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# Voices from the Borders of Governance: Connecting the Local Narratives of Surplus Populations

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# Voices from the Borders of Governance: Connecting the Local Narratives of Surplus Populations

*Danny L. Balfour and Brittany Gray*

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*No one wants to be beaten/ pitied / No one chooses refugee camps / or strip searches  
where your / body is left aching or prison / because prison is safer / than a city of fire...  
no one would leave home / unless home chased you to the shore*

– Warsan Shire

In the globalized political economy of the early 21<sup>st</sup> century, national borders are both porous and heavily guarded. In a fluid global economic system, governing borders has become all the more important and difficult, the last frontier of mobility. The stories of Maria that follow are emblematic of what happens when human mobility tries to follow the paths of opportunity and safety in a global society open to free movement of money and goods, but not people (at least not those of limited means). The stories presented in this paper provide an example of connecting multiple narratives (Balfour and Mesaros 1994; MacIntyre 1984) to better understand and create ethical alternatives to exclusionary, and often deadly, border policies. In addition, the narratives demonstrate how government institutions and flawed policy have perpetuated the act of placing border security above ethics and human rights.

## **The Stories of Maria: The Journey North**

*Eva and Carlos felt threatened by the increasing gang activity and violence in Guatemala, especially because sexual assault and trafficking were on the rise in their region and they had a young teenage daughter, Maria. Afraid for their daughter's future, Eva and Carlos made the heart wrenching decision to send Maria to live with her uncle in Arizona who had been living in the states legally for the past few years. With relatively few resources available to them, the couple reluctantly turned to a local "coyote" to help their daughter make the treacherous journey across the border. A few weeks passed before the coyote was finally ready to take his next trip. After sharing tearful farewells with her mother and father, Maria climbed into a van of fellow travelers,*

*most of who were heading north in search of jobs in the U.S., and waved goodbye until her parents were specks on the horizon. The trip proved daunting. The coyote provided few resources and not nearly enough food and water for everyone traveling through the desert. Dehydration and malnutrition quickly set in amongst the group. Tragically, Maria died before they reached the border; her body left for the desert to consume. Or...*

*Nearly three weeks after their departure, the coyote told the exhausted travelers they were less than a day's journey from their destination. Maria looked at her fellow travelers as each mustered a weak smile- but for different reasons. Some were meeting up with family members already living in the states, while others were looking for financial opportunities, or, like Maria, escaping dangerous situations back home.*

*Upon crossing the border, the coyote curtly explained that his journey was over and that his "friends" would take the group the rest of the way. Though Maria was nervous about this new group of strangers, she was too tired to question the situation. After traveling many hours, they arrived at a house and were escorted indoors. Finally, the travelers were told their trip was over; that they had finally made it to the United States. But before they could begin celebrating, the new guides started aggressively pushing the weary travelers to various parts of the house. A woman grabbed Maria and despite her best efforts to fight her aggressor, Maria was simply too weak from her travels to resist. She soon found herself locked in a room with three other girls.*

*The following morning, Maria and the other travelers were forced to begin work at a nearby garment factory. After several hours with no breaks, one traveler attempted to flee. Maria watched as the woman was shoved to the ground by one of the overseers and dragged out of the room. One of the other captors proceeded to explain that he knew where each of their families lived in Guatemala, and that he would hurt their loved ones if they didn't cooperate or work efficiently. He finished by telling everyone not to go to the police, and to trust he was doing them a favor by saying so. He described the brutality of police officers and horrible conditions of prisons, and threatened them with deportation. From then on, Maria worked 12- to 16-hour days, seven days a week. She was given no wages and only meager amounts of food and water. If she performed unsatisfactorily, she was physically beaten and then forced back to work. And on more than a handful of occasions, she was sexually assaulted by one of the male "supervisors". Maria felt as if there was no escape from her imprisonment.*

*One day after several months of servitude, Maria looked up from her sewing machine to see police officers in the factory doorway. She was hopeful but frightened. She had no idea whether the police were there to help or hurt her.*

Maria's stories are fictional. Nevertheless, they present realistic possibilities compiled from real-life scenarios and empirical research. Accounts from refugees and children at the border provided insight to the hardships faced while crossing the desert (Preston 2014; O'Neil 2014; Walser, McNeill, and Zuckerman 2011), and testimonials from human trafficking survivors speak to the fear tactics, work conditions, and repercussions of bondage (Bales and Soodalter 2009; Batstone 2010; Bales 2012). Legal actions taken within the stories are based on current policies, criminal cases, and instances of (mis) classification of human trafficking victims and refugees as criminals (Bales and Soodalter 2009; Batstone 2010; Loftus 2011; Elizondo 2014; Brennan 2014; Martin

and Yankay 2014; TIP Report 2014; Simanski 2014). Therefore, the stories provide a glimpse of the many realities faced by those crossing U.S. and other international borders.

