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## **Abstract**

The Pacific has long been home to mobile populations, from the early voyaging Polynesians to Asian immigrants to Europeans, Americans and Australians. In the latter group, some came as derelicts off ships and others as missionaries, traders, and owners of plantations and shipping. Movement was both within islands and between islands and mainlands. They were always connected by routes of trade and travel, but who travelled and what happened to them depended a lot on the particular legal and social conditions of travel and arrival.

## **Sex Trafficking and Global Governance in the Context of Pacific Mobility**

**Sally Engle Merry<sup>1</sup>**

The Pacific has long been home to mobile populations, from the early voyaging Polynesians to Asian immigrants to Europeans, Americans and Australians. In the latter group, some came as derelicts off ships and others as missionaries, traders, and owners of plantations and shipping. Movement was both within islands and between islands and mainlands. They were always connected by routes of trade and travel, but who travelled and what happened to them depended a lot on the particular legal and social conditions of travel and arrival.

Migration has long been fundamental to the nature of Pacific societies, but the way law regulates migration has important implications for the immigrant experience and the society that is formed. This historical framework offers a useful perspective for understanding a much-discussed contemporary form of movement: travel for sex work. Understanding sex trafficking through the lens of migration patterns moves the debate beyond the sex worker/abolitionist battles to see it as movement that is sometimes voluntary, sometimes coerced, and often a combination of both. It suggests the futility of preventing movement, even if coerced, and the importance of the legal status of the migrant for their ultimate adaptation and the social order they create.

Patterns of migration formed contemporary Hawai‘i and Fiji, the Pacific places I know best, but in quite different ways (see, for example, Merry 2000, Merry and Brenneis 2004, Merry 2004). Both were populated by waves of immigrants, but some came as indentured

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workers, some as traders or missionaries, and some as colonial officials. In Hawai'i, while some were able to become citizens of an independent island kingdom, others were not accorded citizenship and were expected to return to their homeland after a stint as contract labourers (Beechert 1985, Merry 2000). Thus, immigrants came under very different legal statuses. The conditions of movement and the legal and social status of each group made a big difference to their settlement and long-term social position.

I will briefly compare the legal arrangements and migratory patterns of these two places, then consider how this perspective on migration provides a valuable lens on a contemporary, much debated, form of movement: trafficking for sex work. The paper considers debates about how this form of movement is defined and how it can be controlled. In the context of the long history of mobility and travel, current efforts to control trafficking seem futile. They underestimate the difficulty of preventing movement and the appeal of mobility, even if it includes coercion. Indeed, movement for sex work is in part fueled by the desire for travel, novel experiences and opportunities, escape from a bad family or economic situation, or improving one's situation. These motivations are consistent with past patterns of migration. Those who are trafficked, which covers a variety of forms of movement, often move in response to the desire for a better life as well as in response to direct coercion or choices made under coercive conditions (Augustin 2007).

The history of Pacific migration suggests that the legal arrangements of movement and settlement in the new location will have lasting implications for the traveller. This means that efforts to prevent sex trafficking are unlikely to stop the flow of people, and arrangements that provide undesirable legal statuses for victims of trafficking will generate long-term difficulties for them. Creating a legitimate legal status for trafficking victims is critically important to improving their conditions. Simply trying to stop the flow of people coerced into sex work, without changing the underlying inequalities of wealth and opportunity that drive mobility, is doomed to failure (see Monzini 2005).

In the Pacific, movement has long been part of family and social life.

As Ilana Gershon observes in her study of Pacific diasporas, families move constantly throughout the Pacific despite migration, working to maintain ties by the exchange of gifts and information. Even in the sphere of family life, a government's policies and classifications play a critical role. As Gershon notes, '... a government's historical relationships with dominant minorities are often the most relevant for understanding a national ethnoscape' (Gershon 2007: 491). Forms of racial or class exclusion, and the relations between dominant groups and minority groups, can shift identities so that, for example, it may be more salient to hold an identity as a Pacific Islander in Australia than as a Tongan or Samoan. In Fiji, the status of Indo-Fijian has become more politically salient in the Indian ancestry population than an identity based on caste or region of origin in India (Kelly 1994, Lal 1999).

