

IS THIS THE WAY TO GO? – HANDLING IMMIGRATION IN A GLOBAL ERA[□]

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ABSTRACT

This article is an English translation of Saskia Sassen's Rätt väg? – Immigration i en global era, originally published in the Swedish journal Ord&Bild. Over the last decade it is estimated more than 2,500 would-be immigrants died trying to get into Europe. Immigration policies of police and military control not only disregard international human rights and civil liberties, but they also promote the illegal trafficking of people. Further, these policies weaken the rule of law and thereby our democracies. Sooner or later brutal police action in the name of immigration regulation will touch the documented. Thus countries need to find another way of regulating illegal entry or risk compromising the rule of law. – Stanford Agora

Over the last decade it is estimated more than 2,500 would-be immigrants died trying to get into Europe. That is many dead, but not many immigrants for a continent of over 350 million people. Who is it we, Europeans, are determined to keep out to the point that they risk their lives to get in? — An equally determined but tiny minority of men, women and children from mostly poor countries, who will come, no matter what, in search of work or refuge. They are not criminals. Yet, our determination to keep them out feeds a criminal trade. There has been a sharp growth in illegal trafficking of people as receiving countries have clamped down on entries and semi-militarized more and more borders.

These immigration policies raise two issues. The first is the old trade-off between regulating an undesirable act and criminalizing that act, even though it may not be intrinsically criminal. The latter policy creates greater incentives for genuinely criminal actors to promote the forbidden activity. A familiar instance of this trade-off concerns marijuana control policy. Does the criminalizing of marijuana in the United States – and the United Kingdom – really work better as a policy to control its use than the controlled legality of marijuana in the Netherlands, which

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leaves very little room for profit making by drug dealers and hence no incentive to expand its use?

The second policy issue raised by these developments is the effect of these hundreds of deaths on us all, not only those directly concerned. The fact that these people lack the proper documents for entry is easily represented in policy and media circles as exempting us from any responsibility as societies for these deaths. The lack of proper documents somehow seems to make these deaths less human and reduce whatever might be our responsibility contributing to these deaths.

I want to argue the direction we are taking in our immigration policies towards greater police and military control and growing disregard for international human rights codes, as well as our own civil liberties laws, is promoting illegal trafficking and weakening our rule of law and thereby our democracies. These policies are adding to an already growing mix of what I would describe as negative incentives, or incentives with negative outcomes for significant sectors of our societies. Illegal trafficking and the deaths of men, women and children who are not criminals, and who die on our "soil" eventually touches the fabric of *our* societies. In the long run it will affect us all. Yes, the central victims are the men and women who are trafficked and especially those who die. We would be foolish to think we can allow these abuses and deaths to happen in the name of maintaining control, and remain untouched. The growth in illegal trafficking and the sharpening of extreme anti-immigrant politics willing to sacrifice some civil liberties in the name of control are indications of this broader negative effect.

INTERCONNECTED FORMS OF VIOLENCE

Part of the challenge is to recognize the interconnectedness of forms of violence that we do not always recognize as being connected or for that matter, as being forms of violence. The sharp growth of government debt, poverty, unemployment, as well as the closing of traditional economic sectors in the global south, partly due to neoliberal economic globalization, has created new migrations and fed an exploding illegal trade in people. We now have growing evidence that International Monetary Fund (IMF) policy has sharpened these conditions even as it has brought great prosperity to about 20% of residents in many countries in the global south.¹

¹ For evidence on these sets of issues please refer to SASKIA SASSEN, *THE GLOBAL CITY* (2d. ed. 2001). See also, Saskia Sassen, *Governance Hotspots in the Post-September 11 World*, in *WORLDS IN COLLISION* (Ken Booth & Tim Dunne eds., 2002).