The problem for Maria, and other migrants that seek to reach the U.S., is that immigration policy treats her as a member of a surplus population, one that – because of race, gender, ethnicity, or political and economic status – lacks the protections and rights normally afforded citizens of a nation state (Rubenstein 1983). And even if she was identified as such, to which population does Maria belong? She can be described as an illegal (economic) immigrant, a refugee, or a human trafficking victim. Regrettably, immigration policy addresses each population independently, blind to the fact that an individual can belong to all three categories, if not more. Even if the police who found Maria recognized the complexity of her situation, which set of policies would they reference to prosecute or assist her? Would they treat her as a criminal or as a victim?

The narratives presented here illustrate issues with current policy and do not reflect the full extent of surplus population experiences with the border. As a result, some surplus populations are not addressed through Maria's stories. These groups include but are not limited to millions of refugees in Europe, the Middle East, and Asia, and the various forms of human trafficking in the United States,<sup>1</sup> legal immigrants, and settled refugees. Each has characteristics of a surplus population, having to face the consequences of exclusionary policies.

The debate over immigration policy tends to frame the problem of borders in a globalized economy in a way that creates surplus populations (Adams and Balfour 2014). For the most part, the problem is defined in nationalized terms, as the impact of immigration on the economy and culture of the United States and other countries such as Australia and the EU, which attract a regular influx of economic and political immigrants, many of whom risk their lives to escape poverty, violence, and political oppression (Weber and Pickering 2014). Those who support more open immigration policies point out how past immigrants have contributed to the economic and cultural development of the nation, and how the nation's future depends upon the ability to fashion new ways to make immigrants part of the polity. Proponents of cracking down on illegal immigrants and limiting legal immigration maintain that immigrants will, at best, take jobs away from deserving Americans or, at worst, become parasites dependent on welfare or crime. Thus it is argued (and made policy, for example, in California's Proposition 187) that public education, health benefits, and welfare should be denied to illegal and even to legal immigrants, with less consideration given to the nation's role in providing safe haven for political and economic refugees. The specter of a surplus population looms as unwanted peoples, including and even especially, children and the elderly, are denied any legitimate role in society. Few policy makers seem to want to consider looking at the problem in a different way—for example, as one that stems from the structure of the world economy, international conflict, and the practices of corporations that maximize profits by using low-wage labor and maintaining high unemployment in Third World countries.

Efforts to crack down on illegal immigration from Mexico to the United States have reduced the flow of illegal immigrants across key border areas (Thompson 2008) but have also had some disturbing unintended consequences. As depicted in the first of Maria's stories, intensified security in the most heavily traveled border areas, including those with the newly constructed border fence, pushes many illegal migrants to try more dangerous routes across wide swaths of desert, causing a marked increase in fatalities (Archibold 2007). This is a prime example of how border security

priorities are placed above human rights and ethical action, creating surplus populations without protection and basic necessities. A similar dynamic can be found in the borderlands and seas of Australia and the EU (Associated Press 2015a; Weber and Pickering 2014). From 2000 to 2008, more than 1,000 people died trying to enter the United States through the Arizona desert, some 700 more than all those who died attempting to cross the Berlin Wall in its twenty-eight-year history (*Economist* 2008). The policy to try to reverse this trend by hiring more border agents and extending the fence belies the Statue of Liberty (*Economist* 2008, 27): “A truly impregnable border . . . would involve two layers of fencing 2,000 miles long, with a large no-man’s land . . . and plenty of watchtowers. [It] would have to look as it does near San Diego, or as it used to in Berlin.” Since then, this has become the reality, but without resolving any of the issues and resulting in ever more deaths and deportations.

The stories of Maria demonstrate how immigration laws and policy create surplus populations and “illegal” aliens, making it difficult to effectively prosecute and/or protect these populations. Ethical and effective immigration policies and practices in the context of a global political economy require redefining the concept of national sovereignty to include both the right to defend and control national borders *and* the obligation to protect and admit those who seek political asylum and/or economic opportunity. The ethical challenge for nations like the U.S. that benefit from a globalized economy is whether or not to accept responsibility to provide safe haven for people disadvantaged and displaced by economic and political forces beyond their control.

