

*Trafficked Women, the Garbage Can, and Frustrated Policy:
EU Failure to Combat Human Trafficking*

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Abstract

Zachary Carr: Trafficked Women, the Garbage Can, and Frustrated Policy:
EU Failure to Combat Human Trafficking
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This thesis argues that the EU's anti-human trafficking policies have been a failure. The problem of human trafficking can only be effectively addressed at the supranational level. I demonstrate in this study that the garbage can model of institutional choice provides the best explanation for the failure of EU policy. This is demonstrated through a critical assessment EU decision making and policy formation in justice and home affairs, as well as an examination of the outcomes of anti-trafficking policy. The dominant normative approaches to human trafficking do not adequately describe the failure of EU policy. The garbage can model is explained as a result of conditions of organized anarchy within the EU in general and the third pillar in particular. The major finding of this thesis is that in order to combat human trafficking more effectively the EU must redesign its decision making style in justice and home affairs.

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Introduction:

The Problem of Human Trafficking

Human trafficking within the territory of the European Union (EU) is a matter of significant concern. The issue of trafficking has multiple implications in the realm of crime and corruption, human rights, cooperation in Justice and Home Affairs (JHA), and EU migration and external policy. The business of human trafficking is one of the fastest growing criminal enterprises in the world today, and some researchers have even claimed that it is the most profitable as well. Of particular concern is the highly exploitive phenomenon of trafficking women for sexual exploitation. Not only does the traffic of women for sexual “exploitation,” more properly termed slavery, represent a grave criminal violation of universal human rights, but it also represents one of the most profitable ventures for transnational criminals. Human trafficking demands a response from governments and international organizations, particularly those that have any concern for either human rights or the rule of law.

For far too long human trafficking was a relatively ignored phenomenon, not the matter international importance that it should have been. International concern came to the fore in the year 2000 when the United Nations (UN) hosted the Convention Against Transnational Organized Crime (CATOC). Although the phenomenon of modern human trafficking had been known to certain circles of policy makers and advocacy groups, it was

not until the Convention adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol) that it became a major international issue. In response, the European Council sought the creation of a framework to organize EU counter trafficking efforts. Subsequently the EU has entered the fray, issuing a number of directives and policies designed to combat human trafficking. Despite EU efforts, human trafficking is still prevalent in Europe. This raises several questions: Are the EU's anti-trafficking efforts a success? Why? And what theoretical framework of policy formation can best explain the outcomes of the EU's anti-trafficking efforts?

I contend that EU policy has failed consistently to combat human trafficking. The logistics of human trafficking reveal that a comprehensive European wide action and understanding is necessary to counter trafficking. However, the EU has made abortive progress in combating human trafficking due to the use of a “garbage can” process to formulate anti-trafficking directives and actions. Garbage can processes prevail in conditions of institutional anarchy. In anarchic conditions decisions are not made rationally. The garbage can model demonstrates that decisions are made based upon participants pre-existing preferences and the a result of a search to make the simplest choice. The simplest choice is the one that both best satisfies existing norms governing behavior; and fullfils the selfish ends of individuals, departments within the organization, or bureaucratic entities the choice at hand effects. Thus, organizations using garbage can processes are not capable of taking consistent and deliberate action to solve problems. In terms of policymaking, institutions in the grip of garbage can processes continually produce ineffective policies that fail to resolve the problems they were intended to address.

The EU does not have a consistent policy making system. Different aspects of EU policy fall under different branches of the organization, and different decision making rules. The third pillar, governing cooperation in JHA, is particularly vulnerable to conditions of anarchy. JHA is fraught with structural inadequacies and confused decision making, contributing to the EU's inadequacy in combatting this terrible crime. Conditions of institutional anarchy are prevalent within the third pillar. A study of EU structures reveals that the institutional relationships produce the conditions that generate faulty decision making described in a garbage can analysis. Moreover, an analysis of EU anti-trafficking efforts demonstrates that policies are indeed confused, poorly designed, and ineffectual. The symptoms of this failure are a lack of coherent methodology and cooperation at the supranational level and the inability of EU institutions to compel member states to act in pursuit of a single policy. Moreover, the enduring legacy of garbage can processes within the EU's institutions inhibit the development of reliable methods to ensure cooperation and accountability at both the member state and the EU level.

My argument is developed through four major sections: The first section demonstrates the complexity of human trafficking and serves as a descriptive map of how transnational and complex the phenomenon is, both in scope and severity. This is meant to give context to the EU's actions and demonstrate the need to forge effective supranational policy against trafficking. Section II examines the dominant paradigms of normative criticism directed against the EU's anti-trafficking efforts. The most prevalent critiques of EU policy are fundamentally inadequate due to their limited scope. I argue that it is necessary to examine the decision making process within the EU to properly explain the

Union's failure. Examination based upon a garbage can model will demonstrate how decision making processes make anti-trafficking policy ineffectual. Section III explains the garbage can model and applies the model to the EU. Garbage can processes thrive in conditions of organized anarchy, and the EU is fraught with the politics of anarchy. Section IV catalogues EU level responses to human trafficking and highlight the actors involved in forming policy directed at the trade in human beings. Cooperation in JHA has fundamental weaknesses that corrupt the EU's anti-trafficking policy. Additionally, the success of this policy will be critiqued from a practical and a theoretical perspective, based on EU and NGO audits of anti-trafficking actions, as well as scholarly criticism of EU efforts. Finally, this section will demonstrate the prevalence of the garbage can processes and organized anarchy in the EU. In the final section of the thesis I conclude that as long as the EU allows garbage can processes to dominate policy formation and decision making anti-trafficking policy is doomed to impotence. I argue that the key to making trafficking policy more credible lies in understanding how to combat garbage can policy, so that the resulting policy may effectively combat human trafficking.

I. Logistics of Human Trafficking

According to a 2005 International Labor Office (ILO) report just a single female held for sexual exploitation generates an average of \$67,200 in industrialized countries such as Western Europe, and \$23,500 annually in the transition countries of Central and Eastern Europe (CEE).¹ U.S. government sponsored research conservatively estimated that approximately 800,000 people are trafficked across national borders, with 120,000 trafficked with in Europe. At least 80 percent of victims are women and girls trafficked into commercial sexual exploitation; it is easy to see just how much money human trafficking generates.² This realization led sex trafficking researcher Siddharth Kara to proclaim that the traffic in women and girls, “[with a] global weighted average net profit margin of almost 70 percent makes it one of the most profitable enterprises in the world . . . The same figure for Microsoft was 28.5 percent.”³

1 International Labor Organization, *A Global Alliance Against Forced Labour*, (International Labour Conference 93rd Session, Geneva: 2005), p. 55

2 US State Department, *Trafficking in Person Report*, (Washington DC: June 2008), p. 7

3 Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, (Columbia University Press, New York: 2009), p. 19

Table 1.1 below illustrates the profits generated by the trade in human beings.

