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## The Victim, the Villain and the Rescuer: the trafficking of women and contemporary abolition

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### Abstract

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A term as morally and politically loaded as 'modern day slave trade' inevitably provokes strong and emotive responses. From the current Secretary General of the United Nations (UN) (António Guterres) to the Prime Minister of the United Kingdom (Theresa May) world leaders have identified human trafficking and slavery as an issue of pressing international concern. The legal understanding of migration (whether legal or illegal, across national borders or internally) has, the article maintains, been constructed in a specific way, serving specific interests. The current 'migration crisis' in Europe demonstrates how the key actors are the same, namely, the victim, villain and the rescuer. The purpose of this paper is to critique the influence of The New Abolitionists movement on contemporary responses to female migration; and through applying a gender lens to the movement it will investigate whether their narratives further drives the gender inequalities that plague the migration framework.

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## Introduction

Currently, the world is witnessing extraordinary movements of people, legally and illegally across national and international borders (Kapur, 2012: 25). The international legal/criminal justice framework is mirrored by the regional, sub-regional and national initiatives, law and policies adopted that demonstrate increasing concerns about unregulated migration and profitable underground criminal activities. Additionally, the current refugee crisis in Europe, coupled with fears around trafficking, sexual slavery, extremism and national security have encouraged the proliferation of laws regulating cross-border movements. The expansive legal architecture implemented to prevent illegal and irregular migration has simply created diminished opportunities for legal authorised migration, subsequently prompting the expansion and diversification of markets of clandestine services (Alpes, 2011; Kempadoo et al, 2012; O'Connell Davidson, 2015). This in turn has led to increased focus upon migration, with the overwhelming emphasis placed upon human trafficking or the 'modern slave trade'. The subsequent development of anti-trafficking laws and initiatives globally is illustrative of how migration is continually framed as trafficking, the rhetoric of which has come to dominate contemporary discussions about migration. Equating the migration or movement of all women as human trafficking echoes the fears of the early twentieth century that led to the creation of the international instruments known as the White Slavery Conventions.<sup>1</sup> One thing that remains a constant and has done since the creation of the 'white sexual slavery' instruments in the early Twentieth Century is that the story of human trafficking invariably involves the same actors; the victim, the villain and the rescuer. This paper will critique each of these actors and their construction within the international legal

framework of anti-trafficking; highlighting how the discourse has dominated contemporary debates on migration to the detriment of women.

The story of human trafficking invariably involves the same actors; the victim, the villain and the rescuer. However, what is frequently excluded is the influence that this construction has upon female migration and how the perception that women are only capable of falling under the classification of victim is detrimental to women globally. Women migrate for a variety of reasons and whether that migration is legal or illegal they have both the capacity and right to make decisions about their own lives. This paper addresses the influence of the abolitionist movement upon modern-day responses to female migration and to consider if the movement further drives the gender inequalities that plague the migration framework.

After a discussion of the contemporary abolitionist movement, the paper critiques the framing of human trafficking as the 'modern slave trade' and briefly chart the historical origin of human trafficking within international legal frameworks. The paper will then examine the key actors in the dominant narrative of human trafficking, as identified in this paper as the victim, the villain and the rescuer. Applying a gender perspective to the construct of the three key actors is important as it highlights how the narrative disproportionality disadvantages women. Furthermore, this paper suggests that the dominant narrative is problematic because it reduces and obfuscates the reasons why women migrate, only allowing for them to fall into the category of a victim. The international legal framework has chosen to focus upon the rescue of women and children and capture and prosecution of criminal gangs. Finally, the paper proposes that empirically grounded research into why women migrate is needed to challenge the dominance of the rescue narrative and to serve as the foundations to develop strategies to help women access their rights to migrate.

<sup>1</sup> Four international conventions were passed between 1904 and 1933 that specifically addressed human trafficking; the Suppression of White Slave Traffic 1904, the Suppression of White Slave Traffic 1910, the Suppression of Traffic in Women and Children 1921 and the Suppression of Traffic of Women of Full Age 1933.

### The contemporary abolitionist movement

The first point to address here is what is meant by the contemporary abolitionist movement? The concept of the 'contemporary abolitionist movement' (hereafter, the abolitionist movement) is relatively easy to both identify and define. Due to its remarkably broad appeal to humanitarian feeling, the movement brings together anti-trafficking and anti-slavery initiatives to produce a powerful narrative that seeks to eradicate contemporary slavery (O'Connell Davidson, 2015: 1). The terms trafficking and slavery are frequently used interchangeably, whether to increase the appeal of contemporary efforts to eradicate the practices or due to confusion over the legal classifications of both. The inevitable consequence of the use of a term that is as morally and politically loaded as the 'modern day slave trade' both promotes and invokes strong emotive responses, within a variety of arenas (Howard, 2016). The powerful appeal of the language of modern slavery frequently relies upon the exploitation of the legacy of slavery inadvertently adopting Kipling's 'White Man's Burden' of a civilising mission (Faulkner, 2017a). The continued confusion and subsequent conflation of the terms trafficking, migration, smuggling and prostitution is particularly detrimental to women, who within these frameworks can only ever be identified as victims (O'Connell Davidson, 2016; Kempadoo et al, 2012; Lee, 2007; Obokata, 2005).

