

## **Moving children? Child trafficking, child migration, and child rights**

### *Abstract*

This article aims to contribute to the growing body of scholarly work that critically deconstructs dominant discourse on 'trafficking' and to the literature that documents and theorizes the gap between states' spoken commitment to children's rights and the lived experience of migrant children in the contemporary world. It contrasts the intense public and policy concern with the suffering of 'trafficked' children against the relative lack of interest in other ways that migrant children can suffer, in particular, suffering resulting from immigration policy and its enforcement. It argues that discourse on 'child trafficking' operates to produce and maintain exclusionary conceptions of who is normatively a child. These conceptions of the normative child then inform policy and practice that often punishes, rather than protects, children who do not conform to the imagined norm, and that simultaneously reinforces children's existing vulnerabilities and creates new ones.

**Key words:** asylum seeker, child abuse, childhood, immigration policy, victims

Over the past decade, the 'trafficked' child has become increasingly visible in public and policy discourse on the suffering of children who move about the contemporary world. However, children who move are also known to suffer in many other ways, ways that are either much less visible in popular and policy discourse, or entirely invisible. Commenting on how, in the US, grief over the lives lost in the September 11 attacks was nationally recognized and amplified, while the lives of those who subsequently died as a result of the US administration's response to September 11 were absent from public representation, Judith Butler (2004: xiv–xv) observes:

Some lives are grievable, and others are not; the differential allocation of grievability that decides what kind of subject is and must be grieved, and which kind of subject must not, operates to produce and maintain certain exclusionary conceptions of who is normatively human: what counts as a livable life and a grievable death?

This article asks whether in publicly mourning the suffering of 'trafficked' children while overlooking other misfortunes that can befall migrant children, exclusionary conceptions of who and what a child is are similarly expressed and perpetuated, both discursively and in policy. In so doing, it seeks to add both to the growing body of scholarly work that critically deconstructs dominant discourse on 'trafficking' and to the literature that documents and theorizes the gap between the almost universal spoken commitment to children's rights and the lived experience of migrant children in the contemporary world.

### 'Trafficking', agency and the adult/child distinction

The 1990s witnessed growing national and international public and policy interest in the 'dark underside' of globalization, and widespread concern about globalization's impact on nation states' ability to control transnational crime and to manage and control immigration. These concerns informed the UN Convention Against Transnational Organized Crime which was adopted by the UN General Assembly in November 2000 along with two new protocols – one on smuggling of migrants and one 'to prevent, suppress and punish trafficking in persons, especially women and children'. 'Human trafficking' was subsequently given an increasingly high profile in policy debate on immigration (Anderson and O'Connell Davidson, 2006), and became a focal point for the activities of a wide range of INGOs, NGOs, charities, and political lobby groups. It has also attracted extensive research and media attention, and featured in numerous television dramas, Hollywood films and best-selling novels over the past decade (for instance, Channel 4's *Sex Traffic*; the movies *Trade*, 2007, *Eastern Promises*, 2007, and *Taken*, 2008; Steig Larsson's 2009 *The Girl who Played with Fire*, Tom Davis' 2010 *Priceless*) and is now popularly perceived as a global problem of immense proportions.

Even amongst those who agree it should be viewed as one of the great scourges of our times, 'trafficking' continues to provoke

controversy, however. The supplementary protocols to the Convention Against Transnational Organized Crime provide that where smuggling refers to situations in which the migrant gives full and informed consent to movement, trafficking involves:

- a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) 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 set forth in subparagraph (a) of this article;
- d) 'Child' shall mean any person under eighteen years of age. (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000)

'Trafficking' is thus described as a process (recruitment, transportation and control) that can be organized in a variety of different ways, involve different types and degrees of compulsion (all of which are undefined – what kind of threats? How much deception? Which types of vulnerability?), and lead to a variety of very different outcomes, linked only by a common purpose, 'exploitation', which itself is undefined (Anderson and O'Connell Davidson, 2003).

This vague and expansive definition gives the term 'trafficking' enormous elasticity. Those whose interest in the phenomenon stems from a concern with human rights lobby to extend its application to all migrants who end up in forced labour and slavery-like situations 'no matter how people arrive in these conditions' (European Commission,

2004: 53), while those whose primary concern is to control and restrict immigration and/or limit governments' humanitarian obligations to migrants make a distinction between 'innocent' and 'deserving' victims of trafficking (VoTs) who exercised absolutely no choice or agency at any stage of the process, and 'undeserving' migrants deemed to have brought suffering upon themselves through their own actions and choices. The US Trafficking Victims Protection Act (2000) even subdivides migrants who are recruited and transported into exploitative and abusive conditions into 'trafficked persons' and victims of a *severe* form of 'trafficking in persons', offering special protection only to the latter group (Chapkis, 2005; Srikantiah, 2007).