Sex Trafficking: Slave-Trading Revenues and Profits, 2007¹

	Weighted Average Purchase Price per Slave (U.S. dollars) ²	Revenues from Slave Trading (millions of U.S. dollars)	Estimated Slave-Trading Profit Margin (percent)	Profits from Slave Trading (millions of U.S. dollars)
South Asia	660	89	57.6	51
East Asia and Pacific	750	101	58.7	59
Western Europe	4,800	428	56.7	243
Central and Eastern Europe	2,600	177	60.8	108
Latin America	1,500	68	57.9	39
Middle East	3,000	135	57.0	77
Africa	630	17	58.1	10
North America	5,250	26	45.0	12
Total	<i>Weighted Average Price</i> 1,895	1,042		599

From: Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, (Columbia University Press, New York: 2009), p. 20

With such massive profit margins and the proliferation of the trade, it is easy to see how human trafficking has become an important activity for international criminal syndicates, and thus deserves the increased attention of scholars and policy makers. A brief look at the profits of human trafficking, however, does not come close to describing its nature. The most widely accepted definition of human trafficking comes from the 2000 United Nations Convention Against Transnational Organized Crime in Palermo, Italy. Included in the Convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) declares that,

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the 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.⁴

Even this definition, however, is imprecise. Trafficking is as much about exploitation as it is about criminality. It is essential to view human trafficking as a chain of association, criminality, and interpersonal networks stretching across national and international boundaries from a point of origin, to a point of exploitation. Traffickers must supply women (seen as a commodity), avoid regulation and policing, beat competition, and profit. The demands of operating such an enterprise forces the groups involved to organize in order to succeed, making them a rudimentary and organic form of organized crime.⁵ There is also a prevailing economic and networking logic underpinning the practice of human trafficking. Economic currents and opportunities for corruption channel the flow of women, and the general pattern is clear: Central and Eastern Europe is key, supplying desperate and marginalized women from the south and east, and serving as the transportation conduits to lucrative markets in the west, and to a much lesser extent, as a destination in its own right.

The accession of the ten relatively poor CEE states into the EU, one of which has been identified as a source country and several as primarily transit countries in the 1990s, has led to the fact that the strongest flows of illegal migrants and trafficked individuals are now taking place within Europe. This combined with the increasing focus on JHA and immigration at the EU level places the problem of human trafficking squarely within the Union's realm of responsibility. That responsibility is growing every year, along with the trafficking industry.

4 United Nations, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, (Convention, Palermo: 2000), p. 42

5 Jay Albanese, *A Criminal Network Approach to Understanding & Measuring Trafficking in Human Beings*, in Savona, Ernesto, and Stefanizzi, Sonia, eds, *Measuring Human Trafficking Complexities And Pitfalls*, (New York: Springer Science Business Media, 2007), p. 62

Table 1.2 below indicates the extent and growth of human trafficking.

Sex Trafficking: Size and Growth Rate, 2006–2007

	Estimated Trafficked Sex Slaves, End of 2006	Estimated Sex Trafficking Victims, ⁶ 2007	Estimated Sex Slaves Escaped, Freed, or Deceased, 2007	Implied Trafficked Sex Slaves, End of Year 2007 (mean)	Percent Growth (mean)
South Asia	335,000	120,000–150,000	110,000–135,000	347,500	3.7
East Asia and Pacific	315,000	125,000–145,000	113,000–135,000	326,000	3.5
Western Europe	180,000	82,500–96,000	78,000–88,000	186,250	3.5
Central and Eastern Europe	125,000	62,500–74,000	60,000–66,500	130,000	4.0
Latin America	90,000	40,000–50,000	40,000–44,000	93,000	3.3
Middle East	80,000	40,000–50,000	40,000–43,500	83,250	4.1
Africa	65,000	25,000–30,000	24,000–27,000	67,000	3.1
North America	10,000	5,000	4,700–5,200	10,050	0.5
Total	1,200,000	500,000–600,000	470,000–544,000	1,243,050	3.6

From: Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, (Columbia University Press, New York: 2009), p. 18

A. Underdevelopment and Desperation: Source Countries in Eastern Europe

Any action targeting human trafficking must include countries currently outside the European Union to the south and east. Women in parts of Eastern Europe are particularly vulnerable to the practices of human traffickers. Organized crime within the region is burgeoning in the politically corrupt climate, and the socially and economically unstable environment. In the Ukraine alone, according to the Ukrainian Ministry of Internal Affairs, in 1991 there were 260 organized crime groups; in the year 2000, they reported that this had grown to 960.⁶ Within Europe, the processes of globalization exists in parallel with the EU driven process of regionalization. As integration and regionalization have progressed, EU member states have progressively lost the ability to regulate external borders and transnational flows. Combined with the big bang enlargement of 2004 and 2007, the frontiers of the Union have greatly expanded to the east and south, areas that are less able and

⁶ Donna Hughes, and Tatyana Denisova, “The Transnational Political Criminal Nexus of Trafficking in Women from Ukraine,” *Trends in Organized Crime*, vol 6, (2001), p. 6

sometimes willing to regulate external borders.⁷

The process of economic transition in the CEE countries has led to a decrease in the quality of life and increasing inequity among the population. It is estimated that of the 120,000 women that are trafficked into the EU each year more than 80 percent of the victims are from Southern and Eastern Europe. Approximately 10 to 30 percent of the victims are under 18 years of age; mostly girls from the ages of 15 to 18.⁸ The socioeconomic position of young women in the transition countries makes them a particularly vulnerable group. The feminization of poverty in Eastern Europe is not just the result of poverty, but of increasing gender inequality and sex discrimination in the countries undergoing transition and/or post-conflict reconstruction.⁹

Although every country in the region contributes some to the international pool of trafficked women, the majority of trafficked women come from Albania, Moldova, Romania, Russia, and Ukraine. About half of the IOM assisted victims of sexual slavery have been Moldovians, one-fourth were Romanians, and one-tenth Ukrainians.¹⁰ The numbers may be even higher however, according to some estimates, 50,000 to 100,000 Moldavians, over 100,000 Ukrainians, and as many as 500,000 Russians are presently active in international