The commitment to the political agendas of criminalisation and punishment by the abolitionist movement serves to compliment other state and international efforts to regulate and control the cross-border flows of people. This is clearly demonstrated through the expansive legal architecture that has been adopted at international, regional and national levels to police borders. As alluded to earlier, the world is currently experiencing unprecedented levels of migration and is struggling both to conceptualise, manage and effectively respond (OECD, 2015). Within the context of human trafficking, these concerns have resulted in the Global Report on Trafficking in Persons 2012 by the United Nations Office of Drugs and Crime (UNODC, 2012). The

report specifically focused upon the flows of trafficking across international borders. This focus is important as it highlights a need to identify the weak spots of international borders and more importantly where the 'evil criminals' are most likely to be caught and punished accordingly. This agenda has been driven by states heightened concerns about illegal migration across borders.

To prevent trafficking there has been a conscious move by states to stop those classified as vulnerable from migrating, serving to dissuade women and girls from moving to protect them from harm (Kapur, 2012: 30). The paternalistic nature of the international community to protect women and girls falls in line (to a certain extent) with the rhetoric of the 'white man's burden' and the need for a heroic rescuer. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (hereafter the Trafficking Protocol) which was adopted as a Protocol to the UN Convention against Transnational Organized Crime 2000 is the flagship instrument of anti-trafficking. The Trafficking Protocol explicitly identifies women and children, enshrining the perception of vulnerability and need for protection. Leaders of the movement advocate that the solution to contemporary slavery is tighter border controls and intensive policing, which would allow 'slaves' to be identified and rescued, forcing the evil 'slavers' out of business (Bales, 1999).

The justifications for restrictive immigration policies and criminalisation of irregular migration are to be found in claims regarding national security, supporting war and peacetime efforts to eradicate 'terrorism' and inspire Western humanitarian values and discourses of democracy globally (Kempadoo et al, 2012: xvi). Human mobility is perceived as a threat to state sovereignty (O'Connell Davidson, 2015, 113). Arguably, the rhetoric of anti-trafficking is primarily about state control over national borders rather than the exploitation of people. A prime example of which can be demonstrated through the advocacy of the idea of 'taking back control of our borders' within the United Kingdom (See Paterson, 2017; UKIP News, 2017). The effect of this perceived threat to state sovereignty

is demonstrated through the construction of the international legal and policy responses to human trafficking, a framework that has shaped the legal understanding of migration in specific ways, serving specific interests. This raises the question of how the international contemporary responses to human trafficking have influenced our understanding of the migration of women. A key contention of this article is that the perceptions of migration and the actors involved have been adopted and nurtured to serve the interests of states in protecting national borders and state sovereignty.

### Human Trafficking – The ‘Modern Slave Trade’

Human trafficking is presented as a dynamic, multifaceted practice, continuously assuming new forms and dimensions (Gallagher, 2010). Trafficking has frequently been presented as an ever-growing phenomenon fuelled by the greed of ‘evil human traffickers’ exploiting the most vulnerable (Bales, 2007). Human trafficking and modern slavery are terms that are used indiscriminately with the United Nations (UN), frequently leading the way with the use of the terms as interchangeable.<sup>2</sup> The term human trafficking is not new to the international legal framework, it was first defined under international law through the Trafficking Protocol in 2000.

#### *The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children*

The Protocol enshrines the key three actors of human trafficking: the victim, the villain, and the rescuer. Subsequently the Protocol adopts the position of the new abolitionist movement and specifically identifying women (along with children) as inherently vulnerable. According to the *Travaux préparatoires*, almost all countries expressed their preference for the Protocol to address all persons rather than just women and children; although it was agreed that attention should be given to the protection of women and

children (UNODC, 2006: a32). The drafters’ decision to explicitly identify women and children as vulnerable provides a linkage to the concept that those classified as vulnerable should be prevented from migrating for their own protection. The definition created by the Trafficking Protocol demonstrates how the understanding of trafficking has been constructed in a specific way. Article 3 of the Trafficking Protocol asserts:

*(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs (UN OHCHR, 2000: Article 3a).*

Article 3 (a) therefore establishes the three separate elements to the definition, (i) the *action*, (ii) the *means* and the (iii) *purpose* or exploitation. The Protocol describes a process; therefore, the defining characteristics of human trafficking are the act of transferring a person; using threat, fraud, force or coercion for exploitation. This definition renders the consent of a person as irrelevant, endorsing the construction of the vulnerable, passive victim operating without any agency. Women and children fit into this ideal category relatively neatly but what happens to those who do not? In contrast, the UN Protocol against the Smuggling of Migrants by Land, Sea and Air accounts for consent in its definition of human smuggling (Gallagher, 2010). The emphasis and rhetoric of the Trafficking Protocol is upon strengthening border controls, offering more substance to the stance that the Protocols are

<sup>2</sup> For example, see UNTV (2014) and more recently the Secretary-General’s statement on reported news of slavery in Libya from 20 November 2017 (UN, 2017).

more about statist control of borders and the creation of distinct categories of the deserving and undeserving victim.