Our governments, by supporting IMF policies, are partly contributing to conditions that will stimulate emigration and illegal trafficking in people. Further, as the rich economies become richer, partly because of these same IMF policies, they also become more desirable destinations. This in turn creates a source of hard currency for the governments of the sending countries, which often face mounting debt and declines in national revenues as neo-liberal globalization weakens and destroys national economic sectors. Thus these governments are not interested particularly in regulating emigration either. Finally, as these same policies have also raised inequality and unemployment inside the rich economies, the disadvantaged have become radicalized, often taking on extreme right wing politics.

The tragedy is those most negatively affected, those to whom violence has been done both in the global south and in the rich economies, the victims of it all, now confront each other as enemies inside our countries. Anti-immigrant sentiment probably runs highest among the poor and the middle classes (though not the upper 20%) comprised of immigrants and would-be immigrants. And as the rich countries raise their walls to keep immigrants and refugees out, they feed the illegal trade in people and raise the profits to be made as despair rises in the global south and fear in the global north. This is not sound policy. This is a vicious policy cycle.

The same infrastructure, both technical and institutional that enables global flows of capital, goods, services and the new transnational managerial and professional class, also enables migrations and illegal trafficking. They facilitate the flow of remittances back to sending countries, a major incentive for these governments to not do anything. These various entanglements raise the complexity of the challenge of how to regulate immigration. These entanglements and this type of complexity are going in the wrong direction. We need to reverse this dynamic.

When globalization policies go wrong, they really go very wrong for countries in the global south. Thereby these policies sharpen the incentives for both emigration and trafficking for emigrants, traffickers and governments in the global south, given growing government indebtedness and lack of opportunity for workers and would be entrepreneurs in much of the global south.

Emigrants enter the macro-level of development strategies for sending countries through their remittances. In many countries these remittances represent a major source of foreign exchange reserves for the government. While the flows of remittances may be minor compared to the massive daily capital flows in various financial markets, they are often very significant for developing or struggling economies.

In 1998 – the last year for which comprehensive data are available – global remittances sent by immigrants to their home countries reached over \$ 70 billion. To understand the significance of this figure, it should be related to the GDP (gross domestic product) and foreign currency reserves in the specific countries involved, rather than compared to the global flow of capital. For instance, in the Philippines, a key sender of migrants generally and of women for the entertainment industry in several countries, remittances were the third largest source of foreign exchange over the last several years. In Bangladesh, another country with significant numbers of its workers in the Middle East, Japan and several European countries, remittances represent about a third of foreign exchange. Exporting workers and remittances are means for governments of coping with unemployment and foreign debt.²

This would also seem to be the case given the growing interdependencies brought on by globalization, which also enable illegal trafficking. Cross-border business travel, global tourism, the Internet and other conditions integral to globalization enable multiple global flows not foreseen by the framers and developers of economic globalization. This creates a difficult trade-off in a context where September 11 has further sharpened the will to control immigration and resident immigrants. Increased illegal trafficking and the reduction in civil liberties will not facilitate the need to learn how to accommodate more immigration to respond to the future demographic turn.

Let me focus next with some detail on one specific flow, which brings many of these issues together.

ILLEGAL TRAFFICKING

Trafficking in workers for both licit and illegal work (e.g. unauthorized sex work) illuminates a number of intersections between the negative conditions in the global south and some of the tensions in the immigration regime.³ Trafficking is a violation of several distinct types of rights: human, civil, political. Trafficking in people appears to be mainly related to sex markets, to labor markets and to illegal migration. Much legislative work has been done to address trafficking: international treaties and charters, United Nations (UN) resolutions, and various bodies and commissions.⁴ Trafficking has become sufficiently recognized as an issue

² There are two ways in which governments have secured benefits through these strategies. One of these is highly formalized and the other is simply a by-product of the migration process itself. Among the strongest examples of a formal labor export program today is the Philippines.

³ Trafficking involves the forced recruitment and/or transportation of people within and across states for work or services through a variety of forms all involving coercion.

