

HUMAN TRAFFICKING ROUNDTABLE REPORT

A Summary from the Duke Human Rights Center at the
Kenan Institute for Ethics at Duke University

October 20, 2014

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We are an interdisciplinary “think and do” tank committed to promoting moral reflection and commitment, conducting interdisciplinary research, and shaping policy and practice. At Duke we serve as a central node for analysis, debate, and engagement on ethical issues at and beyond the university. We currently feature work in five core areas: Human Rights, Global Migration, Rethinking Regulation, Moral Attitudes & Decision-Making, and Religions & Public Life.

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The Duke Human Rights Center at the Kenan Institute for Ethics explores contemporary international human rights challenges by promoting interdisciplinary collaborations and innovative pedagogy for faculty, students, and practitioners. It encourages critical investigations from a broad range of disciplinary traditions that engage undergraduate and graduate students on the ethical issues at play and that bridge the often separate spheres of research, advocacy and policy.

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INTRODUCTION

On the afternoon of October 20, 2014, the Human Rights Center at the Kenan Institute for Ethics hosted a roundtable on human trafficking. The roundtable included the Kenan Institute's annual visiting human rights fellow, Dr. Anne Gallagher, as well as faculty members from across Duke and other universities. Faculty came from a broad range of disciplines, including: anthropology, sociology, public policy, law, journalism and mass communication, science and society, political science, history, philosophy, social work, and American studies.

The primary goal of the roundtable was to facilitate an interdisciplinary conversation on human trafficking and to provide an opportunity for participants to share their work as well as to learn about ongoing research outside their academic fields. The roundtable conversation was structured by two sets of questions that were circulated to participants in advance. This report summarizes the main themes discussed during the workshop. The summary is not intended to be a document endorsed by consensus of the group nor to be taken as reflecting the positions of individual participants.

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*All participants attended in their personal capacity; statements in this paper should not be taken as necessarily representative of the individuals or organizations listed here.

BACKGROUND

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, was adopted by the General Assembly in 2000 and entered into force on December 25, 2003. It supplements the United Nations Convention against Transnational Organized Crime, which entered into force a few months earlier, on September 29, 2003. The Protocol presents the first international legal definition of “trafficking in persons” as “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.” The purpose of the Protocol and accompanying definition is to prevent human trafficking, assist victims, and foster cooperation among states. It has been used to inform national approaches to prosecution and enforcement and remains the leading document informing human trafficking policy. As of November 2014, 164 states have ratified the Protocol.

WORKSHOP SUMMARY

The roundtable proceeded in two parts, centered on questions circulated in advance of the workshop. The first part focused on questions related to definitions and frames: “What are the prevailing narratives, frames and definitions of trafficking, and how do they impact trafficking research and/or policies? How are such narratives and frames changing or becoming more entrenched?” Topics of discussion included the utility of the current international legal definition of human trafficking, the strengths and weaknesses of alternative frames, the process of identifying individuals as trafficking victims, and the role of the media in shaping public understandings of human trafficking.

The second part of the roundtable focused on questions relating to anti-trafficking intervention strategies: “How are intervention strategies changing, and how should we assess their ‘progress’ and efficacy, or lack of efficacy? How might current methods and approaches to assessment be improved?” Discussions focused primarily on the role of law and community mobilization and the influence of changing technologies, data and information sharing.

QUESTION 1: FRAMES, IDENTIFICATION, AND NARRATIVES

Utility of the Definition of Human Trafficking

Participants began by recognizing some of the predominant criticisms of the international legal definition of human trafficking as too narrow,

too broad, and exceedingly vague. It was pointed out that the original intention of the treaty drafters in creating the international trafficking framework was a modest one: to address a legal vacuum in migration and humanitarian regimes and develop a narrow exception for trafficking victims, whom they considered as warranting special procedures. At its origins, the definition was not meant to address labor issues or migrant workers more broadly, but rather to serve as a roadmap to help states adapt and clarify the definition for their domestic contexts. However, many countries implemented the definition directly into their laws without adjusting or further defining it. Participants discussed how this has led to different uses of the legal definition and forms of prosecutions, which treaty drafters did not foresee.

The legal definition was also the product of a compromise between stakeholders. To enable relatively quick passage, treaty drafters relied on broad terminology – such as “abuse of a position of vulnerability” and “for the purposes of exploitation,” without defining these terms. Because the definition is so open-ended, it has been expansively interpreted and the system risks being overwhelmed.