### **Legal Regulation and Migration to Hawai'i and Fiji**

At one time Fiji and Hawai'i had large agricultural populations ruled by powerful chiefs (Collier 2004). They were colonised in the late 19th century by European-descended groups and both developed a thriving sugar plantation economy based on imported Asian labourers. In each case, colonial officials formed a coalition with the indigenous people and excluded the immigrant sugar workers from land and political power. The workers responded by organising into labour unions and mobilising politically to improve their lot. By the end of the colonial era in both places, the people of other nations who came to work the land more or less outnumbered the indigenous people, and British and American law and bureaucracy were layered over a system of chiefly authority (Lal 1999, Kamakau 1961, Fuchs 1983, Kame'eleihiwa 1992).

The duration of the colonial period was similar: the British controlled Fiji from 1874 until 1970; the Americans ruled Hawai'i as a colony from 1898 until 1959. Fiji became independent in 1970; Hawai'i became a US state in 1959. Despite independence, Fiji remains economically dependent and Hawai'i retains a colonial economic relationship to the US mainland. Both are neocolonial rather than postcolonial, in the sense that they are nominally self-governing but

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still economically dependent as they were under colonialism. The status of Native Hawaiians remains essentially colonial within the state of Hawai'i where they are excluded from their lands and politically subordinated in state politics (Cooper and Daws 1990, Denoon 1997, Silva 2004, Coffman 2009).

Ethnic conflicts in Fiji and Hawai'i varied dramatically during and after colonialism. In the years following direct colonial control, they both faced ethnic tension and indigenous nationalism along with ongoing and unresolved charges of social injustice (see Lal et al 1993). In Fiji, ethnic Fijians feared economic domination by the Indo-Fijians even though ethnic Fijians own the vast bulk of the land in perpetuity. Although Indo-Fijians were elected to political leadership, ethnic Fijian-led coups quickly deposed them in the name of indigenous rights and primordial connections to the land. Coups in 1987 and 2000 excluded elected Indo-Fijians from political power and allowed ethnic Fijians to retain political control. But this came at the price of political stability. Ethnic Fijians now feel economically secondary to the Indo-Fijian community and are seeking affirmative action to equalise their position. Many Indo-Fijians are leaving the islands (Kaplan 2004; Lal 1999, 2004).

Hawai'i, in contrast, appears to be a successful multiethnic state. The descendants of European and Asian plantation workers, Native Hawaiians, American colonial elites, and mainland US immigrants live peacefully under a democratically elected government. Some immigrant groups have achieved political power and economic affluence but Native Hawaiians are largely a dispossessed and poor minority that is struggling to recapture their culture, and control over land (Kauanui 2008), while others such as those from the Philippines and the Pacific Islands are caught at the bottom of the social hierarchy of the state (Haas 1992; Okamura 1996, 1998, 2000; Okihiro 2009).

The ongoing but unresolved demands for land and sovereignty in Hawai'i by Kanaka Maoli — Native Hawaiians — have fuelled an energetic and sometimes angry sovereignty movement since the 1970s (Hasager and Friedman 1994, Tengan 2008). The movement

seeks to restore political power to Kanaka Maoli through a range of remedies from independence to a system of reserves, although there is no consensus within the community about the best path to self-determination (see Merry and Brenneis 2004).

Although the political turmoil in Fiji and Hawai'i is usually understood as primarily ethnic, the causes are economic and political as much as ethnic. Many are rooted in the legal and institutional arrangements of land and governance developed during the colonial era (see Kelly 1994, Beechert 1985, Kaplan 2004, Kame'eleihiwa 1992, Merry 2000). The colonial legal legacies of Hawai'i and Fiji have contributed to their contemporary political instability and ethnic turmoil. Comparing the ethnic situation in Hawai'i with that of Fiji highlights the impact of colonial legal arrangements on the shape of contemporary ethnic conflict.