⁴ See e.g., Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms and*

that it was also addressed in the G8 meeting in Birmingham in May 1998.⁵ The heads of the 8 major industrialized countries stressed the importance of cooperation against international organized crime and trafficking in persons. President Clinton issued a set of directives to his administration in order to strengthen and increase efforts against trafficking in women and girls. This in turn generated the International Trafficking of Women and Children Victim Protection Act of 1999, introduced Senator Paul Wellstone.⁶ NGOs are also playing an increasingly important role. For instance, the Coalition Against Trafficking in Women has centers and representatives in Australia, Bangladesh, Europe, Latin America, North America, Africa and Asia Pacific. The Women's Rights Advocacy Program has established the Initiative Against Trafficking in Persons to combat the global trade in persons.

This type of trafficking shows us one of the meanings of interdependence in the current global system. There are two distinct issues here: one is that globalization has produced new conditions and dynamics, especially the growing demand for these types of workers by the expanding high income professional workforce associated largely, though not exclusively, with globalization.⁷ The second issue is that globalization has enabled older trafficking networks and practices that used to be national or regional to become global.

Here I want to focus on some of the data on the trafficking of women, especially for the sex industries and the growing weight of this trafficking as a profit making option for the traffickers, especially it would seem from the global south. This then adds to the role of emigrants' remittances generally, whether from lawful, unauthorized or trafficked immigrants in the account balance of many of the impoverished governments of sending countries. Profits and revenues are, clearly, a disincentive to attack this trade. Insofar as the countries of the global north are one of the key destinations, they do not escape the consequences of this illegal trade either.

Trafficking in migrants is a profitable business. According to a UN report, criminal organizations in the 1990s generated an estimated \$3.5 billion per year in profits from trafficking

Contexts, 11 HARV. HUM. RTS. J. 65 (1998).

⁵ See TRAFFICKING IN MIGRANTS (International Organization for Migration, Geneva, Various Years).

⁶ S. 600, 106th Cong. (1999). For a good critical analysis, see Dayan, Policy Initiatives in the US Against the Illegal Trafficking of Women in the Sex Industry (1999) (Department of Sociology, University of Chicago (on file with author).

⁷ One process that captures this specific type of interdependence is the global migration of maids, nannies, and nurses. See e.g., GLOBAL WOMAN: THE SUPPLY OF MAIDS, NANNIES, NURSES AND SEX WORKERS (Barbara Ehrenreich & Arlie Hochschild eds., 2003).

migrants (excluding most of the women trafficked for the sex industry). The entry of organized crime is a recent development in the case of migrant trafficking; in the past it was mostly petty criminals who engaged in this type of trafficking. The Central Intelligence Agency of the United States reports that organized crime groups are creating intercontinental strategic alliances through networks of co-ethnics throughout several countries; this facilitates transport, local contact and distribution, provision of false documents, etc. The Global Survival Network reported on these practices after a two-year investigation using the establishment of a dummy company to enter the illegal trade. Such networks also facilitate the organized circulation of trafficked women among third countries – not only from sending to receiving countries. Traffickers may move women from Burma, Laos, Vietnam and China to Thailand, while Thai women may have been moved to Japan and the United States.⁸

Although there is no exhaustive data, the available information suggests that trafficking in women, including minors, for the sex industry is highly profitable for those running the trade.⁹ The United Nations estimates that 4 million women were trafficked in 1998, producing a profit of \$7 billion for criminal groups. These funds include remittances from prostitutes' earnings and payments to organizers and facilitators in these countries. In Japan, where the so-called entertainment industry is legal, profits are about 4.2 trillion yen per year over the last few years; there is growing evidence that illegally trafficked women are a growing share of sex-workers. In Poland, police estimate that for each Polish woman delivered, the trafficker receives about \$700. In Australia, the Federal Police estimate that the cash flow from 200 prostitutes is up to \$900,000 a week. Ukrainian and Russian women, in high demand in the sex market, earn the criminal