But participants noted that these definitional fluidities have also provided some benefits. Had countries realized at the time how much legal power would be applied to the definition of human trafficking in 2000, many would not have signed on to the treaty.

Importance of Framing

Participants discussed the human trafficking frame, and the use of rights-based, labor, and anti-slavery frames as alternatives. They focused on implications of various frames for funding, access to remedies, and advocacy.

Both small and large organizations often struggle to secure funding, and the label of human trafficking opens them up to more funding pathways. At the same time, even that funding is precarious, which leads advocates to constantly switch tracks due to funding needs. Framing also has implications for available remedies. For instance, under the human trafficking frame, particularly if someone seems to fit preconceived notions of “the perfect victim,” advocates may attempt to secure a T-Visa, which enables individuals to temporarily stay and work in the U.S. if they are willing to cooperate in some form with law enforcement agencies. If not, advocates will likely circumvent the T-Visa. In general, advocates may avoid government social services since they may put individuals in danger and are cumbersome. Instead, many try to work around the system to access services in other ways, using an individualized approach.

Participants discussed the widespread use of a slavery frame for human trafficking, and advocates’ use of anti-slavery rhetoric. One participant stated that this is not an appropriate or effective discourse because it organizes and valorizes “rescuers,” rather than mobilizes victims. Another participant responded that the use of slavery language is effective for the average person because of its historical and normative weight. Many shared the view that the slavery discourse ignores the complex realities of

human trafficking. The slavery frame, moreover, may have a distinct mobilization effect, but is not a panacea for the legal dilemmas of the trafficking frame; it has its own legal ambiguities and questions about scope. Participants also debated whether the labor frame would be more appropriate given that human trafficking is an extreme form of exploitation within the general frame of migrant labor. But some participants viewed the labor paradigm as unrealistic and suggested that, even if it were a more appropriate framing, states would not accept it.

One participant raised the issue that many different forms of trafficking are included together in these frames and that different organizations generally share the same goals. Problems arise when different frames promote different solutions, which are not all equally effective or appropriate.

Problems with Selective Identification

Participants also discussed the politics of who is recognized as a victim of human trafficking. Specifically, what distinguishes those who come to the attention of legal entities, and what are the consequences of being identified or not as a victim? Participants suggested a number of factors influencing identification that have less to do with the victim than with the identifiers or with simplified narratives of who constitutes a victim.

Focusing on the example of farmworkers, participants repeatedly emphasized how the actual life conditions between farmworkers may not differ much, although some may be identified as trafficked, while others remain as undocumented immigrants. The difference between the two groups stems not from their

actual situations but from the interests of legal entities that engage in identification and the structures in which “identifiers” operate. For instance, an actor may identify an individual as trafficked if his/her trafficker has crossed the line one too many times, and thus drawn law enforcement’s attention. The focus here is not on helping trafficked individuals but on targeting traffickers. Or an actor may identify individuals as trafficked because their narratives are more consistent with public understandings of human trafficking, or are easier to articulate. This led to a discussion of victimhood, and the notion of the “perfect victim” and the ways in which governments themselves reinforce notions about who constitutes a “worthy” victim. Lastly, organizations and NGOs that lack funding to provide for all marginalized immigrant populations may identify individuals as trafficked to increase their access to resources.

Issues about identification implicate questions about rights: those who have access to the title of victim of trafficking are accorded a certain set of rights. At the same time, identification often renders identified individuals agency-less. As one participant pointed out, the benefits of identification lead to difficult questions about cut-off points. As the number of people who do not fit the definition of trafficked or are not recognized as trafficked continues to increase, how should we approach legal cut-off points? How do scholars and practitioners talk about line drawing?

Lastly, even if individuals are labeled as trafficking victims and are conferred rights, what happens to them next? What protections

are afforded to them? Participants discussed how identified individuals are often unable to work, denied welfare, and face significant time delay in accessing services and protections. These factors can deter victims from coming forward, even if the process is clear to them. Others who are not determined to be trafficking victims can be deported. What happens to individuals then has more to do with who identifies them as victims or not, and the structures that shape the identification process.

Narratives of Trafficking in the Media

The media usually covers human trafficking in terms of crime, rather than human rights or public health. This dominant focus implies that trafficking can be solved by better legislation and policing efforts. Participants generally agreed that the current criminal framing is too narrow and noted how media might offer a more multifaceted understanding of trafficking.