7 Lucia Ovidia Vreja, "Human Trafficking in South Eastern Europe," *Connections: The Quarterly Journal*, Vol IV No 4, (Winter 2005), p. 53

8 Martti Lehti, *Trafficking in Women and Children in Europe*, HEUNI Paper No. 18, (The European Institute for Crime Prevention and Control, Helsinki: 2003), p. 7

9 Elizabeth Kelly, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, (Prepared for the International Organization for Migration, London: November 2002), p. 25

10 Dennis J.D. Sandole, "Combating Crime in Southeastern Europe: An Integrated, Coordinated, Multi-level Approach," in Jurekovi Predrag, Labarre Frederic, *Panel III: The Impact of Crime on the Regional Stabilization Processes in South East Europe*, (National Defense Academy, Vienna: 2003), p. 146

prostitution outside their home countries.¹¹ Despite its small population, Moldova has become one of the most important source countries for women trafficked into Europe. Mass migration and desperation have reigned in Moldova since the early 1990s when Transnistria violently separated from Moldova, and economic crisis ensued. According to the United Nations Development Program, as of the year 2000, between 600,000 and 1,000,000 (as many as one fourth of the population) Moldovans had fled the country, many of them clandestinely.¹²

Ukraine is a major source country for trafficking in women; the main destination is Germany. NGOs reports indicate that presently some 100,000 Ukrainian women are engaged in prostitution in Western Europe alone, and since the early 1990s, over 400,000 Ukrainians have been sold for prostitution. Some estimates claim that as many as 80 percent of Ukrainians engaged in prostitution abroad are victims of trafficking.¹³ Romania is the main source country for women trafficking into the Balkans, and a main transit corridor for women trafficked from Moldova, Ukraine, and Russia to EU member countries. According to NGOs, thousands of Romanian women are sold abroad every year, and in Turkey alone it is estimated there are over 10,000 Romanian prostitutes.¹⁴ In all of the primary source countries, a comparatively large share of the population lives below the international poverty line.

¹¹ Lehti, p. 29

¹² Jana Costachi, "Preventing Victimization in Moldova," *Global Issues*, (June 2003), p. 30

¹³ Lehti, p. 30

¹⁴ Lehti, p. 26

Table 2.2 below indicates the correlation between trafficking and poverty.

Table 2.2. The link between trafficking and poverty¹

Selected European countries of origin	Identified victims of trafficking (2000-June 2003)	Population living on less than US\$ 2 a day (%)
Albania	2 241	11.8
Republic of Moldova	1 131	63.7
Romania	778	20.5
Bulgaria	352	16.2
Ukraine	293	45.7
Croatia	3	< 2
Czech Republic	2	< 2
Poland	1	< 2
Hungary	1	7.3

¹ The data are only illustrative and represent a tentative indication of the link between trafficking and poverty.

Sources: Counter-Trafficking Regional Clearing Point, op. cit., p. 10; poverty figures from World Bank, op. cit., table 2.5.

From: International Labor Organization, *A Global Alliance Against Forced Labour*, (International Labour Conference 93rd Session, Geneva: 2005), p. 57

Poverty is clearly important, however, it does not tell the whole story of what pushes women to seek migration and fall prey to traffickers. Moreover, it makes the problem appear to belong to the field of immigration, whereas, the internal dynamics of source countries and the mechanisms of exploitation identify important linkages to other areas of concern. Human trafficking is complex and rooted in the economic and political development of CEE and it is also an issue of corrupt business practices, criminality, and political corruption.

The source countries are the first anchor point in the trafficking chain, and serve as the point of entry for women into the criminal network. The process of recruitment involves the most open end of the social network criminals employ. Most women are referred to traffickers through family contacts, social contacts, advertisements, travel agencies, language schools, foreign “missionaries,” lovers, or employment agencies.¹⁵ The traffickers

¹⁵ Albanese, p. 62

themselves become involved at this stage through similarly diverse means. Some studies have found that most traffickers had no special skills or training, and the most important factors were simply the right connections.¹⁶ Most became recruiters or smugglers through contact with family, friends, or former co-workers at legitimate jobs. Once in the criminal network there is evidence that traffickers operated solely based upon interpersonal contact, with no hierarchical leadership, and a natural division of labor flowing from skills and contact. Exploiting the desperation of women to work and travel abroad, traffickers offer promises of low skilled labor abroad, as dancers, waitresses, nannies, maids, bartenders, but almost never explicitly as prostitutes.¹⁷ The majority of the travel and employment agencies that women are recruited through are illegal fronts, Moldovan investigators found that out of 1346 travel agencies investigated only 340 were legal businesses.¹⁸ Once recruited, women are referred on to a transporter who facilitates their movement and controls them; at this stage the trafficked person is firmly trapped.

B. Integration and Criminal Networks: Trafficking in Central Europe

There is no clear break between source and transit country and the line is often blurred. Differentiating source countries from transit countries is often difficult and an artificial distinction, however, there is a general pattern: women are taken from Eastern Europe and moved through the Balkans and Central Europe to Western Europe. The Balkans

¹⁶ United States Department of Justice, *Characteristics of Chinese Human Smugglers*, (Washington DC: Department of Justice, August 2004), p. 5, 8

¹⁷ Hughes, p. 4

¹⁸ *European Commission, Research based on case studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy and The Netherlands*, (Brussels: DG Justice & Home Affairs, 2001), p. 158

have a long tradition of illicit trade routes, for arms smuggling and drug trafficking that pre-date the collapse of Yugoslavia. Human trafficking patterns have tended to follow these existing routes, often times operated by the same criminal gangs that operated the arms and drug traffic. There was a dramatic increase in persons trafficked through the Western Balkans starting in the early 1990s.¹⁹ The collapse of communist rule helped animate this movement, as in all CEE countries, however, the unique horrors of the Balkan Wars created an environment ripe for trafficking. In the confusion criminal elements quickly exploited women's vulnerability. Criminals began to exploit women, and also to take advantage of the disintegrating state and police apparatus, which enable trafficking to thrive in the open. Trafficked women from Russia, Moldova, Ukraine, and Romania flooded the Balkans, brought through FYROM, Albania, Serbia, and Bosnia in boats, trucks, or in the trunks of cars.²⁰

According to the US Drug Enforcement Agency, there have been approximately 200,000 women trafficked to, through, and from the Balkans in the past decade. It is also estimated that the number of prostitutes in Europe originating from the Balkans stands at around 250,000 to 800,000.²¹ The most critical and complex part of the trafficking process takes place in the transit countries of CEE. Victims must be bought, sold, moved, and the traffickers must enter the territorial frontiers of the European Union. At this point in the

