy;” and, protection against “discrimination or retaliation for having taken legal action” (Fisher 1981, 536-538). The Amendments also “eliminated the interstate requirement and expanded the definition of ‘agricultural employment’ to include all activity prior to delivery for storage of any agricultural or horticultural product whether or not the activity took place on a farm” (Fisher 1981, 555). These amendments address important issues necessary for the protection of agricultural workers, in part remedying the exclusion of farm workers in earlier labor rights legislation.

Not surprisingly, an increase in enforcement in the years after the 1974 Amendments prompted backlash from agribusinesses. Highly relevant to this backlash was the 1976 case *Alexander v. Brennan*³⁷ that “struck down the Department of Labor’s voluntary compliance program and ordered the Department to use its coercive powers to enforce FLCRA” (Fisher 1981, 538). Growers, contractors, and crew leaders no longer had complete control over their workers. There were not only laws in place, but

³⁶ Defined in the amendment as “any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers (excluding members of his immediate family) for agricultural employment.” 7 U.S.C. § 2042(b) (1976)

³⁷ *Alexander v. Brennan*, 80 Lab. Cas. 33,846 (D.D.C. 1976)

employers, contractors, and labor supervisors also faced the real threat of enforcement of these laws. “The Act does not protect farmworkers by prohibiting a limited set of enumerated abuses within a single type of employment relation; rather, it does so by creating a broad prophylactic scheme within which almost any abuse of farmworkers is difficult, dangerous, and potentially expensive” (Fisher 1981, 542-3). This labor regime is much different from what we have today, where there is not only an incentive to hire undocumented workers, but conditions that make it easy to exploit farm workers.

Fisher’s article, published in the *Texas Law Review*, was in fact a defense of the FLCRA and written at a time when it was under heavy attack. Unfortunately, after several proposed additional amendments,³⁸ which would have “exempt[ed] almost the entire agricultural industry” (Fisher 1981, 552), the FLCRA was eventually repealed and replaced with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) in 1983 (MSPA 1983).

The MSPA maintained some of the important provisions in the FLCRA, but the fatal flaw is that the MSPA excludes the thousands of migrants who come to this country every year as guest workers. “The term ‘migrant agricultural worker’ does not include any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States....”³⁹ The use of the word “migrant” here is thus not intended to

³⁸ The proposed amendments were to sections 2042(b)(2) and 2042(b)(3). Fisher notes that the 1979-1980 assault “was a concerted effort by virtually every major organization of the American agricultural industry. Supporters of the 1980 amendments included the American Farm Bureau Federation, the National Council of Agricultural Employers, the National Food Processors Association, the United Fresh Fruit and Vegetable Association, the Citrus Industrial Council, the American Association of Nurserymen, and the Western Grower Association” (1981, 539).

³⁹ See Section 3(8)(2); see also for a good summary <http://www.ers.usda.gov/publications/ah719/ah719e.pdf>

denote an immigrant worker, but merely someone who is employed in agricultural employment “of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.” The H-2A guest worker program that brings in migrant workers for agricultural labor is in fact classified as a “nonimmigrant” work visa. And as I said earlier, there is no cap on the number of H-2A guest workers who can be brought into the United States. These workers are excluded from the National Labor Relations Act, the Fair Labor Standards Act, and even the Migrant and Seasonal Agricultural Worker Protection Act.

Unlike domestic labor laws, agricultural labor is subject to inspections and monitoring via the MSPA. Despite the fact that guest workers are excluded from this law, a robust system of monitoring and enforcement would likely prevent many of the abuses they suffer. A 2007 Southern Poverty Law Center report entitled “Close to Slavery: Guestworker Programs in the United States” highlights the lack of enforcement of agricultural labor laws (Southern Poverty Law Center 2007). The report says inspections are scarce and monitoring largely absent. “The number of wage and hour investigators in the ...DOL has declined by 14 percent between 1974 and 2004, and the number of completed compliance actions declined by 36%.” Wayne Cornelius notes: “The number of INS cases involving potential violations of [IRCA] by employers declined steadily during the 1990s, from 14,311 cases in the 1990 fiscal year to just 5,211 cases in 1996” (Cornelius 1998, 141). The Government Accountability Office (GAO) has also commented on this lack of involvement in monitoring and enforcing these labor laws that affect migrant farm workers. Their report to the House Education and Labor

Committee stated that the Department of Labor “does not sufficiently leverage its existing tools to increase compliance.”⁴⁰ As in the case of visas for domestic workers, there are also provisions of the H-2A visa that are inherently problematic, including the fact that the worker is tied to one employer and cannot leave that situation without being blacklisted and/or deported. The Southern Poverty Law Center report concludes that the H-2A guest worker program is “fundamentally flawed” (Southern Poverty Law Center 2007, 41).

Wolken’s article attempts to deconstruct the impact of certain feminist legal theories on the issue of human trafficking. She says the impact, thus far, is mostly negative, pointing out: “The disparity in treatment based on gender⁴¹ has devastating effects for men enslaved in agricultural work. ... If you see sexual slavery, you call the police; if you see domestic slavery, you call the ‘wife’ and take her word as to what is occurring; if you see agricultural slavery, you call the Department of Labor and have the men deported,” (Wolken 2006, 436). Agricultural slavery has, in fact, been marginalized, as our national focus is overwhelmingly and myopically on sex trafficking, or what has historically been termed “white slavery.” A focus on agricultural slavery would require a deeper probe into laws that regulate farm labor (especially the guest worker program), including the negligence of the DOL in monitoring or enforcing agricultural labor laws generally. Specifically, this probe would inevitably require a broader discussion on issues of immigration, undocumented labor, and race.

⁴⁰ http://www.house.gov/apps/list/speech/edlabor_dem/071508.html

⁴¹ Wolken notes, “It is general knowledge among experts and practitioners dealing with trafficking that women trafficked for sex account for a small percentage of the total victims of trafficking in the United States, and that young Caucasian women account for an even smaller portion of this number.” p. 410

To do the job the government has largely failed to do, a Florida organization has taken the lead in addressing labor abuses that affect farm workers. Established in the early 1990's, the Coalition of Immokalee Workers (CIW) is "a community-based organization of mainly Latino, Mayan Indian and Haitian immigrants working in low-wage jobs throughout the state of Florida." It began as an informal group of workers meeting weekly to discuss their working and living conditions, coming together to try to improve these conditions. Their work evolved to include the issue of agricultural slavery, as it became apparent that some instances of abuse rose to the level of violent forced labor and debt bondage:

The CIW's Anti-Slavery Campaign is a worker-based approach to eliminating modern-day slavery in the agricultural industry. The CIW helps fight this crime by uncovering, investigating, and assisting in the federal prosecution of slavery rings preying on hundreds of farmworkers. In such situations, captive workers are held against their will by their employers through threats and, all too often, the actual use of violence -- including beatings, shootings, and pistol-whippings (CIW 2012).

Addressing supply chain issues is important to their work. Supply chains in the agricultural industry include the growers themselves and end retailers, but also numerous other business entities such as chemical and fuel suppliers, transportation and equipment suppliers, and of course labor contractors. A 2004 Oxfam America report explains how labor fits into the agricultural system: "Squeezed by the buyers of their produce, growers pass on the costs and risks imposed on them to those on the lowest rung of the supply chain: the farmworkers they employ" (OXFAM 2004, 36). The government is also part of this supply chain, in that it has directly facilitated and legitimated the procurement of much of this labor through the establishment of the guest worker program. Agricultural

slavery is made easier due to a lack of enforcement of many of the labor laws impacting farm workers generally. Add to that the fact that H-2A workers fall outside of the protection of all of the basic labor laws in the United States, even the curiously named Migrant and Seasonal Agriculture Worker Protection Act. They do not, however, fall outside of other domestic and international laws concerning basic human rights, including the right to not be held in slavery or servitude.

In 2001, CIW launched the “Campaign for Fair Food.” “The logic behind the Campaign for Fair Food is simple. Major corporate buyers—companies such as Publix, Ahold, Kroger and Wal-Mart—purchase a tremendous volume of fruits and vegetables, leveraging their buying power to demand the lowest possible prices from their suppliers. This, in turn, exerts a powerful downward pressure on wages and working conditions in these suppliers' operations” (CIW 2012). CIW has brought the issue of labor abuses in the fields to the forefront, influencing big companies like Taco Bell, McDonalds, Pizza Hut, Wal-Mart, Whole Foods, and Trader Joe’s to address these abuses by paying more to their suppliers and cooperating in the monitoring and improvement of working conditions for the thousands of farm workers who grow and harvest the food these corporations purchase. CIW has also been central in training government agencies and other NGOs on the issues of human trafficking and assisting in the prosecuting of forced labor cases in agriculture.⁴² This is progress, and the CIW ought to be highly praised for their work, but it is not enough. The government must take

⁴² The CIW was instrumental in uncovering, investigating, and prosecuting the case against Miguel Flores and Sebastian Gomez, a landmark case involving agricultural slavery. Both defendants were sentenced to 15 years in federal prison. See *U.S. v. Flores* (1997). This case precipitated the 2000 Trafficking Victims Protection Act (TVPA). See also <http://ciw-online.org> and the Appendix for a list of recent cases involving agricultural slavery in the United States.

more responsibility in addressing the structural factors that help to facilitate violent abuse of farm workers. Laura Germino, a member of CIW, says “There are two ways to keep [the workers] down on the farm; one is by force, and the other is by a government-sanctioned program that locks the worker to the employer” (Bales 2009, 75). She is, of course, referring to the H-2A guest worker program.

Unlike domestic labor and forced prostitution, agricultural labor is more directly tied to the larger economy and is one link in a comprehensive supply chain for restaurants, grocers, and consumers generally. This fact illuminates how the problem of slavery and trafficking, when we get rid of the myopic focus on sex, is a problem that *also* occurs within the context of a global economy and an interconnected society. The supply and demand dynamic of trafficking and slavery is one that surely includes the demand for cheap and accessible sex, but it is also about the demand for cheap and flexible labor. As in the case of domestic slavery, the perpetrators ease the burdens of their household budget by paying household employees little or nothing—using race or ethnicity, class, and gender, even if subconsciously, as partial justification for the ill treatment of these workers. Sometimes this demand for cheap labor is tied to other actors and factors in the larger economy, as in the case of agricultural slavery (and other categories of labor included in the H-2B visa like seafood and meat processing, landscaping, and construction). What is important to recognize is that in both domestic and agricultural slavery government policies are directly part of the supply and demand dynamic: government policies facilitate the procurement of workers to fill a demand for a particular kind of labor and are structured and administered in a way that makes the abuse

of workers easy, affordable, and protected.

I have thus far begun to address the ways in which migrant labor laws in the United States help to facilitate the problem of trafficking and slavery, specifically, the lack of protections inherent in certain temporary worker visas that create an environment conducive to abuse and exploitation. Border controls also contribute to the problem of trafficking and slavery, especially for the undocumented worker. Chacon sums up these points well: “Border interdiction strategies, harsh penalties for undocumented migrant workers, and insufficient labor protections for all workers, but particularly undocumented migrants, all interact to facilitate trafficking...” (Chacon 2006, 2977). I discuss the issue of border controls in the next section.

Border Security and Immigration Controls

There are dangers at the worksite for both documented and undocumented migrants. There are also dangers in the process of migrating to the United States, especially for the undocumented migrant, who is an “illegal alien” and labeled a criminal once in the country. These dangers include physical barriers and obstacles (e.g., electric fences, border guards who use deadly force, deserts, rivers, small smuggling containers), as well as the increased need to use underground migration networks for successful border crossing.

Despite these issues, anti-trafficking efforts in the United States include a heavy focus on border security.⁴³ The logic of this approach rests on the assumption that the

⁴³ I discuss this more directly in the next chapter when I examine the TVPA.

problem of trafficking can be largely addressed by preventing the entry of undocumented persons and criminals, including traffickers and smugglers, by either apprehending them at the border or deterring the attempt to cross: “With more than 42,000 frontline CBP [Customs and Border Protection] officers and Border Patrol Agents protecting nearly 7,000 miles of land border and 327 ports of entry—including official crossings by land, air, and sea—*CBP is uniquely situated to deter and disrupt human trafficking*” (Customs and Border Control 2012, emphasis added). Border security has in fact steadily increased since the 1990’s. “Operation Gatekeeper” was initiated in California in October 1994, “Operation Safeguard” initiated in Arizona that same month, and “Operation Rio Grande” initiated in Texas in August 1997. The plan was to fortify traditional entry points with a significant increase in border guards, as well as an increase in physical barriers: cement walls, electric fences (Chacon 2006; Nevins 2002). For border enforcement along the southwest border, the INS budget doubled between 1993 and 1997 reaching \$800 million (Cornelius 2001, 661). The number of border patrol agents has more than doubled since 2004 (KLTV 2011).

President Obama, in a speech given in El Paso, Texas on border security and immigration, said: “[I]t’s true that a lack of manpower and resources at the border, combined with the pull of jobs and ill-considered enforcement once folks were in the country, contributed to a growing number of undocumented people living in the United States.” He also noted: “[B]ecause undocumented immigrants live in the shadows, they’re vulnerable to unscrupulous businesses that skirt taxes, pay workers less than the minimum wage, or cut corners with health and safety” (KLTV 2011). Obama seems to

be offering a humanitarian reason for keeping out undocumented immigrants, that since they are vulnerable to exploitation this is one reason to prevent them from coming to the United States. To address the lack of “manpower” at the border Obama states: “[W]e now have more boots on the ground on the southwest border than at any time in our history. The Border Patrol has 20,000 agents—more than twice as many as there were in 2004” (KLTV 2011).

Marshall and Thatun suggest, however, that the “border-control theory” has the advantage of allowing destination countries to pursue border security policies and immigration controls under the guise of trafficking prevention. More importantly, the empirical evidence indicates that efforts to restrict the movement of people does not hinder trafficking, but assists it (2005, 50). This illuminates the mistaken conflation of migration and trafficking, or the idea that the former causes the latter: “The rationale behind increased border controls is an adjunct to the idea that if people cannot move, they cannot be trafficked”⁴⁴ (Marshall and Thatun 2005, 50). It is not movement that leads to trafficking, however, but a lack of rights.

The logic of increased border security for trafficking prevention is that if we raise the risk of apprehension high enough to be an effective deterrent we will see a decrease in the number of would-be “illegal” persons attempting to cross the border, a decrease in the number of undocumented immigrants in the country, and thus decreased incidents of human trafficking. Even assuming the previously mentioned conflation of migration and trafficking is true (that movement leads to trafficking), many argue that the tactic of

⁴⁴ See also Kempadoo et al (2005) and Parrenas (2008)

border security does not necessarily deter migration. As Obama admits, there is a pull of jobs. In fact, labor migration is the consequence of a number of complex factors. Wayne Cornelius, in studying Mexico-U.S. labor migration, concludes that international labor migration is “the inevitable consequence of powerful market and demographic forces in both labor-importing and labor-exporting countries, reinforced and channeled by social networks that link relatives and friends in the sending and receiving countries” (Cornelius 1998, 140). These ‘social networks’ were in large part initiated by the bracero program.

Cornelius adds:

After three or four generations, the sociocultural infrastructure of self-sustaining migration from Mexico to San Diego and other U.S. cities with large Mexico-origin populations is firmly in place. Thus, the flow of new migrants persists and the stock of immigrant workers continues to expand, even when macroeconomic conditions in the receiving area would not seem to favor such an influx of labor... and even when the U.S. government tries to create formidable new deterrents to illegal immigration (Cornelius 1998, 142).

Douglas Massey, in writing about U.S. immigration policy after NAFTA, asserts, “The United States wants to have its cake and eat it too. On the one hand, it seeks to create a continent-wide free trade zone for goods, capital, and information. On the other hand, within this integrated North American market it wants no movement of labor. Rather, international migration is to be suppressed through police actions at the border and coercive internal sanctions” (Massey 2001). That is the political rhetoric, and it is certainly seen in increased border security. At the same time, the United States is very lax about enforcing the law when it comes to undocumented labor, especially when it seems to benefit our economy—the lack of monitoring and enforcement in agriculture is

one example of this. We want the availability of this labor, but stop short at legitimating it outright. And as previously discussed, the migrant labor regime in the United States is such that employers have an incentive to hire undocumented workers. Bill Ong Hing argues that employer sanctions have little effect on migration. Aside from this lack of deterrent, he argues that these sanctions make workers more vulnerable to exploitation. They become more desperate and accept lower wages and poorer working conditions (Bacon 2012).

Concerning this increased border security, in an effort to deter migration and address human trafficking, Chacon argues that the effect of increased border security shifts migration away from traditional entry points increasing the difficulty of crossing the border. She writes, “Far from preventing trafficking, these efforts actually cut against anti-trafficking initiatives. Increasing the cost of migration, rather than deterring many migrants, simply drives them into the arms of high-priced smugglers” (Chacon 2006, 3009-10). In “Cross-border Movements and the Law,” Ratna Kapur asserts: “The failure of international law to adequately address the reality of the migration phenomenon has given rise to a growing market for clandestine migration services...” (2005, 28). I discuss how international law deals with migration in chapter four. The failure, however, is also at the State level. Kapur adds:

The clandestine regime is produced in part by the failure of States to recognize the need for marginalized groups to migrate and to facilitate such movement through provision of safe, legal passage. The emerging legal regime with its focus on border controls, security, and law and order is in part producing a clandestine migrant-mobility regime which consists of providing a host of ‘services’ to those who cross borders, including the facilitation of smuggling, illegal migration, and underground travel, and the provision of false passports, visa permits, and identity papers (2005, 28).