⁸ There are various reports on the particular cross-border movements in trafficking. Malay brokers sell Malay women into prostitution in Australia. East European women from Albania and Kosovo have been trafficked by gangs into prostitution in London. Edin Hamzic & Maeve Sheehan, *Kosovo Sex Slaves Held in SoHo Flats*, SUNDAY TIMES LONDON July 4, 1999 at 5. European teens from Paris and other cities have been sold to Arab and African customers. Susan Shannon, *The Global Sex Trade: Humans as the Ultimate Commodity*, CRIME AND JUSTICE INTERNATIONAL 5 (1999). In the United States the police broke up an international Asian ring that imported women from China, Thailand, Korea, Malaysia and Vietnam. See, MARTIN BOOTH, *THE INDUSTRY OF SOULS* (1999). The women were charged between \$30,000 and 40,000 in contracts to be paid through their work in the sex trade or needle trade. The women in the sex trade were shuttled around several states in the US to bring "continuing variety to the clients" *Id.*

⁹ See *generally*, Foundation Against Trafficking in Women (STV) and the Global Alliance Against the Trafficking in Women (GAATW). For regularly updated sources of information on trafficking, see <http://www.hrlawgroup.org/site/programs/traffic.html>. See *generally*, SIETSLE ALTINK, *STOLEN LIVES: TRADING WOMEN INTO SEX AND SLAVERY* (1995); GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION, (Kamala Kempadoo & Jo Doezema eds., 1998); See Shannon, *supra* note 8; LAP-CHEW LIN & WIJERS MARJAN, *TRAFFICKING IN WOMEN, FORCED LABOUR AND SLAVERY-LIKE PRACTICES IN MARRIAGE, DOMESTIC LABOUR AND PROSTITUTION* (1997); *THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA*, (Lin Lean Lim ed. 1998).

gangs involved about \$500 to \$1000 per woman delivered. These women can be expected to service on average 15 clients a day, and each can be expected to make about \$215,000 per month for the gang.¹⁰

It is estimated that in recent years several million women and girls were trafficked within and out of Asia and the former Soviet Union, two major trafficking areas. Increases in trafficking in both these areas can be linked to women being pushed into poverty or sold to brokers due to the poverty of their households or parents. High unemployment in the former Soviet republics has been one factor promoting growth of criminal gangs as well as growth of trafficking in women. Unemployment rates among women in Armenia, Russia, Bulgaria and Croatia reached 70% and in Ukraine 80% with the implementation of market policies. There is some research indicating that economic need is the bottom line for entry into prostitution.¹¹

Some of the features of immigration policy and enforcement may well contribute to making women who are victims of trafficking even more vulnerable and to give them little recourse to the law. If they are undocumented, which they are likely to be, they will not be treated as victims of abuse but as violators of the law insofar as they have violated entry, residence and work laws. The attempt to address undocumented immigration and trafficking through greater border controls over entry raises the likelihood that women will use traffickers to cross the border, some of whom may turn out to belong to criminal organizations linked to the sex industry.

Further, in many countries prostitution is forbidden for foreign women, which enhances the role of criminal gangs in prostitution. It also diminishes one of the survival options of foreign women who may have limited access to jobs generally. Prostitution is tolerated for foreign women in many countries while regular labor market jobs are less so – this is the case for instance in the Netherlands and in Switzerland. According to International Organization for Migration (IOM) data, the number of migrant women prostitutes in many European Union countries is far higher than that for nationals: 75% in Germany, 80% in the case of Milan in Italy, etc.

While some women know that they are being trafficked for prostitution, for many the conditions of their recruitment and the extent of abuse and bondage only become evident after

¹⁰ For more detailed information on these various aspects see, Marjan Wijers and Marieke van Doorninck, *Only Rights Can Stop Wrongs: A Critical Assessment of the Anti-Trafficking Strategies, from the Conference on Preventing and Combating Trafficking in Human Beings (2002)*; IOM, *supra*, note 5.