### **Maria the Illegal (Economic) Immigrant**

*As the police filtered into the room, they began asking Maria and the others for their work visas. When none were presented, the workers were quickly detained and the owner charged with hiring illegal immigrants. Since it was his first offense he was facing only fines: \$250-2000 per illegal employee. Within 48 hours the workers were transferred to immigration authorities and transported to a nearby detention center. Facing deportation, Maria was informed by her immigration officer that she would be granted a hearing to defend herself beforehand.*

*After a long nervous wait, Maria’s court date finally arrived. She unfortunately did not have funds to hire an attorney and was unaware of assistance programs available to her. As a result, Maria was unable to effectively defend herself and prevent her deportation. Though the thought of seeing her parents again brought some comfort, Maria was worried whether Guatemala had gotten worse while she was gone. She was afraid of being sexually abused and trafficked by the local gangs. She couldn’t handle going through it yet again.*

The state of illegal immigration is discernable through the Department of Homeland Security’s (DHS) Annual Report. In 2013, approximately 662,000 aliens were apprehended by DHS, sixty-four percent having come from Mexico. Of these, U.S. Immigration and Customs Enforcement (ICE) detained 441,000. As a result, roughly 438,000 aliens were removed from the U.S. Of these, 72% were from Mexico, 11% Guatemala, 8.3% Honduras, and 4.8% El Salvador. In addition, 178,000 aliens were returned to their countries of origin through processes not requiring a removal order, and nearly 198,000 were removed as known criminals<sup>2</sup> (Simanski 2014). During this time, over 990,000 immigrants were granted Lawful Permanent Resident (LPR) status. Of these,

459,751 were new arrivals and 530,802 were adjustments to prior statuses (Mongar and Yankay 2014).

With strict immigration policies in place, however, it is rather difficult to gain residency in the U.S. and other advanced countries without already having family or employment in the country. Undocumented immigrants like Maria who enter the country illegally are then labeled criminals simply for where they are, not any criminal act. One opportunity for temporary residency is the guest worker program in which migrants obtain one of two H2 visas, the H-2A for agricultural and H-2B for other seasonal work (Loftus 2011). As part of the H-2A visa program, employers are required to meet wage and working condition standards, such as, housing, transportation, tools, and worker compensation. In addition, a complaint system is in place so workers may make claims to any violations of their rights by their employers (U.S. Department of Labor 2015). The requirements of employers are designed to prevent labor infractions and trafficking of workers; however, migrant workers are still at risk.

Despite these measures, policy falls short of protecting this surplus population. In some situations, employers may have used fear tactics to prevent workers from coming forward and making a complaint. These fears may develop, for instance, from threats of being fired and deported without pay, being blacklisted by other potential employers, or doing harm to one's family. In some instances, legal migrant work can escalate into a form of bondage. It should also be noted, whether by free will or the demands of traffickers, migrant workers may remain in the U.S. after their visas expire. Though this population has rights within the U.S., it does not mean they know how to exercise them, or that they are aware they possess such rights. Though migrant workers do not have the same rights as U.S. citizens, they still possess more rights than those in the states illegally. Therefore, it is critical those who are working directly with surplus populations help inform these individuals of their rights and treat them with respect. By doing so, victims of trafficking and labor-abuse might trust local authorities and organizations enough to report misconduct and legal infractions.

Due to strict border policies and security, many illegal immigrants try to cross the border in much the same manner as in the story of Maria. Having to travel in harsh conditions with limited resources often results in injury, sickness, and even death. If they are caught in the process, they are deported to their home country to face the very situations they were trying to escape. In effort to decrease the number of border crossing attempts, U.S. immigration policy created penalties for those entering or staying in the country illegally (8 U.S.C. § 1182, § 1227), as well as, anyone who knowingly employs illegal immigrants (8 U.S.C. §1324). In sum, current policy is punishing- and potentially killing- individuals who are trying to escape a life of hardship and better themselves. A universal value of protecting and providing for one's family is lost to legislation designed to restrict international mobility.

Despite extensive measures to limit illegal immigration, it can be argued that the U.S. promises basic human rights to those without documentation. These include the right to life, liberty, property, and due process of law (Loftus 2011). But once again, like migrant workers with H-2A visas who are afraid to make complaints against their employers, illegal immigrants are even less likely to do so. Their illegal status makes them more vulnerable to employer threats, especially those regarding detention and deportation (Loftus 2011). As in the story of Maria, her employer

threatened her with physical violence, police brutality, poor jail conditions, and physical harm to her family in Guatemala. These threats trapped Maria, like so many men, women and children, in a world of bondage with little hope for escape. Even though surplus populations are allotted the most basic of human rights under U.S. law, individuals like Maria are likely unaware of these protections or are too afraid to utilize them. As a result, the cycle of abuse is perpetuated while the nation continues to fail at protecting these individuals.