The vagueness of the Protocol's definition also means that those who object to female prostitution on moral or political grounds, believing it to be by definition exploitative, can interpret *all* forms of female migration into prostitution as 'trafficking', whereas those who make a distinction between forced prostitution and free choice prostitution argue for a much more restricted interpretation, one that recognizes that adult women can be deceived or coerced into moving and subject to abusive or slavery-like practices within prostitution, but that they are also capable of making an informed choice to migrate to engage in sex work. As a result, diametrically opposing proposals for the reform of prostitution laws can each be presented as contributing to the struggle against 'trafficking' (Anderson and O'Connell Davidson, 2006).

So far as adults are concerned, these controversies hinge on questions about choice, consent and agency. However, the Protocol makes such questions irrelevant in relation to children. If children have been recruited and transported for purposes of exploitation, they have been 'trafficked' no matter if they consented to move. Furthermore, and not least because of intense campaigning by a wide range of child rights agencies and NGOs through the 1990s, the idea that child prostitution is harmful, undesirable and exploitative, and that children lack the capacity to consent to prostitution contracts is more or less universally accepted. Certainly, there are few, if any, voices calling for prostitution to be recognized and regulated as a legitimate form of work for children. This greater moral and political consensus is enshrined in international and domestic law. The UN Convention on the Rights of the Child (CRC) explicitly requires states to protect children from 'all forms of sexual exploitation and abuse', prostitution is identified as a 'worst form of child labour' by the ILO, third party organization and control of child prostitution is criminalized in virtually every country of the world, and

the act of purchasing sexual services from a person below the age of 18 is now also criminalized in many countries. To recruit and transport a child for purposes of prostitution and to subsequently control that child's prostitution almost universally transgresses both laws and moral norms. Talk of 'child sex trafficking' does not therefore open up tricky questions about where to draw the line between 'traffickers' and agents who facilitate children's voluntary and consensual migration into sex work.

'Child trafficking' seemingly stands on clear and certain moral and political terrain, especially when the focus is kept on movement into prostitution. This is undoubtedly one of the reasons why those campaigning against 'child trafficking' (for instance, Terre des Hommes, World Vision, Save the Children, ECPAT, Anti-Slavery International, Unicef) tend to foreground 'sex trafficking' in their fund raising, lobbying and awareness raising work on the issue.

### Moving children

The way in which 'trafficking' has been brought to public and policy attention as a pressing new social problem closely fits Joel Best's (1999) more general model of the social and political construction of new crimes and new victims (Florin, 2010). Among other things, Best observes that in staking claims for a given phenomenon to be treated as a pressing new problem, social activists 'almost always argue that victimization is very common'; stress that victimization is consequential; and present victimization as relatively straightforward and unambiguous, 'the victimizer is exploitative, the victim is innocent' (1999: 103–9). These are all very visible features of discourse on 'trafficking' in general, and 'child trafficking' in particular.

The definitional and methodological problems associated with the term 'trafficking' make it impossible to accurately measure or even reliably estimate the numbers affected by it (Salt, 2000; Anderson and O'Connell Davidson, 2003), and in fact, though widely cited and hugely influential on international policy, US government estimates have even been criticized by the US Government Accountability Office which noted, among other things, the fact these estimates were developed by one person who did not document all his work, the huge discrepancy between the numbers of observed and estimated VoTs, and the absence of an effective mechanism for estimating the number of VoTs (Morehouse, 2009; Shah, 2010). However, the immense scale

of the phenomenon is confidently declared in governmental and non-governmental publications on the issue. It is routinely asserted that some 1.2 million children are 'trafficked' each year (ILO, 2002; Unicef, 2007; All Party Parliamentary Group on Human Trafficking, 2009; World Vision, 2010), that there are up to 13.5 million 'trafficked' children worldwide (Charity Network Inc., 2007), and that 'the human trafficking industry' generates profits of US\$32 billion annually (Polaris Project, 2009).