19 Julie Mertus, et al, *Combating Trafficking*, in Friman, H. Richard and Reich, Simon, eds, *Human Trafficking, Human Security, and The Balkans*, (Pittsburgh: University of Pittsburgh Press, 2007), p. 41

20 Martina E. Vandenberg, *Peacekeeping and Rule Breaking*, in Friman, H. Richard and Reich, Simon, eds, *Human Trafficking, Human Security, and The Balkans*, (Pittsburgh: University of Pittsburgh Press, 2007), p. 84

21 Lehti, p. 22

trafficking chain, the amount of social interaction is very high and, although it is a highly organized phase, it is still centered around relationships, contacts, and individuals.²²

Transporters' contacts within customs bureaus, with other criminals, and in destination countries are vital. These outside connections are so important because the vast majority of trafficking groups are small comprising fewer than seven members, they require at least the complacency, if not outright cooperation of select officials.²³

A multitude of studies, including the assessments of individual governments, have pointed to the international and multifaceted character of trafficking rings. Belgian authorities have estimated that 40% of the large trafficking rings operating through Belgium are composed of multinational members.²⁴ It is estimated that 56% of large highly international groups control the victim throughout the chain of trafficking: from recruitment, through transport, and to sale. Moreover, these groups are significantly correlated with other illegal activities, with an 80% likelihood of transporting weapons or drugs along with people.²⁵ Curiously, despite their extensive criminal ties, most of the traffickers involved as transporters have no criminal record, which would hinder their ability to move and travel abroad. Ukrainian police statistics claim as many as 70% of trafficked women travel on a legal tourist visa that a transporter obtained for them, highlighting the invisibility traffickers desire to achieve in moving victims and obtaining illicit documents.²⁶

22 Commission, *Case Studies*, p. 109

23 Albanese, p. 68

24 Commission, *Case Studies*, p. 72

25 Commission, *Case Studies*, p. 46

26 Hughes, p. 8

A microcosm of this complex dynamic took place in the Western Balkans, where traffickers expanded their operations to meet demand, corrupted local and international officials, and adapted tactics of exploitation to an evolving environment. The US State Department's Trafficking in Persons report identifies every country in the Balkans as a transit and source country, and many are also destinations for trafficked women.²⁷ The Balkans do not seem to be a likely destination for trafficked women. The nations of the Balkans are poor, suffering from economic collapse, underdevelopment, and the feminization of poverty as much, if not more so, than countries in Eastern Europe. The collapse of the communist system and spread of globalization and regionalization spawned social upheavals which caused the dramatic increase in trafficking in CEE; this destabilization also sparked war in the Balkans. This extreme environment facilitated social dislocation and a break down in the rule of law, providing conditions that allow trafficking to flourish; namely desperate and vulnerable women and a lack of legal protection.

Social dysfunction became far more extreme and desperate with the outbreak of war and ethnic cleansing in the region. The Balkan War created a ripe environment for women to be sourced and transported in the region, but the international response also created incentives for women to be trafficked into the Balkans. Shortly after the Dayton Peace Agreement, more than 60,000 troops, police, contractors, and other NATO and UN staff arrived in the Balkans.²⁸ The presence of large numbers of foreign personnel paid in western currencies caused a boom in both the legal and illegal economy. An Amnesty International report found that in 1999 the international community was responsible for as much as 80

²⁷ Mertus, p. 41

²⁸ Vandenberg, p. 84

percent of the demand for sex. Local demand soon caught up as foreign currency boosted the income of local police and black market entrepreneurs, who frequented the brothels. In 2002, the international community represented 30 percent of customers, but provided 80 percent of the industries' income.²⁹ In 2001, the US State Department noted that Bosnia was no longer merely a transit country, but a major destination country, with around 10,000 victims of trafficking exploited for sex.³⁰

Sadly the number of women trafficked into the Balkans for the purpose of prostitution did not decrease due to anti-trafficking activity. Rather, the decrease in the number of trafficked women was directly linked to the withdrawal and reduction in size of international forces in the area. As smaller EU led missions replaced the large NATO and UN missions in Bosnia, the number of foreign personnel decreased 10 fold, and trafficking to Bosnia scaled back in reaction.³¹ Regrettably, traffickers had learned a valuable lesson about the relationship between transit and destination countries, and the Balkans have remained an initial destination region. Traffickers now use the Balkans to submit women to a violent “breaking process,” forcing them to acquiesce to rape, torture, and exploitation, before reselling them to the West.³² The use of Balkan countries as a kind of trial ground for women has allowed traffickers to render their victims more docile, and subjecting women to the experience of being trafficked and sold multiple times increases control over them. In a Turkish study, a trafficker openly admitted that women are sold in “sales-like auctions”

²⁹ Mertus, p. 47

³⁰ Vandenberg, p. 91

³¹ Vandenberg, p. 94

³² Mertus, p. 43

where they are literally auctioned as commodities.³³ It is important to note that the situation in the Balkans is complex, and the nations of the Western Balkans in particular are difficult to succinctly summarize or classify.

C. Selling Sex, Buying Women: Destination; The West

Western Europe is the most lucrative market for prostitution, and the end destination for most trafficked women in continental Europe. National authorities in Western Europe provide vague data in regards to trafficking. According to Western EU member state's official statistics, the number of women trafficked into Western Europe is between 5,000 and 40,000 annually. A preponderance of organizations dispute this figure and argue that the number of women is considerably higher, between 100,000 and 150,000 women and children.³⁴ Since 2003, the main destination countries for Romanian, Moldovan, and Ukrainian sex slaves are in Western Europe: Spain, Italy, France, Netherlands, Austria, or Greece. Until 2002, the Balkans (especially Serbia, Montenegro, and Albania) represented a main destination region, along with Western Europe, where women and girls from further east were trafficked.³⁵ The estimated number of women engaged in sex work across Western Europe is staggering: Belgium 30,000, France 40,000, Germany 300,000, The Netherlands 30,000, Switzerland 6,000, United Kingdom 80,000. Trafficked women comprise between

33 Liz Kelly, "You Can Find Anything You Want": A Critical Reflection on Research on Trafficking in Persons Within and into Europe, in Laczko Frank and Gozdzia Elzbieta, eds, *Data and Research on Human Trafficking: A Global Survey*, Special Issue of International Migration, Vol. 43 (½) 2005, (International Organization for Migration), p. 248

34 Lehti, p. 15

35 Vreja, p. 59

40-80 percent of sex workers.³⁶ Given the staggering size of the commercial sex market and the dominance of trafficked women working in the industry, it is not hard to grasp the magnitude of the problem in Western Europe.