Coyotes, as they are sometimes called, have been used for years to get people into the United States, and as border security increases their services are increasingly necessary to assist in successful border crossing. This service can be very costly. Migrants risk debt bondage as they begin their journey to the United States, sometimes taking on a loan at the beginning and sometimes being tricked into the debt later on. Fees have increased over the years⁴⁵ as the process of migrating has become more difficult and more dangerous. Taking on a loan to get to the United States might be manageable, but there is a risk of being trapped by unscrupulous agents who use force, fraud, or coercion to exploit workers. *This* is trafficking at its most basic, and increased border security makes this situation more likely. A lack of legal access to migration requires either total clandestine migration (being smuggled or guided by a coyote, or sneaking in on one's own) or, as Kapur notes, the use of false passports, visas, or other identity papers. The use of these false papers allows some to enter as apparently "legal" persons, but this comes with a risk of trafficking for the migrant similar to the way in which a loan of money makes one vulnerable, as most often these false papers comes with a price—if not a fee then an arrangement of repayment. A decrease in apprehensions at the border is frequently cited as proof that there is a decrease in the number of "illegal" immigrants crossing the border (Cornelius 2001, 666). This is a fallacy, one blatant example of this being the use of false identity papers. These migrants are undocumented, but appear to

⁴⁵ See especially Cornelius (2001). "Fees charged by coyotes... have doubled, tripled or even quadrupled, depending on the entry corridor and the services offered." ... "Professional people smugglers have not yet priced themselves out of the market, however. They now have more clients because of the increased difficulty of border crossing." 667-8.

be “legal” persons entering the country and, as Obama recognizes, will live in the shadows still vulnerable to exploitation. Additionally, those who are not apprehended have not necessarily failed to cross the border, but have merely not been caught—the services of a coyote resulting in success. Success, that is, unless this transaction results in trafficking and enslavement. As Kapur points out: “[C]urbing migration will not stop trafficking, but merely drive the activity further underground, and make it more invisible. ...[S]tricter immigration measures have resulted in pushing the victims further into situations of violence and abuse” (2005, 29).

Apprehension data is rather elusive. In his article, “Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control Policy,” Cornelius writes:

Apprehensions statistics overstate the actual flow of persons because the data represents events (i.e., apprehensions) rather than persons, who may make multiple entry attempts on a single trip to the border. ... On the other hand, apprehensions data understate the flow because of the large number of unauthorized migrants who manage to enter without detection. Some evidence suggests that the probability of apprehension has increased significantly since 1993 if illegal entry is attempted in one of the most heavily fortified areas. ... By the late 1990s, however, the majority of would-be undocumented migrants and the people-smugglers who assist them had learned to avoid these heavily fortified areas. Thus, the borderwide ‘gateway ratio’... may still be in the historical range of 70-80 percent, despite post-1993 border enforcement buildup (Cornelius 2001, 664-665).

Cornelius also notes that with increased border security some migrants are deterred from returning to their home country due to the difficulty and increased cost of crossing the border. For these reasons, at least, using such statistics is not a very reliable guide to understanding migration flows and the presence of undocumented persons in the United States. For the prevention of human trafficking, these statistics are also not very useful.

What *is* certain is that people risk their lives to get into the United States for a chance to work. Tightened border security makes migration even more dangerous and increases the likelihood of trafficking and enslavement. Even if it is the case that there are fewer “illegal” immigrants entering the country, it is at the expense of increasing the acute dangers faced by all those attempting passage, as the dangers of increased border security include the physical obstacles of clandestine migration. As I stated earlier, migrants, with or without a coyote, will likely need to choose less direct routes, avoiding the more traditional and accessible paths across the border. Many times this means crossing deserts or vast rivers. For those crossing with the help of smugglers, this might mean hiding in small spaces that have little air or pose other threats to life or limb. There is also the increased use of deadly force, treating these migrants as dangerous criminals who must be stopped at all costs.

As Cornelius noted, increased border militarization also means that migrants are less likely to cross the border to return to their home country. Chacon points out that this also plays a role in their vulnerability to trafficking. She argues that as people find themselves trapped in the country they become more beholden to employers and more vulnerable to exploitation (2006, 3010). In addition to increasing the vulnerability to trafficking and enslavement, this threatens development in poor countries, as well as family reunification. Workers who cannot return home will be less able to contribute to the growth or stability of their communities than if they were present. If they are unable to send money home, this problem is compounded further.

The history of border security is a complex one and, as Nevins makes clear, it

exists within the larger context of nationality. He writes, “This phenomenon relates to the somewhat conflicting functions of the modern territorial state of ‘protecting’ national territory from putative threats from without while trying to maximize potential benefits for domestic interests of transnational flows” (2002, 15-16). Obama, in his El Paso speech, highlights this desire to maximize potential benefits of transnational flows. He says, “[S]topping illegal immigration also depends on reforming our outdated system of legal immigration. We should make it easier for the best and the brightest to not only study here, but start businesses and create jobs.” And while he acknowledges the plight of the undocumented worker who is vulnerable to exploitation, he also makes clear that the undocumented person has “broken the rules, and has cut in front of the line” (KLTV 2011). Yet in a system that endures to make it easier for “the best and the brightest” to come to the United States, while failing to protect the “other” thousands of persons who are cleaning our houses or harvesting our food, including the undocumented worker who is readily employed by U.S. businesses, it is difficult not to conclude that there is a system of marginalization in place that is based on race and class. Border controls indeed exist within the context of nationality, and *this* is inseparable from the long history of imperialism and a global North-South divide that has resulted in vast inequalities.

Immigration controls are used, in part, to sustain this reality. Alex Sager, in “Immigration, Class, and Global Justice,” writes:

[T]he economic injustice of the global economy is partly a result of immigration policy. Borders do not merely divide the world into regions and states. Rather, they are part of the world, barriers that shape social and economic reality. Border restrictions distort markets, providing legal constraints on migrants that narrow their job opportunities and set wages below what market rates would determine under conditions of fair competition. They are part of a global basic structure that provides the

background conditions that determine how well people's lives go (2012, 44).

Obama mentions farm labor in his El Paso speech. "We need to provide farms a legal way to hire the workers they rely on, and a path for those workers to earn legal status" (KLTV 2011). This is good, especially if a path to citizenship can be implemented for those workers we rely on season after season to harvest our food. But we do not lack a legal way to hire farm workers, and the H-2A program has no limit on the number of workers that can be hired under this visa, as long as employers follow the provision of first trying to fill the jobs with U.S. citizens. This system, however, is broken. If we are to "reform our outdated system of legal immigration" (KLTV 2011) this most assuredly would include the guest worker program. With few labor protections and virtually no oversight, these legal workers are left to suffer at the hand of their employers. But these workers are not "the best and the brightest" and certainly not the ones to get mention in the President's speech. He instead highlights immigrants who have created massive wealth: "Look at Intel and Google and Yahoo and eBay—these are great American companies that have created countless jobs and helped us lead the world in high-tech industries. Every one was founded by an immigrant" (KLTV 2011). In discussing undocumented labor, Obama points to the need to address the problem of labor violations, to prevent abuse and exploitation of workers, but also (and mainly) for the purpose of strengthening the middle class: "[O]ne way to strengthen the middle class is to reform our immigration system, so that there is no longer a massive underground economy that exploits a cheap source of labor while depressing wages for everyone else"

(KLTV 2011). Another way to address the exploitation of cheap labor is to provide all migrant workers with labor protections and enforce these rights with effective systems of monitoring. This, however, might not be in keeping with the goal of strengthening the middle class, as businesses would be forced to pay their workers more, would not get away with non-payment, would need to negotiate with unions, and would be forced to provide workers with clean and safe housing that is up to code.

Border security must be seen within this backdrop—the dangerous conditions it creates, the current migrant labor conditions it ignores, and the inequalities it sustains. Sager points out that attention to the forces that shape migration has important moral implications. I believe these forces have been conveniently ignored in the creation of migrant labor regimes in the United States. Sager writes, “Too much discourse on immigration pretends that developed states are isolated territories besieged by huddled masses looking to take advantage of their citizens’ hard work and generosity” (2012, 43). In fact, developed states are part of an interdependent and international society and are not self-contained.⁴⁶ Sager (2012) rightly asserts that their actions create moral obligations. An honest assessment would perhaps shine a light on these moral obligations, the very least of which would include safe and legal migration paths, expansive labor protections and effective monitoring systems to prevent abuse, exploitation, trafficking and enslavement.

In this chapter I use the United States as a case study to explore the possibility that structural factors contribute to the problem of trafficking and slavery. I have shown

⁴⁶ I explore this in greater detail in chapter four.

that border security, immigration controls, and migrant labor laws are part of a *basic structure* and that this structure contributes to the problem of trafficking and slavery by making migrants especially vulnerable to this kind of exploitation. In the next chapter I examine the official anti-trafficking framework for the United States and international community and conclude it is an inadequate model for prevention due to the fact that it fails to call attention to such structural causal factors. This is important since this framework is to serve as a guide by which governments create legislation and implement policy objectives in order to address the problem, with the goal of reducing its prevalence. It is therefore important that who/what is responsible be correctly identified.

CHAPTER THREE

Towards a New Anti-Trafficking Framework for Prevention

The current approach taken by the international community and the United States in combatting human trafficking and slavery is one that largely focuses on its criminality and, in turn, on rights violations of victims. There has been a resurgence of “abolitionism.” This approach is not incorrect; it is, however, incomplete and fails to call attention to other important factors that contribute to the problem—social-structural processes that impact immigration and migrant labor. Who/what is responsible must be correctly identified and the framework for prevention reflect this understanding. It is important that we respond appropriately to those involved: criminal prosecution and victim protection and advocacy; prevention, however, is for the most part conceived of as a public awareness and border security issue. A narrow scope of responsibility has resulted in an anti-trafficking framework that primarily focuses on direct perpetrators of the crime, to the exclusion of other important contributing factors. We need a new framework. Prevention priorities ought to hone in on two main issues that are most directly associated with the trafficking process: migration and labor rights. As Kempadoo suggests, the concept of human trafficking has been critiqued “for its ability to hijack attention away from structural, underlying causes that give rise to exploitation...” (Kempadoo 2005, ix). Yet when properly understood, the issue of trafficking in fact illuminates structural deficiencies.

In an effort to better address prevention, the 2010 Trafficking in Persons report calls for initiatives to ensure “worker protections throughout the supply chain,” yet

without safe and legal channels for migration migrants risk being trafficked (U.S. Department of State 2010). The risk of trafficking continues at the job site: guest worker programs and temporary work visas are replete with inadequate safety measures and worker protections. Undocumented workers are in an even more precarious position. An anti-trafficking framework ought to include a focus on facilitating the labor migration of the “unskilled” migrant worker and creating a safer work environment for these workers. Instead, measures focus on even tighter border security, as well as continued support for a global migration regime that fails to adequately facilitate safe migration for these populations.

In this chapter I offer a critique of the current anti-trafficking framework and recommend a new framework that acknowledges other important factors that contribute to the problem. Here I examine two contemporary pieces of legislation that provide law and policy goals to combat trafficking and slavery. One is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, generally referred to as the “Trafficking Protocol” (United Nations 2000). The other is the U.S. Trafficking Victims Protection Act, or TVPA (U.S. Department of Justice 2000). In the TVPA, the United States sets guidelines and requirements for not only itself, but also for other states in how the problem of human trafficking is to be addressed. In this regard, it is effectively an international instrument. This is important to the extent that what is laid out in this Act can be regarded, alongside the UN Protocol, as the prevailing doctrine on the issue. The first main section of this chapter will take a look at these

instruments and examine how they each approach the problem. I will then look at international commitments (hard and soft law) in relation to the free movement of people and migrant rights. These international commitments are important to consider since the United States is party to most of them. This will include the World Trade Organization's General Agreement on Trade in Services (GATS), which lays out provisions for international labor migration.

In assessing the U.S. anti-trafficking framework, and more specifically, the structural causes that are often ignored, a more fundamental question emerges: To what extent is the international community, including the United States, responsible for the prevention of human trafficking? This will be the focus of chapter four, but I will say a few words here to provide a better context for the present discussion. As Kara asserts, "The long-term abolition of sex trafficking and all other forms of contemporary slavery will require an elevation in global efforts to eradicate extreme poverty, as well as the reconception of economic globalization as a system for which ultimate legitimacy depends on promoting the social, political, and economic well-being of all members of humanity" (2009, 41). Kara covers the main essentials in this statement. The difficulty, of course, is translating these ideals and standards into actual practices that will promote the social, political, and economic well being of all members of humanity. There are interesting and important questions embedded in Kara's statement. First, to what extent is the phenomenon of globalization controlled or guided by institutions and governments? A related and more fundamental question concerns the proper role of the state and international community in promoting the social, political, and economic well being of all

people. These are complex and challenging questions which must not be taken for granted in the larger discussion of trafficking and slavery; in fact, their critical evaluation is essential to finding long-term solutions to these problems. Most agree that human trafficking and slavery have increased in prevalence in the last half century, alongside an increasingly globalized world. How these interactions are facilitated and regulated will be important to the impact these interactions have on society. In particular, I have in mind here policies concerning the movement of people and capital.

Kara suggests that the system of economic globalization needs reconceptualizing in order to meet the needs of all members of humanity. I discussed this in the previous chapter, highlighting migrant labor regimes in the United States, as well as immigration controls, both of which have a role in sustaining systems of inequality. The new framework I propose for addressing the problem of human trafficking and slavery is one that emphasizes the need to make changes in how systems function in the process of globalization, in particular, systems effecting the movement of people and capital. This is necessary, I argue, in order to “make globalization work” (Stiglitz 2007) to promote the social, political, and economic well being of all members of humanity (Kara 2009). This attention to structural change will, I think, lead to more effective prevention of human trafficking and slavery in the short and long term. The current framework illustrates how the problem is largely conceived of as one that can be addressed by preventing the illegal migration of people across borders. This in some sense treats the movement of people as a root of the problem. Not only is this incorrect and inadequate, but this understanding fails to acknowledge the larger picture of why people are migrating and fails to recognize

that most people emigrating are doing so on their own accord. That is to say, these would-be victims desire to emigrate and do so for a number of reasons: to find a job, to find a better job, to seek out better living conditions, to escape violence and oppression, to reunite with family members, etc. In other words, these people are not necessarily passive victims being taken against their will across borders.

The first paragraph of Article 11 in the UN Trafficking Protocol begins, “Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons” (United Nations 2000). It seems, however, that current international commitments in relation to the free movement of people, along with law and policies pertaining to migrant labor rights, are not only inadequate at facilitating a safe and legal migration experience for an increasingly global economy, but actually create conditions ripe for extreme exploitation of a growing number of migrants. The international community gives tireless attention to the movement of goods and capital (and to the protection of property rights attached to these goods), yet fails to fully recognize the other part of the economic equation: labor. I say “fully” because immigration law and policy (especially labor migration under the WTO GATS), as I will show in the third section of this chapter, leaves out whole groups of people whose cheap labor is nevertheless in high demand: the so-called “unskilled” migrant worker. I now turn to the exploration of international and U.S. law in relation to human trafficking and slavery.

United Nations Trafficking Protocol

The purpose of the Trafficking Protocol, with 117 signatories, is to “prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and, to promote cooperation among States Parties in order to meet those objectives.”

Section I defines the terms and scope. As we saw in chapter one, this is where the definition of trafficking⁴⁷ was established in international law.

Section II focuses on victim protection and assistance measures. Section III focuses on prevention, cooperation between states, border control, and identification documents. Article 9 of Section III is entitled “Prevention of Trafficking in Persons” and states:

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons,

⁴⁷ ““Trafficking in persons’ shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation 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” (United Nations 2000).

especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Paragraph two mentions “social and economic initiatives” as a way to prevent and combat trafficking; and paragraph four mentions poverty, underdevelopment, and lack of equal opportunity as factors that make people more vulnerable to trafficking. Attention to these factors is important, but the issue of migration is nowhere mentioned or even alluded to under the heading of prevention. In fact, the lack of safe and legal migration channels significantly increases the risk of trafficking. Instead of creating safer migration channels for these millions of people, the policy response has been to make it more difficult to migrate across borders by increasing border security. As I explained in the previous chapter, this exacerbates the problem, making trafficking more likely. Immigration restrictions also impede regular migration for many seeking a better life or escaping violence. Paragraph five mentions the need to discourage the demand that fosters exploitation that leads to trafficking, yet increasing border security, coupled with already restrictive immigration policy, in effect feeds this demand. Many people wanting to emigrate must do so clandestinely due to border guards and a lack of legal means to enter a country. The focus on border security illustrates how the problem of trafficking is largely conceived of as a law enforcement issue, as well as a problem that can be addressed by preventing the migration of people.

Article 10 of Section III is entitled “Information exchange and training” and

states:

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

Article 12 and 13 also deal directly with travel documentation/immigration papers. Article 12 is entitled “Security and control of documents” and Article 13 “Legitimacy and validity of documents.” Again the focus is law enforcement and crime prevention at the border; however, determining at the border whether individuals attempting to cross an international border are perpetrators or victims of human trafficking is a difficult task. The point at which one becomes a victim of human trafficking is not easily discoverable, as it is a complex process that, at the beginning of migration, necessarily involves the intention of persons involved with the migrant at any point of their migration experience. As I stated previously, most people migrating do so willingly, though of course with varying degrees of enthusiasm and even varying degrees of consent and coercion (some may be in search of a particular job—farm labor for instance—and some may be escaping violence or extreme oppression). And because

documents can be forged or falsified, determining the legitimacy of documents is also difficult. Furthermore, whether documents are legal and true is a small part of a much larger problem, and is to some extent irrelevant. Sometimes victimization occurs after the migrant has settled into a job or living situation. As discussed in chapter two, this can present itself in a number of ways, including fraud or being held by force or threat of force. That is to say, many migrants crossing the border with legal documents in hand still risk trafficking and slavery due to the nature of the conditions in which they work and live. What is especially disturbing is that these exploitable working conditions are almost entirely class-based, affecting migrants in low-level, working-class jobs (for example, migrant farm workers and domestic workers). Migrants crossing the border without legal documents either do so knowingly (with the help of smugglers or others who have good, bad, or mixed intentions as to the safety of the migrant), or without knowing their documents were illegally obtained (i.e., they believe the documents obtained for them by others—say labor recruiters—are legal). Trafficking, by definition, includes a number of crimes (or even actions that by themselves cannot be categorized as crimes) that only when taken together constitute trafficking. Prevention of trafficking cannot really happen at the border since determining whether a person is a victim or perpetrator of trafficking is not likely at the border. The risk of trafficking lies not at the physical border, but in a host of structural and systemic problems that increase the risk of exploitation of the migrant. This includes not only the lack of legal access to the immigration process (as the risk of trafficking increases when one must migrate clandestinely), but also, and perhaps most importantly, the vulnerable and highly

exploitable working conditions of migrants, the extreme of which is slavery.