¹¹ There is also a growing trade in children for the sex industry — this has long been the case in Thailand but now is also present in several other Asian countries, in Eastern Europe, and Latin America.

they arrive in the receiving country. The conditions of confinement are often extreme, akin to slavery, and so are the conditions of abuse, including rape and other forms of sexual violence, and physical punishments. They are severely underpaid, and wages are often withheld. They are prevented from using protection methods against AIDS and typically have no right to medical treatment. If they seek police help they may be taken into detention because they are in violation of immigration laws; if they have been provided with false documents there are criminal charges.¹²

As tourism has grown sharply over the last decade and become a major development strategy for cities, regions and whole countries, the entertainment sector has seen a parallel growth and recognition as a key development strategy. In many places, the sex trade is part of the entertainment industry and has similarly grown. At some point it becomes clear that the sex trade itself can become a development strategy in areas with high unemployment and poverty and governments desperate for revenue and foreign exchange reserves. When local manufacturing and agriculture can no longer function as sources of employment, of profits and of government revenue, what was once a marginal source of earnings, profits and revenues, now becomes a far more important one. The increased importance of these sectors in development generates growing tie-ins. For instance, when the IMF and the World Bank see tourism as a solution to some of the growth challenges in many poor countries and provide loans for its development or expansion, they may well be contributing to develop a broader institutional setting for the expansion of the entertainment industry and indirectly of the sex trade.

This tie-in with development strategies signals that trafficking in women may well see further expansion. It is a worrisome possibility especially in the context of growing numbers of women with few if any employment options. Such growing numbers are to be expected given high unemployment and poverty, the shrinking of a world of work opportunities that were embedded in the more traditional sectors of these economies, and the growing debt burden of governments rendering them incapable of providing social services and support to the poor. Under these conditions, women in the sex industry also can become a source of government revenue. These tie-ins are structural, not a function of conspiracies. Their weight in an economy will be raised by the limitations on other sources of revenue for workers, enterprises and governments.

¹² A fact-sheet by the Coalition to Abolish Slavery and Trafficking reports that one survey of Asian sex workers found that rape often preceded their being sold into prostitution and that about one third had been falsely led to becoming sold into prostitution.

THE COMING DEMOGRAPHIC CRISIS IN THE GLOBAL NORTH

Even as the rich countries try harder and harder to keep would-be immigrants and refugees out, they face a growing demographic deficit and rapidly aging populations. According to a major study at the end of the current century and under current fertility and immigration patterns, population size in Western Europe will have shrunk by 75 million and almost 50 percent of the population will be over 60 years old – a first in its history.¹³ Europe, perhaps more so than the United States given its relatively larger intake of immigrants, faces some difficult decisions. Where will they get the new young workers needed to support the growing elderly population and to do jobs considered unattractive by the native born, particularly in a context of rising educational attainment? The number of these jobs is not declining, even if the incidence of some of them is; one sector that is likely to add jobs is home and institutional care for the growing numbers of elderly people. Export of older people and of economic activities is one option being considered now. There is a limit to how many elderly people and low wage jobs an economy can export and a society can tolerate. Immigration is expected to be part of the solution.

In the US the evidence suggests a slightly different pattern. By century's end the forecasted decline for the US is 34 million people, though this represents a point in the upward slope, which will not be completed until after the end of this century. The evidence is fairly clear that a significant component of population growth in the US over the last two decades as well as labor force growth is accounted for by immigrants, both second generation and foreign born.¹⁴ In both cases, immigrants account for a larger component of growth than their share in the general population and the total labor force.

Yet the way the countries in the global north are proceeding is not preparing them to handle this future scenario. They are building walls to keep would-be immigrants out. At a time of growing refugee flows, the UN High Commissioner for Refugees faces an even greater shortage of funds than usual. Given an effective demand for immigrant workers, and indeed families for demographic purposes, both of these policy preferences are likely to have negative repercussions for Europe. Such policies construct the immigrant and the refugee as a negative

¹³ INTERNATIONAL INSTITUTE FOR APPLIED SYSTEMS ANALYSIS, SPECIAL REPORT: GLOBAL POPULATION (2001). As is well known, several large European countries are now below reproduction levels, notably Italy and France.