I have not attempted to provide an exhaustive study of domestic anti-trafficking efforts, or sex markets in Europe. A brief conceptual study, however, is useful to gain insight into the general development of the European commercial sex industry. Western Europe has various pull factors contributing to human trafficking. Sex industries in the West continue to expand, while being less able to recruit nationals to work within them, thus creating a strong market for both migrants and trafficked women.³⁷ Sex markets are increasingly diverse and wide ranging: Technological developments such as the internet, as well as the proliferation of tourism, escort agencies, and media outlets that advertise sexual services, have contributed to the growing demand for commercial sex.³⁸ The demand side of the commercial sex industry is difficult to quantify, but Kara has identified three components: male sexual demand, profit, and the elasticity of demand.³⁹

Male demand is difficult to quantify, and no systematic attempt to do so will be made here; however, profit and elasticity are more tangible. The profits from sexual exploitation and trafficking, as outlined earlier in this thesis, are immense. The draw of trafficking is its ability to provide profit maximization in the sex industry. The economic rationale is simple, bonded women reduce "labor" cost within the commercial sex industry. Moreover, Kara's

³⁶ Lehti, pp. 16-19.

³⁷ Kelly, *You Can Find Anything*, p. 242

³⁸ International Labor Organization, p. 51

³⁹ Kara, p. 33

research has suggested that the demand for sexual services is highly elastic. In one case he observed that a doubling in price led to a 80% decrease in costumers.⁴⁰ With a high elasticity, as the price for commercial sex fell by half in the 1990s the potential client base expanded. In Italy, for example the average male wage earner, with an annual income of \$30,921, must only work 2.2 hours to purchase services from a prostitute.⁴¹ Trafficked womens' lives are sold as a cheap commodity, and their services are equally as inexpensive.

Table 3.3 indicates the purchase price of a trafficked woman versus the cost of sexual services to a client.

Sex Slave Purchase Prices: Italy (euros)		
Origin Country	Purchase Price	Price of Sex Act
Brazil	5,000	40
China	5,000	40
Russia	3,500	30
Moldova	3,500	30
Bulgaria	3,500	30
Poland	3,500	30
Albania	3,000	25
Ukraine	3,000	25
Hungary	3,000	25
Latvia	3,000	25
Romania	2,000	20
Nigeria	—	20

From: Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery*, (Columbia University Press, New York: 2009), p. 88

Growth in the sex market precipitated growth in supporting services to facilitate illegal immigration, trafficking, procurement, and exploitation. Illegal employment and travel arrangements can exist within the informal networks of acquaintances and friends

⁴⁰ Kara, p. 37

⁴¹ Kara, p. 34

present in migrant communities. When these informal networks became involved with older smuggling networks - that could arrange a wide variety of services ranging from false documents, to accommodation and transport - then the criminal enterprise of human trafficking became all too real. Western countries responded with more severe immigration policy. This aggravated the situation, making it more profitable to smuggle human cargo. Criminal networks have started to concentrate more on trafficking, allowing the opportunity to become more professional as well as organized internationally.⁴² An international response is necessary to counter the increased profitability and professionalism in organized crime and trafficking. As I demonstrate below, the European response is regrettably lacking in vision, organization, political will, and international scope. Anti-trafficking regimes are not homogenous, and moreover a commonly recognized normative framework for action is absent. The EU's preferences are poorly defined, the organizational technology to act is unclear, and the responsibility of participants is excessively fluid.

⁴² Commission, *Case Studies*, p. 110

II. Responses to Human Trafficking:

Paradigms and Approaches to Human Trafficking

Normative assumptions have driven both the creation of anti-trafficking regimes at the European level, and the academic discourse seeking to explain the effects of these policies. The prevailing normative frameworks can be broken down into four categories: The law enforcement approach, the migration approach, the human rights approach, and the economic approach. To date, the law enforcement approach has held sway, defining trafficking as a crime under international law, and seeking to repress it through police action and criminal trials. The result has been an emphasis on tightening border controls and visa regimes, along with the criminalization of the victims of trafficking.⁴³ The police approach to date has focused on national level enforcement and traditional criminal suppression methods. Policy analysts and most academics charge that the policing paradigm has produced lackluster results in the fight against human trafficking. The focus of the law enforcement paradigm is far too limited in scope, and cannot capture the truly international and multifaceted nature of human trafficking. Police forces all too often launch high profile crackdown resulting in a flurry of arrests. The subsequent fall in arrests and criminal activity on the part of a single network is proclaimed to be a sign of success. The actual effect however, is more often than not to force traffickers further underground, and increase the

43 Nicole Lindstrom, *Transnational Responses to Human Trafficking*, in Friman, H. Richard and Reich, Simon, eds, *Human Trafficking, Human Security, and The Balkans*, (Pittsburgh: University of Pittsburgh Press, 2007), p. 65

complexity of their organization.⁴⁴ The major weakness of this approach is its vulnerability to poor policy design. As Gabriela Konevska notes, "Without an effective and comprehensive legislative framework, fighting against trafficking in human beings is fruitless."⁴⁵

A related but softer approach is the migration approach. The International Organization for Migration (IOM) and a majority of Western European states are the main proponents of this strategy. Migration focused anti-trafficking regimes rely on a two part effort, starting with controlling and policing the movement of people, and then returning caught persons to their countries of origin. This methodology, however, fails to provide protection for victims once they are returned to their countries of origin, and some fall victim to re-trafficking.⁴⁶ Moreover, this strategy has the potential to actually enhance the dangers of human trafficking. Making migration barriers more formidable does not mitigate peoples desire to immigrate, and making the process more difficult makes illegal means of entry seem more attractive. The effect has been to in fact increase the importance and role of criminal organizations in the process of trans-national migration.⁴⁷

The human rights framework against trafficking often works with law enforcement, but it derives its focus from a different ideology. This mindset is common among

44 H. Richard Friman, and Simon Reich, *Human Trafficking and Human Security*, in Friman, H. Richard and Reich, Simon, eds, *Human Trafficking, Human Security, and The Balkans*, (Pittsburgh: University of Pittsburgh Press, 2007), p. 151

45 Gabriela Konevska, *Policy Responses to Human Trafficking in the Balkans*, in Friman, H. Richard and Reich, Simon, eds, *Human Trafficking, Human Security, and The Balkans*, (Pittsburgh: University of Pittsburgh Press, 2007), p. 120