The problem of migrant smuggling is also addressed by the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air (United Nations 2004). Like the UN Trafficking Protocol, this is a supplement to the United Nations Convention Against Transnational Organized Crime. Frank Shanty, in *Organized Crime: From Trafficking to Terrorism*, sums up this protocol: “This document calls for states to strengthen their borders and to cooperate with each other by exchanging information relative to criminal trafficking groups, transit and destination points and routes, and fraudulent travel documentation. Overall this document establishes an international protocol to prevent the unlawful exploitation of migrants and establishes provisions for their humane treatment” (Shanty 2005, 309). Again, the conception of the problem envisions migrants as passive victims when in fact many people being smuggled do so voluntarily and desire to cross an international border in order to find a job and better living conditions. Some of these migrants are in fact escaping violent oppression and must find the means of illegal entry into the destination country due to the lack of legal access. If we are concerned about preventing the unlawful exploitation of migrants we ought to focus more attention on facilitating their safe and legal migration and establishing comprehensive labor protections. This requires so much more than border guards with guns.

Finally, Article 11 is entitled “Border measures” and focuses on border controls and security in order to prevent and detect human trafficking, with specific focus on commercial carriers to prevent illegal movement of persons:

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such

border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

If the purpose of increased border security, in the context of human trafficking, is to “prevent and combat” trafficking in persons, it fails miserably. Simply, this policy objective fails to acknowledge the complexity of the trafficking problem. The focus on border security increases the demand for clandestine border crossing, which in turn increases the risk of trafficking by not only making one dependent on others in the migration process, but also by leaving one especially vulnerable once in the destination country. As an undocumented, “illegal alien” (a crass label, though technically accurate given current immigration policy) the immigrant has fewer rights and is less likely to report abuse by an employer or seek help when conditions (at work or in general) are exploitative. With or without legal papers, the working-class migrant is at risk. As noted

in the previous chapter, a common occurrence in trafficking cases is the confiscation of immigration papers. In these cases, the migrant is not an “illegal alien” yet the risk of trafficking remains due to the lack of worker protections in jobs common to working-class immigrants (farm and domestic labor, for instance). Class is relevant here. The immigrant from Russia who has a Ph.D. in physics seeking employment with a high-tech firm will be less likely to experience abuse and exploitation than a person seeking seasonal farm labor. The same holds true of the immigrant from Africa who has a Ph.D. in African Literature and who seeks a position at a university. I am not arguing that their experience will be without difficulty, or that they will not end up underemployed, or even that they will be treated without prejudice or even violence. It is difficult, however, to deny the extreme hardship of the “unskilled” migrant, and especially one who arrives in the destination country without legality. Furthermore, the risk of deportation for them means something much different than the Russian physicist or the African professor. The focus on border security creates obstacles that increase the risk of trafficking, as does the lack of attention to migrant labor laws including immigration controls.

Perhaps most importantly, the focus on the border detracts from addressing larger structural problems, such as the need for a morally defensible global migration regime and expanded labor rights that will effectively decrease the risk of extreme exploitation. The problem of trafficking and slavery in this international protocol is primarily understood as a problem of criminal activity and victimization of persons. This UN protocol is, after all, a supplement to the UN Convention Against Transnational Organized Crime. This framework not only fails to address the larger structural problems

that assist in facilitating human trafficking, but it directly contributes to the problem by increasing the demand for clandestine border crossing. The first paragraph of Article 11 begins, “Without prejudice to international commitments in relation to the free movement of people...” (United Nations 2000). It seems, however, that current international commitments in relation to the free movement of people are inadequate at facilitating safe and legal migration for an increasingly global economy.⁴⁸ These “international commitments” and policies need to be questioned, critically examined, and redrawn. I examine these commitments in the final section of this chapter.

With these policy objectives in mind, I now turn to the main trafficking legislation in the United States: Trafficking Victims Protection Act (TVPA).

Trafficking Victims Protection Act (TVPA)

The purpose of the TVPA is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims” (U.S. Department of Justice 2000). The prescription to accomplish this is lengthy, and the focus is prosecution and victim assistance. Though efforts to prosecute these crimes and

⁴⁸ Of course states typically invoke a “right” to control the borders of their territories. I do not take up this debate here, but only wish to point out that any border security policy must be able to satisfactorily justify coercive measures in the face of morally significant consequences of such actions. Relevant to such a discussion would be the types and degrees of harm that results from border measures and democratic theory. States currently have a recognized right to pursue policy to protect and advance particular state goals, but they also have a recognized duty to act within the norms prescribed by *jus cogens* and international humanitarian law (e.g., admitting refugees). See Arash Abizadeh (2008) “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Won Borders;” David Miller (2010) “Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh;” and Wayne Cornelius (2001) “Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy.”

protect against future victimization are legitimate efforts to *prevent* trafficking, this is not enough, and the attention to enforcement sometimes fails to realize the objective of enforcement.

The TVPA was enacted in conjunction with the Violence Against Women Act (2000). In the *Findings* section of the TVPA, there is heavy focus on women, stating that the victims are “primarily women and children.” The “sex industry” is the other focus, including “activities relating to prostitution, pornography, sex tourism, and other commercial sexual services.” Gender discrimination is noted throughout: “Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin.” There is brief mention of “other” offenses: “This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.” In sum, combating trafficking is primarily understood as an effort of law enforcement, the focus being on prosecution, punishment, and protection.

Section 106: Prevention of Trafficking, is less than a page long (the entire document is about 24 pages) and prescribes job training and counseling, microcredit lending, and business development training. It also notes the need for programs to keep children (especially girls) in school, as well as the inclusion of educational curriculum and public-awareness campaigns to inform people about the dangers of trafficking and the protections available to victims. Programs are encouraged if they seek to “accelerate and advance the political, economic, social, and educational roles and capacities of

women in their countries.” Section 107: Protection and Assistance for Victims of Trafficking, is nearly six pages and focuses on social services for victims of trafficking and protections while in custody. There is also heavy focus on necessary amendments to the Immigration and Nationality Act that, providing the victim is “willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons,” protects victims from deportation and in some instances provides a path to permanent residency. Section 108: Minimum Standards for the Elimination of Trafficking, is about a page in length and simply mandates that countries do all they can to prevent, prohibit by law, investigate, and prosecute trafficking in persons, as well as protect and rehabilitate victims. The brief mention of prevention efforts is described as “measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.” The remainder of the document focuses on the prosecution of traffickers, restitution for victims, as well as actions against governments that fail to meet the aforementioned minimum standards.

Effective legislation and law enforcement, educating people so that they are aware, and a focus on job skills and even micro-lending are all fine efforts. But there are limitations to these efforts, especially the law enforcement approach of border control as previously discussed. Prevention is not given much attention, and when discussed it is an inadequate treatment. In fact, the focus on law enforcement is curious in light of known labor abuses in agriculture that are rampant due to a lack of monitoring and enforcement of laws meant to protect farm workers. The focus on law enforcement in the TVPA is primarily on border security and prosecution and really misses the point of how law

enforcement could assist in prevention if targeted more effectively, especially in the case of farm labor. Even with this focus on law enforcement, the TVPA fails to acknowledge problems inherent in current laws that facilitate trafficking and slavery, especially laws and policy that limit worker rights for migrants (e.g., certain visa categories). Paragraph 10 in the Findings section states: “Trafficking also involves violations of other laws, including labor and immigration codes.” The focus on law enforcement here completely misses the fact that current labor and immigration codes are part of the problem.

The “Trafficking in Persons Report” is an annual report compiled by the U.S. State Department that details the state of trafficking and slavery around the globe. This report is pursuant to the TVPA.⁴⁹ The tier rankings in this report are to reflect not only the state of slavery and trafficking in each country, but also to indicate what each country is doing to address the problem. The United States was added to the list of countries under scrutiny only in the tenth year of the reporting (2010). The focus is on the 3Ps: prosecution, protection, and prevention. Protection is focused on the 3Rs: rescue, rehabilitation, and reintegration. The 2010 report added a fourth P: *partnership*—interagency and international cooperation, an important addition and acknowledgement. The 2010 Trafficking In Persons report, in the section titled “*Policy Priorities*,” admits that not much guidance is given by the UN Trafficking Protocol or the TVPA “in setting forth prevention activities beyond the obvious: public awareness campaigns, addressing root causes, and conducting law enforcement-related or border security activities.” The report continues:

⁴⁹ See sections 104 and 105.

A decade later, governments are expanding their understanding of prevention to include policies and practices that cut off modern slavery at the source. This includes initiatives that both combat the demand for commercial sex and ensure that the demand for low prices is balanced by a demand for traceability, transparency, and worker protections throughout the supply chain. Governments, corporations, and consumers can come together to ensure that free trade means labor that is freely offered because of fair compensation, rather than labor taken for free (U.S. Department of State 2010).

This is progress in conceptualization of preventative measures. Still, we need to be more critical. For instance, free trade as an ideal that ought to translate to “fair compensation” is ultimately left to the good faith of individual employers and manufacturers, as well as law enforcement of already questionable labor laws, such as guest worker programs and various work visas. Moreover, the mention of “free trade” here is used to refer to labor practices, when historically (and in contemporary economic jargon) the term refers to trade regulations between states and regions, not labor issues such as worker pay. The relation of “free trade” to labor practices, however, is a useful juxtaposition. Specifically, free trade is defined as “when goods and services can be bought and sold between countries or sub-national regions without tariffs, quotas or other restrictions being applied” (OECD: glossary). Current restrictions on labor migration create an underground (and illicit) migration system. Due to immigration controls implemented at the state level, backed by international trade policy⁵⁰, migrant laborers (whose cheap labor is in high demand, especially in industrialized capital-rich and labor-poor countries) must resort to illegal means of entry, contracting with people smugglers or trusting coyotes to deliver them to jobs in what is termed “unskilled” labor

⁵⁰ See the WTO’s GATS Mode Four.

(agriculture, for instance). Karen Bravo argues that the current model of trade liberalization, coupled with a model of “restrictive domestic immigration laws create disequilibrium and labor market failures which in turn stimulate migration flows.” She argues that human trafficking is “embedded within the disequilibrium and labor market forces” (2009, 549). Within international and regional trade law, “trade in services” (one’s labor) is generally treated very differently from the trade of other forms of capital (e.g., goods, money). Kempadoo aptly points out:

Current global economic policies calling for free trade and unqualified access by large transnational corporation to an unlimited supply of natural resources and raw materials, it is argued, guarantee, and defend, the rights of socially powerful elites—the propertied, managerial, cosmopolitan, and professional classes—while they limit the access, movement, and rights of the dispossessed and the economically weak and powerless. In this arrangement, a continual regulation of the supply of cheap, flexible, wage-labor is paramount, with immigration laws and policies playing a critical role in controlling the flows of labor (2005, xiv).

What is especially curious about the inclusion of the notion of free trade in this “Policy Priorities” statement, a statement that calls for worker protections and fair compensation, is the lack of connection between current free trade policy (what it includes and excludes: labor migration is highly regulated and thus effectively excluded from the free trade regime) and how this impacts both worker protections and the extent to which individuals and whole countries are fairly compensated in the process of trade. Specifically, current trade and labor regulations (including immigration policy) fail at providing migrants with safe and legal paths to legitimate employment and adequate worker protections. Too often this results in not only unfair compensation but also exploitation and human rights abuses. Undocumented migrant workers fall outside the

already minimal protections and are in an even more dangerous position. If we are genuinely concerned about providing effective worker protections and promoting fair compensation, we ought to examine more critically the current structure of trade and labor regulations— as I stated earlier, policies impacting the movement of people and capital. Beyond the constrained ability to migrate legally for employment, Kempadoo also points out the discriminatory nature of immigration policy: “Access to documented status and residency in the destination country—that is easily afforded to categories of highly skilled workers, technocrats, business-elites, and those with enough financial clout—is not extended to the working class, and growing numbers of poor immigrants...” (2005, xv). Obama confirmed this in his El Paso speech (KLTV 2011).

When these issues are critically examined, what is revealed is a free trade regime that more often promotes and sustains inequality rather than fair competition. The lack of free movement of large populations is problematic to such a degree that sophisticated underground networks of people smugglers and traffickers have developed in order to facilitate the movement of people. The fact that migrant laborers lack robust legal competition in an open labor market often relegates them to working conditions (and living conditions generally) that lack proper protections against extreme exploitation, including enslavement. Border security, as a central feature of anti-trafficking policy, is not only an obstacle to the free trade of labor, but also is a facilitator of dangerous and illicit border crossing that encourages the enterprise of human trafficking and slavery. But it goes beyond the lack of safe and legal migration. Current labor regulations affecting migrant workers help to facilitate the supply and demand of this exploitable

labor force that is then marginalized, even when an essential and structural part of our economy.

Effectively “cutting off modern slavery at the source” (U.S. Department of State 2010) requires addressing both the supply and demand. In labor-intensive industries such as agriculture, construction, restaurants, hotels, textiles, and domestic work, there is a demand for cheap labor. This demand comes from both employers and consumers. Employers want to keep costs down in order to achieve higher profits and/or to be more competitive; consumers want cheap or affordable food and clothing. The nature of this dual demand (of manufacturer and consumer) extends beyond these seemingly simplistic economic functions. Perhaps most important is the demand that the means to achieve these cheap/affordable⁵¹ goods and services be simultaneously accepted and yet hidden from plain view and from our social and political consciousness and conscience. Government policy has implemented labor and immigration regimes that effectively make possible these cheap goods and services.

Employers have a ready supply of workers they can exploit for two main reasons: one, there are many migrant workers in search of jobs, and they will do what they need to in order to reach countries where their labor is in high demand; two, there are inadequate labor protections for these workers once they find employment, which makes them vulnerable to exploitation, including conditions of slavery. That is to say, the risk of exploitation already exists given current migrant labor regulations. This vulnerability is

⁵¹ I recognize that some households in rich and developed nations struggle to buy adequate food and clothing, however, in general the amount we spend on food and basic clothing is minimal in relation to our income.

only compounded by the lack of safe and legal migration channels. Rachel Salazar Parrenas is among those highly critical of the TVPA 3Ps and 3Rs approach and sums it up by asserting that this framework does not “get at the root causes of trafficking.” “[The 3Ps and 3Rs] do not call attention to the vulnerabilities engendered by exclusionary migration policies that limit the citizenship rights of migrants, or to the segmented labor markets that relegate migrants to the shadow economy” (Parrenas 2011, 2). Cynthia Wolken, whose focus is on migrant farm workers, points out a similar deficiency in the current framework: “Human trafficking does not occur in social and political isolation. . . . No longer should the largest vulnerable population of victims in the United States, migrant farm workers, be ignored simply because including them in the dialogue would inevitably require a larger discussion on race, nationality and our failed immigration policy” (Wolken 2006, 409). Jennifer Chacon also recognizes that obstacles in making substantial progress in anti-trafficking efforts lie in *current* law and policies regarding immigration, including the lack of worker protections for many migrants:

In enacting the TVPA, Congress purported to recognize the fact that human trafficking is most successful in places where the victims of trafficking feel unable to avail themselves of legal protection when they are mistreated in their place of work. Logically, any effort to address the problem of forced labor would require the revision of either labor or immigration laws to eliminate the gap between labor law rights and the actual remedies available to undocumented workers. . . . Instead, the TVPA took much more limited and indirect measures to address the workplace protection problem that is at the heart of human trafficking. These measures, which fail to address deep structural problems that encourage domestic reliance on unprotected immigrant laborers, cannot possibly put an end to forced labor given the existing structure of labor and anti-smuggling laws (Chacon 2006, 3008).

Paragraph 17 of the preface of the TVPA states: “Existing laws often fail to

protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves” (U.S. Department of Justice 2000). This acknowledges that laws need to aim to not punish the victims, and the TVPA addresses this modestly, but it also acknowledges that victims are often illegal immigrants. As Chacon points out, the TVPA fails to *apply* this knowledge to the content of the TVPA and proceeds by ignoring the current structure of immigration law, both nationally and internationally, which effectively creates conditions that help to facilitate the exploitation of many thousands of migrants, including their increased risk of being trafficked and enslaved.

The 2008 Trafficking Victims Protection Reauthorization Act attempts to improve protections for domestic workers (U.S. Department of Justice 2008). Section 202 calls for the creation of an informative pamphlet on the rights of domestic workers and that this same information be available on a government website. The heading of the pamphlet says:

We are confident that you will have an interesting and rewarding stay. However, if you should encounter any problems, you have rights and you can get help! You have the right to: Be treated and paid fairly; Not be held in a job against your will; Keep your passport and other identification documents in your possession; Report abuse without retaliation; Request help from unions, immigrant and labor rights groups and other groups; and Seek justice in U.S. courts.⁵²

This pamphlet is available in nine languages and is to be given to domestic employees in the immigration process. This is good, but what is needed is better enforcement of labor standards for these workers, prevention efforts that go beyond a general

⁵² <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>

acknowledgement and awareness of the worker's rights. If the worker is unable to use the phone or the Internet or leave the house to get help, she is unable to effectively protect herself. As Human Rights Watch states in its report, "[M]igrant domestic employees are reticent to leave their employers or file legal complaints to enforce their rights. Many workers choose to endure human rights violations temporarily rather than face deportation. ... Still others fear that if they leave their jobs and publically complain of abuse, their powerful employers will retaliate against their families in their countries of origin" (Human Rights Watch 2001, 1-2).