Restrictive border controls serve to nurture the need for illegal routes of migration as they remove legal migratory options. Efforts to tackle covert methods of migration through criminalisation and stricter border controls have only nurtured and enhanced the need for illegal migration. The attempts by states to eradicate human trafficking compliment wider actions against illegal migration, packaged and presented as a desire to protect human rights (O'Connell Davidson, 2015: 130). A fact of seminal importance is that the Trafficking Protocol was adopted within the framework of transnational criminal law and not within the international legal framework of human rights. This is illustrative of the desire to protect human rights, or to be perceived as protecting human rights, when the focus is upon the criminalisation of offenders and statist control of borders. However, stricter immigration policies have resulted in pushing migrants further into situations of exploitation, abuse and violence, which in turn makes them more inaccessible (Sanghera, 2012).

The justification frequently used for increasing efforts to prevent unauthorised migration is the existence of a moral obligation to fight the contemporary equivalent of the transatlantic slave trade (O'Connell Davidson, 2015: 120). This justification inadvertently serves as a deflection from the role of the state as a villain, as the rights of the state to control national borders frequently conflicts with the human rights of people attempting to migrate. Furthermore, the Trafficking Protocol clearly establishes two of the key actors within the human trafficking narrative, namely the 'victim' and the 'villain' prescribing specific roles for each. The role of the state within the context of regulating international migration frameworks is more often that of the 'villain' than the heroic 'rescuer' image that the state asserts itself to symbolise.

A less obvious creation is the role of the third actor, 'the rescuer' which has arguably been created for the State. The consequence of the endorsement of the artificial construction of the

three key actors firmly assures the roles of each and firmly sets the role of the state as both the heroic rescuer of victims and server of justice to wanton criminals. The significance of this is that it allows for the state to pursue the criminalisation and punishment of 'evil human traffickers' and occasionally trafficked persons. The Protocol fails to acknowledge that state led anti-trafficking initiatives combined with more stringent immigration policies encourage the necessity of illegal migration. The rhetoric of anti-trafficking and anti-slavery initiatives have a negative impact upon migration options, and no matter how noble the cause may seem they serve as a deflection from conditions that encourage clandestine migration. The over simplistic construction and subsequent understanding of migration is particularly detrimental to women and both removes and limits the migration options that are available to them.

Anti-trafficking is frequently synonymous with legal efforts to control both immigration and prostitution, limiting the mobility of female migrant workers (Kempadoo et al 2012: xvi). Article 3 of the Trafficking Protocol also clearly identifies the forms of exploitation, listing the 'exploitation of the prostitution of others or other forms of sexual exploitation' first upon the list. The wording of the article therefore intrinsically links human trafficking with sexual exploitation, despite being heralded as a move away from the perception that the two were synonymous (Kempadoo et al 2012; Miller, 2000).

A key contention of this article has been to demonstrate how the new abolitionist movement and its established dominance; depicting women as lacking agency and capacity. The common focus is upon gangs which inadvertently excludes some women (who, arguably may need helping) from having a position within international legal migration frameworks. Moreover, the movement supports the stereotype that women are reliant upon men, frequently their husband to migrate and that women traditionally fall within the category of homemaker rather than breadwinner. These over-simplistic assumptions about the place of women are evident within the abolitionist movement which continually removes the agency



and autonomy of women, framing them as victims.

*The Historical Origins of Human Trafficking*

The historical origins of human trafficking are illustrative as to how and why the trafficking narrative has been constructed and moreover, to better understand the thrust of anti-immigration and anti-prostitution of human trafficking. The 'White Slavery Conventions' encapsulated the fear over women who migrating and the need for special levels of protection to be afforded to them at the international level to save them from sexual slavery.

The origins of human trafficking are significant for two reasons. Firstly, they have served as the foundations for the contemporary international legal and policy responses to human trafficking. Secondly, parallels can be drawn between the 'moral panic' that led to the development of the White Slavery Conventions and contemporary concerns about the 'modern day slave trade'. The White Slavery Conventions and the levels of hysteria that surrounded their development and adoption are significant, as they are illustrative of how fear can drive the development of international instruments that are prescribed to protect women and children from harm through restricting their rights to move.