Campaigning materials lend credence to claims about the vast size of the problem by listing the many different settings in which 'trafficked' children are found (labour exploitation, domestic servitude, enforced criminal activity, illegal adoption, underage, servile or forced marriage, benefit fraud, etc.), but almost without exception, they also emphasize the link between 'child trafficking' and sexual exploitation by starting that list with child prostitution. Stressing the link between 'child trafficking' and the sex industry operates to underscore the profoundly damaging consequences of 'trafficking' and to unequivocally construct those involved as either victims or villains. For example:

Traffickers follow a sickeningly methodical process, and it begins with isolating a child from those who love her . . . The child is then . . . put through the 'seasoning process,' in which their captors repeatedly beat and rape them, teaching them fear and submission. The effects are consistent, simple and tragic: the child is broken. These docile slaves are then forced into various types of labor. Most often, the children are forced into the sex industry. Girls as young as four or five are put to work in prostitution and pornography, and while this is the most appalling of practices, those who are thirteen, fourteen, or fifteen are equally victimized. (Charity Network Inc., 2007)

According to Unicef (2007), all 'trafficked' children are 'destined for *ruthless* exploitation' (emphasis added), and whether this takes place in the sex industry or another context, the consequences are equally horrifying:

Once separated from their family [trafficked children] can become malnourished and neglected, and are subjected to violence and sexual abuse. They are also at risk of HIV infection. Trafficked children are driven by fear. Their traffickers control them with threats, rape, violence and drugs. (Unicef, 2007)

To think of millions of children torn from their homes, then raped, beaten, brutalized and sexualized is emotionally moving. It can and does excite people to act on their behalf. Huge amounts of money, time and energy have been expended by governments, international agencies, child rights agencies and NGOs on combating child trafficking; politicians from across the political spectrum publicly condemn it and call for action against it; large companies and A-list celebrities lend their backing to campaigns against it; ordinary people donate money to help fight it.

But other children whose movement is associated with suffering, even death, do not attract the same attention and concern.

### Not-so-moving children

The introduction of ever more restrictive immigration policies and tighter border controls by affluent, migrant-receiving countries has led to the emergence of a growing market for clandestine migration services, including smuggling across borders, faking travel documents, and arranging marriages (Kofman et al., 2000; Kempadoo et al., 2005). Very often, adults and children fleeing war and persecution to seek asylum are also dependent on such services in order to make their escape. Though not all forms of clandestine migration are physically dangerous (journeys made with fake documents are often no more or less risky than those with genuine travel papers), death during transit is nonetheless the starkest risk to many irregular migrants. Between 1993 and 2010, UNITED for Intercultural Action documented more than 11,000 deaths of refugees and migrants attributable 'to border militarisation, asylum laws, detention policies, deportations and carrier sanctions' in the European Union (UNITED, 2010). Their data are not fully disaggregated by age, but nonetheless show that children are amongst the dead – drowned, frozen to death in refrigerated lorries, suffocated in cargo containers, even shot by police and blown apart by land mines. More children dying while border crossing was one of the significant trends revealed by a review of deaths of children who were Mexican or Central American residents and who died in Pima County, Arizona during the years 1995–2004 (Bowen and Marshall, 2008). Rape and sexual exploitation is another risk faced by children and women migrating by irregular channels (UNFPA, 2006).

Once in the country of destination, irregular migrant children continue to be at risk of physical and psychological harm, not only or always from the criminal gangs that feature in dominant discourse on 'child trafficking', but from state actors. Migrant children are held in detention centres, which are widely recognized as unsuitable for children; there have been reports of police violence against migrants in detention, including attacks against children and of children being beaten with batons and electrical cables, held in 'punishment cells' for up to a week without adequate bedding and sometimes without access to a toilet; of children locked in for 22 hours a day and denied access to education; of children dying as a result of lack of medical treatment, fires, and suicide (HRW, 2002; Bloch and Schuster, 2005; IRR, 2006; Fekete, 2007). Cases of families being separated in UK detention centres, and of breastfeeding mothers being detained separately from their babies have also been reported (Refugee Council, 2003).

Children with migrant parents whose immigration status is irregular may witness violence perpetrated against their parents, and may indeed be subject to it themselves, in the process of deportation proceedings (Birnberg Pierce et al., 2008). Even without actual violence, deportation is a terrifying experience, often involving early morning raids with up to 14 police officers, wearing uniforms and bullet-proof vests, bursting into the family home, hand cuffing parents etc. And where much research and policy attention has been devoted to the forced movement of children across borders through 'trafficking', very little has been paid to the forcible return of child migrants to their countries of origin by state actors. This happens to several different groups of child migrants: those who are deported with their families; those who are deported on their own; and those who have been identified as VoTs, but who are not deemed to be at risk of further rights violations upon return to their home country. Even when the children concerned are deemed to have been 'trafficked', such decisions are not monitored, and data on what happens to them after they have been returned are not routinely gathered (ECPAT Netherlands, 2005). A recent report accuses the UK Border Agency of 'systematic disregard' for children, putting them on planes out of the country with no checks on their safety or welfare. A total of 334 unaccompanied children who claimed asylum in Britain since 2004 have been deported, most to their first European point of entry, and often left there destitute and homeless (Dugan, 2010).

