# I K Thiemann

# Human Trafficking as a Migration Crisis – Gender, Precariousness and access to labour rights

## Abstract

Human Trafficking is considered one of the key humanitarian crises of our time. Public opinion and policymakers alike call for meaningful responses to human trafficking and modern slavery. Counter-trafficking legislation and policy often portrays human trafficking and modern slavery as criminal law problems, which can be remedied through tougher border controls.

This chapter argues that human trafficking cannot be solved through border-focussed anti-immigration measures, but needs to be approached as a gendered migration problem, which requires greater protections for vulnerable workers, particularly for female workers in private households and in the sex industry.

Therefore this chapter discusses root causes of human trafficking and migrants’ exploitability in gendered immigration and emigration policies, as well as in insufficient labour protections for vulnerable workers. In doing so, it also challenges the role of states in creating migrants’ precarious statuses through insufficient safe migration routes and labour protections in destination countries.

Keywords: human trafficking; labour; migration; exploitation; precariousness; gender.

## Introduction

This chapter approaches human trafficking as a phenomenon in gendered migration. Whereas human trafficking is nearly always described as a contemporary crisis, it is hardly ever perceived as a crisis of gendered migration, let alone a crisis caused by migrants’ exclusions from rights.

In the following, I will firstly identify root causes of human trafficking in gendered approaches to migration. Not only has a male norm of ‘migrant’ influenced the way migration is perceived and regulated, but gender norms also influence, sometimes purposefully, sometimes only consequentially, nationalist sentiments and policies to prevent women from traveling.

The second part of this chapter then illustrates the interplay of migration policies, on the one hand, and migrants’ perceived and actual access to labour rights, on the other. It links precarious and feminised labour and demonstrates how trafficked persons constitute the ultimate exploitable workers. By viewing immigrant status as a legal category, which fosters precarious working conditions, I demonstrate that the combination of insufficient labour protections and increased vulnerability can culminate in human trafficking as one of the most severe forms of exploitation.

## Gendered Assumptions about Migration

Migration theory has always assumed migration to be a male-dominated process (Boyd 1986, Boucher 2009, Bludau and Ezzeddine 2013). Women traditionally are seen as migrating only as spouses or children of migrating men. However, since the early 1980s, more women have been migrating independently in search of jobs, rather than travelling with their husbands or joining them abroad (Zhyvytsya and Keil 2012). According to data from the United Nations Population Division between 1965 and 1990 the number of female migrants grew faster than the number of male migrants in most receiving countries. It is assumed that at least half of all international migrants today are women (Zhyvytsya and Keil 2012). The International Labour Organisation (from here on ILO) even argues that, if the numbers of official and unofficial flows of migrants are added, the proportion of women migrants is likely to be much higher than that of men (Chammartin 2002). The increase in female migration is due to a combination of factors, including the feminisation of the labour market, a greater demand for women’s labour, particularly their care work, domestic work and sex work, as well as changing views on women’s mobility (Dhar 2012). However, this increase in female migration is insufficiently reflected in discourse about migration. Human Trafficking in particular is seen as a separate phenomenon, rather than as part of broader migratory patterns.

The lack of focus on women’s participation in the migratory process is connected to assumptions about labour. An emphasis on the human capital model values productive labour conducted by men outside the house and neglects the importance of women’s reproductive labour at home and in private households in terms of economic activity and labour force participation (Dhar 2012). Women are estimated to spend around 70 per cent of their unpaid time caring for family members.Due to its classification as unpaid, reproductive work, this contribution to the global economy remains largely unrecognised (Zhyvytsya and Keil 2012), as does women’s paid work in the informal sector and private households. In additionto ignoring reproductive labour, the focus on productive labour in migration research neglects the impact of family life, gender norms in countries of origin and destination, and the interdependence of productive and reproductive spheres on the migratory process (Meares 2010).

There is a need to understand the unique challenges of female migration such as the poor working conditions in the female-dominated fields of domestic work and caregiving jobs (Anderson 2000, Mantouvalou 2012), the changing role of women in the family and in their community due to migration, and the vulnerability and exposure of migrant women to different kinds of risks, including trafficking (Zhyvytsya and Keil 2012, Kawar 2004).