If the police officers in the doorway chose to look at Maria as an immigrant, they would not help her “escape.” Legally speaking, she would not meet the qualifications of the Immigration and Nationality Act and would be deported back to the risks of Guatemala. Not only did she enter the U.S. without inspection, she was also working without proper documentation (8 U.S.C §1324). Her employer on the other hand, may receive fines and other repercussions for hiring illegal immigrants, but would not be prosecuted on human trafficking charges. This is a simple example of how public officials may perform their employment responsibilities as expected while harming a surplus population. Not only is Maria’s status as a human trafficking victim not considered, legislation and authorities failed to protect and assist her against her offenders; ultimately leading to her deportation. Consequently, the traffickers are free and able to continue subjugating vulnerable populations. This is why following the economic immigration narrative alone is misleading. It creates a blind eye to why someone might be in the U.S. illegally and may result in the criminalization of victims. Although many travel to the U.S. in search of wealth and prosperity, it is also possible they are refugees or victims of human trafficking.

### **Maria as Victim of Human Trafficking**

*As the police entered the factory, they began by stating they simply had a few questions to ask. After easing the workers minds with a little small talk, the police began asking if they had proper visas. Upon discovery of the workers’ illegal status, the police inquired further. They asked questions such as, where are you from? How did you get here? Where do you live? How much are you paid for your work? Are you able to leave your home to buy groceries? Maria was confused. Why were they asking her if she was able to buy groceries? She was afraid to answer the questions for fear of her and her family’s safety, but she thought it was a risk worth taking. After explaining how she had arrived at the factory and the abuses she had suffered, the officer realized the workers were possible human trafficking victims.*

*Maria and the workers were soon escorted to local shelters and centers. She was given basic amenities and was able to speak to a counselor about her traumatic experience. While at the center, Maria learned that her potential human trafficking status could help her receive U.S. citizenship and rehabilitative support services if granted a T-visa. As part of the application process, Maria was told she needed to assist authorities in prosecuting her traffickers. She was afraid to speak in court in front of her abusers, but the attorney assured her they couldn’t harm her while they were in custody.*

*During the trial, Maria’s attorney told her they were having difficulty proving coercion. Without coercion or proof of her abuse, Maria’s traffickers would only face charges for hiring illegal employees and a few minor labor infractions. After all the pain and anxiety she endured while helping*

*the authorities prosecute her offenders, Maria feared she wouldn't be granted a visa and soon be deported to Guatemala.*

The 2014 TIP Report provides insight to the current state of human trafficking in the United States. In 2013, top countries for victim origin included the U.S., Mexico, Philippines, Thailand, Honduras, Guatemala, India, and El Salvador. The US government currently complies with minimum standards for preventing, prosecuting, and protecting human trafficking victims. According to the report, the Federal government has prosecuted more cases, obtained more convictions in both sex and labor trafficking, and continued to strengthen training at all levels of government. At the state level, each has enacted anti-human trafficking policy. It is also reported that state level prosecutions have also increased. Despite these advances, US prosecutions of human trafficking offenders only number in the hundreds. In 2013, the Department of Justice (DOJ) prosecuted 253 trafficking offenders, of which, 275 were sexual bondage and 49 were largely related to labor trafficking—though many were a combination of both forms. Conversely, only 178 convictions were made by the DOJ. In addition to federal human trafficking cases, media reports suggest over 100 additional cases at the state level (TIP Report 2014). What the report doesn't address is the number of human trafficking victims who are criminalized and incorrectly labeled as illegal immigrants.

When legislation focuses solely on immigration policy, human trafficking victims and refugees often fall through the cracks.<sup>3</sup> And if discovered and deported to their home country, they may be at risk of re-victimization. If the police determined Maria was an illegal immigrant and deported her back home, she or her parents might decide it's best for her to cross the U.S. border yet again to escape the dangers of Guatemala. However, since the police saw Maria as a potential human trafficking victim, she may be eligible for victim support services and possible U.S. citizenship. As depicted in Maria's human trafficking narrative, authorities followed an alternative framework; meaning the immigration framework from the previous narrative was not prioritized. Rather than simply identifying Maria and the others as illegal immigrants, the authorities used their personal training and experience to inquire deeper, determining the reality of workers' situation and their potential status as human trafficking victims. Conversely, critics argue against this victim-centered approach to immigration, claiming it presents a policy abuse opportunity for both illegal immigrants and government officials (Chacon 2010).

Though human trafficking is denounced at all levels by the Victims of Trafficking and Violence Protection Act (TVPA), only those who suffer "severe" forms of trafficking are granted assistance. According to the TVPA, severe forms of trafficking include:

- **Sex trafficking:** the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion. Or in which the person induced to perform such act has not attained 18 years of age; and
- **Labor Trafficking:** the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (TVPA 2000; 22 U.S.C. § 7101).



The issue with this definition is that “severe” is not described in detail. It is subjective and left to interpretation. How does a victim prove coercion or verbal threats of violence to them or their families back home? How does Maria prove that she wasn’t able to leave the garment factory when she wasn’t physically confined to the location?