Undocumented migrants, both adult and child, are one of the groups facing the greatest risks of poverty and social exclusion in Europe today



(PICUM, 2007). Whether they are with their parents or not, 'illegality' represents a barrier to education, services, justice and social protection, and exposes children to additional harms from state actors (Bloch and Zetter, 2009). The list of harms that migrant children and the children of migrants can endure could go on, and extends to those who are legally present in the country of destination but still disadvantaged and deprived of equal protection, education and opportunity by discrimination and racism (O'Connell Davidson and Farrow, 2007), as well as to the suffering experienced by children left in the country of origin when their parents initially migrated or fled, and subsequently forced to remain apart from their parents by immigration regimes that deny them rights to family reunion (Madziva, 2010).

In short, children who migrate, especially if they move through irregular channels, can be exposed to many of the same risks and dangers that anti-'child-trafficking' campaigners identify as the harms of 'trafficking' – violence; sexual abuse; HIV infection; forcible separation from their family; incarceration in appalling conditions. They too can be terrorized, driven by fear, face discrimination, suffer psychologically, experience low self-esteem and suicidal feelings. Summing up the wrongness of trafficking, Unicef (2007) states 'Not only does trafficking violate every child's right to be protected and grow up in a family, it also deprives them of education and opportunity'. But immigration regimes can also do all of this to a child and more. Why are the harms inflicted on children by 'traffickers' so much more loudly decried than those resulting from immigration policies?

### **The child and the migrant**

To speak of child migrants is to bring together two very different cultural categories. The dominant modern discourse of childhood sees childhood 'as weakness itself' (Christensen, 2000: 42) and marks out 'the child' as 'a passive and unknowing dependant' (Jenks, 1996: 124). Children are defined by their innocence and vulnerability. 'Immigrants', by contrast, especially 'illegal immigrants' and 'asylum seekers', are generally attributed with agency and cunning. 'Immigrants' supposedly constitute a threat to that which we hold dear, whereas children are one of the things that we hold dear – they are our future, they are precious and loveable. The social value of children (as a general group) is assumed, taken for granted, unquestioned. The social

value of 'immigrants', by contrast, is constantly questioned and almost completely unacknowledged in popular discourse. The 'child migrant' is thus almost a contradiction in terms, and certainly disturbs the victim-agent binary that is so important to the way we make sense of the world, especially to the way we think about injustice, suffering and victimhood. We (adult nationals) have a duty to protect children as real or potential victims, but we supposedly need to be protected from 'immigrants' who really or potentially make us victims.

Dominant discourse on 'child trafficking' circumvents the collision of these two incongruous sets of stereotypes by establishing the 'trafficked child' as a *real* child and by 'dis-identifying' her from the category of migrant (Aradau, 2008). Unlike migrants, who actively seek to make a better life for themselves or to escape war, disaster, persecution or poverty, the 'trafficked' child of this discourse has, object-like, been removed, transported and put to use. Migration is explicitly rejected as the background context for the 'trafficked' child's situation, which is reframed as 'child abuse', as, for example, in: 'Child trafficking is not about migration or immigration . . . However it manifests itself, child trafficking is child abuse' (CEOP, 2007: 2). Similarly, the introduction to a Unicef (2010) campaign against 'child trafficking' begins by claiming that 'trafficking' has come to the forefront of public attention as a result of some high profile cases, and cites that of Victoria Climbié:

who died in London in February 2000 as a result of neglect and horrendous physical abuse by her great aunt. Victoria's family had sent their daughter to England in the hope of a better life for her but her aunt viewed her niece as little more than a useful tool for claiming benefits.

Mention of this case firmly establishes in the reader's mind the enormity of the 'trafficked' child's suffering and establishes it as child abuse (although it begs the question of who 'trafficked' Victoria Climbié, and undermines the connection between 'trafficking' and organized crime that is asserted elsewhere). Unicef (2010) then continues to de-link 'trafficking' and migration as follows:

Human trafficking should not be confused with the smuggling of people, as happens when e.g. immigrants and asylum seekers enter receiving countries illegally, in order to seek work or claim asylum. Smuggling and trafficking are related but different activities. The smuggling of human beings takes place with the consent of the travellers. Many asylum

seekers and illegal immigrants pay heavily for the services of people who help them evade border controls. Trafficking on the other hand implies something much worse, that the travellers are unwilling or unknowing victims.

