

Response to Harold Hongju Koh, 'The New Global Slave Trade'

Rey Koslowski

In 'The New Global Slave Trade', Harold Hongju Koh describes the grim world of human trafficking but then offers a strategy to combat it. He argues that trafficking is primarily a human rights problem best approached by an analytical focus on transnational legal processes that, in turn, grounds a policy recommendation for an anti-trafficking strategy combining prevention, protection, and prosecution. I am very sympathetic to his general analytical approach and find his implementation strategy eminently reasonable. Therefore, I can offer little in the way of direct critique. Instead, I will place his essay, particularly his analysis of the problem, into a broader context that may provide some additional insights and strategies.

The problem of the global slave trade is broader than the trafficking of human beings across international borders. Koh focuses on the estimated 12 million people who are bought, sold, or forced across international borders on a yearly basis. This is only part of global slavery today given that many more people are subjected to forced labour and debt bondage but do not cross international borders. Anti-Slavery International was established in London in 1833 and its US sister organization Free the Slaves estimates that there are some 40 million people trapped in new forms of slavery around the world, primarily in South Asia (India, Pakistan, Bangladesh, and Nepal). As opposed to old forms of slavery based on legal

ownership in which slaves were maintained largely because of their high purchase costs, relatively low profit margins, and scarce supply, new forms of slavery are typified by avoidance of legal ownership, low purchase costs, high profits, abundance of potential slaves and short-term relationships that are ended by disposal of the slaves once they are used up. Contemporary slavery takes the form of bonded labour, early and forced marriage, forced labour, slavery by descent (also inherited debt bondage), and human trafficking. It is the increasing phenomenon of human trafficking that is, in a sense, bringing new forms of slavery to North America and Europe.

Most media coverage, legislation, and past international treaties on human trafficking focus on the trafficking of women and children into forced prostitution. Although such exploitation of women and children is the most reprehensible variant of trafficking, it is only a part of the trafficking of all forms of labour. For example, a recent study based on cases of trafficking reported in the American media, estimated that at any given time, more than ten thousand, if not tens of thousands, of people work as forced labourers in the United States with approximately half the identified cases being of prostitution and child exploitation but the rest being forced labour in domestic services, agriculture, sweatshops, and food service. Of those forced labourers, the largest group was Chinese, then Mexican and Vietnamese.

Debt bondage and involuntary servitude are defining features of human trafficking as opposed to just smuggling people across borders for a fee. Due to very high smuggling fees, migrants who have been smuggled from China are more likely than other smuggled migrants to enter into debt bondage arrangements backed up by threats of violence against them and their families in China. The passengers of the

smuggling ship, The Golden Venture, which washed ashore on a New York beach in 1991, agreed to pay an average fee of \$ 10,000 to be smuggled to the US. The fee for passage from China to New York City in 1991 is as high as \$ 15,000. Typically, customers pay smugglers a down-payment (usually \$ 5,000 - 10,000) and then family members, relatives, or friends pay the balance of the fee upon arrival and the migrant repays the debt at no or relatively low interest rates. A smaller percentage of migrants become indebted to organized crime groups and loan sharks who charge much higher interest rates and back up debt repayment with enforcers. Generally, the migrants work in garment factories and Chinese restaurants, often up to 60 hours per week and live in very small spaces where it is not uncommon that they share beds by sleeping in shifts.

While in the New York City area, debts might be primarily held by relatives and friends (whose treatment of the migrant may also vary), in American Samoa and the US Territories of the Northern Mariana Islands, Chinese, Taiwanese, and Korean employment agencies, migrant traffickers and unscrupulous subcontractors in the territories exploit migrants through debt bondage arrangements to produce cheaply 'made in the USA' garments which can be sold at high profits. As Koh notes, it was a case of trafficking of sweatshop labour to these territories that produced the largest anti-trafficking case in US history. With fees of up to \$ 10,000 for the promise of work in the US and Europe, the potential for exploitative debt bondage arrangements among smuggled Chinese migrants is all too great. This is reflected in the increasing number of cases of Chinese workers found working in exploitative and dangerous conditions, whether in US sweatshops, Italian shoe factories, or picking cockles along UK beaches.

As the above cases illustrate, human trafficking across international borders is often a subset of human smuggling, which is itself a part of the broader phenomenon of what is variously termed 'irregular', 'unauthorized', 'undocumented', or 'illegal' migration. That is, trafficked individuals who are forced into prostitution or labour may have initially voluntarily engaged the services of a smuggler to cross international borders illegally but then upon arriving find themselves coerced into labour through violence directed at them and/or their families back home. The key difference between human smuggling and trafficking is coercion, whether through direct application of physical force or the threat of the use of force.

It is very difficult to disentangle the processes of human smuggling from the trafficking of people because these processes are generally handled by networks of intermediaries rather than end-to-end by the same individual or organization. Consider a typical situation of the late 1990s in which a young Moldovan woman is told by an Italian trafficker's Moldovan recruiter that he has friends in Italy that can get her a job working illegally in an Italian restaurant in Germany. The recruiter makes arrangements with a series of smugglers (who may or may not know that he is a recruiter working for an Italian trafficker) in order to transport the woman to Italy. The Moldovan woman might be transported across the Adriatic in an Albanian smuggler's speedboat together with Turkish men seeking to work in the Netherlands, and Iraqi Kurds and Kosovo Albanians fleeing persecution and ethnic cleansing. In the instance of the crossing, all the individuals are being smuggled as they are simply paying a fee for an illegal border crossing. However, when the Moldovan woman arrives in Italy, has her passport seized, and is forced into prostitution,

what on the face of it was an act of human smuggling becomes an act of trafficking for forced prostitution.