The notion that human trafficking is synonymous with prostitution can be traced back to public concerns about the 'white slave trade' of women and young girls into prostitution at the end of the nineteenth century (Lee, 2007, 4). Concerns about the 'white slave trade' reflected a 'moral panic' (Cohen, 2011) of the time and the legal consequences of which resulted in the creation of four instruments between 1904 and 1933; namely the Suppression of White Slave Traffic 1904<sup>3</sup>, the Suppression of White Slave Traffic 1910<sup>4</sup>, the Suppression of Traffic in Women and Children

1921<sup>5</sup> and the Suppression of Traffic of Women of Full Age 1933.<sup>6</sup> The focus of the instruments was predominately aimed towards the protection and rescue of women and girls from prostitution through criminalisation. These instruments reflected a racialized social panic about the so-called 'white slave trade', which was primarily concerned with the entrapment and enslavement of white women in prostitution (Doezema, 2010; Lammasniemi, 2017). Not one of these conventions offered a definition as to what human trafficking entailed, however they are illustrative of the historical foundations of human trafficking. Those foundations *prima facie* rested upon concerns about the sexual slavery of women and girls but also demonstrate racial tensions and attitudes towards the role and vulnerability of both. Moreover, it demonstrates the inherent need to protect a specific category of women from sexual slavery indicating that the virtue of white women was a more pressing concern to the international community. These instruments are of seminal importance considering one of the main contentions of this paper, as they also identify three key actors within the 'white slave trade' and 'trafficking of women' rhetoric of the time, namely the victim, villain and rescuer.

The idea that women do not willingly migrate, and are only capable of being victims of trafficking, 'sex slaves' or sexual deviants is something that has continuing relevance today. Moreover, it is illustrative of the contemporary problems facing women and the migration choices available to them. So, what influence do these perspectives have upon the migration of women today? The political legacy of the white slave trade is still strong today; forming the foundations for the perception that human trafficking and prostitution are synonymous. In terms of the wider migration framework the rhetoric or emotively driven 'moral panic' response is problematic, as it excludes women from the narrative and creates 'invisible women'. Arguably, the women that are excluded from holding the position of the victim within the flawed framework of the three actors makes

<sup>3</sup> International Agreement for the suppression of the "White Slave Traffic" 1904, 12 ratifications, 9 States which acceded to the Agreement, Agreement was declared applicable to 38 colonies, dominions and protectorates (UN Treaties, 2017).

<sup>4</sup> International Convention for the Suppression of the White Slave Traffic 1910, 13 ratifications, acceded to the Convention 22, Agreement was declared applicable to 50 colonies, dominions and protectorates (UN Treaties, 2017).

<sup>5</sup> International Convention for the Suppression of the Traffic in Women and Children 1921 (UN Treaties, 2017)

<sup>6</sup> International Convention for the Suppression of the Traffic in Women of Full Age 1933 (UN Treaties, 2017)

things harder and more dangerous for these women. The notion that women and girls do not and perhaps more importantly cannot migrate unless they have been trafficked or sold into sexual slavery, is a perception that legal reform alone would struggle to break.

### **The key actors: the victim, the villain and the rescuer**

The three provides a conceptual framework to challenge the dominant narrative that shapes our perception of women within international migration frameworks. Critiquing the role of these actors within the contemporary abolitionist movement reveals the influence the narrative has upon legal policy responses to illegal migration.

Numerous states have adopted policies that dissuade legal migratory routes in the name of anti-trafficking and combatting the 'modern slave trade'. These are based upon the presumptions that with increased surveillance and regulation 'traffickers' and 'slavers' can be identified, punished and subsequently deterred., International legal responses to cross-border movements are based upon assumptions that consolidate the construction of the key actors within the migration framework. Firstly, the assumption that they are weak, submissive, victims, secondly that they can be rescued and assimilated back into society and thirdly that they are capable of violence and therefore must be imprisoned or even eliminated (Kempadoo et al, 2012).

An issue of paramount importance within contemporary migration frameworks is the acknowledgement that the interests of those who cross borders and the states who control them are morally opposed to each other. The sometimes-lethal immigration and anti-trafficking policies adopted by states fail to address or acknowledge the fact that in the absence of safe migration routes, they are forcing men, women and children to pursue illegal options. The current crisis in Europe, along with the continuing journey of those attempting to cross the Mexican/USA border are just two examples that vividly depict the ongoing plight of human beings seeking to

cross international borders (Sanchez and Natividad, 2017).

The construction of the 'victim, villain, rescuer' narrative both endorses and advocates the continued invisibility of women within debates about migration unless they conform to the 'sex slave' or 'victim of trafficking' stereotypes. Migrants are continually classified as passive objects and victims of external circumstances such as war, natural disasters and poverty (Gatt et al., 2016) or victims of 'slave traders' or 'traffickers'. The continued focus upon evil traffickers, slave traders serves to underline the assumption that all migrants lack agency and are not capable of acting. The distinction between the categories forms an undercurrent to contemporary responses to those who migrate, whether they are classified as deserving or undeserving victims.