## The Discriminatory Effects of Gendered Migration Policies

Migration policy based on a male norm also reinforces gender norms and contributes to some of the risks of female migration by creating female dependency and denying official access to women-dominated fields of work (True 2012, Chuang 2006). In combination with a migration theory that is gender-neutral on the surface, but founded on the concept of a male (migrant) worker, gendered institutions in receiving countries, which are also based on a male norm, further affect migrant women’s wellbeing. The assumption of an independent male migrant and a dependent female migrant increases women’s vulnerability. The idea of the male breadwinner means that women’s legal status in a country is often tied to the status of their spouse, which creates a situation in which women are indeed dependent on their spouses and this dependency increases their vulnerability (Boyle and Halfacree 2002). For example, in many countries, if domestic violence occurs, women risk losing their residence rights if they decide to leave their spouses, or are forced to stay with the abuser (True 2012, 60).

### Discrimination in Immigration Policy

Migration policies of Western countries are not normally openly gender-biased. However, legal, official recruitment efforts are frequently indirectly aimed at male workers through minimum income, education or work experience requirements (Boucher 2009, Schwenken 2009, Augustín 2007). Additionally, some countries have imposed restrictions on admissions of migrants for feminised occupations and the demand for domestic, care and sex workers does not translate into legal immigration routes for these occupations (Murphy 2015, León 2010, van Hooren 2010). Therefore women’s opportunities for legal migration are limited to the extent to which they are able to meet the male norms both in the ability to move and in the work they are able to do. These limits mean that women’s migration is more limited than men’s in most countries (Chammartin 2002). Partly due to these male-focussed migration policies, much of the feminization of migration will go undocumented. Furthermore, female migrants will struggle even more than their male counterparts to receive decent remuneration for their work, acceptable working conditions or labour protection as a whole (Chammartin 2002).

When women are able to migrate legally, they often take up positions at the lowest end of the economy, jobs that male migrants and female nationals refuse to do, such as work in the domestic and sex industries (Anderson 2000, Truong 1996). Therefore, even when they migrate through legal channels, women end up working in sectors in which they can easily become subject to discrimination and arbitrary employment terms, as well as abuses, exploitation and human trafficking (Zhyvytsya and Keil 2012, Anderson 2012).

Gender also affects the industries both nationals and migrants end up working in. Men still form the majority of workers in the information technology and scientific sectors, while women more often work in welfare and care professions, including the education and health sectors, which are closer to traditional ‘women’s work’ (Morris 2009, True 2012). Since policy in receiving countries assumes a male migrant, these female-dominated sectors are only rarely open to official migration. Additionally, they tend to be marked by low wages, by absence of social services and by poor working conditions (Mantouvalou 2012, Lutz 2012).

Since women have a lesser chance of migrating legally, they are more vulnerable to discrimination, abuse and violence than male migrants are in the migration process (Chammartin 2002). The policies of some receiving countries include bans and restrictions on female migration in order to ‘prevent’ women from falling into the hands of traffickers and smugglers (Adams 2003, Doezema 2010, Andrijasevic and Anderson 2009). Contrary to its intention, restrictive regulation often drives the migratory process further underground and forces women migrants into even more vulnerable positions, since it increases their need for assistance to migrate clandestinely (Chammartin 2002). For women, this trend of migration regulation and tightened border controls causes increased vulnerability to exploitation and abuse, and continuing inequality with men (Zhyvytsya and Keil 2012).

Women migrants are already at a higher risk of exploitation *during* their migrant journey, due to being both a woman and a migrant. This risk is aggravated by policies limiting the forms of migration available to women, meaning their migratory journeys often include flight, trafficking and undocumented migration. While protecting women is at the forefront of the debate, especially with regard to trafficking (Adams 2003,Chapkins 2003), policy responses still adhere to male categories and the trafficking debate has failed to translate into a migration policy that takes the specific needs and rights of women into consideration and offers women-specific migration routes. This makes them more likely to utilise the services of smugglers and other intermediaries, and ultimately renders them more vulnerable to traffickers (Zhyvytsya and Keil 2012, Andrijasevic 2009, Costello 2015).

Equally, once they have arrived in a receiving country, women’s immigration status often does not allow them to work legally. They are therefore forced to work in the informal sectors of the economy, where there is less regulation and protection. At the same time they are not considered active participants in the labour market by the state (Morris 2009). Such continuous exclusion then also leads to women being unable to claim residency or citizenship, as their ‘informal’ labour in the underground economy does not qualify them for residency in most countries (Calavita 2006).