It is possible that the police would recognize Maria as a trafficking victim. However, because immigration policy often takes precedence, those in a position to help human trafficking victims don’t often consider all possible reasons why an individual might be in the U.S. illegally. For instance, Loftus (2011) discusses the harm done by authorities that participate in blind rather than smart raids. In these situations, authorities enter a work place expecting to find illegal immigrants working inside, not human trafficking victims, therefore pursuing the wrong line of questioning. With victims afraid to come forward and authorities focused on immigration status, many human trafficking victims may in fact be deported as criminals rather than assisted as victims. As a counter measure, some stakeholders argue that a victim-centered approach should be implemented in situations like these (TIP Report 2010). By incorporating this concept into day-to-day operations, discretion can be exercised that will put the well-being of individuals first, not their potentially illegal immigration status. Doing so encourages ethical actions and decision making, while helping to prevent surplus populations from slipping through the cracks.

In the case of Maria, had the police conducted a blind rather than smart raid, she would have been detained, charged with illegal immigration fees, and deported illegally. Alternatively, her traffickers may have simply received labor infraction fines for having knowingly hired illegal aliens and avoid any human trafficking charges. Consequently, this affords traffickers the opportunity to subjugate their future workers, and perpetuate the cycle. If convicted, the trafficker may face 5 to 20 years of imprisonment and substantial fines; though it should be noted that crimes and punishments vary by state (TIP Report 2014). In several cases, victims of modern-day slavery have actually been punished more severely than their traffickers (TVPA 2000); yet another unintended consequence of street-level bureaucrats fulfilling their employment responsibilities and upholding the law. Due to this narrow perspective of immigration and mobility in the U.S., those working with surplus populations may unknowingly (or not) ignore human rights and cause harm to individuals, for the sake of performing their job (Adams and Balfour 2014).

According to the TVPA, victims of “severe” human trafficking should not be prosecuted for illegal citizenship or inappropriately detained, incarcerated, fined, or penalized for actions committed as a direct result of human trafficking (TVPA 2000; 22 U.S.C. § 7101). Despite this globally recognized regulation, many modern day slavery victims experience or fear experiencing this exact situation. As for Maria, she suffered negative repercussions in the immigration narrative despite having been a trafficking victim. Though the authorities were unaware of the true situation, they began the cycle of treating Maria as a criminal rather than victim. As stated in the narrative, the events ultimately led to her prosecution and deportation as an illegal immigrant. Even though deportation may temporarily rescue Maria from her bondage, her situation back home may be just as bad or worse. For instance, violence and human trafficking may still be present in the area, or Maria’s community may shame her for her sexual impropriety. In situations like these, it is not surprising for individuals to try to cross the border yet again, despite having a bad experience with it in the past.

Another disconnect between immigration and human trafficking policy stems from the multiple levels of government that can get involved. In regard to immigration cases, local and state governments are recommended not to act for it is typically under federal jurisdiction. Participation in anti-human trafficking cases, however, occurs at all levels of government (Loftus 2011). Though authorities and local and state governments are encouraged to take action in human trafficking cases, they may try to avoid them in fear of overstepping immigration jurisdiction. This is another example of how simply doing one's job can result in unethical behavior. An officer of the law shouldn't have to fear overstepping their bounds when questioning immigrants about their legal status and work conditions. In the case of Maria, she was both an illegal immigrant and human trafficking victim. Which title should be first priority? Should the officers in the door way treat her as a potential criminal or assist her as a victim? The answer seems morally obvious but human trafficking cases must be tried and proved in a court of law. Without knowing to which population a person like Maria belongs or which policy takes priority, it is no wonder authorities have difficulty opening a human trafficking case and victims are afraid to come forward.

Human trafficking policy issues, however, are not limited to the immigration narrative. Due to the relatively recent attention of modern day slavery, much of the legislation is ambiguous or incomplete. One such shortfall is policy relating to prostitution. Prostitution is a "hot topic" in the anti-trafficking community, largely due to the perspective that prostitutes choose their line of work, even if out of desperation. Regardless of one's opinion on the matter, not all prostitutes choose their profession. Fear tactics, physical abuse, forced drug addiction, and malnutrition are just a few strategies implemented by traffickers to force women, men, and children into this line of work, or any type of work for that matter. As a result, prostitutes have been arrested, and deported if illegal, while their "johns" and "pimps" faced small fines if anything. Furthermore, federal law states that any minor participating in prostitution may not be prosecuted as a criminal – they are considered human trafficking victims because they are not considered mature enough to genuinely consent to sexual activity (TVPA 2000; 22 U.S.C. § 7101). However, not all states are aware or follow this law as minor prostitutes continue to be arrested and prosecuted (Irvine 2013; TIP Report 2014).