Section 203 of the 2008 Act requires the employer and the domestic worker to sign a contract containing certain mandatory terms of working and living conditions. Even prior to this 2008 Reauthorization Act domestic workers are covered by the minimum wage provisions of the 1938 Fair Labor Standards Act if their annual cash wages from one employer are at least \$1,700 or they work a total of more than 8 hours a week for one or more employers;⁵³ this would include virtually all domestic employees. Yet with the contract requirement and these wage provisions domestic workers are still at considerable risk for exploitation since there is no follow-up, monitoring, or enforcement of these legal standards and requirements for domestic employees. For domestic workers with a B-1 visa, the government does not even keep records on their whereabouts. These "protections" amount to lip service if they are not actually enforced. This kind of lax regulation is dangerous and negligent. What is necessary beyond a written contract and informing the domestic worker of her rights and the employer of his/her obligations is a

⁵³ <http://www.dol.gov/whd/regs/compliance/hrq.htm>

reliable system of monitoring and enforcement, for instance, direct deposit of wages into a secure account and regular visits to the house. Even this will not be foolproof but it will be a step in the right direction to monitor and enforce labor and human rights standards.

In the next section I will examine the environment of immigration law, focusing primarily on the international law of labor migration, supplementing the discussion in the last chapter on immigration issues within the United States. T. Alexander Aleinkoff points out that oftentimes one's migration experience is not simply a 'point A to point B' journey. It is usually conceptualized as a triangular relationship between the emigrant, the sending state, and the destination state, but a more complete picture must include the role of social networks, carriers, smugglers and traffickers, employers in the destination state, and other reasons why the person might be emigrating (e.g., persecution in the sending state) (2002, 12). This web of connections is complex and thus "international legal norms... operate on several levels and have a range of addresses" (2002, 12). A global migration regime must acknowledge these complexities and respond with appropriate action if it is to operate efficiently in facilitating the migration of millions of people, while protecting their human right to be free from slavery and extreme exploitation.

Global Migration Regimes

The framework for global migration is important to anti-trafficking efforts. Migration is a process older than the state and "more natural than the state borders people

cross” (Aleinikoff 2002, 12). The debate on the free movement of persons is often seen as dichotomous: state sovereignty on the one hand, and the fundamental right of free movement on the other. States, however, “have sought to manage migration in the interests of both their populations and of friendly relations with other states; and they have affirmed human rights norms both on principle and because they expect such norms to be followed by the states to which their citizens travel and in which they take up residence” (Aleinikoff 2002, 11). Cooperation exists, at the very least, due to the desire and need to migrate for all involved. The rules that have emerged, however, are not necessarily devised and applied in a manner consistent with a universal fairness. The system does not take into account the desires and needs of all states (or more broadly, individuals) and treat these preferences equally. I am setting aside the more philosophical discussion of state sovereignty and the right of free movement. Instead, I focus on an examination of the current framework of labor migration in international law and the normative implications of this framework. The lack of an effective international migration regime contributes to the failures in protecting the human rights of migrants and contributes to the risk of their exploitation, including the condition of slavery.

There is a brief history of acknowledgement of the complexities associated with international migration and the vulnerabilities experienced by certain groups of people, namely undocumented migrants and refugees. The International Labor Organization (ILO), which became the first specialized agency of the United Nations in 1946, drafted the Migration for Employment Convention in 1939. This convention came into force in 1952. It begins to lay out issues relevant to immigration in order to “facilitate the

departure, journey and reception of migrants for employment” (Article 4). It includes discussion of rights and protections for migrants. A supplementary convention, Migrant Workers Convention (1975), came into force in 1978. It begins by noting the main task of the International Labour Organization as protecting the interests of workers when they are employed in countries other than their own. The introduction also notes “the existence of illicit and clandestine trafficking in labor calls for further standards specifically aimed at eliminating these abuses.”

In 1966 the United Nations General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which entered into force in 1976. Both of these covenants include migrant rights. Migrant rights are also part of the International Convention on the Elimination of All Forms of Racial Discrimination (1965, entered into force in 1969) and the International Convention on the Elimination of All Forms of Discrimination against Women (1979, entered into force in 1981). More aspirational, of course, is the 1948 UN Universal Declaration of Human Rights, a “preliminary draft International Bill of Rights.”⁵⁴ Regional instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, entered into force in 1953), the African Charter on Human and Peoples’ Rights (1981, entered into force in 1986), and the American Convention on Human Rights (1969), all contain rights relevant to migrant workers.

⁵⁴ <http://www.un.org/en/documents/udhr/history.shtml>

The Cairo Programme of Action was adopted at the 1994 United Nations International Conference on Population and Development, internal and international migration given attention as an important issue for development and the protection of human rights. Regional efforts, such as the Budapest Process, the Manila Process, and the Puebla Process, are “consultative forums” in an effort to create systems for orderly migration and to address problems such as asylum, human trafficking, migrant rights, development, and so on. The 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was entered into force in 2003. A UN fact sheet on this convention states:

The Convention in a comprehensive international treaty focusing on the protection of migrant workers’ rights. It emphasizes the link between migration and human rights—a policy topic that is drawing increasing attention worldwide. . . . It incorporates the results of over 30 years of discussion, including United Nations human rights studies, conclusions and recommendations of meetings of experts, and debates and resolutions in the United Nations on migrant workers (UNHCHR 2005, 1).

This convention is the latest of the seven so-called core international human rights treaties. It is, however, more comprehensive and detailed. Only 33 states have ratified or acceded to it, perhaps because it is so comprehensive and detailed; no large industrialized countries have signed onto it.⁵⁵ It is, as are the other human rights treaties, soft law.

In 1999, the UN Commission on Human Rights created the *Special Rapporteur on the Human Rights of Migrants*. The mandate of the Special Rapporteur covers all

⁵⁵ Signatories include Algeria, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Peru, Philippines, Senegal, Seychelles, Sri Lanka, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda and Uruguay.

countries, whether or not they have ratified the 1990 Convention on the Protection of the Rights of All Migrant Workers. In 2008, the UN Human Rights Council, pursuant to Resolution 9/5, “encouraged the Special Rapporteur to continue to examine ways and means of overcoming obstacles to the full and effective protection of the human rights of migrants, including national and international efforts to combat the trafficking of persons and smuggling of migrants, in order to achieve a better comprehension of the phenomena and to avoid practices that could violate the human rights of migrants.”

In 2003, the UN Secretary-General and several governments launched the Global Commission on International Migration (GCIM), the “first-ever global panel addressing international migration”⁵⁶ (much like the League of Nations’ Temporary Slavery Commission of 1924, discussed in the previous chapter). Active until 2005, its mandate was “to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration.”⁵⁷ In its final report (2005), the Commission concludes: “[T]he international community has failed to realize the full potential of international migration and has not risen to the opportunities and challenges of migration.” The “Key Findings” section:

The globalization process has created enormous wealth but has not yet narrowed the gap between the rich and the poor, not created sufficient jobs for the growing number of young people entering the labour market in developing regions. The scale and scope of migration is growing and will increase further due to differentials in the ‘3Ds’ of development, demography and democracy. Certain sectors of the economy in both developing countries and industrialized states would collapse without the presence of migrant labour (GCIM 2005, 3).

⁵⁶ <http://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf>

⁵⁷ <http://www.unhcr.org/refworld/publisher/GCIM.html>

Under the heading of “A World of Work: Migrants in a Globalizing Labour Market,” it acknowledges “the linkage between international trade and international migration.” Its recommendations under this heading, however, first encourage the facilitation of the labor mobility of “highly educated professionals” by removing barriers of this mobility, while in the next bullet point encourage the creation of “jobs and sustainable livelihoods” in developing countries “so that citizens of such states do not feel compelled to migrate” (GCIM, 6). The tension between these two proximate statements is striking. The “unskilled” migrant worker is discouraged from leaving his home country (and presumably provided with skills training), while the people who are highly educated are encouraged and assisted in a system that aims to remove barriers to their migration experience. Under the heading of “The Challenge of Irregular Migration: State Sovereignty and Human Security,” it recommends that states “address the conditions that promote irregular migration by providing additional opportunities for regular migration....” It also recommends that states “strengthen their efforts to combat the distinct criminal phenomenon of migrant smuggling and human trafficking.” “In both cases, perpetrators must be prosecuted, the demand for exploitative services eradicated and appropriate protection and assistance provided to victims” (GCIM, 7-8). These are fine recommendations, but within the context of the prior recommendations they do not make much sense. States are encouraged to do first what they can to discourage the movement of migrants in developing countries, and then encouraged to provide additional opportunities for regular migration in general and to eradicate the demand for

cheap, exploitable labor. This demand, however, cannot be understood without reference to the larger structure of immigration law itself, which in effect supplies cheap, exploitable labor by preventing the regular migration of persons in developing countries who are in search of jobs due to the “differentials in the 3 D’s” previously highlighted by the Commission.

With this extensive list of treaties, conventions, covenants, declarations, official groups, and publications, it is clear that the issue of migration and migrant rights in general is not ignored in international law or discourse. It is also clear that what is needed is not additional conventions, covenants, or proclamations, but *application* of migrant rights and protections to *current* laws regarding migration and migrant labor, laws that, as they currently stand, effectively create obstacles to the *realization* of what amounts to aspirational *wishes* for the protection of migrant rights. In fact, the 2005 UN summary report of the GCIM acknowledges, in so many words, the need for a robust injection of current human rights standards into current law: “The human rights component of the UN system should be used more effectively as a means of strengthening the legal and normative framework of international migration and ensuring the protection of migrant rights” (GCIM, 9). The international legal framework for labor migration fails to account for the unskilled migrant worker.

The main legal regime dealing with labor migration is the WTO’s General Agreement on the Trade in Services (GATS), which became effective in 1995 at the conclusion of the Uruguay Round of trade negotiations. Simply, it provides rules for international trade in services or the movement of persons in supply of labor services.

The introduction states:

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;” ... “Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness; ... “Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs... (GATS 1995).

The GATS makes note of the need to facilitate the “increased participation of developing countries,” including least-developed countries (LDCs), and even the desire to facilitate “the expansion of their service exports,” yet the comparative advantage of most of these countries is cheap labor, which is in high demand all around the globe. To really facilitate the increased participation of these countries would be to socially, politically, and economically legitimize their main export—unskilled labor—integrating it into trade and labor regimes with all the rights and privileges afforded to other labor migrants included in the GATS (e.g., skilled professionals). Instead, the movement of this labor is either ignored (virtually no labor protections for migrants in agriculture or domestic labor) or criminalized (the undocumented “illegal” person). Developing countries have in fact pointed out that the current commitments under the GATS have little significance for their countries (WTO 2002). Jan Niessen, Director of the Migration Policy Group, argues: “In so far as commitments have been made, they privilege high-skilled personnel and especially service providers associated with a multinational company, which has an international commercial presence” (2003, 5). The social, political, and economic

marginalization of certain job sectors, namely jobs that are traditionally and continually filled by working-class migrants (both documented and undocumented) in what is labeled “unskilled” labor, leaves millions of workers without adequate labor protections—working conditions that many times are in violation of aforementioned international conventions, treaties, and jus cogens.

What this means, in the simplest of terms, is that current migration regimes are not working if they lead to such violations. Tomer Broude has written extensively on the subject of international migration and asks “whether the model of international labour migration regulation found in the WTO’s GATS conforms to principle of global justice” including cosmopolitanism, statist, realism, Rawlsian “Society-of-Peoples,” or nationalism. He argues that from all of these viewpoints we can derive “general principles that delineate the common ground of international migration regimes that might be morally acceptable to all approaches” (2007, 2). These principles would include “the encouragement of global distributive justice; the protection of basic human rights of migrants; promotion of the effectiveness of migration policy; and emergency safeguards for migration receiving states.” He concludes that the GATS fails to satisfy any of these general principles and requirements (2007: 31). Instead it marginalizes even more those who are widely recognized to be most vulnerable to exploitation—the “unskilled” migrant.⁵⁸

The TVPA in effect acknowledges these shortcomings— in pointing out that “illegal immigrants” are especially vulnerable to trafficking and slavery— yet in the

⁵⁸ See also Bravo (2009).

original national and international anti-trafficking law (the UN Protocol and the TVPA) there is not even a nod to the need to restructure and reorganize the current migration regime, the current structure of which marginalizes, and in many cases exploits and enslaves, the unskilled migrant worker. The 2008 Reauthorization Act attempts to correct this oversight with regard to domestic workers. The 2008 Act also admits the need to more directly address international labor migration—to facilitate this legally and safely. Section 111 states:

It is the sense of Congress that the Secretary of State, in conjunction with the International Labour Organization, the United Nations Office of Drug and Crime Prevention, and other relevant international and nongovernmental organizations, should seek to establish a multilateral framework between labor exporting and labor importing countries to ensure that workers migrating between such countries are protected from trafficking in persons (U.S. Department of Justice 2008).

This is acknowledgement, at least, that there is a failure to facilitate this migration. Still, there is a gross negligence in the lack of robust attention given to the issue of migration and the migrant rights. It is paid great lip service in international instruments and discourse yet the follow-up is weak. Given that the consequence of this neglect is an ever-increasing exploitation of migrants, this issue deserves international attention as a pressing humanitarian problem.

The issue of human trafficking has finally become an active global concern. We now need to connect the dots, recognizing the strong and morally significant connection between the lack of rights and enforced protections for migrants and the problem of human trafficking and slavery. We must also recognize that migration is caused in part by global inequality and insecurity, as well as complex push and pull factors intimately

related to a global economy and that this migration must be facilitated within a morally defensible global migration regime. An increasingly global society, with increased social, political, and economic connections, has moral implications. In the next chapter I explore these implications, examining the issue of responsibility for the problem of human trafficking and slavery.

CHAPTER FOUR

Towards a Better Conception of Responsibility

In this chapter, I discuss responsibility for the problem of human trafficking using the “social connection model” as originally formulated by Iris Marion Young (Young 2006, 2011). Understanding the process of human trafficking is essential to the task of assigning responsibility. As I have shown thus far, social norms and institutional rules concerning labor and immigration all play a part in the supply and demand of human trafficking. It would be a stretch, however, to contend that people who have contributed to the creation of such norms and institutions and processes intend that this phenomenon occur. Nevertheless, Young’s social connection model asserts: “If the injustice has causes rooted in social structures... then it would seem that all those who participate in producing and reproducing the structures are implicated in that responsibility” (2006, 115)

This is not to say that direct perpetrators of this violence ought not be held accountable in a more direct way (prosecution, jail, fines, etc.). Stopping there, however, would be incomplete, and most importantly it would fail to account for larger processes and social, political, and economic structures that facilitate trafficking. As Young puts it, “Identification of the wrongs that individual actors perpetrate... needs to be supplemented with an account of how macro-social processes encourage such wrongs, and why they are widespread and repeated” (2006: 115). Stopping with the prosecution of perpetrators is, in fact, unfair if there are other people and institutions involved in the process: institutional rules such as labor and immigration policies at the national and

international level that affect both the demand and supply of the trafficking process; businesses in multiple industries, many highly interdependent; migrants in search of economic opportunities, many responding to complex social, political, and economic push and pull factors; and, though seemingly subtle, consumers who demand affordable food, clothing, gadgets, services and so on. This understanding is absolutely essential if we are aiming at a complete picture of who/what is responsible, especially for the end goal of prevention.

The problem of human trafficking, which is without a doubt an instance of injustice, results as a consequence of multiple social, political, and economic structures that cooperate in a constant interplay of interdependent exchanges. It cannot be said that any one individual or institution or process, to the exclusion of others, is responsible for the trafficking problem, despite the role of certain actors who have played a more direct role and who deserve punishment. Young's model of responsibility does not aim to blame or punish those other more indirect actors that are implicated in the reproduction of these structures. It does, however, aim to impose certain duties of responsibility.

We have already achieved abolition. Trafficking and slavery are not legally sanctioned anywhere in the world. Our task is no longer de jure abolition, but rather to drastically reduce the prevalence of human trafficking. As I have suggested, in order to do this we must first identify who/what is responsible. Recall that the notion of responsibility has two senses in this discussion. One: who/what is responsible for the continuation of the phenomenon, its reproduction. Two: who/what is responsible in a moral sense for the problem, implying moral obligations to address the problem.

Understanding the process of human trafficking and slavery is essential to the task of assigning responsibility in the second sense. I have argued that the current anti-trafficking framework is lacking because it fails to correctly identify (or pay attention to) all of the social-structural processes that contribute to the problem (responsibility in the first sense), and this has resulted in a misconception of who/what is responsible (responsibility in the second sense). The policy framework focuses heavily on prosecution and border security without also recognizing the role of current law and policy that encourages the problem. Who/what is responsible in the first sense is the direct perpetrators *and* social-structural processes. This chapter attempts to give an account of structural injustice to better explain how these social-structural processes are responsible in both senses. Young argues that our responsibility in cases of structural injustice “derives from belonging together and with others in systems of interdependent processes of cooperation and competition through which we seek benefits and aim to realize projects.” She asserts that we bear responsibility because we participate in these systems, despite not being able to trace such injustice in a direct causal chain to our own particular actions (2006, 119).