Some of these informal, feminised jobs, particularly domestic and sex work, make female migrants more vulnerable to exploitation than male migrants. The lack of regulations and labour controls regarding work in private houses and in the sex industry (Thiemann 2016b, Mantouvalou 2012), coupled with the solitude of individualised work environments in these sectors, creates greater precariousness than the work environments of migrant men, who tend to work in groups on construction sites or on farms. This lack of scrutiny in the private sphere is a gender-specific issue affecting migrant women (Chammartin 2002, Piper 2003). Work in private households, e.g. as a care, domestic or sex worker, involves greater risks of being exploited and/or being treated badly due to the lack of laws and standards regulating it. Therefore, it often involves unregulated, long work hours with too few rest days, no monitoring of work-place conditions and a heightened risk of abuse by employers.

### Discrimination in Emigration Policy

Both in destination countries and in countries of origin, women’s migration is often viewed more critically and is perceived as less ‘normal’ than men’s. Countries of origin have concerns about the migration of ‘their’ women. Particularly when countries experience a so-called ‘brain-drain’ (Docquier and Rapoport, 2011), a case of the most highly educated and skilled young people leaving a country to work elsewhere, this may correlate with fears of also losing the young women most able to raise the nation (Docquier et al 2009). In some countries male emigration is completely unregulated, but female migration is restricted or even banned (Oishi 2002).

Restrictive emigration policies of developing countries are not just the simple products of economic concerns. Instead, Nana Oishi’s case studies show that both policy on and public perception of female migration is different from male migration and limits female migration (Oishi 2002). Whereas economic concerns form the main reason for policies on male migration, emigration policies for women are ‘value-driven.’ Women’s migration is more emotionally laden for the state than men’s migration, because women are not considered a value-neutral workforce. Women are considered the nurturers of the nation, as well as the symbols of national dignity and pride. Due to this, the number of female emigrants is low in countries in which independent female migration carries social prejudice, despite economic hardship. This indicates social stigma of women’s migration that is strong enough to effectively discourage a significant number of women from leaving the country, despite the economic effects of such a decision (Oishi 2002).

The phenomenon of human trafficking has exacerbated the problem insofar as the governments of some countries of origin have taken steps to curb or outright prevent women’s migration in order to ‘protect’ women from abuse and exploitation (Kapur and Sanghera 2000, Kapur 2002, Lepp 2002). Annalee Lepp explains this phenomenon with the example of Thailand:

On the one hand, the Ministry of Labour and Social Welfare tends to encourage Thai people, especially men, to seek employment abroad through various program and government-endorsed employment agencies, it promotes and facilitates “safe” and legal labour migration, because the remittances sent from workers abroad contribute to boosting the economy, especially in terms of earning foreign currency. At the same time, other government agencies, such as the Department of Public Welfare, tend to discourage female migration, by providing information about potential abuses and warning women about the difficulties they may encounter abroad. (Lepp 2002, 94)

Some counter-trafficking organisations, such as the Global Alliance Against Trafficking in Women (GAATW) condemn such policies, as they operate on the assumption that trafficking will be reduced if the flow of female migration is reduced. This occurs without taking into account the root causes of migration, such as a need to provide for their families and the absence of employment in the country of origin (Lepp 2002).

Such restrictive approaches echo historical ‘protective’ policies, in which women were excluded from night work as a protective measure to prevent them from being attacked or sexually assaulted (Wikander et al 1995). There is significant feminist scholarship criticising ‘protective’ approaches to prevent women’s vulnerability in the public sphere (Wikander et al 1995, Nakanishi 1983, Baer 1978, Miller 2004). Protective measures essentially result in excluding women from that sphere. In this, they fail to provide any real protection for women and fail to create the public sphere as a space that is safe for all members of society. Instead, such measures perpetuate the idea that for women only the home (the literal home, but also the home community, or, in this case the home country) is a safe space, rendering women’s attempts to operate in the public sphere as risky and ultimately shift the blame for violence against women onto the victims of such violence (Price 2002, Andrijasevic 2003, Goldsack 1999, Chapman and Hockey 1999).

## Labour Migration, Human Smuggling or Human Trafficking?

While women experience particular exclusion due to their gender, all migrant workers share vulnerabilities created through their immigration status. Equally, other groups of workers, who are not restricted to certain sectors or employers, such as working holidaymakers and students, may instead be limited to part time or temporary work (Anderson 2000). Again, this creates an imbalance between employers and employees, as both part-time and short-term work come with fewer labour protections than full-time work in the standard employment contract.