The systems of legal regulation of land and citizenship are among the most salient differences between the two societies. These grew out of different theories of colonial governance. Hawai'i was colonised by Americans who sought to privatise the land, Christianise the Hawaiians, and convert them into free labourers independent of the chiefs (Kame'eleihiwa 1992, Silva 2004, Osorio 2002). Governance shifted from a system of chieftains to a constitutional monarchy with an elected legislative body (Merry 2000). The result was a weakening of the chiefs, the massive loss of land by Native Hawaiians and its purchase by Americans and Europeans whites in the 19th century, and the gradual economic and social marginalisation of Hawaiians. By the middle of the 20th century, most Hawaiians lived in remote villages and poor urban neighbourhoods. Following the model of privatised land and capitalist development, the sugar planters imported labourers from China and Japan to plant and harvest the cane. In the 1880s, these Asian labourers were effectively excluded from citizenship by the increasingly powerful Americans (Beechert 1985, Lal et al 1993, Okihiro 1991). When Hawai'i became a US territory, however, the Hawai'i-born children of the Chinese and Japanese became US citizens with the right to vote and, in the 20th century, they gradually acquired

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political power while Hawaiian political power diminished (Okimoto 2009, Merry 2000).

Fiji, on the other hand, was governed by a British regime that sought to protect and isolate the Fijians in villages while maintaining the power of the chiefs and Fijian control over land (Thomas 1994, 1997; Samson 1998). This meant that the vast majority of the land remained under the control of Fijian villages and chiefs. The Australian white-owned sugar companies imported people from India to work the plantations fields but, like the US white planters in Hawai'i, saw the Indians as labour units rather than citizens (Kelly 1994). They dealt with the demand for political participation by creating a system of separate communal voting for seats designated by ethnic identity.

While Hawai'i and Fiji developed quite different colonial systems for allocating land and political power, they both sustained tripartite divisions of colonial authorities, indigenous peoples, and immigrant sugar plantation labourers who were viewed as coolie labourers rather than potential citizens. Although not expected to stay, these labourers put down roots and settled. Hawaiian leaders endlessly sought 'citizen' labour instead of 'coolie' labour — workers whites from Portugal, even Norway, rather than Chinese, Japanese, or Filipino workers. In time the population of immigrant workers came to equal or outnumber Native Hawaiians and Fijians (Merry 2000).

But, there are important differences in the two island groups and these were shaped by Christianity, colonialism, capitalism, literacy, land privatisation and electoral democracy which combined to form quite different constellations. In Hawai'i, under the influence of missionaries and the pressures to release land for plantations, the government privatised land owned by chiefs and commoners. The land division, or *Mahele*, of 1848 resulted in massive land loss for the Hawaiian people, particularly the commoners (Kame'eleihiwa 1992). By the 1860s, much of the arable land had been converted into white-owned sugar plantations. In Fiji, by contrast, the colonial government protected Fijian land rights so that the vast majority of land is held collectively by lineages. Moreover, to protect Fijian lands and culture, and following



widespread British colonial practices, voting was specified by ethnicity with seats designated for particular ethnic groups (Lal 1999). The results have been a deep social divide with much less social blending among ethnic communities in Fiji than in Hawai'i.

Hawai'i has a more fluid and less racially divided society than Fiji, but it is by no means free of racism or persistent racial/ethnic inequalities (Takaki 1983, Okamura 2000, Okihiro 2009, Trask 1993). Fijians retained their cultural identity and political power more extensively than Native Hawaiians but at the price of alienating their substantial Indo-Fijian population. While Japanese-Americans have become politically and economically powerful in Hawai'i, Indo-Fijians have been less able to translate their economic success into political power and consequently many of the more highly educated Indo-Fijians have chosen to emigrate (Lal 2004).

Overall, the major patterns of migrant labour movement in Fiji and Hawaii are parallel, but the contemporary social formation is quite different because of significant variations in land ownership and political representation. The legal status of each immigrant had long-term effects on the present situation (Merry and Brenneis 2004).