Young writes, “The ‘social connection model’ of responsibility says that all agents who contribute by their actions to the structural processes that produce injustice have responsibilities to work to remedy these injustices” (Young 2006, 102-103). This statement raises a few questions that must be addressed. First, what counts as an action? Second, what are structural processes? The third involves the verb phrase ‘produce injustice.’ When are we justified in inferring a causal relationship? And further, what

counts as an injustice? Fourth, what does ‘responsibility to work to remedy’ entail and how do we determine these responsibilities? There are indeed many elements to this statement. It is clear that we need a theory of justice that adequately explains responsibility in relation to injustice that is structural. Young’s social connection model addresses each of these elements. In what follows, I will apply this model to the problem of human trafficking and slavery. The first two elements I will include under the heading of “structure,” explaining what constitutes actions and how the actions of many people create structural processes. The third and fourth elements involve the moral question of what justice requires. Under the heading of “obligations of justice,” I will explore two common moral models that explain what obligations of justice require. Young uses these two models to show that common approaches to what responsibility for justice requires are inadequate for explaining injustice that is structural; that is, they are not altogether incorrect, but rather they fail to address the special nature of structural injustice.⁵⁹ Under the heading of “responsibility,” I will examine a common model for responsibility that is usually applied in legal and moral discourse; Young calls this the liability model (Young 2011, 96). Especially in matters of criminal law, this model is used to demonstrate a causal connection in order to establish a guilty verdict, or a verdict that establishes that a particular person or agent is responsible for harms committed. However, in cases of structural injustice there is no direct causal chain, but rather a complex collection of institutional processes and social norms that contribute to injustice that is widespread, affecting many people in perhaps slightly different ways. I will then outline Young’s

⁵⁹ See Young (2011) chapter 5.

social connection model of responsibility. She intends that this model supplement the liability model rather than replace it. For the problem of trafficking and slavery, there are direct perpetrators that can be held directly liable for their actions—and the liability model of responsibility attends to this. In fact, effective investigation and prosecution is essential in combatting this problem. For the social-structural processes that I have shown to contribute to the problem, we need a way of explaining why these other factors can be said to be responsible, and further, what a “responsibility to work to remedy” the problem entails (Young 2006, 102-103).

Structure

Social theorists frequently appeal to the notion of “social structure,” though it is notoriously difficult to define (Young 2011, 52). Young suggests that structures “constitute the historical givens in relation to which individuals act” and “serve as background conditions for individual actions by presenting actors with options [and] channels that both enable action and constrain it” (2006, 112). I define structural injustice as injustice that occurs as a result of subtle or pronounced cooperation or interaction of individuals and institutions and processes.⁶⁰ I refer to these as social, political, and economic structures. Furthermore, despite the lack of clear and direct causal chains linked to individuals that could reasonably be held directly liable for this injustice, responsibility for this injustice includes all persons and groups involved in reproducing these structures. This may challenge our intuitions, and Young suggests this

⁶⁰ ‘Cooperation’ involves voluntary interactions, while ‘interaction’ generally may be non-voluntary or incidental or without intention. Both kinds of interaction occur in social, political, and economic structures.

is due to our common legal and moral frameworks for justice (assigning blame, responsibility, liability, and so on). These common frameworks, she argues, cannot adequately explain structural injustice. This is no reason to dismiss the idea that structural injustice exists. It is, rather, an invitation, and perhaps a moral imperative given its social implications, to explore its possible foundations.

I do not take for granted that structural injustice exists. This paper is an extended argument that human trafficking is an example of injustice that results as a consequence of structures. Human trafficking and slavery are symptoms of larger structural problems, and these symptoms will not go away if we continue to treat the problem without adequate attention to prevention. Prevention in this case requires correctly identifying who/what is responsible. Young's social connection model of responsibility is an attempt to explain how structural injustice exists and, equally important, how it can be remedied.

Obligations of Justice

At the outset of her article "Responsibility and Global Justice: A Social Connection Model" (2006), Young examines various views on the extent of obligations of justice to set the stage for a discussion on responsibility. Injustice and suffering are widespread in this world, ranging from single acts with varying degrees of harm to the genocide of whole civilizations. One cannot possibly address all injustice and all suffering. Even those who dedicate their lives to such endeavors (Gandhi, for instance) will have to pick and choose what to focus on and their contributions will necessarily be limited. But how do we make sense of this dilemma—what to focus on and what to

require of ourselves? One prominent view on obligations of justice is what Young calls the “cosmopolitan-utilitarian model.” I will explore this model in the next section.

The Cosmopolitan-Utilitarian Model

There are at least three components to this view.⁶¹ The first states that “particularist” relationships are irrelevant to assessing moral obligations. This means that one’s obligations of justice are not constituted by virtue of facts such as socio-political membership. The current migrant labor regime in the United States is one example where facts such as socio-political membership are relevant to assessing moral obligations: undocumented and documented migrant workers labor without the same protections afforded to citizens precisely because they fall outside the socio-political membership of the United States. The second component states that every individual has equal moral weight. This may be difficult to accept. Our intuitions seem to tell us that family and close friends have priority over all others, even though we might agree that all persons deserve care and attention no matter where they live or who they are. This second component appears to be closely tied to the first, in that members of a socio-political group (like citizens of the United States) are considered to have priority over others who are not members of the group. Again, this is how the migrant labor regime in the United States functions. Non-members are denied rights and privileges afforded to members. Nevins discusses this in his examination of the evolution of the U.S.-Mexican border (Nevins 2002), the idea that this border creation is linked to the larger task of nation-state building and the distinction of member and non-member, of citizen and alien.

⁶¹ Peter Singer is a prominent thinker who defends this model. See Singer (1993), chapters 1 and 9.

The third component states that our obligations of justice are vast and deep: we are obliged to extend our efforts to minimize suffering right up to the point where our own suffering begins. This is also difficult to accept, on a personal level or as applied to Nations. The United States, or any industrialized country, certainly does not act in accordance to this tenant in helping countries in need of aid and assistance.

There are interesting arguments for and against this cosmopolitan-utilitarian view on obligations of justice, but for our present discussion their further explication seems to me to be an unnecessary tangent. That is to say, my position is not that we ought to do something about the trafficking problem because we are all human beings with equal moral status sharing this world and we ought to help one another (although I also believe this). This would require a different discussion. My position, rather, is that as participants in processes and structures that produce and reproduce injustice, we are implicated in this injustice and are thus responsible for this injustice, in both senses I explained earlier. I think this is more compelling and more difficult to rationally dismiss. Furthermore, if we conceive of responsibility for justice using a cosmopolitan-utilitarian model we may fail to make this important connection concerning causes (the supply and demand dynamic of trafficking), as it does not call attention to structures that contribute to injustice. It certainly does not dismiss the role of actions and their consequences; in fact, it highlights the idea that we ought to live our lives in such a way so as to minimize suffering, but it does so by focusing on a cosmopolitan ethic that justifies this by virtue of egalitarian principles and our shared humanity and a utilitarian ethic that justifies this by virtue of maximizing the good. Calling attention to structures that contribute to injustice

is essential for identifying who/what is responsible, since it is these structures that play a crucial role in the reproduction of the phenomenon. The cosmopolitan-utilitarian model simply does not include an account of these kinds of structural causes of injustice. As Young writes, “ The position has too thin an account of the role of institutions and collective action. ... [S]ome account needs to be offered of the nature of social relationships that ground claims that people have obligations of justice to one another. It is not enough to say that the others are human” (2011, 138-139). I next explore a more mainstream model of the obligations of justice: the liberal model.

The Liberal Model

Young notes that a widely accepted philosophical view continues to hold that the scope of obligations of justice is defined by membership in a common political community. She explains the logic of this model, which draws somewhat on the liberal theory of justice formulated by John Rawls in *A Theory of Justice* (1979):

“[I]t holds that obligations of justice presuppose the existence of shared political institutions. It is incoherent to say that relationships between people are unjust or just... in the absence of shared institutions for adjudicating such claims or regulating people’s relations. Some more general and less stringent obligations obtain between persons across political jurisdictions just because they are human, but these are not obligations of justice.” (Young 2006: 103-104)

The liberal model describes the reasoning underlying the current migrant labor regime in the United States—not that there are no obligations owed to migrants as persons, but that because they are not members the specific obligations owed to them are decidedly different, far different than they would be if they were members, or citizens, of the United

States. These obligations differ even more when migrants are not authorized to be in the United States; when this is the case the person is considered an “illegal person,” or “alien.”

The liberal view, however, appears to be increasingly moot for our presenting problem due to an increasingly globalized and interdependent world (i.e., our connections and experiences are increasingly globally-derived rather than limited to the nation-state). What is for certain is that globalization has altered the landscape for more liberally-inspired “obligations of justice,” as our social, political, and economic communities have evolved to include, in subtle or pronounced ways, people and processes from all corners of the globe. At the very least, it has introduced new conditions and, thus, new questions. These increased interactions make untenable the view that our obligations of justice have strict boundaries that are demarcated by nation-state identities. Rawls begins to account for this in his book *The Law of Peoples* (1999), though he still focuses heavily on the role of “peoples” bounded in political membership, rather than individuals as first and foremost members of a world society (the cosmopolitan view).⁶²

However, despite the lack of an established world government (a common constitution) we do have at least some established standards of what is just, standards that are in fact intended to transcend nation-state boundaries, in theory and practice. Some of these were introduced and discussed in the previous chapters: international treaties and conventions prohibiting the slave trade and the practice of slavery, establishing labor standards, declaring “human rights” and so on— a baseline for what is to be taken as

⁶² See also, Buchanan (2000)

acceptable for everyone, all nations in a civilized world, standards largely derived from the acknowledgement of stark historical events that eclipsed this baseline (slavery and genocide, for instance). We have, at least, acknowledged that even though our social, political, and economic foundations (theoretical and practical) may differ, we agree that some things are not debatable: standards for certain obligations of justice. In international law these standards are called *jus cogens*, or compelling law that is necessarily universal and non-derogable. These standards are to apply to the actions of states within the borders of the nation-state, as well as international relations.

We also have shared institutions (war tribunals, international criminal courts, the United Nations, and the like) for adjudicating claims of injustice, at least for certain claims of injustice. We have, in addition, shared institutions that establish codes of conduct for international processes such as trade and labor: the World Trade Organization (WTO). These institutions also have their own structures and processes for adjudicating disagreements and claims of unfairness and even injustice. Not every single country participates in these shared institutions, but a majority of countries do. In this way, when interpreted more broadly, the liberal model of obligations of justice must incorporate, at least in certain matters, obligations that go beyond the nation-state boundary, for the simple fact that our shared institutions are increasingly many. That is to say, shared socio-political institutions are widening, as we engage with each other in structures and processes (e.g., trade, migrant labor regimes). It could even be argued that we live under a common set of rules, to the extent that we participate in activities requiring cooperation and involving inescapable interdependence (e.g., rules for international trade). Charles

Beitz asserts that there exists an international society, despite the lack of a common more comprehensive constitution.⁶³ He argues that due to this international society of increasingly interdependent global interactions (what I call social, political, and economic structures), principles of justice like those in the liberal model would apply to this global society (Beitz 1979, 154). He writes:

When, as now, national boundaries do not set off discrete, self-sufficient societies, we may not regard them as morally decisive features of the earth's social geography. For purposes of moral choice, we must, instead, regard the world from the perspective of an original position from which matters of national citizenship are excluded by an extended veil of ignorance. ... The global interpretation [of Rawls' *Theory of Justice*] is the result of recognizing an important empirical change in the structure of the world political and social life (1975, 388-389).

Beitz is writing, in part, as a reply to and a reinterpretation of Rawls' *Theory of Justice*, in an effort to “work out a more satisfactory international normative political theory” (1979, vii). While there is considerable controversy about the consequences of increased economic integration and what exactly the benefits and burdens are, the normative implication of these interactions and cooperation is simply that interdependence produces benefits and burdens and this fact, in turn, produces moral obligations (e.g., how this is distributed). Beitz points out that these aggregate benefits and costs produced by international economic relations would not exist if states were economically autarkic (1979, 152). In other words, interdependence constitutes real social cooperation, and this cooperation produces obligations of justice. He references

⁶³ See also Young (2011) for an explanation of Beitz's views.

Kant⁶⁴: “As Kant notes, international economic cooperation creates new basis for international morality” (Beitz 1979, 144). Just as economic cooperation within a state creates a basis for morality, international economic cooperation creates a basis for international morality. Kant was writing in the eighteenth century. Modern society is now highly integrated, and it would seem this assertion is even more compelling now. Beitz concludes,

It is not only true that interdependence involves a pattern of transactions that produce substantial benefits and costs; their increased volume and significance have led to the development of a global regulative structure. The world economy has evolved its own financial and monetary institutions, which set exchange rates, regulate the money supply, influence capital flows, and enforce rules of international economic conduct. The system of trade is regulated by international agreements on tariff levels and other potential barriers to trade. To these global institutions should be added such informal practices of economic policy coordination among national governments as those of the Organization for Economic Cooperation and Development, which are aimed at achieving agreement on a variety of domestic policies of local and international relevance. Taken together, these institutions and practices can be considered as the constitutional structure of the world economy; their activities have important distributive implications (1979, 148-149).

It should also be pointed out that *Beitz* wrote this in 1979. The World Trade Organization (WTO) was formed in 1995, and its impact on trade all around the world is the subject of considerable controversy. Nation-states indeed have their own constitutions or set of rules, but they do intercept, as in a Venn diagram, when they cooperate or interact in certain social, political and economic activities. There are rules that all must abide by, and although the process of rule-making is not without problems,

⁶⁴ Immanuel Kant, *The Metaphysical Elements of Justice* (1797), p 124-29. See also Kant, *Perpetual Peace* (1795), p. 106-108.

it is a fact that these shared institutional structures and processes exist. As I said, these activities require cooperation and involve inescapable interdependence.

An obvious obstacle to this process is the absence of a robust system of rule-enforcement of the various international treaties discussed in the last chapter. For instance, although there are a number of treaties or agreements on labor rights and migrant rights, these standards are not necessarily applied or acted on by individual nation-states. Many of these laws are ‘soft law’ and are not subject to enforcement on any regular basis. The unequal basis on which rules are made complicates the process even more. For instance, as noted in the last chapter, many developing countries have petitioned for the GATS to be amended to make it more relevant to their countries and the “unskilled” worker, but no industrialized country has agreed to any proposed changes, as it would presumably not be in their interest to do (WTO 2002). This is one of a number of examples of the resultant benefits and costs of a highly integrated international society; as Beitz notes, these benefits and costs do not exist simply as an aggregate, but their distribution is controlled by one or another agent. At least some distribution is entailed by the fact that these benefits and costs exist (Beitz 1979, 152). The burdens, the costs, and how these get distributed amounts to a rather complicated discussion. Beitz admits that there is considerable controversy about this distribution and what the benefits and costs of interdependence actually amount to (1979, 152). But important to his conclusion, and my own, is that this recognized integration has moral implications. Our obligations of justice must extend beyond the nation-state and in a way that acknowledges social connections as what ultimately grounds these obligations.

We must acknowledge that shared socio-political institutions, a condition that is said to serve as the legitimate basis for adjudicating injustices, are evolving globally, involving diverse persons and processes beyond the boundaries of the nation-state. Defenders of the liberal model must account for this fact by recognizing that obligations of justice, according to their own understanding, must include people and processes that, although they may not be within the strict physical boundaries of their own nation-state or citizens of the same country, are nevertheless included in these processes. This is so due to increasing social connections. International labor migration, and indeed global capitalism generally, are acute manifestations of these social connections. It is important, then, that the benefits and burdens be distributed justly. The liberal model, even when interpreted broadly, still places an emphasis on political institutions at the expense of recognizing more basic social connections. Rawls, for instance, in *The Law of Peoples*, uses “peoples,” who are bounded by a common system of government (Rawls 1999), as the primary unit rather than individual persons. Young instead focuses on *social connections*, and this includes individual persons, governments, and public and private organizations. She broadens the scope of analysis and who and what are to be responsible for executing obligations of justice.

Young’s model of obligations of justice asserts: “Responsibility in relation to injustice... derives not from living under a common constitution, but rather from participation in the diverse institutional processes that produce structural injustice” (2006, 119). We then need a conception of responsibility that acknowledges this connection (Young 2006, 130). The cosmopolitan-utilitarian model focus heavily on our

shared humanity and presumed equality, while the role of institutions and social interactions in producing injustice is largely ignored. The liberal model, while acknowledging obligations that extend across borders, still places too much emphasis on nation-state membership as the overarching element required for a more broad range of obligations of justice. As for the problem of human trafficking and slavery, migrant workers are at risk for extreme exploitation precisely because they fall outside the protections afforded to citizens of the United States. They do not live or labor under our common constitution, and many are, in fact, categorized as “illegals” or “aliens.” The liberal model denies them justice because they are, ultimately, not part of the social and political community: the nation-state. The cosmopolitan-utilitarian model fails to fully acknowledge the role of shared institutions and social connections in producing injustice, and is, as Young points out, “overly individualist,” focusing on what each person ought to do to minimize suffering (2011, 138).

Our global interactions produce benefits and costs. These interactions give rise to conflict and the inevitable distribution of these benefits and costs. As Beitz asserts, this distribution is guided, and many times controlled, by agents, both public and private. This process is morally significant. There are public institutions that have been created, in part, to deal with these interactions (domestic and international regulatory frameworks for social, political, and economic activities), and because they have a role in distributing the benefits and costs of these interactions they have moral obligations. Young writes, “The moral status of political institutions arises from the obligations of justice generated by social connection: such institutions are instruments through which these obligations

can be discharged” (Young 2006, 105). These institutions (e.g., WTO and UN) are certainly imperfect, but they are nevertheless a response to increased social connections. We have acknowledged the fact that our social connections have generated a need to address certain obligations of justice at the global level. What is needed, of course, is more attention to how these institutions either fail to adequately address injustice or, in the alternative, how these structures contribute to injustice directly. Young’s model calls attention to these “diverse institutional processes” and the structural injustice that sometimes results due to these processes.