Irregular migrants are likely to stay with their employer due to fears of deportation and lack of other options (Andrijasevic and Anderson 2009), making them even more vulnerable to exploitation than regular migrants. Instead of rendering migrant labour undesirable, immigration law’s restrictions on the sector, the length, the number of hours and for whom migrant labourers can work actively contribute to creating precarious labour conditions for workers (Fudge 2012).

This leads us to one of the definitional problems in migration – when does migration turn into irregular migration, where are the lines between irregular migration and human smuggling and how do smuggling and human trafficking differ? There are definitions of human trafficking in the 2000 UN Trafficking Protocol and of human smuggling in its sister protocol, the 2000 UN Smuggling Protocol. However, these definitions are vague and in reality the experiences of trafficked and smuggled persons cannot easily be distinguished. Smuggled persons can become trafficked persons and the early stages of a person being trafficked may look like smuggling (Thiemann 2016a, O’Connell Davidson 2010, van Liempt 2007, Gallagher 2008). Equally, common concepts of legal or illegal migration are challenged through people who enter a country legally, overstay their visa or lose their status by violating their visa regulations (Anderson 2013). Governments’ policies that aim to deter both illegal migration and human trafficking through means of stricter border controls might thus be ineffective in curbing migratory flows. Instead, they might increase the vulnerabilities of irregular migrants in general and trafficked persons in particular. By nonetheless describing human trafficking as a phenomenon that is separate from other forms of migration, and one that predominantly affects women, an artificial barrier is created.

### Links Between Trafficking and ‘Normal’ Migration

In fact, there are continuities between someone holding regular migrant status and a person with the most precarious form of irregular migrant status, a trafficked person. Immigration and labour policies contribute to creating the specific vulnerabilities amongst migrants, which then lead to an exploitability in precarious labour and human trafficking.

Already the lines between migration, smuggling of humans and human trafficking are blurry. Trafficking is often presented as being different from other kinds of migration or not a migratory process at all (Derks et al 2006). Trafficked persons, unlike migrants, are assumed to have been coerced into crossing borders. As a result, trafficked persons receive greater sympathy and official concern than those who are considered illegal immigrants (Pérez 2012, Basok and Piper 2012). However, it also means that the solution to trafficking becomes the removal or arrest of traffickers and repatriation of trafficked persons (Sharma 2005). Thus, the result is largely the same as for irregular migration, but it is presented as helping a victim, rather than expelling an irregular migrant. Idealising victimhood, particularly female victimhood, in this context, creates a further loss of rights, as I will discuss in the next section.

Furthermore, framing the problem as voluntary vs. involuntary migration shifts attention away from immigration laws in Western host countries and ignores the close links between migration and trafficking which have been demonstrated in studies based on primary interviews (Rao and Presenti 2012). If, for example, human smuggling is considered to be only ‘*largely* voluntary’, human smuggling and human trafficking have to be viewed on a scale such that the difference between the two might be in the different levels of abuse experienced by trafficked persons and smuggled persons rather than viewing the two as separate phenomena with different responses (Rao and Presenti 2012).This distinction might be difficult to make, both legally and practically.

Equally, other kinds of irregular and even legal migration can and often do involve violence, confinement, coercion, deception and exploitation (Derks et al 2006, Andrijasevic 2010, Anderson and O’Connell Davidson 2002). As we have seen, employers actively seek migrant workers because they are exploitable. In this context, creating a distinction between trafficking and exploited migrant labour then means defining what constitutes acceptable and unacceptable levels of exploitation (Anderson and Andrijasevic 2008). This distinction is both difficult to make and morally questionable, as it creates hierarchies of suffering which ‘may reflect more the preconceptions and feelings of those who devise them than those who experience them’ (Andrijsevic and Anderson 2009, 154).

In addition to exploitation of trafficked persons and other migrants being on a scale, there are additional features that make trafficking appear similar to migration rather than being a distinct category. For example, a study conducted by Smriti Rao and Christina Presenti found a significantly higher likelihood of a state having high numbers of persons trafficked out of the country if said state is a transition economy, in which women have already achieved some level of economic mobility and independence (Rao and Presenti 2012). Equally, Rutvica Andrijasevic found in interviews conducted with trafficked women that their accounts of why and how they migrated did not differ significantly from other female migrants, mostly quoting dire economic conditions, problems at home and desire for independence (Andrijasevic 2010, 56).