If it is determined that an individual like Maria is indeed a human trafficking victim, he or she is granted some rights and may have the opportunity to apply for U.S. citizenship. According to the TVPA, individuals who suffered "severe" forms of trafficking are able to apply for a T-Visa (TVPA 2000; 22 U.S.C. § 7101). Those applying for the visa are able to stay in the U.S. and may receive victim services (if available), however, only if they assist in the prosecution of their trafficker, which not all victims may be able to do. With this in mind, recent legislation has made an exception for those who are too traumatized or placed in physical danger by testifying. In addition, while applying for the visa is free of charge, there are often fees for filing supplemental materials and those applying are not allowed to legally work within the U.S. until they are granted a T-visa. This creates hardship for many human trafficking victims, especially if they do not speak the native language. As a result, they may turn to local immigrant populations to help them fill out the applications or forms to waive fees. Unfortunately, some of these communities already have connections to human trafficking, making it difficult for victims to testify against their oppressors, especially if threats are made against family and friends in their native country (Seelke and Siskin 2008).

In addition, helping authorities during the investigation and applying for the T-visa does not mean they will be granted the visa, and in fact, may still face deportation. Why would someone like

Maria risk their safety only to be deported back to the situations they were escaping from, often made worse by now facing shaming from their community? If deported, the possibility of recidivism is all too real. Even if a victim does assist in investigations and is granted temporary residence in the U.S., they can only work once they receive their T-visa (TVPA 2000; 22 U.S.C. 7101). How is that person supposed to support his or herself during the lengthy application process? How are they supposed to afford health care and therapy? Even if they attained work with their T-visa, it most likely would be low-skill, low-wage work. Victim assistance policy is currently lacking, forcing non-profits and other charitable entities to try to fill the gaps.

Another issue with human trafficking policy is that it follows and is limited by public opinion. Much of the nation is appalled that women and children are forced into sexual slavery, as they should be. However, many are unaware that modern day slavery exists in many forms and locations; agriculture, sweat shops, fisheries, service industry, etc., and that it affects people of all ages, genders, and nationalities. Therefore, a common mindset is that if it's not sexual slavery, it is merely a labor infraction, which can be far from the truth. As a result, victims of non-sexual slavery have become members of a sub-surplus population, with less protection than their sex-trafficked counterparts.

Some argue that human trafficking is not taking place in the amount and form that legitimate sources are quoting. Part of this perspective comes from the relatively low number of T-visas granted to modern day slavery victims. In 2013, only 848 victims and 975 victim family members received these visas (TIP Report 2014). However, there are a plethora of reasons why so few of the 5,000 visas available each year are granted. One of the leading reasons is the low number of cases discovered annually. Part of this is due to the victims' fear of coming forward, as well as, traffickers operating behind closed doors. In addition, having authorities that are not trained to recognize the signs of human trafficking may result in the improper labeling of a victim as an illegal or victim of a labor infraction. However, current policy also doesn't help authorities and local/state governments protect human trafficking victims or prosecute traffickers.

Unclear policies as to who is a victim and who is a trafficker, and as to who is an illegal immigrant or trafficking victim, makes it difficult to take informed action in these situations. Therefore, officials in a position to help need to be aware and properly trained in order to prevent immigration frameworks from overshadowing the need to put the human element first. And though sometimes overlooked, one reason the number of trafficking visas allocated is low in comparison to the number of those estimated to be in bondage, is that not all victims are migrants. Trafficking can claim anyone, no matter the nationality, legal status, gender, age, or location. It is also possible that human trafficking victims do not see themselves as such, or are unaware of the concept and options available to them, resulting in them not coming forward as a victim. In fact, they may even view themselves as illegal immigrants who fear deportation, especially if their captors use it as a fear tactic (Loftus 2011).

## **Maria the Refugee**

*The police and a few translators walked through the factory explaining to the workers that they were there to ask questions. To help the workers feel at ease, the police began by asking innocuous questions such as how their day was or if they've been enjoying the warm weather. As they felt the workers becoming more comfortable, they began asking the more serious questions. Where were they from? Do you have a work visa or citizenship? How did you get here? Why did you leave your home and family, and travel to the U.S.?*

*At first, Maria was afraid to answer truthfully. Would her traffickers harm her family back in Guatemala? Would the police deport her back to the dangers of her home because she didn't have proper paperwork? Maria decided not to divulge the whole truth to avoid possible punishment from her traffickers but did explain why she had traveled to the U.S. Through the interview process, it became apparent to the officers that many of the workers were illegal immigrants that fled the recent conflict in Guatemala. Their past experiences with immigration cases allowed the officers to quickly recognize that many of the individuals might qualify for political asylum as refugees.*