#### *The Victim*

Feminist critiques have been polarised by debates about victims and victimhood (Doezema, 2010; Limoncelli, 2010). Feminist contributions to effective strategies to address human trafficking have been limited by the impasse over the victim or agent status of trafficked women (Winterdyk et al, 2012, 60). The way in which victimhood has been constructed and understood is fascinating; clear parallels can be seen between the historical origins of human trafficking and the contemporary moral panic about a white sex slave trade of women and children. What is particularly significant is the extent to which current claims with regards to human trafficking and prostitution recapitulate these arguments made over a century ago with regards to 'white slavery', an issue that was largely mythical (Doezema, 1999: 468). The stereotypical image of a young, naive, foreign woman tricked into prostitution overseas is as poignant now as it was when the White Slavery Conventions were adopted (Andrijasevic and Mai, 2016). Victims of trafficking are labelled as naïve and gullible, this is problematic as women are classified as eternal victims, infantilised and in need of rescue. The victim is usually female, weak and vulnerable, snatched or tricked by an evil group of foreign criminals and trafficked to be sold into sexual slavery, enduring endless violent beatings, sexual assaults and rapes upon this

journey. These perceptions are illustrative of our contemporary engagement with migration and the wider context of women and their place within the patriarchal systems of society, the family and the state. Although progress has been made in terms of advancing the rights of women, as a group they remain marginalised and continue to suffer gendered inequalities and injustices globally.

Many of the contributors to Kempadoo (2012) conclude that the dominant crime and punishment approach to trafficking (favoured by States, UN, and certain NGOs and Trans-National Corporations (TNCs) harms the people that it seeks to protect. This approach fails to address the immediate needs of 'victims' and may increase their vulnerability to trafficking. Some commentators have further criticised the dominant discourse on trafficking for its apparent refusal to acknowledge the agency or autonomy of those who it depicts, presenting them as naïve, malleable objects in need of rescue and protection, rather than in need of rights and recognition (Andrijasevic, 2014; Kempadoo et al 2012; O'Connell Davidson, 2013). Furthermore, it has been advocated that understanding how the figure of the victim is embedded in larger historical, cultural and political contexts is imperative in sex work analyses' in addition to moving beyond the focus upon the articulation of rights and mapping of agency (Andrijasevic, 2014).

The way that migration and the international legal framework that seeks to address both legal and illegal migration through the construction of women as invisible unless they are 'sex slaves' in need of rescue by the heroic state or non-governmental organisation further complicates the issue. Moreover, the moral outcry to 'save these vulnerable women' has been critiqued as a new form of imperialistic foreign policy and interventions that are representational obliterations of women's agency. (Cheng, 2008) With the stories of women who migrate increasingly side-lined and ignored, unless they fall within the parameters of the 'ideal victim' women are increasingly silenced and infantilised.<sup>7</sup>

<sup>7</sup> The concept of the 'invisible woman' has been recently highlighted through 'The invisible women of Europe's migration crisis' and a

The argument for giving women a voice is not isolated, it mirrors calls about women who migrate to work within domestic environments. These women are continually cut out of debates about them, their rights, choices and conditions (Garofalo Geymonat, Marchetti and Kyritsis, 2017). Extensive empirical research that engages with women who migrate would not only prove significant and illuminating but would assist in the critique and subsequent deconstruction of myths and misconceptions surrounding women within international migration frameworks. This could lead to highlight the more pressing need for international legal reform in terms of legal migration routes and the availability of safe avenues of migration.

This construction of the 'victim' also deflects from the structural issues that perpetuate migration, such as poverty, inequality, access to education, lack of opportunities; all of which are issues that disproportionality affect women. The idea of the 'victim' further deflects from the fact that human trafficking is a phenomenon that lies outside of the system, a status which affords a level of protection (Howard, 2016). The consolidation of the core binaries of consent and coercion, freedom and force, legitimate and illegitimate are a discursive representation of reality, creating simplistic assumptions about trafficking and the migration of women generally. Additionally, states also distinguish between 'deserving' and 'undeserving' victims, with varying degrees of blame being attached to certain categories of unauthorised or illegal migrants. This classification of 'the other' or 'undeserving victim' is significant, particularly considering the media portrayals of the ongoing migrant crisis in the Mediterranean. Images of non-white males dominate contemporary stories of migration, leading to the demonization of 'the other'. These negative illustrations encourage legal responses that promote imprisonment, detention and even obliteration or elimination (Kapur, 2012 33). Furthermore the language used to classify them as undesirable 'economic migrants' or vilify them as

subsequent photograph exhibition at the Université Libre de Bruxelles in Belgium as part of the EU Border Care research project. EU BORDER CARE is the acronym for a 5-year research project funded by an ERC Starting Grant (2015-2020) (Grotti, 2017).



intrinsically evil due to their race, religion or distinct 'otherness'. The unfavourable and unsavoury image of migrants is not isolated to Europe, with the incarceration of asylum seekers in Australia. The 'migrant' has been transformed into a manipulative, dangerous and contaminating force against which both states and individual sovereignty must be protected (McMaster, 2000; McMaster, 2002). The vilification of certain categories of migrants is a fundamental issue for women and girls as it inadvertently supports the creation of a unique 'victim' within the parameters of which women and girls must fall.

This focus upon the ideal victim has helped to develop a simplified understanding of the three key actors involved in human trafficking. This simplification removes the activities of the state from critique and allows it to be framed as the glorious and heroic rescuer. Former Home Secretary, Theresa May, the main advocate of the Modern Slavery Act, wishes to style herself as the twenty-first century William Wilberforce whilst simultaneously imposing stricter, and to certain extent lethal, immigration policies.