Media portrayal is important because it shapes how the general public and policymakers come to understand trafficking issues. Roundtable participants highlighted the dangers of incomplete portrayals, including the re-victimization of individuals labeled by the media as “the victim.” These news stories rarely offer a critical analysis of the dominant trafficking narrative – such as relaying someone’s more complicated story – to illustrate the various dimensions of trafficking and refrain from exoticizing the problem. Instead, the media often presents trafficking stories solely through the trauma of being trafficked, ignoring the many layers of the experience, from leaving home through what happens well after being identified as a victim.

One of the main reasons for the media's simplified narrative is limited resources. Funding for news media has been significantly reduced, and finding sources to write a nuanced story requires time and effort, which is often not possible for journalists unless they are part of a special project or investigative team. Reporters want to talk to victims, usually those with "perfect stories," but often have trouble finding them. Also, editors generally insist on the need for personalized and human-interest stories in order to ensure readership.

Participants discussed ways that media might be able to translate victim centered and multilayered stories into the public realm – including expanding the narrative beyond the timeline of "leaving home to being identified," making more explicit the political connections between immigration policies and trafficking without exoticizing, focusing on testimonies, finding ways for reporters to discuss trafficking through a broader dialogue rather than simply a victim's lens, and diversifying the type of narratives that are told.

QUESTION 2: INTERVENTION STRATEGIES

In discussing intervention strategies, participants focused primarily on law and community organization as well as new technologies, data and information sharing.

Law and Community Organizing

Roundtable participants noted that it is not simply which laws exist that influence the efficacy of legal interventions, but how those laws are being used to address the needs of

individuals. How, one participant asked, might an anti-trafficking legal regime help spur the organization of workers? Could different enforcement strategies aid collective group efforts to receive basic human rights protections? In an era in which labor organizing is declining, or in places where it never took hold, how should advocates work around that reality, while recognizing that strength comes from organizations and collectivities? One participant stated that activism and public awareness fall along continuum. Organizing needs to occur in the context of knowledge of laws. One area of improvement then could be strengthening connections between on-the-ground organizing and the use of legal tools.

Participants also discussed the regulation of international recruiting as one route to address human trafficking. Imposing standards or formalizing the process of becoming a recruitment organization could create pressure to become certified and regulated. Understanding that state reliance on trafficked and migrant labor is entrenched and that exploitation is parcel of the global economy, regulation of recruitment could be a novel avenue for effecting positive change.

One participant commented that in the U.S., some legal successes have stemmed not from the Department of Justice, but from the work of the Equal Opportunities Commission, which provides remedies and restitution. U.S. reliance on unilateral compliance mechanisms could also be viewed as somewhat successful. In one view, this is troubling given that the U.S. regulatory standards are products of domestic politics rather than international rules to which other states have

submitted. Yet U.S. unilateral regulations have also created spaces for international advocacy that would not have been possible otherwise.

Participants also recognized how law, as currently used, can undermine the interests of victims. Legal and government advocates focus primarily on finding and prosecuting perpetrators, rather than helping persons identified as victims. Some countries require that victims participate in the trial of their trafficker in order to access legal remedies or to remain in that country. Law in this instance is not tailored to meet individual needs and can have potentially severe consequences.

New Technologies, Information-Sharing and Data

Even as labor organizing is on the decline, new technologies are making information more accessible and thus changing the power positions of individuals in trafficking and labor contexts. For instance, participants noted that some people are writing about their labor experiences and shaming employers on Facebook. Others are using cell phones to access information as they make decisions about migration, which may shift negotiation dynamics. Exploitation often depends on the economy of information across industries and political contexts.

Participants also discussed data availability and quality for policymakers and researchers. Some participants suggested that the most reliable data comes from grassroots reports and on-the-ground documentation of particular instances of trafficking or migration, not from academic sources or annual indexes and reports.

The Role of Academia

Participants noted a need for more cooperation

and conversations between different fields, especially between the research of academics and the on-the-ground work of activists, social workers, policymakers and journalists. One participant urged more academic contributions to the public sphere, because reports based on questionable data influence state and public responses to human trafficking. The role of scholars is to analyze such reports, as well as media and public narratives. Scholars should critique writings that are causing harm, such as salvation stories that reinforce stereotypical images of rescuers and victims, and power inequalities between them.

Participants recognized that academic writing is often removed from policy-making and practice. Research and scholarly critiques need to be made more accessible to the general public and to policymakers. Academics should look to collaborate with practitioners and utilize practical insights to advance academic debates and policy-making. At the same time, practitioners working in human trafficking, especially social workers, are under-resourced and have little time to focus on bigger picture dynamics. Some participants suggested that it is the role of academia to debate larger structural forces shaping trafficking dynamics.