*The police escorted the workers out of the factory and drove them to a nearby refugee camp. Here Maria and the others waited until their court hearings to either grant them asylum, or deport them home as illegal immigrants. Though the conditions at the center were not the best, Maria was happy to be away from the factory and free from her abusers. Finally, the day came for Maria to testify in court why she fled her home in Guatemala. Though the process was a long and tedious one, Maria was eventually given an answer from the courts. She was granted asylum and sent to live with her uncle, her only legal guardian in the U.S.*

DHS publishes an annual report on refugees and asylum seekers. In 2013, the U.S. government capped the number of permitted refugees at 70,000. A decrease from the 76,000 permitted in 2012 and 80,000 in 2011. Top countries of origin include Iraq (28%), Burma (23%), Bhutan (13%), and Somalia (11%). States with the highest residency of refugees included Texas (11%), California (9.1%) and Michigan (6.7%). Refugee status approval is determined by priority level<sup>4</sup> as well as meeting eligibility criteria. According to United States law, a refugee is someone who- is located outside of the U.S, is of special humanitarian concern to the U.S., was persecuted or fears persecution due to race, religion, nationality, political opinion, or membership in a particular social group, and is not firmly resettled in another country (Martin and Yankay 2014).

Though Maria may not technically qualify as a refugee due to her residence in the U.S., she may still qualify for asylum rights considering she was escaping a dangerous environment in Guatemala. According to DHS, individuals who have been persecuted or fear persecution due to race, religion, nationality, membership in a particular social group, or political opinion, and who meet the definition of a refugee, are already in the U.S., or at port seeking entry, may apply for asylum.<sup>5</sup> Top nationalities of asylum seekers in 2013 included China (34%), Egypt (14%), Ethiopia (3.5%), Nepal (3.4%), and Syria (3.2%) while states with the most asylum residents included California (42%), New York (13%), and Florida (12%) (Martin and Yankay 2014). If seeking amnesty, an individual may not work or apply for work until their status is cleared, or until 150 days have passed since their application submission; whereas, refugee status permits an individual to work immediately upon entering the United States. As a result, charities and other nonprofit organizations often have to fill the gaps until those granted asylum are able to support themselves. One

benefit to both of these options is that both applications can be processed at no cost (Department of Homeland Security 2015).

However, recent events along the border suggest Maria might not have received this privilege. With the large number of women and children being found at the border, the U.S. has had difficulty deciding whether to treat them as illegal immigrants or refugees. From January through July 2014, more than 50,000 unaccompanied children were apprehended at the border. An additional 54,347 adults with children were also reported (Department of Homeland Security, 2014). According to the U.N., 60% of those arriving at the border can make legal claim to protection via asylum but many are not granted these rights. Most nations, including the U.S., are not adequately prepared to assist this volume of migrants. As a result, many fall through the cracks and may not receive support in filing for asylum. Though crude, Washington describes the ethical and political decision to be made with the statement “do we spit on them or give them blankets (Elizondo 2014).”

As a countermeasure, President Obama opened additional detention centers in Texas to address the situation while simultaneously working to discourage further migrations. Do those who survive the journey deserve due process and a chance to prove their eligibility for asylum? If they are deported, will they simply try to cross the border again? If so, the risk of injury, death, or human trafficking becomes quite real. Currently, NGOs are attempting to fill service gaps to this population, meeting the needs of the people at the border who have no legal rights (O’Neil, 2014). Maria’s stories illustrate the human cost of the confusing and contradictory immigration policy of the U.S and the need for comprehensive reform based on the realities of the global economy and the plight of its surplus populations. By doing so, we can start aligning humanity and policy, as well as, limiting the damage done by street level bureaucrats who are “just doing their job.”

## **Toward Ethical Immigration Policies and Practices**

As mentioned earlier, ethical and effective immigration policies and practices in the global political economy requires a definition of the concept of national sovereignty that includes the right to defend and control national borders *and* the obligation to protect and admit those who seek asylum and/or economic opportunity. Getting to this new definition of national sovereignty begins with the recognition of a universal human right of mobility (Weber and Pickering 2014). In a world where goods, services, and finance move seamlessly across national borders, and international corporations operate as near sovereign powers, people also need the right to move with as few impediments as possible to pursue the opportunities afforded by the globalized economy, and escape oppressive political regimes. Otherwise, those opportunities will be restricted to the portion of the world’s population with access to capital and mobility (such as within and between the US and Eurozone). Facilitating mobility will not only provide new opportunities for those who need and deserve them, but also reduce the illicit economy of human trafficking in and around national borders.<sup>6</sup>

At a tactical level, this means governing borders in a way that “puts cruelty first” (Shklar 1984) as the worst vice to avoid, by restricting as much as possible access to dangerous crossing routes and facilitating movement through safer routes. Those who present themselves to border guards and immigration officials should be afforded all basic human rights, including due process and habeas corpus, and most admitted with at least temporary work or refugee visas. Such a policy would

allow a much more legitimate assumption of criminality for those trying to cross through the dangerous routes while greatly reducing the number of people made into criminals and victims only because they violated laws that restrict mobility. Even though Maria's and the others' legal statuses were initially unknown, the framework of illegal immigration led officials to deny their human rights simply because of where they were.