The international legal framework that has been created to address the migration of women is complex and increasingly problematic. The framework creates and promotes a response which draws distinctions between deserving and undeserving victims. The effect of populism in recent times and as a response to the ongoing and appallingly handled refugee crisis within Europe is indicative of the complexities that surround both legal and policy responses to migration. In the UK for example, the Government wishes to rescue those trapped within modern slavery on the one hand while on the other 'taking back control of our borders' to tackle immigration considering the rise of anti-immigration, anti-European feeling as demonstrated through the vote to leave the European Union in June 2016. The hypocrisy of migration and anti-slavery and anti-trafficking policies is frequently disregarded and they are addressed as distinct and concrete areas, but they are intrinsically linked.

### *The Villain*

The idea of the 'villain' has remained a popular theme within international legal responses to

migration, in particular through the Trafficking Protocol. The Trafficking Protocol specifically identified the perpetrators of human trafficking as organised criminal groups through Article 4 (which also provided that the offence of trafficking must be international in nature). This requirement is problematic, however, for present purposes it is significant as it endorses the identification of the three key actors of human trafficking; the victim, the villain and the rescuer. The Trafficking Protocol unquestionably supports and endorses the role of the 'evil' villain.

Within the media, the role of the villain has been constructed as a non-white male with a distinct foreignness or 'other' like quality. A prime example of this is the 2008 film *Taken*; as it is illustrative of the popular media representations of human trafficking and the key actors involved. It is as though the drafters of the Trafficking Protocol had seen the film 'Taken' and used it as inspiration for the legal construction and definition of human trafficking.<sup>8</sup> The story in *Taken* revolves around a white American teenage girl who is kidnapped (with her friend) whilst on holiday in Paris by a group of organised Albanian criminals. She is subsequently sold at a cattle auction to the elite and purchased by a rich-non-white male after being highly sort after as her status as a virgin is confirmed. Meanwhile, the lead of the film, her father (played by Liam Neeson), embarks upon a mission to find her, rescue her and punish those who took her. This film has been selected due to the reason that it neatly summarises the stereotypical story of human trafficking and endorses the contention of this article about the pre-defined roles of the key actors.

Additionally, in 2003 a report of the Council of Europe (CoE) parliamentary assembly noted that trafficking networks targeted poorer European countries such as Estonia, Bulgaria, Georgia, Russia, Moldova, Romania and the Ukraine (Vermot-Mangold, 2003). However, rather than outlining an action plan for tackling structural issues such as poverty, lack of education and opportunities (which disproportionality affect women and girls) the report encouraged the focus

<sup>8</sup> For further discussion on this point refer to Snajdr (2013).

upon 'evil traffickers' targeting the poorest areas of the region. This explicitly places the focus upon the identification of criminals, who are seeking to exploit the most vulnerable. There is a categorical failure to engage with an alternative dialogue about migration, particularly within the context of women and perceived ideas about vulnerability, gender and migration.

The current UN Special Rapporteur on trafficking in persons, Maria Grazia Giammarinaro<sup>9</sup> has recently called upon governments to fully recognise the rights of trafficked persons, stating that they are 'are entitled to assistance, protection and access to justice and remedies regardless of their residence status or whether perpetrators are identified, investigated or prosecuted' (UN Human Rights, 2015). This highlights the continued focus of the international community upon identifying organised criminal groups, the 'evil traffickers' however it is near enough impossible to make a claim that human trafficking is entirely or even largely a product of organised crime (Sanghera, 2012: 15). This framing of the perpetrators removes the state from critique, or attempts to shield them from the fact they play a more significant role other than just the rescuer. This continued emphasis upon criminals as a key to prevent human trafficking endorsed by the Trafficking Protocol is obstructive as it fails to recognise and effectively respond to the larger issues of contemporary migration. Until acknowledgement is given to the underlying structural factors that drive and perpetuate migration, the international legal framework will continue to fail in its response to prevent human trafficking. What is not addressed is the role of the state and how stricter border controls and the pursuit of 'evil human trafficking gangs' contribute to driving irregular and often dangerous avenues of migration.

The narratives of human trafficking and the abolitionist movement frequently highlight the immorality and criminality of those who assist in irregular or illegal migration. The role of the state is largely excluded or side-lined within these narratives. Ignoring the role of the receiving state allows for that country to not be implicated in the

migration phenomenon, and is therefore justified in resorting to methods of containment and confinement (Kapur, 2012: 37). Additionally, the loss of life is frequently attributed to the conduct of traffickers, slavers and smugglers. However, State actors are sometimes directly responsible but do not receive the same level of scrutiny or vilification afforded to those involved in irregular migration. An example of this is provided through the actions of the Spanish police in February 2014 who fired rubber bullets at a boat filled with migrants on route from Morocco to Spain within which 11 people died (Amnesty International, 2014). This example is illustrative of the tendency for states to escape classification as a villain within the international migration frameworks. The contemporary responses to the unprecedented levels of migration have been driven by the desire for states to police, control, imprison and punish with limited or no accountability for their actions. The international legal framework that has been constructed to address human trafficking specifically focuses upon the evil organised criminal groups (Trafficking Protocol, 2000: Article 4) and serves as a deflection from the role that the state has in aggravating contemporary issues of migration.