46 Lindstrom, p. 63

47 Lynellyn Long, *Trafficking Exchanges and Economic Responses*, in Friman, H. Richard and Reich, Simon, eds, *Human Trafficking, Human Security, and The Balkans*, (Pittsburgh: University of Pittsburgh Press, 2007), p. 22

organizations such as UN Global Initiative to Fight Trafficking (UN.GIFT) and the Organization for Security and Cooperation in Europe (OSCE). The proponents of this understanding of trafficking seek to encourage legal and political regimes, along with international conventions that facilitate the protection of human rights in countries of origin and destination.⁴⁸ The actual initiatives introduced in the realm of human rights protection, however, have been underwhelming. A focus on human rights from the legal perspective is not significantly different from a policing approach, given that it is clear the rights of the victim have been violated. Where human rights advocates distinguish themselves is in victim assistance and rehabilitation, which is all too often lacking in the law enforcement approach. Women shelters and campaigns to "empower" victims are the primary means used in the human rights approach's efforts to mitigate the effects of trafficking. Unfortunately, these measures are not widespread enough to help all victims, and offer no help in preventing or suppressing human trafficking.⁴⁹

The economic approach is related to the human rights approach, but differs in two important ways. First, the economic perspective assumes that most victims of trafficking sought migration voluntarily and only after seeking to immigrate, became victims. As such, it tends to reject the strict calls for repatriation of individuals who have been trafficked. Rather, the economic viewpoint assumes that establishing more effective means of legal immigration combined with more equitable economic development will be most effective at countering trafficking.⁵⁰ A second distinction between the economic approach and the human

48 Lindstrom, p. 66

49 Mertus, p. 45

50 Lindstrom, p. 67

rights approach is the emphasis on education and the rule of law. Proponents of this approach note that a common cause of the feminization of poverty is a lack of female education. Many women drop out of schools at comparatively young ages, making them vulnerable to poverty and exploitation.⁵¹ The system of international governance and law, unfortunately, constrains prospects for an economic approach to human trafficking. Inconsistent policy within Europe, combined with a lack of uniform and engaged external policy means that there is a dichotomy of inclusion versus exclusion in Europe. Women are caught, "between law enforcement exporting states of the new EU . . . increasingly fortified against the crime-exporting states" further to the east.⁵² Without a more consistent and functional policy making system in the EU and the international arena more generally, the stability required of the economic approach will remain illusive.

The aforementioned dominant conceptual approaches to human trafficking offer many insights; however, they are inherently incomplete. The four dominant paradigms are intentionally apolitical, focusing criticism on policy outcomes, rather than the political process from which the policies were derived. Viewing progress made against human trafficking as an outcome of immigration policy, policing policy, human rights policy, or general foreign policy; however, this perspective ignores the complexity and fundamental causes of policy failure. A more forceful analysis must focus on the agenda setting processes and decision making mechanisms behind the political institutions that form and implement anti-trafficking policy. Only an understanding grounded in European Union's institutional dynamics can capture the structural weakness of anti-trafficking policy.

⁵¹ Long, p. 34

⁵² Lindstrom, p. 68

To understand why a policy fails, it is necessary to view the policy within the context of the political organs that created it. Taking such an institutional perspective reveals the structural weaknesses that plague a policy or organization and result in poor policy outcome. In this case the system under review, the European Union, is vast and complex. Just as it is important to understand politics within a state to understand why policy succeeds or fails; it is necessary to understand the EU as analogous to a state. The political system of the Union certainly lacks many of the state's mechanism for coercion and control; however, Hix has argued that, "Even so, it is beyond dispute that the EU has acquired for itself at least the policy-making attributes of a modern state."⁵³ With much of the legislation enacted in European states emanating from the EU, it is clear that supranational politics are significant. Nonetheless, the picture is far from clear, and as Moravcsik notes EU member states are still responsible for much of their own affairs. The ramifications of this are that the European legislative process is riddled with complexity, divided competencies, and irregularity.⁵⁴ This focus on institutional factors is essential to explaining why lines of policy consistently fail over time.

Institutions are key actors in not only the creation of policy, but also in its application. Institutions make up the terrain of the political landscape, they channel problems, participants, solutions, and behaviors toward the goal of forming and acting upon policy. The dynamics of institutions, and the structures they exhibit are more resilient to change than

⁵³ Simon Hix, *The Political System of the European Union*, (New York: Macmillian, 2005)

⁵⁴ Jeremy Richardson, "Policy-making in the EU: Interests, Ideas and Garbage Cans of Primeval Soup," in Richardson, Jeremy, ed, *European Union: Power and Policy Making* (New York: Routledge, 2006), p. 5

individual preferences, providing stability and a super structure to political life.⁵⁵ When a policy has been demonstrated to be a failure consistently over time and across multiple lines of analysis it becomes necessary to look into the institutional crafting of the policy to understand the resulting inadequacy. In regards to EU anti-trafficking policy, this faulty mode of policy formation is the garbage can approach. Analyzing anti-trafficking policy from the garbage can perspective better explains the consistent inadequacy of EU policy through a more fundamental analysis of the processes responsible for its formation.

55 Gary Mucciaroni, "The Garbage Can Model & the Study of Policy Making: A Critique," *Polity*, Vol. 24, No. 3 (Spring, 1992) p. 466

III. A Garbage Can of Policy: Explaining the Failure of EU Anti-Trafficking Policy

Given the importance of institutions to policy creation and execution, any theory seeking to explain the failure of policy must also explain the institutional dynamic behind the policy. I argue that a garbage can model applied through an institutional perspective allows for a fundamental analysis and critique of EU policy formation. Focusing on the garbage can model reveals that what appears to be rational policy is often a result of a very non-rational process. Moreover, the garbage can demonstrates that although the EU may seem to be an organization created to solve problems, it is in fact very poor at this task. Furthermore, combining the garbage can process with an understanding of institutionalism makes clear that EU policy formation takes place within an anarchic dynamic, where the goals of the organization are actually more self serving and introspective than other theories of decision making assume them to be. Institutionalism in this context uses institutions to measure and trace decisions and policy formation over time. It identifies institutional goals, behavioral norms, and organizational self-perpetuation as the most important considerations for institutions. I argue that institutionalism completes the garbage can, showing that decisions are made in chaotic ways, where the participation of key players, the pursuit of pet policies, and institutional desires to construct behavior are the vital components.

Michael Cohen, et al, first proposed the garbage can process of decision making in 1972. The garbage can is an institutional choice hypothesis that seeks to explain the decision

making behavior of certain institutions that the authors classified as organized anarchies.