Such intermeshing of human trafficking and human smuggling can raise a quandary for policymakers and human rights advocates. Prosecuting the smugglers that transport Moldovan women bound for forced prostitution in Italy may have also stopped Kurdish and Kosovar asylum-seekers from reaching safety. Migrants in search of work are not the only customers for smugglers' services. After the international community turned its back on Europe's Jews at the Evian Conference, many Jews only escaped the Holocaust by paying smugglers who helped them cross the border into Switzerland. During the Cold War, those who helped East Europeans cross the border into West Germany were often considered heroes, even if they accepted payment. For doing the same thing today, one may be prosecuted as a criminal. Referring to those Americans who broke the Fugitive Slave Law and ran the Underground Railroad to Canada as well as Peter Dupre, a British national who smuggled East Germans and Czechs across the Yugoslav border into Austria, a libertarian activist has made the argument that 'human smuggling is morally good'. Going back to the smuggler's speedboat, yes, the smuggling of the persecuted Kurds and Kosovars may be considered 'morally good' but the simultaneous smuggling of the Moldovan woman destined into forced prostitution is not. Moreover, smugglers may also be human rights violators. In many cases, smugglers have little regard for the safety of their customers as boats are often overloaded and, when pursued by the coastguard, smugglers have thrown babies and small children overboard to force their pursuers to stop for a rescue operation that enables escape.

Not only is trafficking so intermingled with human

smuggling, there are limitations to approaching human trafficking as a human rights problem because trafficking is just as much an economic phenomenon as human smuggling and illegal migration are. Human trafficking exists because there is demand for trafficked labour in receiving countries, whether in brothels, in sweatshops, or on farms. The greatest shortfall in the analytical approach and implementation strategy offered by Koh is that it does not address demand. What about the employers and consumers of trafficked labour? What about the johns who purchase sex with trafficked women and children forced into prostitution?

In an analysis of the demand behind human trafficking, Kevin Bales makes the argument that ‘consumers of trafficked people operate within a moral economy that allows them to rationalize this activity’. In contrast, ‘human rights are based on the privileging and then codification of the victim’s definitions of an action . . . (but) virtually every action that we now think of as a violation of human rights was once deemed as acceptable’. Although laws and civilized discourse may increasingly privilege the victims’ definitions of the act of paid crossing of an international border and debt repayment through forced labour as a human rights violation, employers and consumers are increasingly operating in a different moral economy that tolerates trafficked labour. Johns may accept the less than enthusiastic performance of women trafficked into prostitution for the lower cost of the sex sold relative to that of native prostitutes. Businesspeople who face competitors that lower costs through exploiting trafficked labour may themselves justify hiring illegal migrant workers. This, in turn, increases the demand for illegal migrant labour that inspires desperate people abroad to pay smugglers and be lured by traffickers.

Part of the problem from a consumer's standpoint is that it is difficult for the consumer to distinguish whether products and services are produced by illegal migrants who overstayed their visas, illegal migrants who paid to be smuggled, or a tracked migrant in debt bondage. For example, the tomatoes in a meal served in an ethnic restaurant may have been chopped by a smuggled migrant or by a tracked migrant working 60 hours per week to repay an enormous debt under threat of violence to his family.

Indeed, the tomatoes themselves may have been picked by tracked labour as became clear from one of the most notorious of cases of modern slavery in the United States. Mexicans who were smuggled into the US in the hopes of working in the Southwest were 'sold' to labour contractors who then did not pay the workers and held them against their will to work in Florida tomato fields. A group of workers eventually resisted and found legal assistance, and the labour contractors were successfully prosecuted under a Civil War era anti-slavery law.

This case is atypical for the vast majority of Mexicans who are smuggled into the US, however, due to increasing smuggling fees (from \$1,000 in 2000 to between \$2,000 and \$3,000 in 2005) and the entrance of more violent groups into the smuggling business along the US-Mexican border in Arizona, smuggled migrants are increasingly being treated as illegal commodities that are 'stolen' from one smuggler by another to be then delivered to labour contractors. Due to increasing US border control enforcement, it is likely that most illegal migrants now use smugglers and are therefore increasingly at risk of violent treatment when crossing or becoming subject to debt bondage afterwards.

Given that the practices of tracking are so intertwined

with smuggling, in practical terms, it is often difficult to disaggregate the prevention and prosecution of human trafficking from the prevention and prosecution of human smuggling and illegal migration more generally. Prevention, protection, and prosecution may not be enough if it does not deal with the moral economy of consumer demand for sex with 'exotic' foreign women that fuels a growing industry that capitalizes on vulnerable illegal migrants. Trafficking prevention through poverty reduction might not be enough if the moral economy remains in place that enables the additional 10 million to be enslaved within their own countries. Educating potential victims of traffickers' ploys may not be enough to convince women to stay home when they see the money sent home by those who were smuggled and are working illegally abroad. Given that truly effective measures to stop human smuggling involve major restrictions on employers' access to cheap and compliant illegal migrant labour, one may anticipate significant resistance from powerful interest groups. Given that consumers of cheaper domestic services, restaurant food, fresh vegetables, clothing, and yes, sex services, apparently have little knowledge and/or concerns about the exploitation that goes into the products and services they consume, the moral economy that enables new forms of slavery and trafficking persists and thrives. No matter how much immigration authorities tighten border controls and prosecutors target traffickers and smugglers, as long as there is high demand for illegal migrant labour which inextricably includes the smuggled and the trafficked, it will be very difficult to reduce trafficking.