Immigration controls and stronger border protections are more likely to keep out women trying to migrate into the sex industry (as well as domestic work), which makes them more likely to engage third parties in the migration process, further amplifying their vulnerability. Depending on their involvement and on their willingness to exploit others, these third parties could in retrospect turn out to be agents, smugglers or traffickers. Additionally, long travelling distances to consulates and embassies, and the difficulties of obtaining visas through regular channels also often leads to women (and men) requesting services from a third party, regardless of whether or not they qualify for an official visa and regardless of the third party charging more than official consulate’s visa rates (Andrijasevic 2010 38-40).

Thus, visa regulations and border controls that attempt to channel migration into legally sanctioned schemes often increase the likelihood of third party involvement in facilitating travel and employment and consequently increase migrants’ vulnerability to abuse and exploitation (Andrijasevic 2010, 45). Rutvica Andrijasevic reports from her interviews the recurring case of female migrants incurring debt and becoming dependent on third parties due to their status as undocumented migrants. In addition to being vulnerable to abuse by third parties exploiting their labour, undocumented status also exposes migrants to potential ill- treatment by border police (Andrijasevic 2010, 44).

Stricter immigration controls often unintentionally serve the economic interests of third parties. Paying third parties for irregular migration, as well as being apprehended by border police en route and the journey being prolonged, increases the migrants’ debt to the third party and increases third parties’ levels of control over migrants.Andrijasevic goes as far as to say that in an EU context ‘immigration regulations that aim at suppressing ‘trafficking’ and hampering the illegal movements of people work in favour of third parties as these become an alternative to the formally sanctioned EU migratory channels’ (Andrijasevic 2010, 45).

Trafficked persons, like other undocumented migrants, choose not to seek help from the police due to fears of deportation. Some trafficked women report that they would only go to the police once all attempts to get hold of their passports failed, as it would mean accepting the risk of getting deported(Andrijasevic 2010, 75). This further demonstrates that immigration status plays a key factor in creating vulnerability and exploitation, one which trafficking narratives aim to erase, but counter-trafficking policies reinforce.

## The Problem with Current Counter-Trafficking Approaches

Counter-trafficking policies often affect immigration policy in ways that result in more tightly controlled borders and more restrictive visa regulations as well as more extensive police investigations and raids, claiming that they will control or at least deter trafficking by reducing the involvement of organised crime in migratory processes (Lepp, 2002, Kinney 2015, Chacon 2005). Evidence, however, points towards the opposite. Stronger borders force migration further underground, increase the potential violence and abuse to which women are subjected, and make facilitating cross-border movement, forced labour and exploitative practices more profitable (Anderson and Andrijasevic 2008, Lepp 2002). Equally, rescue missions in red light districts often lead to a criminalisation of migrant sex workers who are unwilling to be ‘rescued’ as victims of trafficking, but may nonetheless find themselves in exploitative working conditions.

Instead of focussing on the exclusions that lead to exploitation and human trafficking, human trafficking is normally treated as an exceptional crime, which requires criminal law solutions, with victims who require ‘rescue’ and temporary paternalistic protections. Thus, traffickers’ explicit exploitation - of the vulnerabilities and implicit exclusions of trafficked persons from the political community - is maintained in trafficked persons continued status as non-right holders as ‘rescued’ victims of trafficking.

### The Criminal Law Approach and Idealised Victimhood

Today human trafficking is predominantly conceptualised within a criminal law framework at international level and in most domestic legislation. The UN Trafficking Protocol, the key international agreement on human trafficking, is part of the UN Convention Against Transnational Organised Crime, establishing the focus of counter- human trafficking action as both cross-border/transnational and crime-focussed. In this, the UN Trafficking protocol takes the so-called ‘3P’-approach, focussing on a combination of prosecution, prevention and victim-protection. Both on international and domestic levels, the focus within this approach is on the criminalisation of human trafficking and the prosecution of its perpetrators.

The criminal law approach then sets trafficking up as a binary criminal act with two polar opposites, the trafficker as the perpetrator and the trafficked person as the victim. By defining trafficking as a phenomenon that only concerns criminals in their active role as traffickers and trafficked persons as their passive victims, trafficking is placed outside of any larger societal context and trafficked persons are defined as mere props to the traffickers’ crimes. Additionally, this binary approach obscures state contributions to conditions, which foster trafficking (Anderson and Andrijasevic 2008), such as exclusionary immigration regimes and lack of labour controls (Costello 2015, Costello and Freedland 2014, Fudge 2012). This approach is problematic, as it ignores governments’ involvements through the complex interplay of economic inequalities between countries of origin and destination countries, as well as the role of destination countries’ immigration controls and labour regulations in creating the conditions, which render people vulnerable to human trafficking (Andrijasevic and Anderson 2009).