To further develop her social connection model, Young explores a common model of responsibility—the liability model—and shows how it is inadequate in explaining responsibility for structural injustice. The next section outlines this conception of responsibility.

Responsibility

Institutions cannot possibly prevent and address every kind of injustice, but if the institution is part of the process that produces and reproduces structural injustice then that is something else altogether. This is the case in the phenomenon of trafficking: immigration and labor policies contribute to the supply and demand dynamic of human trafficking and slavery. My focus is on all institutions that participate to produce and reproduce social, political, and economic structures, and this includes in addition to the international institutions, institutions within the nation-state, national institutions that dictate rules and regulations for immigration, labor, and trade—structures that, again,

participate in global processes. In *A Theory of Justice*, Rawls discusses the idea of “basic structure” and asserts that it is “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.” He says that this “basic structure is the primary subject of justice because its effects are so profound and present from the start” (Rawls 1971, 7). Young suggests that we have a responsibility to change institutions and processes so that their outcome will be less unjust (2006, 123). She writes:

Because we dwell on the stage of history, and not simply in our houses, we cannot avoid the imperative to have a relationship with actions and events performed by institutions of our society, often in our name, and with our passive or active support. The imperative of political responsibility consists in watching these institutions, monitoring their effects to make sure that they are not grossly harmful, and maintaining organized public spaces where such watching and monitoring can occur. ... To the extent that we fail in this, we fail in our responsibility, even though we have committed no crime and should not be blamed.” (2011, 88).

This most certainly includes the government monitoring the effects of its own institutions, including institutions regulating immigration and migrant labor. This attention to institutions is important. Even still, our focus cannot be on any one element or component of society, to the exclusion of others. It would be incomplete and unfair, just as it would be incomplete and unfair to only point to those who directly perpetrate the crime of trafficking and slavery, those who we can rightly call criminals.

“[S]tructural social processes concern the *whole* of society...” (Young 2011, 142, her emphasis). Some institutions have a distinctive role in promoting justice, especially if they exist in part to facilitate the activities of many actors (e.g., WTO), but the scope

must be broadened to include the rules and norms and processes of other actors (businesses, media, and ordinary people).

How do we conceive of the responsibility of these other players? The responsibility of political institutions seems fairly clear and straightforward—their legitimacy depends on the promotion of justice. But an account must be given of the responsibility of other agents/actors, such as ordinary people, businesses, and private groups—all participants in the production and reproduction of social, political, and economic structures. In order to further explicate her model of responsibility in relation to structural injustice (the social connection model), Young distinguishes her model from the most common conception of responsibility: the liability model.

The Liability Model

“The most common model of assigning responsibility derives from legal reasoning employed to establish guilt or fault for a harm. Under this liability model, one assigns responsibility to a particular agent (or agents) whose actions can be shown to be causally connected to the circumstances for which responsibility is sought” (Young 2006, 116). She explains that this responsibility can be mitigated in cases where one’s actions were not totally voluntary or where there is some lack of knowledge that can excuse the agent of some degree of responsibility (Young 2006, 116). She points out that in some cases of human rights violations, application of the liability model is appropriate. She uses the example of the global apparel industry, and factory owners and managers who violate labor laws, sometimes rising to the level of slavery. They ought to be held liable

and punished, and sometimes are. If local officials fail to punish them for known violations of such laws then these agencies ought to be blamed and also held liable (via international sanctions, for instance). However, she points out that “particular workers in particular facilities in particular places stand within an extensive system of structural social processes that connect the making of garments to those who wear them.” Owners of these operations “may claim that they have little choice about the wages they pay, and cannot afford to give workers time off or to invest in better ventilation and equipment.” They, after all, “operate in a highly competitive environment.” She adds, “they are under heavy pressure from the exporters... [and] the exporters in turn are under heavy pressure from big-name companies” (Young 2006, 117). The agricultural industry is similarly situated. I would add that the pressure comes not only from retailers (demanding merchandise they can sell with a decent profit margin), but the fashion designers that create the blueprint of the product in the first place, the billion-dollar marketing industry, contractors, wholesalers, and distributors. Who else participates in and benefits from this industry? I would suggest the insurance agencies and financial groups who support each separate component of this process of making and selling apparel also benefit. It can even be said manufacturers of equipment parts participate and benefit (and the extended supply chain involved in that industry), parts that are used in factories, in trucks and boats, and the necessary provisions to build and outfit a retail store. And, of course, we cannot overlook the end-user: ordinary people demanding (or at least desiring) affordable (and perhaps “fashionable”) clothing. This complex process continues *because* there are millions of people who are ready to purchase these goods. The agriculture industry is

similarly situated—the need and desire for fresh and affordable food is a daily occurrence. For the apparel industry, these goods are not just for necessity, but are also in response to fashion trends promulgated by the fashion industry, their marketing partners, and the media—all participating in and benefiting from this process. And these consumers continue to have the desire for these goods because they know that they are available.

Who/what else is implicated in this example of the global apparel industry?

These factories operate under the allegiance to their own local governments. As I said earlier, sometimes these government agencies responsible for enforcing labor laws fail to do so, either because they are themselves corrupt or, as Young points out, because they too are responding to pressures or constraints of a very competitive international trade system. They must win the bid of investment groups who are shopping around for the best deal for establishing their factories. They need to promote a “‘favorable’ investment climate, which includes low taxes and minimal regulations” (Young 2006, 118). Some governments have in fact “‘indirectly encouraged sweatshop practices by constituting special export processing zones whose factories are exempt from taxation and forms of regulation that apply to other enterprises in the country” (Young 2006, 118). In these cases, we cannot easily hold accountable (in a liability sense) the owners and operators who allow labor abuses, because they actually might not be breaking any rules (though they are violating international standards that are supposed to apply to everyone—but enforcement of these standards is weak). They are, however, still responsible somehow for the harms they inflict on workers in these cases. Young adds, “Public-sector

regulating capacity has been reduced further in some cases by policy responses to the actions of international financial institutions such as the International Monetary Fund, which pressures borrowing states to reduce public spending” (2006: 118). The highly competitive nature of the agriculture industry also creates this race to the bottom. In the case of agricultural slavery, the U.S. government is responsible for creating and enforcing labor laws. In cases of agricultural slavery then, it is not only farm owners or labor contractors who are responsible.

These factory operators, in Young’s example, and labor supervisors on the farm are, in fact, “small actors with relatively little power in this global system” (Young 2006, 117). Again, this does not absolve their liability where it can be reasonably demonstrated, and indeed they ought to be held accountable. It would, however, be unfair, and more importantly unhelpful, to not look at the larger picture and recognize the complex system that supports these structures that produce and reproduce injustice. It would be especially unhelpful, since without this understanding our efforts to address these injustices will be less than effective, and perhaps to some extent even futile, especially for long-term prevention.

The Social Connection Model

Young’s model does not dismiss the liability model. Justice many times requires application of this model, even instances within cases of structural injustice. As Young makes clear, however, the liability model is not always sufficient for assigning responsibility when the injustice is structural, and some may be removed from any

interaction with those who experience the most harm (2006, 118). Even in this recognition that some actors are far removed from actions that directly harm (labor abuses generally, or worse, instances of trafficking and enslavement), we would be remiss to not somehow account for their role in these structures that produce and reproduce injustice. This is the aim of Young's social connection model. It is analytical and theoretical, but it is also a philosophy with practical application. It seems inappropriate to "hold liable" these other actors. This is generally agreed. It would be inappropriate to go to the mall or grocery store or mountain resort and arrest ordinary people for their role in supporting a system of cheap, exploited labor that may include workers who were trafficked and enslaved. It would be similarly inappropriate, though perhaps less so, to arrest and punish politicians or CEO's for their role in the production and reproduction of structures that result in structural injustice. They are nevertheless participants. How do we proceed? Young asserts:

While it is usually inappropriate to blame those agents who are connected to but removed from the harm, it is also inappropriate... to allow them (us) to say that they (we) have nothing to do with it. Thus, I suggest that we need a different conception of responsibility to refer to the obligations that agents who participate in structural social processes with unjust outcomes have. I call this a social connection model (2006, 118).

There are five main features of the social connection model of responsibility. The first is that it is not isolating. As in the liability model, we blame and punish those who can reasonably be shown to perpetrate harms directly. This is not incorrect, but in cases of structural injustice there are other people and processes involved. Pointing to the direct perpetrators of harm does not absolve other persons or processes that contribute to

structural injustice, as described earlier in the example of the apparel industry and the process of human trafficking.

The second concerns judging background conditions. Young explains this by recognizing that under the liability model of responsibility, what we generally point to when we say someone is blameworthy and responsible for a harm done is a “deviation from a baseline,” or some action that deviates from what is morally or legally acceptable. That is to say, the actionable harm deviates from the existing background conditions of that action, background conditions that are considered normal and moral. The social connection model, in illuminating the structural conditions that contribute to injustice that is structural, calls into question these background conditions that are considered normal and morally acceptable. Young writes:

When we judge that structural injustice exists, we mean that at least some of the normal and accepted background conditions of action are not morally acceptable. Most of us contribute to a greater or lesser degree to the production and reproduction of structural injustice precisely because we follow the accepted and expected rules and conventions of the communities and institutions in which we act (2006, 120).

In the case of human trafficking, the background conditions that are considered normal and acceptable include: a labor regime that provides few labor protections for working-class migrants; an immigration regime that results in a simultaneous demand for and supply of a cheap and exploitable labor force; a trade regime that gives priority to the movement of capital and the protection of property rights over and above the facilitation of labor migration and the enforcement of established international labor standards that aim at protecting people against exploitation (i.e., despite being an essential element in the production process labor is given very little attention); and a consumer culture that

demands goods and services at a “reasonable” price, a pricing scheme that we have become dependent on—spending relatively little, on average, on food and clothing in relation to our overall incomes.

The third feature is that the social connection model is more forward-looking than backward-looking. Unlike the liability model, it seeks to not just punish direct perpetrators of harms (actions done—in the past—that one can be held liable for), but also to shed light on the processes and structures that may reproduce—in the future—structural injustice so that these injustices can be prevented or at least their prevalence significantly reduced. In the case of human trafficking, following this model, we ought to give significant attention to comprehensive prevention. The current framework, as I have illustrated, instead focuses heavily on targeting traffickers and the border (present criminal acts) rather than prevention: the structures that contribute to the continual reproduction of the problem—conditions that will surely give rise to future cases of trafficking. These conditions include heavily restrictive immigration controls, tight border security, and a lack of protections for migrant workers. If our current focus is at the expense of giving adequate attention to how the problem is produced and reproduced, the prevalence of the phenomenon may be largely unaffected, even given a reasonably expected deterrent-effect (which is admittedly forward-looking) of the backward-looking function (blaming and punishing the direct perpetrators: the criminals). Young writes: “When conceptualizing responsibility in relation to structural injustice... we are concerned with an ongoing set of processes that we understand is likely to continue producing harms unless there are interventions in it” (2006, 122). In this way, an anti-

trafficking framework must focus heavily on approaches that have strong forward-looking qualities—addressing labor migration and migrant labor protections.

The fourth feature is shared responsibility. From the first feature (not isolating), “it follows that all those who contribute by their actions to the structural processes producing injustice share responsibility for such injustice” (Young 2006, 122). Clearly not all of us implicated in the phenomenon of human trafficking are responsible in the same way or to the same degree. Our responsibility to address these injustices will thus differ.

The final main feature of the social connection model is that this forward-looking responsibility is discharged only through collective action. Since these are complex social-structural processes, altering them so that their outcomes will be less unjust will require the cooperation of many actors in diverse social positions (Young 2006, 123). How we each approach the problem will be decidedly different since we each participate in these processes differently and are in different social positions— individuals with different levels of resources and abilities, businesses with different levels of power and influence, and government agencies with different roles in matters of public policy. Young adds that victims of these injustices also share in this responsibility. While some are arguably in vastly different positions to do so, those who can ought to make some effort to effect change. Getting involved in the process of union organization for workers is one example. The impact of this can be significant, as the early work of Cesar Chavez in organizing for the rights of farmworkers clearly demonstrates.⁶⁵ These organizing and

⁶⁵ See United Farm Workers www.ufw.org

protest activities, however, can be very dangerous for farm workers. It would seem reasonable to suggest that each person is allowed to judge the cost and benefits of such action, as this assertion of shared responsibility is not to blame or punish, but admonish action in a way that recognizes the reciprocal nature of such social responsibility. Farm workers in particular face harsh penalties for organizing and asserting their rights to be not only treated humanely but also paid fairly. Furthermore, H-2A agricultural workers are not protected under any law to organize. They face the threat of violence and coercion, on top of the threat of blacklisting and deportation. This usually means workers will try to endure the conditions they work under.

Young's social connection model supplements the liability model and, as she insists, "better corresponds to the intuitions expressed in claims about the responsibility agents have concerning global justice" (2006, 125). So far, however, this does not give us definitive answers for the more practical question about how we ought to respond to this responsibility through our direct actions. Young addresses this matter of practical implementation with what she calls parameters of reasoning: "the grounds for differentiating kinds and degrees of responsibility" (Young 2006, 125). These four parameters include: power, privilege, interest, and collective ability. I will summarize and tailor these points to our present problem: human trafficking and slavery.

We not only have different participatory roles in structures that produce and reproduce injustice, but there are many structural processes that we all participate in. We also stand in different social positions, with varying abilities and resources and constraints that impact how we can respond to our responsibility to address these

injustices, and this is often times in flux throughout our lifetimes. As in the typical response to the strong version of the cosmopolitan-utilitarian ethic, one might get overwhelmed at such a daunting task of discharging one's responsibility. People often resolve that life is just unfair and although there is much suffering, what can really be done? Young points out, however, that when it can be demonstrated that we are in fact part of the process, it is no longer acceptable, or even rational, to conclude with such resolve. We cannot simply say it has nothing to do with us. Structural injustice is precisely the opposite—we are part of the problem and thus necessarily have a role to play in the solution.

Considering all the individuals, institutions, and processes involved in the production and reproduction of the structures that contribute to the phenomenon of trafficking and slavery, how ought we to consider the differences among them, their responsibilities to address this problem, in relation to these parameters—power, privilege, interest, and collective ability? I will break this discussion down into three categories of agent type: 1) government, 2) business, and 3) individual. These are not rigid categories. The category of individual includes both single persons and groups of persons that organize together in unity for a special interest. The categories of government and business include individuals, as these organizations do not exist independent from individual agents. These three categories include both individuals and institutions, and together their actions and interactions constitute processes. As I have asserted throughout this thesis, social, political, and economic structures are the result of the cooperation and interaction of individuals and institutions and processes.

Government

The category of government includes those public institutions that are said to have a role in distributing the benefits and burdens of social cooperation. Young's model differentiates the concepts of duty and responsibility, as each carry different degrees or kinds of obligation. The social connection model does not say that we have a duty to do X (a specific action), only that as participants in the process we are implicated and thus have a responsibility to respond somehow. I think it is reasonable to interpret the social connection model as saying we have a duty to be responsible. People who play a role in government have a particularly strong duty to be responsible for injustice, especially injustice that is structural. The role of such institutions in distributing the benefits and burdens (or costs) of social cooperation has moral implications, as this often affects the lives of people—how well their lives go, what obstacles or rewards they may experience.

For our purposes here, it matters not if these institutions intend on doing harm⁶⁶; it is certainly problematic if they do intend on harming, but that is a different discussion altogether. If the policies government institutions enact do result in harm (with general tendencies towards harm—and certainly this is an important debate involving value judgments and fact-finding), these policies must be overhauled and corrected. This is especially crucial when these harms tend to negatively impact only certain populations (certain classes, races, ethnicities, religions, genders, and so on). For example, certain visa categories (H-2A, A-3, G-5, B-1) fail to protect workers from exploitation, and tight border security increases the harms experienced by certain populations—these harms, in

⁶⁶ There are different kinds of harm to be sure. The kinds of harms that give rise to obligations of justice that I discuss in this thesis are culpable harms, that is, harms that merit condemnation.

the case of both visa categories and border controls, can be violent and life-threatening. These populations are not U.S. citizens and so remain outside our common constitution, but are nevertheless participants in labor regimes established by social, political, and economic structures in the United States and most directly by the U.S. government. As discussed earlier, our obligations of justice extend beyond nation-state identities to include those we interact with in social, political, and economic arrangements. This most assuredly includes, at least, those who we legally employ with temporary worker visas. And given the strong and complicated pull of migrant labor⁶⁷, including undocumented workers, border security measures that create dangerous conditions for migration can be said to result in harms and must also be corrected. It becomes clear, however, that the categories of agent type (government, business, and individual) overlap. These visas do not come with the requirement that employers treat their employees poorly, or exploit their labor, or violate standards of international human rights. Individuals make the decision to exploit and enslave, and even though it is certainly true that government policies make it easier to do so, we must not ignore the fundamental role of the individual and business organizations. In some situations, there are also consumers involved, demanding affordable clothing or food; businesses and government are responding to these pressures. These actors, in these social, political, and economic structures that shape immigration and labor (and social norms involving race and class), cooperate in this process of exploitation.

⁶⁷ See Cornelius (1998) and Nevins (2002).