¹⁴ ALEJANDRO PORTES & RUBEN G. RUMBAUT, IMMIGRANT AMERICA (2000).

and undesirable subject, thereby encumbering integration. Further, given firms and households interested in hiring immigrants or determined to do so, for whatever reasons, restrictive policies and racialized representations of the immigrant and the refugee, can be expected to feed the already growing illegal trafficking of people.

CONCLUSION: THE NEED FOR A MORE ENLIGHTENED IMMIGRATION POLICY

The large and looming issue confronting societies under the rule of law is whether policies that brutalize people — no matter what their nationality — and promote criminalized profit-making through the trade in people, are desirable and indeed sustainable if we are to keep up our systems based on the rule of law for which our forebears fought so hard and spilled so much blood. Allowing this sort of brutalization and criminality is a very high price to pay for maintaining border control, and sooner or later it begins to tear at the fabric of the lawful state and of civil society.

The risks to *our* societies and to us, citizens, fully documented, are well illustrated by what is happening today in the US. The events of September 11 and the subsequent restrictions on the civil liberties of particular immigration groups in the US are tearing at, and some would say weakening the rule of law as it affects all US residents. The government in the US is granting itself more and more authority to deal directly, in an extrajudicial way, with matters that used to run through judiciaries or that would not be considered a matter for the government. In so doing, the US government is violating basic rights not only of those it has profiled as possibly dangerous, but also of its citizens, all citizens, not just those who might be suspect.

Are there ways of regulating the flow of people into our societies that could strengthen, rather than weaken, its civic fabric? The repeated incidents of would-be immigrants dying at the hands of illegal traffickers do not. These incidents produce indifference. They promote acceptance of these deaths — all in the name of maintaining control over entry.

We are not only paying a price for those who die on our soil; we are also paying a price for those who are smuggled into our countries alive. The price we pay for allowing the abuse that is human smuggling is much higher than the price we pay for accommodating these people who just want a chance to work —and work they do. Indeed, much research suggests that we actually gain from the presence of these immigrants. For instance, seventeen percent of entrepreneurs in London belong to ethnic communities, a far higher share than their population share.

Continuing to use policies that make possible the brutalization of would-be migrants and the profit-making of criminal smugglers is a cancer deep inside *our* states and societies. It is the price we pay for criminalizing undocumented immigrants and, more generally, for resorting to policing and militarization as the way of regulating immigration. The US illustrates this to some extent. In the name of effective control, the new US 1996 Immigration Act strengthened policing by reducing judiciary review of immigration police actions. A crucial issue here is the object of the expanded policing: It is not known criminals or firms suspected of violating environmental regulations or drug dealers. It is a population sector, not even select individuals, but a fairly broad spectrum of men, women and children.

There are consequences to this tension between, on the one hand, the strengthening of police approaches to immigrant regulation and, on the other, the strengthening of civil and human rights and the civic empowerment associated with a stronger sense of civil society. This policing will get caught in the expanding web of civil and human rights, and these rights will include those of citizens. Policing, when unchecked by civil review, can easily violate such rights and interfere with the functioning of civil society.

If my son decided to go write the great American novel by spending time with farm workers or in garment sweatshops and there were an Immigration and Naturalization Service (INS) raid he could well be part of the suspects — because I know he would not be carrying his US passport with him. Or worse, if he were among the farm workers in California running away from the INS police and pushed towards jumping in one of the water levies, as has happened a number of times over the last few years, he might have been one of those who drowned. The most dramatic account of these incidents has it that the turbulent waters seemed less threatening than the INS police with their guns and shouting, and that indeed, these farm workers may have been pressured in terror into the waters and drowned. After the new 1996 law, many of these INS actions can escape review and accountability in front of a judge if the persecuted were merely suspected of being undocumented. Abusive or excessive policing and the weakening of judicial review of such actions will interfere with the rule of law. This type of police action will touch us, the documented. We need to find another way of regulating entry: now we are strengthening modes of regulation that carry a high cost not only in immigrant deaths, but also to the rule of law.