The UN Protocol’s definition of trafficking is founded on a narrow historic concept of human trafficking as ‘sexual slavery in migrant prostitution’ (Thiemann 2016a, Doezema 2009). However, its definition encompasses both human trafficking for sexual exploitation, and human trafficking for labour exploitation and services, as well as the exploitation of organ trading. Such a broad definition, built on such a narrow original victim category, makes it both too wide and too narrow, if trafficking is to be distinguished from other forms of exploitation, and from human smuggling.

The UN Trafficking Protocol also builds on a legacy of highly gendered counter-trafficking legislation. On the surface, the UN Trafficking Protocol defines trafficking in gender- neutral terms and seems to apply it to all persons equally. However, there are a number of instances in which it blatantly or indirectly continues narratives of idealised victimhood and is gendered in problematic ways.

The text mentions the category of ‘women and children’ on several occasions, switching from the wider construction of exploitation of all persons to a narrower category, which focuses on the vulnerability of women and children. The phrase ‘especially women and children’ in the Preamble, but also throughout the text of the Protocol, echoes older White Slavery and Trafficking treaties, and satisfies the concerns of lobbying groups, which wanted to particularly highlight the situation of women and children in order to maintain the connection between trafficking and prostitution (Ditmore and Wijers 2003).

By mentioning the vulnerability of women and children without acknowledging the structural factors, which create their vulnerability, the Protocol presents their vulnerability as inherent. Thus, while the inclusion of the term ‘especially women and children’ in the title and the definition of the Protocol seems to recognise the gendered history and trafficking, it perpetuates a view of trafficking that conflates trafficking and prostitution and casts all trafficked persons into one mould, that of innocent women and children. Such a categorisation makes it harder for ‘atypical’ victims to receive assistance. Instead, this focus on prostitution and vulnerable, idealised victims ignores the global economic dimension of human trafficking. It lets us view human trafficking as a migration crisis of an exceptional exploitation committed by criminal organizations against very few individuals, which it sets up as a binary of absolute victims and absolute perpetrators. This assumption ignores that exploitative labour situations are common, rather than exceptional, and that exploitative forms of labour, including human trafficking, play a role in maintaining the global economy (Raigrodski 2015).

Thus, whereas gender is omnipresent in the focus on women and children in the Protocol, it acts to idealise women as victims, rather than to address their gendered vulnerabilities and to empower them as agents in their own right. The approach of focussing on trafficked persons only as victims, not as persons with agency, including the focus on prostitution and on ‘women and children’ can be seen throughout the Protocol.

Similarly, the 2005 Council of Europe Convention on Action against Trafficking in Human beings, while shifting its focus away from traffickers as criminals and from intercepting trafficking at the border, still maintains a focus of feminised victimhood. In fact, while using more gender-neutral language than the UN Protocol, the explanatory report of the Convention makes special note of the historic ‘White Slave Traffic’ and – uncritically – sees human trafficking as a continuation of that legacy. Thus, it maintains the problematic notion of both conflating human trafficking and sex work and separating human trafficking from other migratory patterns.

In some passages, such as the following, the Convention seems to acknowledge the connection of women’s global disadvantages and gendered issues in migration more broadly, for example when it states that the ‘[…] development of communications and the economic imbalances in the world have made trafficking in women, mainly for sexual exploitation purposes, more international than ever. There was first the “white slave traffic”, then trafficking from South to North and now there is trafficking in human beings from the more disadvantaged regions to the more prosperous regions, whatever their geographical location (but in particular to western Europe).’ (Council of Europe Convention on Action Against Trafficking in Human Beings and its Explanatory Report 2005, 209).

Equally, the report further points out that ‘women, according to existing data, are the main target group of trafficking in human beings and to the fact that women, who are susceptible to being victims, are often marginalised even before becoming victims of trafficking and find themselves victims of poverty and unemployment more often than men. Therefore, measures to protect and promote the rights of women victims of trafficking must take into account this double marginalisation, as women and as victims […]’ (Council of Europe Convention on Action Against Trafficking in Human Beings and its Explanatory Report 2005, 210).

Whereas the acknowledgement of women’s different needs from men is positive, particularly in light of male-focussed international legal and policy norms, the way in which womanhood and victimhood are linked is nonetheless problematic. The wording ‘who are susceptible to being victims’ seems to imply that women are inherently more likely to be victims, reiterating the UN Trafficking Protocol’s problematic notion of ‘women and children’ as one passive, agency-free entity.