Another example involving government policy impacting the lives of people relates to economic policy, including international trade policy. It is not that in pursuing certain economic policies governments intend on doing harm, but rather that with increased interaction and interdependence comes benefits and burdens resulting from aggregate effects that then get distributed (Beitz 1979). The impact of economic policies is wide ranging, influencing markets, interest rates, employment levels, budgets for social spending, and so on. Important for my purposes is that economic and trade policies play a role in migration push and pull factors as people adjust to changes in the economy—living conditions, job availability, etc. Massey and Espinosa argue that U.S. economic policies toward Mexico have exacerbated an important factor that promotes migration to the United States: high interest rates. They note that as a condition for receiving U.S. aid Mexico has been forced to raise interest rates “to exceedingly high levels” and that high interest rates are “a powerful force” in promoting migration, both documented and undocumented (Massey and Espinosa 1997, 991). They also note that the provisions of NAFTA reinforce the process of market consolidation in Mexico, bringing about social and economic transformations that influence migration patterns. Acevedo and Espenshade assert that liberalization policies in the agriculture sector influence migratory flows. They argue that privatization of communal landholdings displaces people living in rural areas making them prone to migration both internally and internationally⁶⁸ (Acevedo and Espenshade 1992, 734). They also point out that the elimination of

⁶⁸ See also Solis (1992).

government subsidies in Mexico for some crops like corn (a provision of NAFTA) will increase unemployment and lead to increased migration.

The effects of economic and trade policy are a mix of positive and negative, but what is certain is that such policies influence migration flows and patterns. Furthermore, the integration of two economies creates new links in transportation, telecommunication, social networks, and other connections necessary for the efficient movement of goods, capital and information—all of which encourage the movement of people, including undocumented workers across international borders (Massey and Espinosa 1997, 991-992). Acevedo and Espenshade agree, arguing that in general as two economies become more integrated and interdependent, migration between them grows.⁶⁹ Not surprisingly, although NAFTA did not address the migration issue explicitly, it did dedicate an entire chapter to the facilitation of the labor migration of *business persons*: business visitors, traders and investors, intra-company transferees, and professionals⁷⁰ (Acevedo and Espenshade 1992, 735).

It is not my intention to discuss economic theories or theories of international labor migration to any great extent. What is important for my purposes is that the participation of the United States in international markets, and indeed its central role in facilitating this trade, contributes to push and pull factors for international migration. Moreover, with the demand for cheap and flexible labor in the United States, and the known prevalence of undocumented workers, the U.S. still fails to respond with

⁶⁹ See also Douglas Massey (1988).

⁷⁰ See also Acevedo and Espenshade (1992) note 8, p.741.

immigration policy that adequately accounts for this. An adequate policy framework would include, at least, implementation of rules that facilitate legal paths to safe employment for these workers who are, everyday, employed by U.S. businesses. The International Labor Organization states in a recent report: “The extent of the flows of irregular workers is a strong indication that the demand for regular migrant workers is not being matched by the supply, with migrants serving as the buffers between political demands and economic realities” (ILO 2004, 12).

These few examples begin to illustrate how government policy plays a role in the trafficking problem: failing to protect certain populations of workers, handing them visas (without other reasonable alternatives) that make them vulnerable to exploitation; and, contributing to the push and pull factors that encourage labor migration, including undocumented labor, and failing to follow this up with opportunities for legal and safe paths for migration and employment. As Kara insists, “The long-term abolition of sex trafficking and all other forms of contemporary slavery will require... the reconception of economic globalization as a system for which ultimate legitimacy depends on promoting the social, political, and economic well-being of all members of humanity” (Kara 2009, 41). To the extent that political institutions have a key role to play in the facilitation and regulation of social, political, and economic processes that produce and reproduce injustice, they have an important responsibility to guide the nature of globalization (these social, political, and economic structures) so that it will have a tendency to prevent harm. Globalization is a process that occurs almost naturally⁷¹, as civilization progresses

⁷¹ To the extent that globalization is a manifestation of social structures that are created by individuals and organizations it is a process that occurs as civilization progresses through time and space. Knowledge

through time and space, but individuals and institutions guide and influence this process, for good and bad. The *realization* of globalization—how it presents itself and what it looks like—depends on the nature of this guidance—what individuals and institutions prioritize, what is legitimated. The new framework I propose for addressing the problem of human trafficking and slavery is one that emphasizes the need to make changes in *how systems function* in the process of globalization, in particular, systems effecting immigration, labor, and trade.

Government has the power to enact certain changes, if it can rise above pressures from businesses and groups that have an interest in maintaining current structures in migrant labor regimes. Government also has the power to enact changes in the area of international trade. This will also require rising above pressures from those powerful institutions (public and private) who have an interest in maintaining current structures in trade regimes that disproportionately benefit large and powerful corporations. As I said, these categories overlap, as individuals and businesses alike must pay attention to these matters and lobby for more accountability from our government, and demand accountability from each other as members of a global society.

Under the heading of “Government Responsibility” in the 2011 TIP Report (U.S. Department of State 2011) it suggests that governments can evaluate their compliance

gives rise to new technology and this, in part, influences what is possible. Globalization has occurred in part because of technology—large ships and navigation tools, the transatlantic cable, computers, the internet, and so on. All of these things made possible increased travel, communication, and trade; increased exchange of all sorts of data necessary for business; shared culture and information in general. These particular things do not “naturally” occur, but they seem to occur alongside human progress (increased understanding, knowledge, and what that can result in over time—the airplane, for instance, was not created by a single person, but through shared knowledge over centuries that culminated in an old idea that was finally made possible given this collective knowledge over time) and I take that to be part of the natural process of an evolving civilization.

with the UN Trafficking Protocol and the TVPA by asking three questions. The third question is: “Is the government doing what it can to protect victims and prevent trafficking?” In the case of agricultural slavery, there is a clear lack of monitoring and enforcement of laws pertaining to agricultural labor. Part of the problem is also that guest workers in the fields (those with H-2A visas) are excluded from protection under these laws in the first place, and undocumented workers are afforded even fewer rights. For domestic slavery, the circumstances are similar. Visa categories for domestic labor are administered without monitoring, increasing the likelihood that these workers will experience exploitation and suffer in silence and isolation. If the United States is to pay heed to its own advice on the subject of anti-trafficking, it must take an honest look at its own laws and correct shortcomings and inadequacies so that it can answer in the affirmative that it is doing what it can to protect victims and prevent trafficking.

Business

The overlap of categories of agent type is especially evident in the category of business. Government regulations impact nearly all aspects of business: financing, labor, trade, markets, manufacturing, and so on, with both positive and negative consequences. Businesses, however, are not entirely constrained by government policy. Businesses are, in fact, created and facilitated by individual agents, agents who make decisions concerning a range of issues with wide-ranging impact. Business decisions affect (at least) employees, consumers, the general public, and the environment.

While businesses are made up of individuals, the responsibility of businesses is

not exactly the same as the responsibility of individuals. That is to say, in general, the scope and depth of responsibility is different to the extent that the actions of business have a wider range of impact on the lives of people and in ways different from the actions of individual persons. Businesses also stand in different social positions than that of individual persons or government. Young's social connection model points out that different agents will have different responsibilities. Businesses participate in the production and reproduction of social-structural processes. Indeed their role in the reproduction of the problem of trafficking and slavery is central as they solicit and employ workers and within a scheme of profit maximization. As discussed in chapter two, corporate buyers demand the lowest possible prices from their suppliers. This produces downward pressures on wages and working conditions.

The subject of business ethics is in some sense an emerging field in the last half century, though Adam Smith wrote about it in his *An Inquiry into the Nature and Causes of the Wealth of Nations* in 1776 and, more subtly, in *The Theory of Moral Sentiments* in 1759. John Dobson observes that, "Smith viewed personal and social material advancement—achieved by the prudent pursuit of economic self-interest—as a means to the moral betterment of society" (2001, 406). Dobson also notes that the unfortunate irony surrounding *Wealth of Nations* "is that its lasting legacy has been to achieve the opposite objective to the one envisaged by Smith himself" (2001, 406). Dobson points out that Smith would have agreed with Aristotle's assertion: "The life of money-making

is one undertaken under compulsion, and wealth is evidently not the good we are seeking: for it is merely useful and for the sake of something else”⁷² (2001, 406).

I agree with Aristotle’s sentiment here, but I also recognize that others may not. It is not the drive for wealth that I ardently object to in the context of a discussion on business ethics or corporate responsibility. That is, I think each of us as individuals have the right to create or find our own purpose for our own lives. Perhaps the good that some seek is wealth as an end in itself. There are, of course, qualifications to this that are relevant to the present discussion on structural injustice. Milton Friedman wrote, in a New York Times article, “There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud” (Friedman 1970). Friedman appears to defend an “ethic” of profit maximization and within a seemingly moral scheme (follow the rules, no deception or fraud, and so on). Unfortunately, the rules of the game, which are often created by individuals and institutions in positions of power, often allow for deception, even fraud⁷³, and open and free competition is rarely found. This is especially evident when considering the constraints on international labor migration. Moreover, Young’s assessment of the global apparel industry, and her account of structural injustice generally, reveals how harms often come to people in the process of following

⁷² See Aristotle’s *Nicomachean Ethics*.

⁷³ The corporate bailouts of 2008, for instance, resulted in the loss of pensions and life savings for many thousands of people. If not fraud, I would call this a kind of theft that impacted the lives of many in morally significant ways. The burdens they suffered were attended by significant benefits for those in executive positions.

institutional rules and social norms that are considered normal, moral, and acceptable. “In an ideal free market,” Friedman writes, “no individual can coerce any other, all cooperation is voluntary, all parties to such cooperation benefit or they need not participate” (1970). We live in no such “ideal free market.”

The pursuit of economic self-interest need not always result in the betterment of society (as described by Smith) to be acceptable or legitimate. This is a rather high standard for many people who struggle to find work to merely survive. However, the pursuit of profit maximization, if it is to be within the bounds of the personal and social responsibility argued for in this thesis, must not result in the culpable harms of extreme exploitation and enslavement. Ideally the standard is much higher. J.S. Mill wrote in *On Liberty*, “The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it” (Mill 1859, 72). This is a complicated statement to be sure. In a globalized, interdependent, and interconnected society, this standard may be difficult to achieve as many individuals act in pursuit of their own good in their own way. It is, however, an ideal worthy of ardent defense and a goal worthy of pursuit in business, personal, and public life. This discussion on the responsibilities of business is continued in the next section, especially under the heading of consumer culture.

Individual

Key to this category is what I refer to as social norms, which can be defined as

“customary rules that govern behavior in groups and societies.”⁷⁴ Social norms are obviously prevalent in both government and business. As I said earlier, these categories overlap, and this is especially true for the category of individual—the most basic social unit. I have chosen to use the title of “individual” for this category (instead of “social norms”) in order to draw attention to the fact that these social norms are produced and reproduced by individual persons⁷⁵, rather than some ghost entity without a name or face. In other words, “social norms” cannot be held to account for wrongs, even though we can point to such norms as an influence in perpetuating injustice. Individuals are the responsible agent. This is important for the purpose of assigning responsibility and admonishing agents to do their part in addressing wrongs that are the result of social structures.

Sayings like, “That’s just how it’s done” or “That’s just how it works” illustrate the tendency for people to excuse themselves from responsibility when engaging in cultural norms that may raise ethical questions. There would be no need to use such phrases if there was not at least a small awareness that these norms are ethically questionable. One example of this might be the social norm of racial segregation, a norm that was in place for at least a century after the abolition of slavery. It was not until the 1954 Supreme Court decision in *Brown v. Board of Education* that it was more widely acknowledged that the kind of treatment black persons were given in general and specifically the rule of “separate but equal” was unjustified (and in fact blatantly

⁷⁴ Sanford Encyclopedia of Philosophy entry for “Social Norms.”

⁷⁵ See Young (2011) p. 59-60.

abhorrent). Racial segregation, in the form of “separate but equal,” was validated by law until it was ruled unconstitutional in 1954, but the social norm of racial segregation continued long after the legality of “separate but equal” ended. This social norm no doubt fueled the violence against blacks in the century after the end of legal slavery: violent and coercive forms of servitude; denial of jobs, property, and education; denial of marital rights; denial of basic constitutional rights like due process and fair trials; denial of voting rights; and psychological and physical violence including the unimaginable terror of lynch mobs—thousands of murders that went unpunished. Many argue that this violence, though to a lesser degree and in different forms, still exists, fueling racial profiling, housing segregation, marginalization in labor markets, and so on.⁷⁶ And the violence of racism is not limited to black populations. Latinos are presently the targets of widespread prejudice due to highly charged debates on immigration policy. Since 2010, 164 anti-immigration laws have passed in the United States (Gordon and Raja 2012). Those targeted include undocumented persons, legal temporary workers, and even American citizens who nevertheless are treated with violence or prejudice simply because they are Latino or appear to be. Government policy on border security and immigration controls has a role in both creating and reinforcing these prejudices that often result in the violent exclusion of the “alien,” including instances of extreme exploitation, trafficking, and slavery.

It is true that some social norms are so deeply entrenched in culture that it may not be entirely reasonable to hold accountable a person who perpetuates structural

⁷⁶ See for instance the work of Noam Chomsky, especially his criticism of the prison system.

injustice. But it is also not reasonable to continually excuse responsibility for the mere fact that one might be ignorant. Most individuals have a choice, though with varying constraints, whether to participate in the production and reproduction of certain social norms. It might not be convenient or desirable, but that is a different consideration altogether. There are social norms in every category of civil society, too many to list here. Of particular relevance to trafficking are the norms of consumer culture and the broad notion of race and class.

Race and Class

The reason why notions of race and class are important becomes apparent when we consider the demographic of those who are most at risk for trafficking. The TVPA admits that migrants are especially vulnerable.⁷⁷ This is, of course, a potentially diverse group. Technically, a migrant is a person traveling from their home country to another country, for a stay that is intended to be somewhat temporary. We would not call a person who is vacationing in a foreign country a migrant, just as we would not call a person a “migrant worker” who is traveling for business for a week or even a month. While the emigration process is potentially dangerous for anyone, it does not affect everyone in the same way. Those who are undocumented are at higher risk for the mere fact that they cannot depend on the host government to provide certain protections during the migration process and also for life in the host country. But even documented migrants, as I explained earlier, suffer an increased risk of being trafficked (e.g., guest workers). Why is this so? Looking at the populations who have been trafficked, the

⁷⁷ Trafficking Victims Protection Act, Section 102, Paragraph 17.

populations that are given special attention by institutions working on the problem of human trafficking (the United Nations, the International Migration Organization, the International Labor Organization, the U.S. Department of State, NGOs like Anti-Slavery International), the migrant most at risk is generally within the category of “unskilled laborer.” A comprehensive report by the International Labor Organization made clear that contemporary migration flows are “dominated by workers moving to fill unskilled jobs,” for instance, those seeking work in agriculture, hospitality, construction, and so on (ILO 2004, 8). I dislike the use of the label “unskilled,” as these jobs certainly require skill, but this is used to denote the fact that these jobs do not require much education or training. This generally means that this group of migrant workers, the “unskilled worker,” is in a certain socio-economic class: the working-class. Yes some highly skilled migrants end up underemployed (the doctor or scientist who can only find work as a taxi driver or janitor in the host country, for instance), but their risk for trafficking is not like that of the unskilled worker. This was elaborated on in the section on U.S. immigration policy. That is to say, while there might be a concern for the safety of a doctor from Nigeria traveling to Europe or the United States for employment, the dangers he might face are different from the dangers facing the poor (in relative terms) “unskilled” laborer who has few resources to assist his migration and search for employment.

I have argued that subtle or pronounced social norms of racism and class-consciousness have influenced public policy on immigration, including labor laws affecting migrant workers. I also believe these norms have influenced how individuals treat these workers. As I said, immigration and labor laws do not require employers (for

instance, a labor supervisor on a farm or an individual employing the services of a housemaid) to treat poorly their workers. This is why it would be wrong to just point to public policies. These employers (or more likely, managers and supervisors) act, in part, on their own beliefs, their personal convictions about what is socially acceptable or normal (social norms). As Young asserts, structural injustices are produced and reproduced, in part, by accepting as normal and moral background conditions that may in fact be immoral.

Consumer Culture

The idea of consumer culture includes many things. It involves the individual, but it also involves the direct participation of the other categories: business and government. Businesses many times invent the needs of the consumer, but they also must respond to the needs and desires that more genuinely derive from the consumer. This is usually a very circular process: consumer desires slowly transform into “needs” and so-called needs proposed by the inventors of things. Sometimes these things end up being very useful and provide a social good, and other times these things impact negatively our culture and environment. Government participates as regulator of business processes and consumer products and services. There is a spectrum of government involvement—sometimes government is too intimately involved, while at other times it is not involved enough. In this way, “government regulation” is neither good nor bad, as it certainly depends on the context. For example, insufficient regulation concerning building codes might result in unsafe environments that put workers and users of the buildings at risk. Inadequate waste regulations on a dairy farm might lead to the

contamination of local water supplies. On the other hand, too much government involvement in some markets might lead to unfair trade transactions. The use of government subsidies in internationally traded agricultural products like corn or cotton has led to severe problems in some developing countries, as explained earlier. Whatever the case may be for a certain product or service, it is almost guaranteed the government is involved in one way or another.