#### *The Rescuer*

The final actor is the heroic rescuer or the hero who has answered the call of the plight of vulnerable women and girls around the world to 'save them'. It has been contested that for decades the stereotype of male and female role has been discursively constructed as women who are dependent upon their migrating husband or sons, or staying behind with the children and/or following husbands or sons for family reunion (Westphal, 2004) This stereotype frames women as passive objects, incapable of participating or choosing to migrate without the endorsement of such actions from a male family member. What of the women who fall outside the parameters of this perception? Are they to be viewed as fallen women who require rescue or women with capacity and agency to make decisions about their own lives?

The broad, sweeping, rescue narratives completely remove the capacity and will of

<sup>9</sup> Who has held the position since 2014 (UN OHCHR, 2017).

women, endorsing the traditional or stereotypical scenario of an organised evil criminal gang, a helpless victim and the heroic rescuer. The rhetoric of trafficking demonises the criminal, yet frames the state as the rescuer leaving limited scope for the state to be framed as anything else due to the explicit language of ‘organised criminal gangs’.

The dominant anti-trafficking paradigm reveals that the largest group of players or non-state actors are clustered in and around rescue and rehabilitation of victims and are primarily concerned with prostitution (Sanghera, 2012: 18). The profile and significance of the ‘rescue industry’ has been significantly lifted by the presence of celebrities who serve as ‘ideal rescuers’ drawing considerable attention from the media, the public, and policy-makers (Haynes, 2014). One of the main contentions of this paper is how the role of the state within migration frameworks is excluded. States frequently classify themselves as the saviours and upholders of human rights, with governments such as the Australia, holding early discussions about the adoption of a modern slavery act, like the Modern Slavery Act 2015 from the United Kingdom. Yet simultaneously, Australia are implementing ever stricter border controls, immigration policies and the controversial Nauru processing centre, suggesting a stark conflict of ideology (See Farrell and Davidson, 2016).

### **Applying a Gender Perspective to Contemporary Migration Frameworks**

Gender is frequently overlooked within contemporary migration frameworks. Through engaging with the conceptual framework of the three key actors of human trafficking and applying a gender perspective to consider how this impacts upon women, the disadvantages that accompany the categorisation can be identified. Within the context of anti-trafficking women and girls are clearly identifiable as victims trapped in sexual slavery.

The vulnerability of both trafficking and migration discourses to the manipulation of political agendas such as stringent border controls and the eradication of prostitution demonstrate the

seminal importance of both a bipartisan dialogue and interdisciplinary analysis of the perceptions, policies and legal instruments adopted to address contemporary migration. Adopting a gender lens for analysis of migration frameworks is helpful, if it does not become polarised by debates about victims and victimhood. With some advocating that applying a gender perspective to migration frameworks illustrates the relationship between migrant deaths and restrictive border controls (Plambech, 2017). This link between migrant deaths and restrictive border controls is continually deflected from within the language of anti-trafficking, which frames the traffickers and slavers as the real villains. Furthermore, adopting a gender lens for analysing migration, and human trafficking is illustrative of the conflict between abolition and populism which has detrimental effect upon women, enhancing their invisible status within contemporary responses to migration.

Conflating trafficking with migration reinforces the gender bias that constant protection from men or the state is essential for women and girls. Women and girls are often branded as vulnerable as illustrated by the title of the Trafficking Protocol. Therefore, they must not exercise their rights to migrate or move in order to protect them from harm (Sanghera, 2012: 11). Women’s cross-border movements continue to be addressed primarily within frameworks of trafficking, victimisation and a conservative sexual morality (Kapur, 2012: 37). Moreover, the detrimental influence of the abolitionist movement over legal and political responses to women who migrate needs to be addressed. The voices of women are frequently omitted unless they are telling the story of the three key actors of the trafficking narrative (typically the victim). Women’s voices are essential and could assist in deconstructing connotations and misperceptions around the issues of trafficking, migration and prostitution within international, regional, sub-regional and national arenas.

Women’s choices to migrate must be viewed within the context of empowerment, agency and the search for better economic opportunities (Kapur, 2012: 37). The current global economic

configurations have disproportionately affected women particularly in the global South, which has led some observers to conclude that human trafficking is best explained in terms of the socio-economic disadvantages faced by women. (Winterdyk et al, 2012: 58). Within the context of rising global inequalities and disparities, migration is influenced by several ‘push’ and ‘pull’ factors, which for some commentators (Lee, 2011; Di Nicola, 2000) has been of seminal importance in relation to understanding of human trafficking. The current migration crisis in Europe is illustrative of this point, with people fleeing conflict, political instability, discrimination and impoverishment to name but a few ‘push’ factors. Additionally, they are pulled to countries of the global North or perhaps more prosperous regions seeking stability, safety, security, economic opportunities, education, healthcare, human rights and other perceived benefits of the destination (Winterdyk et al., 2012: 66). However, contentions about migration driven solely by ‘push factors’ have arisen with migration scholars increasingly asserting that migration is an outcome of an extremely complex interplay between macro-level structures, micro-level institutions and individual agency (O’Connell Davidson, 2015: 114).