The characteristics of organized anarchy are three fold: First, an organization that has problematic preferences, second, unclear technology, and third, fluid participation.

Problematic preferences refers to a dearth of clear goals or ideology where a group “can be better described as a loose collection of ideas than as a coherent structure; it discovers preferences through action more than it acts on the basis of preference.”⁵⁶ The problem of unclear technology defines a situation in which actors in an institution are unaware of how other parts of the same organization operate, how decisions are implemented, how decisions become actions, or how the institutional norms function. Under these conditions, “Although the organization manages to survive and even produce, its own processes are not understood by its members” and the institution adapts through institutional learning, trial and error.⁵⁷

Fluid participation refers to environments in which participants' competencies and involvement are inconsistent, “participants vary in the amount of time and effort they devote to different domains; involvement varies from one time to another.” The result of this is that the “boundaries of the organization are uncertain and changing.”⁵⁸

When a situation arises where an organization is expected to act a “choice opportunity” appears. The choice opportunity will become a “garbage can” into which participants dump both problems and solutions. The mix of information present in the choice opportunity is dependent upon the institutional structures of the organization and how information is produced, channeled, and analyzed; the participants active in the process and

56 Michael D. Cohen, et al, “A Garbage Can Model of Organizational Choice,” *Administrative Science Quarterly*, Vol. 17, No. 1 (Mar., 1972), p. 1

57 Cohen et al, p. 1

58 Cohen et al, p. 1

the ideas they introduce is also of vital importance.⁵⁹ Rules that govern structure are part of a code of socialization that is learned and adopted through a process of socialization.

Behavioral routines are not merely a set of rules, roles, procedures, conventions, and protocols within an organization; rather, they are a social norm. As March explains, “Action is often based more on identifying the normatively appropriate behavior than on calculating the return expected from alternative choices,” making operations within an organization a constructed system of values.⁶⁰ Although learned group behaviors constrain individual and group action, it is also worth mentioning that the codification of rules is incomplete and inconsistencies and random events are common. Hence, garbage can processes are neither arbitrary nor random and occur in the context of institutional norms and culture, which constrain the serendipitous situational context of choice opportunities.⁶¹

Institutions, however, are not all encompassing and in many circumstances action is necessary with or without defined goals and bounds. It is important to note that in situations of organized anarchy organizational channels are not always strong enough to constrain the random and arbitrary aspects of decision making. In such conditions the garbage can prevails. Kingdon describes this behavior in organizations, “people act in the absence of clearly defined goals; indeed, action is often facilitated by fuzzing over what one is trying to accomplish.”⁶² Organized anarchies experience difficulty in accomplishing tasks. This

⁵⁹ Cohen et al, p. 2

⁶⁰ James G., March, *Rediscovering Institutions: The Organizational Basis of Politics*, (New York: Free Press, 1989), p. 22

⁶¹ March, p. 29

⁶² John W. Kingdon, *Agendas, Alternatives, and Public Policies 2nd ed*, (New York: HarperCollins College Publishers, 1995), p. 84

feature is especially true of political OAs whose goals are ambiguous, encompassing tasks such as fighting crime or eliminating poverty. The technology to accomplish these ends is unclear; actors disagree about the proper role of the organizations, the methods that ought to be used, and even the goals of the institution itself. Because of this organizational preferences are problematic and organizations often establish their preferences through the process of acting. Also, competencies are blurred through conflict between different branches and levels of government, making it unclear which particular institution, or part of an organization should act and how.⁶³ The effect of this is a confusion of decision making structures at the institutional level. The manner in which information flows into decision making organs compounds uncertainties and inconsistencies in organizational decision making.

Information flows through organizations in four streams: problems, solutions, participants, and choice opportunities. The dynamic between problems and choice opportunity is simple; when faced with a problem, an institution has a choice opportunity that creates a need and an expectation to act. Greater confusion comes when an agenda and resulting policy must be instituted to manage the incoming problem. Agendas are not set and alternatives sought, rather solutions are advocated for longer periods of time, waiting for an opportunity to be pushed onto the policy agenda. Kingdon describes the process, “participants do not first identify problems and then seek solutions for them; indeed, advocacy of solutions often precedes the highlighting of problems to which they become attached.”⁶⁴ This coupling of solutions to problems takes place through participants bound

⁶³ Kingdon, p. 85

⁶⁴ Kingdon, p. 205

within the institutional bounds of the organization in which the process takes place. When these elements are joined at a fortuitous time a policy entrepreneur can harness political momentum to attach their preferred solution to a convenient problem.⁶⁵

Individual participants are a vital linkage in the process of decision making and agenda setting. Solutions are seldom designed to solve a particular problem, indeed they are most often a product of individual or institutional self interest. Participation is less a matter of a particular actors needed to weigh in on a situation and more a function of advocating the right solution at the right time.⁶⁶ Participants' success in promoting their pre-existing formulae is a matter of their success in excluding other solutions and their advocates; framing the issue as pressing and appealing to the institution's logic of appropriateness. An important part of this strategy is the ability to appeal to symbols, ritual, or myth; bestowing legitimacy upon policies and agendas, whether or not they successfully resolve the problem at hand. The process of making policy is more about “shaping meaning [within] political institutions [to] create an interpretive order” as opposed to problem solving.⁶⁷ Policy makers focus is not on problem solving and actions are based upon a bounded notion of rationality, “because the cognitive and conceptual capacities of decision-makers,” Stinchcombe argues, “consider only a very small number of alternative solutions.”⁶⁸

In organizations with garbage can processes there are certain predicted institutional

65 Kingdon, p. 194

66 Kingdon, p. 86

67 March, p. 52

68 C. Himler, and Aurthur L. Stinchcombe, “*Remodeling the Garbage Can: Implications of the Origin of Items in decision Streams*,” in Morten Egeberg, and Per Lægreid, eds, *Organizing Political Institutions: Essays for Johan P. Olsen*, (Oslo, Norway: Scandinavian University Press, 1999), p. 28

behaviors and outcomes. The bounds of individual conceptual capacity, the constraints of institutional rules, and the uncertainty of garbage can decision making produces policy outcomes as a result of “oversight” or “flight.” The process of oversight creates choices when a problem within an organization is easily solved using the existing structure and norms of the organization.⁶⁹ In this circumstance all the elements of the four streams running through an organization are optimal, which is in large part due to an easy match with the organizations existing preferences, and a policy window allows the problem and attached solution to enter the agenda with relative ease. The perceived needs of policy makers and their existing agendas are key, and solutions to problems that can attach to their needs conveniently are attractive.⁷⁰ In these situations the effectiveness of participants to carry the day is what drives decisions. Problems appear to be easily solved, and solutions seem to naturally fit into an institutions existing preferences and norms.