That an organization whose mission is to ensure 'special protection for the most disadvantaged children – victims of war, disasters, extreme poverty, and all forms of violence and exploitation' (Unicef, 2004) would engage in this kind of moral ranking of misery is extraordinary. It is equally surprising to see such an organization use the language of 'illegality' so easily in relation to 'immigrants' and asylum seekers, without so much as a nod towards what De Genova (2002: 429) terms 'the legal production of migrant "illegality"' or any recognition of the ways in which states – through their preventative and deterrent asylum policies and their immigration policies more generally – are a source of risk for children (Boyden and Hart, 2007; Eneajor, 2009).

'Trafficked' children win their place at the high table of child suffering, deserving of special and particular care and protection, because they are non-agential – they are 'unwilling or unknowing victims', vacant, inert, innocent, entirely lacking in will or agency. And implying that the case of Victoria Climbié exemplifies their situation obviates the need to engage with difficult questions about children's choices, preferences and interests. It can be stated with absolute certainty that no child would ever choose to be tortured to death as Victoria Climbié was, and that no child would ever be better off being tortured and murdered than they would be if they remained at home.

But can these absolute certainties really be so easily transposed onto the millions of children that Unicef and others describe as 'trafficked'? The idea that children in prostitution are necessarily vulnerable and non-agential is widely accepted (and yet even here, some would question the assumption that children in prostitution necessarily lack agency, citing research showing that children sometimes actively choose prostitution in preference to the other poor and exploitative options available to them, Montgomery, 2001; O'Connell Davidson, 2005; Soderlund, 2005). However, as defined in the UN Protocol and employed by governmental actors, NGOs and others, 'trafficking' intersects with a wide array of different markets, institutions and practices. 'Child traffick-ing' is reported to cover the movement of children for exploitation in domestic work, work in the catering and hospitality sector, factory, mine and agricultural labour, begging, and forced marriage, as well as

prostitution, also for illegal adoption, soldiering, stealing, drug cultivation and trafficking, credit card fraud, benefit fraud, and organ trading. Though some of these activities are almost universally condemned and criminalized, others are socially tolerated and may even be socially valued. In most countries, including those in the affluent world, it is legally and socially acceptable for a person below the age of 18 to enter many labour markets, and to marry, and to join the armed forces. Likewise, adoption and private fostering are not regarded as categorical wrongs in the way that child prostitution is, but rather as potentially positive and desirable for some children.

Stepping away from the relatively fixed moral terrain of child prostitution significantly complicates questions about how the 'trafficked child' is to be distinguished from other children who have been moved, or whose movement has been facilitated, by third parties. According to the UN Protocol, the distinction hinges on whether or not they have been moved for purposes of exploitation. But given that 'exploitation' is a politically contested, historically and culturally variable concept, and that even when key elements of what might constitute it are agreed, they generally range along a continuum rather than existing as either/or options, this hardly equips us with a clear and standard definition.

Take children's labour migration. There is nothing in international law to prevent children who have reached the minimum working age from entering into, say, agricultural or domestic work, and even though child labour in these sectors *can* take forms that the ILO would describe as hazardous or consider a worst form of child labour, it does not *necessarily* take these forms. Judgements about when child labour becomes a worst form of child labour, as the ILO itself acknowledges, are not easily made (for example, 'given its hidden nature and the characteristics of the employment relationship it is very difficult to draw the line between "legitimate domestic work" and its exploitative forms', ILO, 2010). Employment relations and working conditions range along a continuum, and even when we focus on the poorest end of the spectrum, there are still gradations in terms of precisely how dangerous, demanding, demeaning, exploitative and poorly paid work is. Just how exploitative does work have to be for a child to be considered a 'VoT'?

The same problem arises in relation to other forms of children's mobility. As Smolin (2004) has shown, it is actually very difficult to draw a bright line between legally recognized systems of inter-country adoption and 'child trafficking'. Equally, though children's migration for private fostering and for marriage, can – whether it takes place

through legally sanctioned or irregular channels – have disastrous consequences, it does not *necessarily* harm the children concerned and may even enhance their well being and life chances. Even if arranged illegally and for a third party's financial gain, distinguishing between 'trafficked' and 'smuggled' children is no simple matter given that expectations regarding the amount of unpaid labour that children and wives will provide within households vary cross-nationally and within nations, as do social norms regarding the powers that adults can properly exercise over children and that husbands can properly exercise over wives. Precisely how bad does a child's experience need to be in order for the people who facilitated her movement to be viewed as 'traffickers'? Certainly it is impossible to state categorically that anyone who organizes or facilitates a child's movement for adoption, fostering or marriage is, *ipso facto*, moving them 'for purposes of exploitation', or automatically guilty of any legal or moral transgression.