This comparison highlights the role played by law in allocating control over land and power, and in constructing ideologies of difference that render the system coherent and legitimate. Over time, the law defined Indo-Fijians as unequal members of society and Asian Hawaiians as members. The long-term effect has been a pattern of exclusion and out-migration for Indo-Fijians and a gradual increase in political and economic power for at least some Asian-Americans in Hawai'i. The legal definition of status was a central mechanism in the creation of the colonial and postcolonial social order. Law's effects come through its capacity to regulate, to establish identities and belonging, and in the resources it affords — or denies — communities for their own use in managing conflict and shaping local sociality. Law is embodied also in objects, records, archives, briefs, systems of land measurement, and ways of regulating voting that constitute a taken-for-granted world, now transposed into the objects of everyday life and interaction.

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As this comparison indicates, while migration was fundamental to the constitution of these Pacific societies, the implications of movement for different groups varied greatly. The legal arrangements of movement and arrival had a significant impact on social inequalities and divisions that emerged over time. These issues parallel the contemporary legal regulation of sex trafficking and deserve more consideration than they receive in much of the anti-trafficking movement.

### **Regulating Sex Trafficking**

With the increase in migration and globalisation in the late 20th and early 21st centuries, a particular form of migration has taken centre stage: the trafficking of women for sex work. Concern about bonded labour and child labour has increased as well, although much of the focus on trafficking zeroes in on sexual exploitation (Miller 2004). This is not a new problem, of course. It has been taking place for a long time. Despite laws against white slavery being passed early in the 20th century, the rate of trafficking seems to have increased dramatically in the post-Cold War era of globalisation, along with rising global inequality, the economic collapse of parts of the former Soviet Union, and the work of organised crime networks (Monzini 2005).

While people may migrate for sex work and other kinds of work, in practice it is hard to separate sex work migrants from labour migrants since a migrant may intend to take one kind of work and find herself in another, or she might move between sex work and other forms of work depending on circumstances (Augustin 2007). The line between sex work migrants, and victims of sex trafficking is vague and ambiguous. It can also be difficult to distinguish between voluntary and coerced migration since people move under varying degrees of coercion. Sex trafficking is not easily distinguished from smuggling, forced labour migration, or travelling as bonded or contract labour as the plantation workers in Fiji and Hawai'i did in the 19th century (Takaki 1983, 1989). Traffickers may be part of organised crime networks or they may be relatives or even family members from poor villages. It is also not unusual for sex workers themselves to become involved in trafficking

as they get older (Warren 2007).

Attention to the problem of trafficking has risen dramatically since the 1990s. Although there have been many calls to identify the size of problem, the cited numbers can vary from a few hundred thousand to millions. The US State Department Trafficking in Persons Report (TIP Report) for 2010 estimates the number of adults and children in forced labour, bonded labour and forced prostitution at 12.3 million globally. The TIP Report lists 49,105 identified victims and 4166 successful trafficking prosecutions in 2009 (TIP Report 2010: 7), but does not explain the discrepancy between the three sets of figures. For the Asia-Pacific region, the TIP Report says there are three victims per every 1000 inhabitants (2010: 7), which implies the total number of victims is knowable and known.

Estimated numbers of victims are difficult to ascertain and depend on how you define trafficking. Trafficking generally refers to movement by force, fraud, and coercion for commercial sex, or if a person is induced to perform the sex act if under 18 years, or if a person is subjected to involuntary servitude, peonage, debt bondage or slavery. The TIP report also says that a person need not be physically transported to be a trafficking victim, but can be considered trafficked if there is exploitation of labour (2010: 8). Clearly, the term covers a wide variety of labour conditions.

The field of sex trafficking is dominated by a contentious debate over prostitution. There are two international coalitions of non-governmental organisations (NGOs) working on sex trafficking. The Coalition Against Trafficking in Women (CATW, [www.catwinternational.org](http://www.catwinternational.org)) condemns prostitution as a violation of women's bodies, persons and rights, while the Global Alliance Against Traffic in Women (GAATW, [www.gaatw.org](http://www.gaatw.org); see GAATW 2007) sees sex work as a form of work and advocates better working conditions and protections for those providing it. While feminists occupy both sides of this divide, the CATW tends to include conservative and religious groups and, the GAATW, public health advocates seeking to manage sexually transmitted diseases including HIV/AIDS. Focusing on the

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dynamics of movement and the legal status of migrants/trafficking victims shifts the debate away from these entrenched positions and opens up new issues.