Just like the UN Trafficking Protocol, the Council of Europe explanation implies that being ‘susceptible’ to victimhood is intrinsically linked to womanhood, rather than created by existing societal exclusions women face due to the gendered effects of policy making and legislation on labour, migration and the regulation of reproductive work, and sex work in particular. As a consequence, while the Convention suggests a gender-sensitive response to dealing with women victims of trafficking, it nonetheless ignores gender as a factor which affects all labour and migration regulations and therefore creates women’s vulnerability. Thus, the Convention’s seemingly gender-aware response is too limited in its scope to be meaningful in its effects.

In political rhetoric in member states, human trafficking has been portrayed as one of the main methods through which people enter Western countries. The British Home Office Minister stated in March 2007 that ‘three quarters of illegal immigrants to Britain are trafficked’ (Andrijasevic and Anderson 2009, 153-154), giving an impression that the government wants to help all these victims of a terrible crime, while at the same time protecting Britain’s borders. Thus, for the general discourse in the media ‘Victim of Trafficking’ creates both fears of floods of irregular migrants, and pity for trafficked persons. This ambiguity helps to contribute to political claims for remedies for ‘real victims’ rather than for rights for all irregular migrants as human beings and for (irregular) migrant workers as workers.

The categorization of trafficked persons is difficult, and, as mentioned earlier, the differentiation between smuggled persons, exploited illegal migrants and victims of trafficking is almost impossible to make in practice (Andrijasevic and Anderson, 2009). Even when exploited migrants meet the official and implied criteria of a ‘real’ victim of trafficking, this does not necessarily afford them improved treatment. Those who meet the legal requirements of the victim of trafficking category can only access temporary and conditional protections, for example temporary leave to remain. Attempts to ‘rescue’ trafficked persons, particularly in feminised jobs such as in nail bars, massage parlors and brothels, usually includes first arresting and detaining suspected trafficked persons, and ultimately repatriating them. Thus, women migrant workers, particularly sex workers, are often the ones who bear the cost of a perception of human trafficking as a unique migration crisis. They are excluded from labour protections, while being not only at risk of exploitation, but also at risk of unwelcome ‘rescue’ and return to their country of origin.

Some argue that this is favourable to alternative outcomes, as it saves women from their captors. However, this approach ignores the fact that a large number of ‘victims of trafficking’ do not want to be rescued – and in fact do not perceive their situation as requiring this kind of interference. This line of argument also overlooks women’s socio-economic and family conditions, which caused them to migrate in the first place and often have not changed since, making trafficked women likely to re-migrate (Lepp, 2002). Through the continuous stress of the criminal- victim dichotomy, trafficking policy reiterates ideas of women as passive and naïve victims who need such ‘rescue’ from traffickers, even if ‘rescue’ means forcible return to their home country. Equally, women need ‘protection’ by the state, even though this may include the ‘protection’ of being kept out by Western countries or being forced to stay ‘at home’ by countries of origin.

Additionally, making so-called protections in destination countries dependent on either a persons’ worthiness as a victim (by fulfilling the narrow victim category) or their usefulness to the prosecution (by being a credible victim), makes help for trafficked persons conditional. This conditionality of services, together with the time limits imposed on both residency and access to services, leads to a normalization of victims of trafficking as recipients of charitable gifts. They are not perceived as right-holders whose rights have been violated, but instead as passive victims receiving generous care that they are not entitled to.

By casting trafficked women in particular as helpless, agency-free victims, who are forced into prostitution and unable to escape, they are rendered simulatenously powerless and innocent. By implying that these women never had a choice and never wanted to be in the destination country, they are also absolved from crossing state borders by migrating (supposedly against their will) and from engaging in prostitution (again, against their will).

By creating this narrative, trafficked women are set them apart from (other) exploited migrants (O’Connell Davidson, 2010).

In creating this victim of trafficking narrative of absolute helplessness, governments can be seen as saving innocent victims, while at the same time to be maintaining exclusion and restrictions in immigration regimes and silencing criticism of restrictive immigration policies. Thus, the trafficking narrative keeps in place the structures that create human trafficking, while ‘rescuing’ those who are able and willing to present themselves as absolute victims. Furthermore, such an approach ignores the underlying structures in labour and migration created by government policy and legislation, as well as the effect of social structures and prejudice, and the harmful exclusions and stigmatisation faced by (migrant) sex workers in particular.