Even when migrant children are involved in criminal activities, determining whether or not they are being exploited involves relative judgements. How ruthlessly does a 16 year old migrant involved in pick pocketing or drug cultivation need to be treated by a third party to be considered an exploited VoT rather than a mere criminal? Difficult questions about consent and agency re-surface here, for people below the age of 18 who break the law are not popularly imagined as unambiguous 'victims', indeed, the age of criminal responsibility is as low as 10 in many countries. Nor has the Trafficking Protocol's assertion that consent is irrelevant where children are concerned been fully incorporated into all countries' domestic law. UK law, for example, 'still requires proof of some element of deception or coercion that has been exercised over the child' (CEOP, 2007: 48), and children whom some would describe as 'trafficked' have been prosecuted in the UK for cannabis cultivation as well as for other crimes.

Moving away from the moral certainties of Victoria Climbié's case and child prostitution also complicates questions about children's best interests and their own wishes. Campaign materials strongly emphasize 'trafficked' children's vulnerability and dependence. The bad things that happen to them occur once they have been separated from their family. 'Trafficking' violates 'every child's right to be protected and grow up in a family' (Unicef, 2007). This implies that 'trafficked' children are taken from an environment within which they were free from exploitation, their dignity protected, and their physical and mental development assured. As with campaigns against child labour and commercial

sexual exploitation of children, the contrast is made between a pleasant and sheltered childhood in the bosom of the family which leads to healthy and 'correct' development, and a 'lost', 'stolen' or 'raped' childhood leading to life-long physical and psychological damage (or worse) for those children who are forced to leave the protected environment of home (Montgomery, 2001: 57). Yet research on the factors that make children 'vulnerable to trafficking' invariably points to the very opposite conclusion.

A review of cases of children 'trafficked' into the UK conducted by CEOP (2007: 22) observes that most had come from broken families or destitute circumstances within their own countries, and that many of the African children 'reported having been orphaned, victims or prisoners of war, victims of sexual and physical abuse, forced into marriages, victimised by traumatic traditions such as female genital mutilation (FGM) and victims of police and social brutality'. And in fact, in other publications Unicef (2010) states that the children who are vulnerable to trafficking 'often come from poor families and lack economic and educational opportunities. Children who have been separated from their families, have minimal education, lack vocational skills or have few job opportunities are most at risk'. These are also pretty much identical to the factors that have more generally been identified as triggering children's independent migration (Whitehead and Hashim, 2005), and migration even into what are, in absolute terms, poor and exploitative working conditions can improve rather than diminish some children's life chances. Labour migration can, for example, allow children to escape settings in which they are expected to undertake extensive and heavy labour without pay for their own families and enjoy few of the basic rights set out in the CRC, and afford them 'the opportunity to develop important relationships or skills, and to earn an income which they [have] significant control over and which [allows] them to buy the things necessary for their progression into adulthood' (Hashim, 2003: 12, see also Grier, 2004).

The most fundamental motive for independent labour migration is children's 'need or desire for income' (Whitehead and Hashim, 2005: 28), but since opportunities for persons under the age of 18 to migrate both legally and independently are extremely restricted, children frequently rely on intermediaries of one sort or another and/or enter into some form of indebtedness in order to realize their migratory projects. This does create a dependency that places them at risk of exploitation and abuse by those who arrange their migration. But not all intermediaries

cheat or abuse the children they help to migrate, and even when children are abused or exploited by such intermediaries, they may still end up living and working in conditions that they regard as preferable to those they left (see Anarfi et al., 2005).

To condemn *all* forms of child labour migration as 'child trafficking' would be to pathologize and penalize a means by which many children access a range of benefits that would otherwise be unavailable to them, as well as to entirely discount the views of many migrant children themselves. And yet without a neutral, standard measure of 'exploitation' it is not easy to draw clean lines between children's labour migration and 'child trafficking'. Detaching 'trafficking' from migration, invoking 'child abuse', and contrasting the condition of 'trafficked' children against abstract universal ideals rather than the situation that they actually left obscures such complexities. This in turn encourages policy measures that can further restrict the opportunities of those children whose life chances are already most limited, and does nothing to challenge the policies that actively construct the vulnerability of children who migrate.