Two systems of law and monitoring currently endeavour to regulate international trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, generally referred to as the Palermo Protocol ([www.uncjin.org/Documents/Conventions/](http://www.uncjin.org/Documents/Conventions/)), was developed within the United Nations system while the *Trafficking Victims Protection Act 2000* (TVPA) originated in the US Congress. Both date from 2000, although the Palermo Protocol did not come into force until 2003. The Palermo Protocol has a crime control orientation and is part of an effort to control transnational organized crime. It is attached to a major international crime convention, the Convention against Transnational Organized Crime, and is a multilateral treaty written under the auspices of the Commission on Crime Prevention and Criminal Justice. By 2010, 142 states had ratified the protocol which, as a multilateral convention, is binding only on those that ratify it.

In the Palermo Protocol, Article 3(a) defines trafficking as the movement of people intended for the purpose of exploitation:

... 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 purposes 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.

It further states that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means outlined above. Yet it is often difficult to differentiate the two kinds of migrants since some may come to work and end up

in prostitution, or move in and out of prostitution and other forms of labour. Moreover, since their status is ambiguous and such movements are generally illegal it is hard to confidently estimate the number of victims affected.

Initial work on trafficking focused on sex trafficking and has recently expanded to human trafficking more generally. Although sex trafficking remains the central concern of both legislation and activism at the national and global level, it is only a subgroup of the much larger population of people being trafficked for labour, slavery, debt bondage, and other forms of unfree labour.

Sex trafficking is commonly represented by the image of a young girl sold by impoverished parents to a criminal network, or kidnapped and sold from hand to hand, who ends up in a brothel in a large city where she disappears into a world of sex work and services to thirty men a night. Such stories have elicited a rescue network active in invading brothels, seizing women and putting them into rescue homes. In some situations, the rescuers also try to repatriate the women. However, the situation as presented is far more complicated.

Research I have done, in India with Vibhuti Ramachandran as well as in other parts of the world, suggests that while this is occasionally what happens to women who end up in brothels, there are many other scenarios as well (see Agustin 2007). Many women who go into prostitution are seeking a better life or to escape from an intolerable one, such as marriage to abusive husbands, or the prospect of starvation unless they leave their community. Some may leave for the adventure and the money they can earn, for example, we interviewed a woman in Kolkata who left high school just before graduation, went with her boyfriend to Pakistan and the Gulf States to do sex work, and then returned home to persuade a friend to go with her on another trip. Technically, this is trafficking, although it was probably not experienced as such.

In Indian villages, a woman may be introduced to the sex trade by relatives, neighbours or friends and, after working in commercial sex, may have the opportunity to improve her situation. As Prabha

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Kotiswaran shows in Kolkata, some brothels cater to trafficked women while others rely more on local women (2008). Women can gradually become property owners which they rent to other sex workers. Some who become brothel owners may even run trafficking networks themselves.

While rescue through brothel raids may seem an appealing solution, raids are difficult. For example, in India prostitution is legal so rescuers must target minors and non-consenting adults. Brothel raids should only rescue women who have not consented, but this is hard to determine, particularly in the turmoil of the raid. One solution is to focus on 'rescuing' children, but the age of young people may be disputed as they typically lack reliable documentation of age. To determine a girl's age NGOs in Kolkata rely on bone ossification tests and a doctor's certification to verify the truth of the test, however, such tests cannot precisely pinpoint age. Women placed in rescue homes sometimes escape and return to sex work or they may be held in prison-like conditions to prevent them returning to sex work. Even after being repatriated to another country, many return, usually due to the same pressures that persuaded them to move in the first place (Warren 2010). This tendency to return does not mean that the women would not prefer a different kind of work; they may return because sex work is the best option available given their circumstances.