Preventing unauthorised migration is fundamentally incompatible with that of protecting and promoting human rights, even where concern (albeit limited) is afforded to certain deserving groups such as victims of trafficking, women and children (O’Connell Davidson, 2016: 123). Contemporary discussions of women within migration frameworks are in their infancy due to the reluctance to depart from the notion that women can only be victims. Yet, this embryonic debate is of considerable importance, as current responses to women who migrate offer only simplistic solutions informed by the new abolitionist movement. Often women are identified as vulnerable due to preconceptions about women who migrate. An example of this perceived vulnerability can be demonstrated through the title of the Trafficking Protocol, which explicitly identifies suppressing and preventing trafficking ‘especially women and children’. The current global migration phenomenon is

profoundly challenging to some of the most basic notions of women’s reproductive labour, family, community, nation, culture and citizenship (Kapur, 2012: 27). The rhetoric of contemporary migration is prescriptive in that it has been constructed to provide concrete and discreet categories or classifications of migrants such as ‘economic migrants’, ‘illegal’, ‘human trafficking victim’, ‘smuggled’ and ‘slave’. The hierarchy of status created with each unique label affording differing levels of legal and political protection, coupled with differing receptions from society. The impact of the adoption and application of these classifications is significant. Women are frequently excluded from media coverage of the ongoing crisis within Europe, with the media continually depicting images of non-white males and applying labels such as economic migrants. Moreover, women are frequently forgotten within media stories of migrant tragedies and loss of life (Plambech, 2017).<sup>10</sup>

## Conclusion

Human trafficking is frequently portrayed with the same three actors; the victims, the villains and rescuers as demonstrated by this paper. This perception of migration distorts the understanding of gender within international migration frameworks. The only position available to women is that of the ‘victim’ therefore women are continually infantilised and framed as passive, vulnerable and in need of rescue. The dominance of the contemporary abolitionist movement is significant as it not only serves to deflect from the role of the state but also discursively represents women who migrate. The movement systematically strips women of their agency and capacity, limiting the ability of the international community to create policies that enable women to migrate.

The various structural factors that drive and perpetuate migration and disproportionality affect women are often neglected. Individualising human trafficking allows a shift of the blame from the international system that endorses, encourages and perpetuates global disparities and

<sup>10</sup> A prime example of this exclusion can be seen through the coverage of the death of three-year-old Aylan Kurdi in 2015.



inequalities that push migration and this includes the migration of women. A real acknowledgement needs to be made that women can and do choose to migrate and that the adoption of ever more restrictive border controls only serves the state that seeks to police those borders. Furthermore, evidence indicates that certain forms of migration carry the highest risks of exploitation and abuse suggests that migrants are aware of the risks but still choose to proceed (O'Connell Davidson, 2015: 111). Alternative rights based strategies must be developed for recovery and reintegration programmes (Sanghera, 2012: 18). However, the overwhelming focus remains upon rescue and this needs to be acknowledged and subsequently addressed through the creation of legal rights to mobility. The illegal status frequently branded onto those who migrate taints almost every aspect of that person's life, it should not be a label deliberately applied to control migration to 'take back control'.

The abolitionist movement is a moral crusade of the Western world, exploiting the historical significance of slavery and the transatlantic slave trade to garner generally unquestionable support. Establishing a crusade to fight against what the current Prime Minister of the United Kingdom Theresa May has branded the 'scourge of modern slavery' to advance a new imperialism and a diversion from the underlying complicity of the western liberal democratic states in advancing exhaustive and inflexible approaches to contemporary migration (Faulkner, 2017b). To conclude, the language and policies of the human trafficking rhetoric and contemporary responses to migration generally are both unhelpful and problematic. These responses have a significant detrimental effect upon women and the migration choices that they are faced with. In the wake of the advancement of the contemporary abolitionist movement the options left to those who migrate are extremely limited unless they conform to the 'victim' awaiting rescue by the heroic celebrity, NGO, or the state a combination of players who have unquestionably taken up Rudyard Kipling's mantle of the 'White Man's Burden'.

The contemporary abolitionist movement inadvertently silences women, arguably causing

more harm than good to those that they purport to protect. Legal reform will not deliver the voices of all women to debates upon contemporary migration, inclusivity remains a pivotal issue that is frequently overlooked. A departure is needed from the language adopted that frames women as especially vulnerable and endorses the construction of women requiring extra protection and rescue from exploitation. To afford greater protections to women it is essential that the international community recognises the agency of women and provides a way for those women who are engaged within contemporary migration to have a voice. An essential step is the move away from the focus upon the stereotypical manifestation of human trafficking, and to deconstruct the image of the victim, the villain and the rescuer.

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