### Immigration policy and the construction of vulnerability

Dependence is a crucial discursive marker of the child's difference from the rugged adult individual that is, in liberal thought, imagined as the proper subject of autonomous rights (Woodhouse, 2008). This ideal of children's dependence explains and justifies children's lack of full independent legal status, the idea being that until they reach the age of majority, 'social rights of citizenship accrue to them indirectly through the adults responsible for their care and for their development as future citizens' (Lister, 1997: 76). It is also enshrined in immigration policy and anti-trafficking policies. So, for example, in US immigration law, Thronson (2002: 6) notes that the term 'child' is used exclusively in relationship to a parent and the law therefore 'does not conceive of a "child" existing outside this relationship'. This strongly reflects notions of the child as property – 'It accepts the idea that children are not independent beings but rather are always bound to someone. Parental possession and control . . . are the hallmarks of a parent-child relationship in immigration law' (Thronson, 2002: 6). Children who migrate independently (and so lack a parent to make them a 'child') represent an anomaly. Immigration law cannot, on the whole, accommodate

the oxymoron of an independent child, and so 'subjects them to the same harsh laws and procedural complexities as adults' (Thronson, 2002: 5–6).

The inconceivability of a parentless child is also illustrated by the practice of UK Home Office officials in relation to unaccompanied children seeking asylum (and the term 'unaccompanied children', like the term 'separated children', itself speaks to the difficulty experienced in imagining a 'child' who lacks an adult carer to make them a child). Crawley (2006) notes that almost half such children had their claim to be under the age of 18 disputed by the Home Office, and this was often in part due to the fact that they did not match the stereotype of a *real* 'child', having assumed 'adult' responsibilities and managed to make difficult migratory journeys without a parent.

If immigration policy and practice often demands that a child is dependent on an adult in order to qualify as a 'child', anti-trafficking measures frequently deal with the anomaly of child migrants by assuming they cannot be acting independently. They therefore impact indiscriminately on all forms of migration by children. So, for example, Busza, Castle, and Diarra's (2004) study, which involved interviews with 1,000 migrant children in Mali, found that only four had been forcibly moved, and that whilst some were experiencing exploitation, or had been exploited by the intermediaries who arranged their travel, the majority had actively chosen to migrate, and were positive about their migration. However, anti-trafficking measures in the area were premised on the assumption that all child travellers were VoTs. In the name of protecting children from 'trafficking', barriers to *all* forms of independent child migration were set in place, thereby making it harder for children to access the potentially positive effects of migration. Bastia's (2005) study of Bolivian teenagers migrating to work in Argentina, and Kapur's (2005) discussion of Nepal's response to international concerns about trafficking, which included legislation preventing girls and young women from migrating without a male relative to chaperone them, also show how anti-trafficking measures can serve to construct children's dependency on adults and so both reinforce existing vulnerabilities and create new ones.

These measures assume that children are always better off staying at home with their families, and 'trafficking' is held to violate their right to grow up in a family. But for children who belong to families that are unable to protect and support them until the age of 18, or whose parents are abusive and neglectful, and who live in a society that does



not have the means to support a welfare system that can supplement or substitute for poor parents, the right to *leave* the family and to independent existence may be more important than the right to grow up in a family. Indeed, if the problem is to be contextualized as child abuse, the uncritically positive emphasis on the family is questionable, given that statistically, families could be argued to pose a far greater risk to children than 'traffickers'. For example, in the seven years between 2000 and 2007, the US Department of Health and Human Services certified 131 foreign national minors as victims of human trafficking (US Department of Justice, 2008). In 2007 alone, the US National Child Abuse and Neglect Data System reported an estimated 1,760 child fatalities as a result of abuse and neglect, and one or both parents were responsible for around 70 per cent of these deaths (Child Welfare Information Gateway, 2008).

Equally it should be noted that parents or guardians who, because of their immigration status, are debarred from social rights, or whose social rights are highly circumscribed, are not in a position to mediate their children's access to education, health care, justice, and other protections. What good is it to give a child the right to be dependent if their adult carers can be refused social rights of citizenship?

### **'Trafficking' and the subject of the rights of the child**

The hyper-visibility of 'trafficking' and the invisibility of other harms to migrants in popular and policy discussion mirrors and reinforces the classical liberal view of rights, which as Benton (2006: 28) observes, focuses very much upon the abuses that 'result from the . . . intentional acts of other individuals or the sovereign state power. This focus on abuses resulting from intentional acts eclipses and so renders at best marginal several sorts of avoidable harms to which individuals are susceptible'. Border deaths, the suffering of children and parents forced apart by immigration rules and/or denied access to health care, education, decent and safe housing and working conditions etc., are not legible as rights violations, but rather appear as the 'collateral damage' of immigration policies that were not specifically designed with these ends in view (O'Connell Davidson, 2010).