A few months before the Palermo Protocol was finished, the US Congress passed the TVPA, which established a funding mechanism for anti-trafficking NGOs around the world and the production of an annual report on the efforts of other countries to control trafficking. This report, the *Trafficking in Persons Report* (TIP Report), has been published annually since 2001 and is available on the internet ([www.state.gov/g/tip](http://www.state.gov/g/tip)). The TVPA emphasises protection, prosecution and prevention, but its major emphasis is on prosecution and the current head of the office managing the program in the US State Department has a background as a prosecutor.

The TIP Report was originally envisioned as a way for the US to encourage source countries to stem the flow of trafficked victims

into the US. The law was passed in conjunction with a renewal of the Violence Against Women Act and built on experience in combating domestic violence and sexual assault in the US (Warren 2007). Like the Palermo Protocol, it has a crime control emphasis although it has increasingly stressed the human rights of victims as well.

In addition to publishing the TIP Report, the US Department of State's Office to Monitor and Combat Trafficking in Persons funds many anti-trafficking NGOs. Despite its origins in concerns about women trafficked for sex work, it has increasingly focused on forms of forced labour. During the Bush presidency, 2000–2008, the office also took a strong anti-prostitution approach so that, even in 2010, my interviews in India indicated that only anti-trafficking organizations were asked by US State Department officials to provide information on their activities for the TIP Report whereas sex-worker NGOs were not consulted.

Since the TIP Report was first published in 2001, it has become a tool for pressuring countries for failure to act more strongly, particularly in the area of prosecution of traffickers. It does this through shaming and encouragement as well as the application of sanctions. Some commentators, even those critical of its unilateral approach, credit the TIP Report with a significant increase in action by governments to control trafficking (Gallagher 2011).

The TIP Report ranks countries in three tiers according to compliance with a set of minimum standards established in the TVPA — Tier 1 indicates the most compliant. A fourth tier, the Tier 2 Watch List, was added in 2004. Countries that fall into Tier 3 face the possibility of sanctions by the US while a 2008 amendment consigns those ranked in the Tier 2 Watch List for two consecutive years, beginning in 2009, to Tier 3 for the next year unless there is a presidential waiver (TIP Report 2010: 25). Sanctions include withdrawal of non-humanitarian aid, although these may be waived for security and other concerns. Until 2010, the US did not rank itself but, in response to global complaints, has now done so. In 2011 the US was ranked as Tier 1.

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Among Pacific countries in 2010, Papua New Guinea was the only country in Tier 3 but Fiji was placed in the Tier 2 Watch List along with Kiribati, the Maldives, Micronesia and the Philippines; Indonesia, Palau and Timor-Leste were Tier 2. Like most other rich countries, Australia and New Zealand were ranked in Tier 1. India has been on the Tier 2 Watch List since 2004 and was classified in the same status for 2010 but upgraded to Tier 2 in 2011. According to the report and discussions with the office in the State Department, India's rank is primarily based on a lack of government efforts to control labour trafficking, especially bonded labour, rather than sex trafficking (TIP Report 2010: 171-2). The report notes that there were very few convictions for bonded labour cases but that there was greater success in the area of sex trafficking, although sex trafficking prosecutions and convictions took place only in Mumbai and Andhra Pradesh (TIP Report 2010: 173). Overall, it noted several government programs such as the Anti-Human Trafficking Units of the police and progressive laws, but cited a lack of implementation of these laws and policies.

The TVPA and the TIP Report arose not from international discussion as the Palermo Protocol did, but from concerns about trafficking into the US. Congress determined what it considered good practices for controlling trafficking and established these as the standards against which other countries were to be judged. There are significant differences between the definitions of trafficking in the TVPA and international protocols (Gallagher 2011). In contrast to earlier reports, however, the 2010 TIP Report makes frequent reference to the Palermo Protocol as well as US standards.