As a result, criminal law based anti-trafficking initiatives are based on ‘regulating women's sexuality, curtailing migration processes and protecting the State by responding to a popular idea of trafficking as transnational organised crime. […] These interventions [are] not only futile in terms of eradicating and preventing trafficking, but also ultimately harmful for women, and for both potential and actual victims of labour and sexual exploitation,’ (Dagistanli and Milivojevic 2013) as they perpetuate gendered concepts of victimhood and exclude women from truly rights-based responses.

Thus, the victim category, which requires absolute and passive victims, maintains trafficked persons’ exclusion from labour rights and human rights at the hand of the traffickers and ignores the underlying exclusions they face as women, migrants and sex workers, which facilitated their initial alienation from those rights.

## Alternative Approaches

The victim protection measures in the criminal law approach are sometimes conflated with a so-called human rights approach. Critical voices have long stated that this approach has failed to take into account root causes, both in supply and in demand, of human trafficking.

Instead, a labour rights approach could address ‘structural labor market conditions and practices that shape workers’ vulnerability and inferior bargaining power in the workplace’ (Shamir, 2012). In order to do so one has to understand human trafficking as existing at one end of a spectrum of exploitation, not as a separate labour or migration crisis. Additionally, trafficking has to be seen as a feature of a neo-liberal capitalist market, which has created a demand for cheap labour, de-regulation of working practices and malleable precarious workers. In this context, employers and traffickers benefit from under-regulated working conditions, which make exploitation likely for workers, particularly for those rendered vulnerable by their immigration or minority status.

Whereas this critique is crucially important, in order to address the situation of trafficked persons, particularly in the sex industry, such an approach also needs to engage with women’s gendered exclusions from workers rights on the basis of the binary notion of ‘productive vs. reproductive labour’. In this, sex workers’ exclusions from people’s notions of what constitutes work, is particularly pervasive. Alternative approaches to human trafficking thus not only need to link human trafficking with exploitative work conditions more broadly, but need to particularly embrace women’s work in non-standard occupations, including sex work, as labour. Furthermore, such policies need to re-imagine trafficked persons, including those in the sex industry, as workers with both rights and agency.

## Concluding Remarks

Focussing on trafficking as a category distinct from other forms of irregular migration shifts the focus away from a larger picture of underlying vulnerabilities. Equally, casting women migrants’ vulnerability in the trafficking context as inherent ignores the contribution policy and legislation make to the creation of gendered vulnerability in the migration process. Whereas some countries favour family migration, routes for skilled, regular migration often exclude women, as there is a perceived higher demand for migrants in male-dominated professions (Kofman 2014, Briddick 2015). Women are thus more likely to enter precarious working conditions in the informal sector, particularly in domestic work and prostitution, since additional stereotypes attributed to women are those of providing care at home and of providing sexual gratification (Chammartín 2002). Ignoring such gendered differences in migration and labour policies and instead focusing on human trafficking approaches the phenomenon from the wrong angle. It restricts the dimension of harm that is experienced by trafficked women to that perpetrated by traffickers and – in the context of sex work – by pimps.

Whereas traffickers, pimps and employers exploit migrants’ vulnerabilities, they do not create them. Not only exclusionary immigration and emigration policies, but also government- sanctioned restrictions of vulnerable migrants’ access to social rights, such as a possibility to sue for wages not received, create the basis for exploitability. In the case of human trafficking for sexual exploitation, this exploitability is exacerbated as the gains from prostitution are not considered to be wages at all, as prostitution is not considered work in most countries’ legislation. Equally, sex workers experience fear of criminalisation in their profession in addition to their immigration status. By directing the attention to the individual culpability of traffickers and by casting trafficked persons as passive victims, states can obscure their own role in creating the vulnerable status of trafficked persons. This leads to a perception of human trafficking as a crime with clear victims and perpetrators, a migration crisis in which states play the role of rescuers, rather than contributors to the phenomenon.

Instead, an approach focussed on gendered exclusions in access to labour rights would enable us to see trafficked persons as on a continuum of vulnerability. Citizen-employees, regular migrant workers, irregular migrant workers, smuggled or trafficked workers all experience vulnerabilities, with added layers of vulnerability for those who belong to gendered, religious or ethnic minorities. A response to the crises of workers’ rights, with particular focus on gender and migration status, could alleviate some of the root causes of human trafficking. Treating trafficked persons as a unique category just isolates them.

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