As Maria's stories illustrate, the politics and ethics of exclusion separates "irregular migrants" into artificial classifications based on "deservingness:" the economic immigrant versus the refugee or trafficking victim, where the latter has rights but the former does not, in an attempt to limit human movement (Kingsley 2016). In contrast, a definition of national sovereignty based on an obligation of protection and admittance to those seeking political asylum and/or economic opportunity recognizes the universal human right to mobility and the complexities and hardship of those who feel they must leave their homes to escape oppression and/or economic deprivation. Operations under the current definition of sovereignty, intentional or not, have continuously placed restrictive immigration policy before human rights and dignity.

An approach to border governance that makes ethics and human rights the first priority, not an afterthought to border security, is better suited to the realities of human migration in the global political economy: people are going to continue to test borders in response to economic and political insecurity (Kingsley 2016). It recognizes the importance of national security and sovereignty while also accepting the fact that, as in all large systems, errors will inevitably occur. But the desire to reduce error should not come before avoiding cruelty and protecting human rights. Ethical governance would place less emphasis on preventing the error of allowing entry of those who should be excluded and place more emphasis on avoiding the error (cruelty) of denying entry of those who need a safe haven and should be admitted, all the while recognizing that it is not a zero-sum game. Errors will occur within ethical and unethical, humane and inhumane, systems, which further supports putting ethics first. The failure to do so literally creates surplus populations, condemning people to deprivation and death without the benefit of the most basic of human rights and legal protections (see also, for example, the half-hearted effort by the EU to deal with the flow of refugees from the violence in the Middle East, Associated Press 2015b; Kingsley 2016).<sup>7</sup> There is a legitimate and important role in controlling borders for law enforcement along with immigration services. But "putting cruelty first" as the worst vice or error would put nations on firmer ethical ground while maintaining and promoting the rule of law and recognizing the human realities of the globalized political economy.

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## Endnotes

<sup>1</sup> TIP Report (2014): “Trafficking can occur in both legal and illicit industries or markets, including in brothels, escort services, massage parlors, strip clubs, street prostitution, hotel services, hospitality, sales crews, agriculture, manufacturing, janitorial services, construction, health and elder care, and domestic service.”

<sup>2</sup> Refers to individuals who had prior criminal convictions.

<sup>3</sup> Kevin Bales (1999) identifies 3 factors contributing to the resurgence of slavery: “The first is the population explosion that flooded the world’s labor markets with millions of poor and vulnerable people. The second is the revolution of economic globalization and modernized agriculture, which has dispossessed poor farmers and made them vulnerable to enslavement. In the new world economy capital flies wherever labor is cheapest, and the financial links of slavery can stretch around the world. The third factor is the chaos of greed, violence, and corruption created by this economic change in many developing countries, change that destroying the social rules and traditional bonds of responsibility that might have protected potential slaves.”

<sup>4</sup> Martin and Yankay (2014): “The United States Refugee Admissions Program (USRAP) establishes processing priorities to identify individuals and groups who are of special humanitarian concern to the United States and who are eligible for refugee resettlement consideration. Priority categories are Priority One...individuals referred by the United Nations High Commissioner for Refugees...Priority Two...groups of special humanitarian concern...and Priority Three...family reunification cases.”

<sup>5</sup> Martin and Yankay (2014): “Asylum may be obtained in one of three ways: affirmatively through a USCIS asylum officer, defensively in removal proceedings before an immigration judge of the Executive Office for Immigration Review (EOIR) of the Department of Justice, or an individual may derive asylum status as the spouse or child of an asylee. To obtain asylum, an alien must apply within one year from the date of last arrival or establish that an exception applies based on changed or extraordinary circumstances.”

<sup>6</sup> Loftus (2011) makes the following recommendations for integrating immigration and human trafficking policy:

- Addressing the implications of employment-based immigration reforms for victims of human trafficking
- Arming migrants with information about their rights
- Training law enforcement officials at federal, state, and local levels
- Bringing state laws into conformity of TVPA



- Ensuring that traffickers are identified and prosecuted through investigations of employers.

<sup>7</sup> It is important to note that German Chancellor Angela Merkel, at considerable political risk, employed something like a policy of putting cruelty first with an almost open door (but still inadequate) asylum policy for Syrian refugees. Unquestionably, some errors were made, but they pale in significance relative to the hundreds of thousands of lives saved by recognizing the need for human mobility in a hostile world.

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