In the TIP Report tier rankings depend on the extent to which governments already comply with the TVPA's minimum standards for the elimination of trafficking or are seen to be making significant efforts to comply with them. Tier placement is based more on government efforts than the size of the problem (TIP Report 2010: 20). Such efforts include passing anti-trafficking laws, implementing these laws through prosecution, providing victims with protection and services and not harming their rights, dignity or well-being, developing victim



identification systems, imposing criminal penalties on traffickers, curbing practices that contribute to forced labour migration, and developing partnerships with NGOs to provide victims' services such as health care and counselling (TIP Report 2010: 20-1). Countries that are making efforts but have a large or increasing number of victims, have not provided evidence of improved efforts, or have not fulfilled commitments made the previous year, are classified as Tier 2 Watch List.

The core principles are prosecution, measured in part by number of convictions of traffickers, protection of victims through collaboration between law enforcement and service providers, and prevention through public awareness and a variety of policies such as enforcement of labour laws, elimination of restrictive visa practices, and increase in criminal and civil penalties for companies that rely on forced labour. The 2010 TIP Report added a fourth category, partnerships — collaborations between government and NGOs in the area of human rights, labour and employment, health and services, and law enforcement (TIP Report 2010: 12-15). Although this is a relatively broad range of criteria, the report focuses largely on prosecution and law enforcement approaches to the problem. Further, while the report emphasises the importance of victim protection and assistance, a core concern is the number of trafficking prosecutions and convictions as well as the overall quality and impact of counter-trafficking law enforcement efforts (TIP Report 2010: 6). There is relatively little focus on regularising the status of the trafficking victim and allowing her to stay in the country where she is working.

The process of data collection, originally rather thin, has improved over the years, relying both on government and NGO data collected by embassies and sent to Washington where the tier rankings are established (Gallagher 2011). However, the report still relies very extensively on statistical information (numbers of convictions, shelters, training programs) rather than more qualitative information on, for example, the nature and impact of support for victims (Gallagher 2011: 15, 20). There is little discussion of the limitations of the data or

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the difficulty of counting trafficking victims and activity. The report focuses on what is measurable such as laws passed, convictions, number of trainings, number of shelters, number of special police units, etc., rather than the unmeasurable quality of life of victims or of poor communities from which people are trafficked.

Nevertheless, this partial information is translated into apparently objective tier rankings, producing a 'truth' of the status of trafficking in each country. There are clearly politics involved, with several of the 2010 Tier 3 countries such as Cuba, Iran, and North Korea already viewed as problematic by the US, although friends such as Saudi Arabia were found in Tier 3 as well. Despite the efforts of US embassies in various countries to put the best spin on the practices they observe, decisions are ultimately made in Washington within the State Department. Countries that refuse to cooperate in providing information are downgraded for failure to gather and share information about their efforts. Arguing that the quality of government is relevant to these rankings, the 2010 report shows a correlation between low tier rankings and poor performance on Freedom House's indicators of freedom and Transparency International's Corruption Perception Index (TIP Report 2010: 28-9).

The TIP Report measures, primarily, law enforcement efforts and rates of prosecution, although it also advocates victim/witness protection and prevention. It does not foreground efforts to improve the lives of poor women and low status individuals, those typically most likely to be trafficked. Some NGOs in India, for example, focus on village vigilance committees to determine if young women have gone missing, or provide skills training for the children of sex workers, yet these would not be activities recognised in the TIP report. The TIP Report defines the solution to the trafficking problem as a criminal justice one and locates the responsible parties within the state. It is the police and judiciary that are targeted as responsible for stemming the practice and the strategies that are encouraged are the passing of laws and training for police and judges to recognise and deal with trafficking. Countries that pass anti-trafficking laws improve in the rankings. The

focus is on punishing traffickers rather than recuperating victims.

Thus, the TIP Report articulates a particular theory of how to diminish trafficking. It focuses on the role of organised crime and traffickers, seeking to penalise their activities rather than working to diminish the vulnerability of potential trafficked victims or providing them alternative modes of livelihood. It imagines the problem of trafficking as one of organised crime rather than poverty and inequality and does not touch on forms of inequality based on class, caste, race and gender that often lie behind patterns of coercion into migration and forced labour. Moreover, it assumes that movement into sex work is unwilling, thus ignoring what Laura Marie Augustin argues is a widespread desire to move, travel and have new experiences among people in all social classes (2007). This produces tourism among the wealthy but migration for sex work or other forms of labour among the poor.