What I find important to highlight for our present discussion on the social norms present in consumer culture is the notion of supply chain ethics. The “fair trade” movement, even with its shortcomings, is a keen reaction to the use of exploited labor in supply chains and unequal/unfair trade regimes. The Coalition of Immokalee Workers, as discussed earlier, has contributed to the awareness that our food is harvested by workers that at times suffer greatly at the hand of their employers. The most important consequence of the fair trade movement is raising awareness in the general population of the fact that the things we buy are produced with an extensive supply chain. In fact, some scholars argue that it was this awareness of supply chains (though it was not yet labeled as such) that helped to spark and sustain the abolition movement that culminated in the abolition of legal slavery in the nineteenth century (Bender 1992). In our present culture, slogans such as “know where your food comes from” admonish consumers to be actively aware that they are participants in a food system, a system that includes not only retailers, but also farm laborers and factory workers. To this list I would add distributors and wholesalers, lobbyists, politicians, chemical and seed manufactures, and the participation of people and processes in multiple countries. In buying food products we

are employing each of these people and institutions; we are supporting a complex process, a vast and dense network of supply chains that bring food products to our local markets, from high-composite packaged foods like a can of soup to single-ingredient bulk oats. In 2009, the Obama Administration started its own food-related campaign: “Know Your Farmer, Know Your Food.” This is a USDA-wide effort “to carry out the commitment to strengthening local and regional food systems.” This initiative focuses on farm to school programs, community supported agriculture (CSAs), and farmers markets. These are important issues for both local food systems and the environment, and this might be a worthwhile campaign. Yet when this “farm and food” campaign is proximate to the guest worker program, and agricultural labor in general that is insufficiently monitored and has known problems dating back to at least the 1960’s, it highlights how these workers are marginalized at every turn. Moreover, this campaign says nothing about these “other” participants in the food system.

This idea of supply chains can be applied to most anything we buy or participate in: where does that come from, how was it made and brought to market, or how was that service provided? Sweatshop activists use this logic in their public protests against the apparel industry, raising awareness in consumers that the clothes they are wearing might have been produced under conditions that, at the very least, give rise to ethical questions. If human trafficking and slavery occur in industries like agriculture, manufacturing facilities (no matter how large or small—big factories or a small production in a remote village), restaurants and hotels, and construction, we all participate in these processes that provide us with products and services. It is this kind of cognitive engagement that is a

necessary first step to addressing structural injustice. We must first see that we are part of the process, that we are not passive agents, that these harms do not occur in different dimensions of existence, but in close connection to our own personal lives. Consumers are an important component to these processes. We therefore have considerable power. This awareness raising will only be useful if it leads to action on the part of individuals, in one way or another. Important to the task of awareness raising is how the problem of trafficking and slavery is framed. Under the current anti-trafficking framework, which largely uses a liability model, public perception of the problem will likely be that trafficking is a horrible crime and the victims need to be rescued and the criminals put behind bars. While these assertions might be true, it certainly gives a very limited understanding of why the problem exists and why it continues. If the problem instead were to be presented using the understanding explicated in the social connection model, the “crime” of human trafficking and slavery becomes more personal, and the call to act more compelling.

Again, individuals, under the social connection model, are not to be blamed for the problem of human trafficking and slavery, but admonished to recognize their role in the production and reproduction of injustices that are structurally caused. The positive actions of individuals, however, whether as consumers or business owners, must be supplemented by government policy that promotes just conditions of labor and trade, as we all have a role to play.

There is no denying the egregious nature of human trafficking and slavery as a humanitarian crisis. Human trafficking is not only a crime perpetrated by individual

actors, but a complex process involving many factors. Young's social connection model of responsibility asserts: "Identification of the wrongs that individual actors perpetrate... needs to be supplemented with an account of how macro-social processes encourage such wrongs, and why they are widespread and repeated" (2006, 115). It is within this framework that I have discussed responsibility for human trafficking and slavery. When we recognize that multiple social, political, and economic structural processes contribute to the problem in important ways, questions arise: how do we conceptualize responsibility when injustice is structural? What are the obligations of justice in these cases?

I have argued that social, political, and economic structures are the result of the cooperation and interaction of individuals, institutions, and processes, and that this cooperation and these interactions produce benefits and burdens. This gives rise to conflict and, most importantly, an inevitable distribution and thus moral obligations that this distribution not unfairly benefit or burden the participants. The problem of human trafficking and slavery is in part a symptom of structural deficiencies in this process. The "unskilled" migrant worker is marginalized and excluded from the benefits of safe and legal international labor migration and labor protections in the United States. These benefits include migration rights and protections that are afforded to the "highly skilled" professional under the GATS, as well as labor protections that are afforded to other workers in the United States.

The liability model of responsibility has heavily influenced the current anti-trafficking framework, as the focus is criminal prosecution and victim protection. This is

not incorrect, but it is incomplete as it fails to account for those macro-social processes that I have shown to contribute to the problem. In our efforts to address trafficking and slavery, a liability model of responsibility must be supplemented with a model that broadens the scope of responsibility, and in a way that calls attention to these social-structural processes. Our “responsibility to work to remedy” (Young 2006, 2011) these structural deficiencies requires reforming the GATS to include the “unskilled” migrant worker in the facilitation of international labor migration. It requires reforming the U.S. visa system so that all domestic worker categories have built-in protections to prevent abuse. It also requires that the “unskilled” migrant farm worker be incorporated into a comprehensive scheme of protections⁷⁸ and effective systems of monitoring of farm labor. We cannot easily control all employment relationships where migrant workers are involved or prevent all cases of trafficking and slavery. What we can do is attend to the systems that regulate this kind of labor. When we see that these social-structural processes are contributing to the problem of trafficking and slavery there is indeed an obligation to work to remedy these processes so that they are less likely to contribute to these serious harms.

⁷⁸ A good place to start would be to include H-2A guest workers in the Migrant and Seasonal Agricultural Worker Protection Act (1986).

CONCLUSION

Trafficking and slavery are horrific crimes that require strict penalties for perpetrators and effective protections for survivors, but these crimes are in part facilitated by a system of laws and norms that effectively marginalize certain populations—the “unskilled” migrant. The failure to see this problem as a complex process occurring within the context of a global and interdependent society has resulted in anti-trafficking policy that focuses heavily on direct perpetrators of the crime and border security. This is at the expense of recognizing the complex structural support system that facilitates the supply and demand of the trafficking process. This has led to confusion about causes and, in turn, confusion about who/what is responsible. Prevention efforts are limited in scope and fail to call attention to structural causes, most significantly the role of current law and policy as contributing factors. Progress has been made over the past decade in how the problem of human trafficking and slavery is understood. The inclusion of the United States in the Trafficking in Persons Report was a turning point, if only for the express recognition that no country or culture is immune to this social problem. Much more progress is needed, however. Human trafficking and slavery are already illegal; our task is to drastically reduce its prevalence. I have argued that trafficking and slavery are symptoms of larger systemic and structural problems, and that anti-trafficking efforts must focus heavily on prevention. Specifically, prevention must address the structural conditions that make ripe an environment in which trafficking and slavery are sustained.

Throughout this paper I have tried to show that laws, policy, and norms impacting immigration and migrant labor play an important role in creating and sustaining the

social, political, and economic marginalization of the “unskilled” migrant worker, significantly increasing their risk for exploitation. The GATS is the only international instrument that regulates the international trade in services, and it excludes the “unskilled” migrant, despite the sustained demand for and use of this kind of labor. Developing countries are, in general, marginalized in the GATS, as the focus is the facilitation of the movement of “highly skilled professionals” and the needs of the multinational corporation. The migrant labor regime in the United States also marginalizes the “unskilled” migrant worker. Many migrant workers with temporary work visas labor in conditions that make them vulnerable to extreme exploitation, including trafficking and slavery. The Trafficking Victims Protection Reauthorization Act of 2008 admits the shortcomings of the visa programs for domestic workers. The marginalization of the migrant farm worker and domestic worker is further supported by a legal regime that codifies their exclusion from labor protections and legal recourse. When the migrant labor regime in the United States is carefully examined, it is no mystery why the “unskilled” migrant worker is at risk for human trafficking and slavery.

Border controls in the United States also contribute to the risk of trafficking. There are many reasons why people attempt to cross the border. Some are trying to reconnect with family members, some are responding to the promise of good jobs. There is indeed a pull of jobs, and some employers have an incentive to hire undocumented workers. The lack of legal access to these jobs, and documented status generally, creates the need for clandestine migration. With increased border security, this usually requires the services of a coyote or an underground network of people for successful migration.

These services are expensive and most often require some kind of loan or an arrangement of repayment serviced through labor. The emigrant risks debt bondage, contract slavery, and forced labor in order to satisfy the conditions of this arrangement. The lack of regular migration options and legal access to jobs create opportunities for unscrupulous persons to traffic and enslave those who are made vulnerable by this immigration and labor regime.

We have failed to see the background conditions of this phenomenon, conditions that lead to its continual reproduction. Social, political, and economic structures contribute to the problem of trafficking and slavery. Achieving a significant decrease in the prevalence of this problem will require attention to these structures and changes in how these systems function. And we need an anti-trafficking framework that recognizes this. The current framework primarily utilizes the liability model of responsibility, which assigns blame and responsibility to direct perpetrators. The current framework gives attention to the important matter of public awareness, but it is within the context of trafficking as a *crime* that occurs in our backyards, and how ordinary citizens can help by being aware of the “warning signs” of trafficking so that victims can be rescued. The issue of inequality is highlighted, but the context of discussion is limited to how we can help poor populations by offering skills training, microloans, and educational opportunities. These are important concerns, but they primarily direct attention towards certain individual actors (the poor), as if they stand outside social, political, and economic structures that contribute to their life experience. An anti-trafficking framework that utilizes Young’s social connection model would shine a light not only on direct

perpetrators, but also law, policies, and norms impacting immigration and migrant labor—effectively highlighting the background conditions that give structural support to the crime of trafficking and slavery. Without a focus on these more fundamental structural issues, a significant decrease in the number of persons trafficked and enslaved will, I argue, not be likely, as the problem will be reproduced given the same support mechanisms.

The social connection model of responsibility for justice asserts that when injustice has causes rooted in social-structural processes the injustice is structural, and all those who participate in the production and reproduction of these structures have responsibilities to remedy the injustice. Social, political, and economic structures are the result of the cooperation and interaction of individuals, institutions, and processes. This cooperation and these interactions produce benefits and burdens and gives rise to conflict and an inevitable distribution. This process has moral implications. Specifically, the role of government institutions in distributing the benefits and burdens (or costs) of these social connections implies significant moral obligations, as this often affects the lives of people—how well their lives go, what obstacles or rewards they may experience. I have argued that trafficking and slavery are symptoms of larger systemic and structural problems and are indeed the result of immigration and labor regimes that marginalize the “unskilled” migrant.

Attention to structural change would need to include, at least, changes to the current migrant labor regime in the United States (absent more expansive citizenship rights)—more protections built into temporary visa systems, effective systems of

monitoring and enforcement, access to legal remedies for all workers no matter one's status, and practical application of global human rights norms. This attention to structural change would also include a reexamination of the role of border security in encouraging clandestine migration and thus its role in increasing the risk of trafficking and enslavement of those who attempt to cross the border without documentation. This would in turn require addressing the extent of undocumented labor in the United States and an acknowledgment that the demand for "unskilled" migrant labor is not being met by the supply through legal paths to employment. Structural change would also require revisions to the current (and very limited) global labor migration regime—adjustments to the GATS or a new framework altogether. Such a regime must include more practically developing countries, including the least developed countries (LDCs), and "unskilled" migrant labor. That is, it is not enough that the GATS declare that these countries be included, the practical effects of the GATS must also demonstrate this inclusion by facilitating their needs alongside the needs of richer and more developed countries.

An anti-trafficking framework must call attention to these background conditions. This basic structure, including labor and immigration regulatory frameworks, fails to effectively facilitate safe regular migration and legal paths to employment for many people. This basic structure in fact facilitates the social, political, and economic marginalization of the "unskilled" migrant worker, increasing their risk for extreme exploitation. In this case, the distribution of the benefits and burdens of social cooperation and interaction has resulted in very heavy burdens for only certain segments of society. If indeed some harms come to people as a result of structural injustice, as I

have attempted to demonstrate in the case of human trafficking and slavery, our efforts to address these social problems must account for this. Certainly it might be difficult to attend to these structural deficiencies, but the efficacy of prevention efforts will likely be aided if we include keen attention to these social-structural processes that contribute to the problem of human trafficking and slavery. Indeed our responsibility for justice demands it.

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APPENDIX

Recent Agricultural Slavery Case Law*

U.S. vs. Flores -- In 1997, Miguel Flores and Sebastian Gomez were sentenced to 15 years each in federal prison on slavery, extortion, and firearms charges, amongst others. Flores and Gomez had a workforce of over 400 men and women in Florida and South Carolina, harvesting vegetables and citrus. The workers, mostly indigenous Mexicans and Guatemalans, were forced to work 10-12 hour days, 6 days per week, for as little as \$20 per week, under the watch of armed guards. Those who attempted escape were assaulted, pistol-whipped, and even shot. The case was brought to federal authorities after five years of investigation by escaped workers and CIW members.

U.S. vs. Cuello -- In 1999, Abel Cuello was sentenced to 33 months in federal prison on slavery charges. He had held more than 30 tomato pickers in two trailers in the isolated swampland west of Immokalee, keeping them under constant watch. Three workers escaped the camp, only to have their boss track them down a few weeks later. The employer ran one of them down with his car, stating that he owned them. The workers sought help from the CIW and the police, and the CIW worked with the DOJ on the ensuing investigation. Cuello worked for Manley Farms North Inc., a major Bonita Springs tomato supplier. Once out of prison, Cuello supplied labor to Ag-Mart Farms, a tomato company operating in Florida and North Carolina.

U.S. vs. Tecum -- In 2001, Jose Tecum was sentenced to 9 years in federal prison on slavery and kidnapping charges. He forced a young woman to work against her will both in the tomato fields around Immokalee, and in his home. The CIW assisted the DOJ with the prosecution, including victim and witness assistance.

U.S. vs. Lee -- In 2001, Michael Lee was sentenced to 4 years in federal prison and 3 years supervised release on a slavery conspiracy charge. He pled guilty to using crack cocaine, threats, and violence to enslave his workers. Lee held his workers in forced labor, recruiting homeless U.S. citizens for his operation, creating a "company store" debt through loans for rent, food, cigarettes, and cocaine. He abducted and beat one of his workers to prevent him from leaving his employ. Lee harvested for orange growers in the Fort Pierce, FL area.

U.S. vs. Ramos -- In 2004, Ramiro and Juan Ramos were sentenced to 15 years each in federal prison on slavery and firearms charges, and the forfeiture of over \$3 million in assets. The men, who had a workforce of over 700 farmworkers in the citrus groves of Florida, as well as the fields of North Carolina, threatened workers with death if they were to try to leave, and pistol-whipped and assaulted -- at gunpoint -- passenger van service drivers who gave rides to farmworkers leaving the area. The case was brought to trial by the DOJ after two years of investigation by the CIW. The Ramoses harvested for Consolidated Citrus and Lykes Brothers, among others.

U.S. vs. Ronald Evans -- In 2007, Florida employer Ron Evans was sentenced to 30 years in federal prison on drug conspiracy, financial re-structuring, and witness tampering charges, among others. Jequita Evans was also sentenced to 20 years, and Ron Evans Jr. to 10 years. Operating in Florida and North Carolina, Ron Evans recruited homeless U.S. citizens from shelters across the Southeast, including New Orleans, Tampa, and Miami, with promises of good jobs and housing. At Palatka, FL and Newton Grove, NC area labor camps, the Evans' deducted rent, food, crack cocaine and alcohol from workers' pay, holding them "perpetually indebted" in what the DOJ called "a form of servitude morally and legally reprehensible." The Palatka labor camp was surrounded by a chain link fence topped with barbed wire, with a No Trespassing sign. The CIW and a Miami-based homeless outreach organization (Touching Miami with Love) began the investigation and reported the case to federal authorities in 2003. In Florida, Ron Evans worked for grower Frank Johns. Johns was 2004 Chairman of the Florida Fruit and Vegetable Association, the powerful lobbying arm of the Florida agricultural industry. As of 2007, he remained the Chairman of the FFVA's Budget and Finance Committee.

U.S. vs. Navarrete -- In December 2008, employers Cesar and Geovanni Navarrete were sentenced to 12 years each in federal prison on charges of conspiracy, holding workers in involuntary servitude, and peonage. They had employed dozens of tomato pickers in Florida and South Carolina. As stated in the DOJ press release on their sentencing, "[the employers] pleaded guilty to beating, threatening, restraining, and locking workers in trucks to force them to work as agricultural laborers... [They] were accused of paying the workers minimal wages and driving the workers into debt, while simultaneously threatening physical harm if the workers left their employment before their debts had been repaid to the Navarrete family." Workers first reported the abuse to Collier County police, and additional workers sought help from the CIW. The CIW collaborated with the DOJ and the police on the year-long investigation and prosecution.

U.S. vs. Bontemps -- In July 2010, Cabioch Bontemps, Carline Ceneus, and Willy Edouard were indicted by a federal grand jury on charges of conspiracy to commit forced labor. DOJ officials accuse the three of holding over 50 guestworkers from Haiti against their will in the beanfields of Alachua County, Florida. The indictment states that Bontemps raped one of the workers in his employ and threatened her if she were to report it. The employers held the workers' passports and visas, and forced them to work in fields recently sprayed with harsh pesticides, causing permanent scarring. The grower, Steven Davis, asked the judge during the court hearing to release Bontemps since he was key to the harvesting operation. "All these people [the workers] look up to him," Davis said. "All these people respect him. All these people worship him." As of September 2010, the prosecution is ongoing. The CIW trained local law enforcement and church groups shortly before the workers were rescued, and assisted in referring the case to the DOJ.

U.S. vs. Global Horizons -- In September 2010, staff of guestworker recruiting giant Global Horizons were charged with operating a forced labor ring active in 13 states, including Florida. Global Horizons President Mordechai Orian and six others are accused of holding hundreds of guestworkers from Thailand against their will, in what

prosecutors call “the largest human trafficking case in U.S. history.” FBI Special Agent Tom Simon described the latest case as "a classic bait-and-switch what they were doing. They were telling the Thai workers one thing to lure them here. Then when they got here, their passports were taken away and they were held in forced servitude working in these farms." The prosecution is ongoing, with more details to emerge about the various states workers lived in and what crops they picked.

*Taken from the Coalition of Immokalee Workers website:

<http://ciw-online.org/slavery.html>