And in dominant discourse on human rights, 'trafficking' and migration, even the harms resulting from the intentional acts of state actors – especially those in affluent, migrant-receiving countries – are

largely invisible. Rather than including state-sponsored violence, detention, the deliberate infliction of destitution, and so on, into the orbit of concern, attention is narrowly focused on the individual morality of 'traffickers' and other 'exploiters', and on the 'uncivilized' and 'corrupt' cultures that tolerate slavery and fail to protect fundamental human rights. This serves to depoliticize what is, in reality, a hugely political issue both globally and nationally (Anderson, 2010a, b; Jacobsen and Stenvoll, 2010; O'Connell Davidson, 2010). As a number of scholars have shown, this means that the figure of the 'Victim of Trafficking' can be worked both in support of more restrictive immigration policies and tighter border controls and in the service of extremely conservative moral agendas on prostitution, gender and sexuality (Doezema, 1999; Chapkis, 2005; Kempadoo et al., 2005; Bernstein, 2007; Shah, 2007; Weitzer, 2007). Discourse on 'child trafficking' contributes to, and in many ways is structured by, this broader discourse on 'trafficking', but I want to conclude with some thoughts on the additional and particular work that it does in relation to dominant discourse on children and their rights.

Children's rights as set out in the CRC are held to be universal and are underpinned by the principles of non-discrimination and the best interests of the child. Commitment to promoting and protecting children's rights is widely taken as a mark of civilization and progress, and as with human rights, the principle that child rights must be defended 'has become one of the commonplaces of our age' (Lukes, 1997: 233). However, the CRC positions the nation state as the primary guarantor of those rights, and there is a tension between the state's obligations to universal child rights and the principles of best interests and non-discrimination on the one hand, and its obligation to maintain its 'sovereignty over a distinctive territory and its people, defined as citizens of this state' (Boyden and Hart, 2007: 237). As Boyden and Hart (2007: 237) note, outsiders, including children, who enter the territory 'may be regarded as encroaching on sovereign assets', and the entitlements and freedoms of outsider children as well as adults are 'subject to contestation by politicians, the media, civil servants and activists'. Indeed, states may find it politically expedient to recognize the rights of the child internationally but politically inexpedient to recognize those of non-citizen children situated on their own territory (Anderson, 2010c).

For children who migrate across borders to escape war, violence, disasters, poverty, or lack of educational and other opportunities, the universal rights to which they are in theory entitled turn out to be

limited and politically contested in practice (Enenajor, 2009: 6), and the principle of non-discrimination is rarely fully realized even if they are amongst the lucky few to win refugee status or leave to remain in a new country (Boyden and Hart, 2007: 237). Children who leave their country of citizenship thus risk becoming rightless, and yet if they remain, and if the state to which they belong happens either to be implicated in violence against its own citizens, or to lack the capacity to provide the welfare and legal system that underpins access to rights, they fare no better (and may even fare worse). Indeed, the latter point highlights:

contradictions within the human rights model's ostensible guarantees of welfare and its retreat from economic development upon which its conception of childhood as a time free from economic responsibilities is premised. The impact of the contradictions in the human rights concept of development is to delegitimise those societies who are unable to realise the norms of the [CRC]. (Pupavac, 2002: 74)

The same contradictions also delegitimize children who migrate from such societies.

Dominant discourse on 'child trafficking' does not question or challenge these contradictions. Instead it seeks to free the 'trafficked child' from their snare by abstracting her from the economic and political inequalities which make the Western ideal of 'childhood' fanciful for the majority of the world's children (Punch, 2003), as well as from the somatic and cognitive differences that exist between children of different ages, and presenting her as the transcendent embodiment of that ideal. It invites us to grieve the fate of 'trafficked children' precisely because they are *not* migrants, not even asylum seekers, but 'unwilling and unknowing victims', snatched from the safe and protective arms of their families. 'Trafficked children' are presented as grief worthy because, like the child at the heart of the Western ideal of childhood, they are passive, biddable, weak, and breakable. The allocation of so much public grief to the suffering of the 'trafficked child', so much less to that of the asylum-seeking child, and practically none at all to that of other migrant children thus – to paraphrase Butler (2004) – operates to produce and maintain exclusionary conceptions of who is normatively a child. These conceptions of the normative child then inform policy and practice that can actually punish rather than protect those children who do not conform to the imagined norm.

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