The focus on prosecution has some negative impacts on ‘rescued women’ who are often important as witnesses against traffickers. I have heard different accounts of the situation of trafficked women and their legal role as witnesses against traffickers, ranging from some NGOs who say women are eager to testify and open to being trained to speak in court to others who say victims are held against their will in safe houses for long periods of time pending trials. Although trafficking interventions seek to protect victims from arrest for sex work, there is nevertheless a tendency to hold them as witnesses to prosecute the trafficker. The option of staying in the country may depend on testifying against traffickers. In the US and Europe, women can get visas to stay a few months or a year if they cooperate with the prosecution of traffickers. Such visas are usually short term, hard to get, and dependant on cooperation with the police.

As the examination of migration in the Pacific in the 19th century indicated, however, the availability of a legitimate legal status could contribute significantly to allowing the trafficked victim to change her life. Even rescued women often return to the brothels or disappear from shelters. Recognising the forces that drove them to leave in the

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first place, and providing alternative ways to live in the receiving country, would recognise the fact of movement and the possibilities offered women to forge a new life. The experience of Pacific migration, and the variety of ways immigrants have moved from coercive immigrant roles to citizenship and belonging, provides insights into how movement occurs and what legal and social conditions foster belonging. Stigmatised identities and a lack of access to full citizenship status clearly inhibit absorption and collaboration. The more risky and coerced the departure, and the less welcoming the receiving society, the less likely the immigrant or trafficked person will be able to find a stable place in the receiving society. Those who design trafficking interventions, particularly if they see prostitution as inherently exploitative and criminal, would clearly help victims more if they adopted a wider perspective on migration and coercion and expanded the possibilities of resettlement.

## **Conclusion**

Current efforts to control sex trafficking involve effort to regulate and control a space of migration not so different from that fuelling past migrations to Hawai'i and Fiji. Then, as now, migrations are sometimes voluntary, sometimes carried out under various forms of coercion such as poverty, state-arranged labour transfers, capture and 'blackbirding'. They may be inspired by the desire for opportunity and novelty, with or without coercion.

Not all migrants in the 19th century Pacific remained poor. Japanese Americans have become economically and politically powerful in Hawai'i, for example, even though the government of Hawai'i sought white immigrants over Asian ones in the 1880s. When Hawai'i became a US Territory in 1898, those born in the Territory became citizens, regardless of race or immigrant history. This openness to membership in the polity allowed more diversity in the political leadership of the islands and ultimately diminished the exclusive economic and political control of the small group of whites who ran the businesses and politics in the early 20th century (see Fuchs 1961).

The pressure to move was great in the 19th century and it has not abated in the 21st century. Such movements will continue as people seek new opportunities, experiences, and escapes. The conditions of movement are shaped by the regulatory systems in which people move: their access to legitimate statuses on arrival, the availability of reasonably priced forms of movement, and some protection from abuse by those who control the means of travel. The focus on trafficking is both too narrow and too punitive to stem the flow or ameliorate its abuses. It needs to move toward greater acceptance of movement and toward making movement and settlement legal and open rather than illegal and clandestine. Improved access to work visas, legal modes of movement, and settlement and citizenship programs could contribute to stemming the trafficking problem. The TIP Report includes these remedies but does not emphasise them.

Efforts to control sex trafficking are not likely to succeed any more than efforts to prevent other forms of illegal migration. Some states use this concern to monitor and close borders and prohibit the movement of people. Indeed, the enthusiasm for regulating sex trafficking arises from a conjunction of humanitarian desire to aid apparently innocent young women from unwanted sex and state desires to strengthen borders and control the movements of people, drugs and other goods. An historical view of migration and settlement provides a useful way of thinking about the difficulty of regulating trafficking through prosecution. Interest in travel and the desire for change will likely continue. In the meantime, efforts to control trafficking can be harmful to the very people they are meant to protect.

### Notes

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