The related but distinct process of flight describes situations when decisions result from a solution being unsuccessfully paired to a problem. Resolution comes from either finding a more easily executed choice; it is also common to redefine the choice to exclude or obfuscate the original problem.⁷¹ Organizational processes tend to force solutions and their attached problems to areas which can easily address the problem. Combined with the tendency of participants to advocate solutions independent of a specific problem, the result of this is that important choices are less likely to resolve problems than unimportant choices

⁶⁹ Cohen et al, p. 8

⁷⁰ Mucciaroni, p. 475

⁷¹ Cohen et al, p. 8

where the contest of proposed solutions is less intense.⁷²

The two dominant methods of garbage can decision making, flight and oversight, makes important problems difficult to resolve. The garbage can also ensures that problems and solutions will be channeled to existing parts of institutions where advocates have been most aggressive about pursuing their select proposals. Finally, the garbage can approach predicts that agenda setting and the formation of preferences do not follow in sequential order. Instead preferences are translated from a vague notion into specific policy on a more arbitrary basis dependent upon participants efforts not rational review with respect to existing preferences.⁷³

Scholars have observed that in many respects the EU practices archetypal garbage can policy formation. The EU is a complex and to some degree unique policy making system. The European Union is marked with problematic preferences and unclear goals; unclear technology for implementing decisions; and fluid participation. It is multinational yet quasi-federal, with extremes of openness to outside influence and acquiescent to member states dictates. Indeed, Richardson has argued that, “At best the EU policy process has exhibited some stable patterns of cross-national coalition-building; at worst some of the extrem aspects of a garbage can model of decision-making.”⁷⁴ These processes are generally true of the EU, however, they are most strongly present in policy areas where conflicting competencies and cross pillar structures are more common. The Union is a patchwork of competencies and

⁷² Cohen et al, p. 11

⁷³ Lord, Christopher and Sands, Jennifer, “Conceptualising Holistic Security in a Fragmented Governance Structure,” Conference Paper (April 2006), online access <<http://www.psa.ac.uk/journals/pdf/5/2006/Lord.pdf>>, accessed 20 May, 2009

⁷⁴ Richardson, p. 6

organizational structures, generating different policy areas through different political methods. It should be expected that policies initiating in the most tangles of institutional realms will be the least effective. Anti-human trafficking efforts are sadly emblematic of this dynamic, being grounded in the troubled third pillar.

The European Union's third pillar, Justice and Home Affairs, is particularly conflicted and most strongly exhibits the characteristics of organized anarchy. The intergovernmental Council of Ministers controls JHA. Decisions are made using unanimity, and are non-binding, making compliance essentially voluntary. More importantly, cooperation in JHA requires cross-pillar resources, and coordination with supranational institutions. The Commission disperses funds that implement JHA actions, yet has no hand in creating JHA policy. Thus third pillar policies are enacted on an intergovernmental basis, non-binding to member states, and dependent upon the Commission - and the community method of decision making- to have effect. Hence, whilst “calling for coherence,” Lord notes, “the Union uses a fragmented governance structure” to craft policy in the third pillar.⁷⁵

Fragmented governance structures within the EU are a result of the near constant state of flux in which the institutions of the Union exist. The EU is fraught with the politics of uncertainty. Richardson has observed that, “Indeed, actors may be totally unaware of other key stakeholders in the process, let alone of the policy preferences and strategies of those actors.”⁷⁶ He goes on to assert that Kingdon's four policy streams which run through a garbage can point to, “an almost uncanny resemblance” between Kingdon's description of policy-making and the behavior of key actors in the EU policy process. Moreover,

⁷⁵ Lord

⁷⁶ Richardson, p. 15

Richardson argues that, “the garbage can model . . . does indeed seem to capture much of what we know empirically about the EU agenda setting process.”⁷⁷ The political climate surrounding decision making, agenda setting, and policy formation is indeed complicated and has ample opportunity for clouded technology and participation. Dinan identifies this complexity, “Beneath the surface the bulk of institutional interaction takes place in hundreds of formal and informal meetings of the principals and officials of the commission, council of ministers, and parliament mostly in the course of legislative decision-making.”⁷⁸ These traits make the processes of organized anarchy readily applicable to the EU, providing a quintessential example of how OA manifests itself in political life.

Upon examination, the history of EU efforts to combat human trafficking are replete with the processes of OA. The problem of human trafficking has been coupled to solutions that are not rooted in solving the problem, but derive instead from existing debates about the proper place of the EU in JHA. Appeals to symbolism and the quest to establish a normative environment have guided EU actions at the expense of viable policy. Decisions are made using garbage can processes, with decisions coming through flight and oversight, forcing anti-trafficking policy into current structures despite the poor fit between the problem and the organs designed to implement policy. The result has been predictable: EU anti-trafficking policy is not successful.

⁷⁷ Richardson, p. 21

⁷⁸ Desmond Dinan, *Even Closer Union: An Introduction to European Integration* 3rd ed, (London: Lynne Reinner Publishers, 2005), p. 329

IV. Member States or a Union: Policy Convergence or Fragmentation?

Through an examination of history and EU documentation the following section demonstrates the persistence of the garbage can over time and through multiple treaties, directives, and actions. Despite the proven inefficacy of anti-trafficking policy; repeated attempts to reform the system; and multiple critical assessments coming from the EU's own auditors, reform to JHA is slow in coming. I argue this historical understanding makes it possible to identify what institutional dynamics must be changed and what missed opportunities must be redressed.

European level policies against trafficking in human beings were inherited from the European Community (EC) and predate the formal status of the Union. Intergovernmental cooperation on matters of JHA dates to the Trevi group of the 1970s, and was discussed as a treaty issue in the Single European Act of 1986.⁷⁹ It was not until the Maastricht Treaty on European Union (TEU) that anti-trafficking regulations became elevated to the level of the *acquis communautaire*, making them part of EU primary law. The Council of Ministers and the European Council held competency for combating human trafficking as a part of the intergovernmental third pillar.⁸⁰ From the outset, Union anti-trafficking measures concentrated on the fight against trafficking in women and children for purposes of economic and sexual exploitation. This historical background makes concerns over human trafficking

⁷⁹ Dinan, p. 562

⁸⁰ Joanna Apap, et al, *Counteracting Human Trafficking: Protecting the Victims of Trafficking*, (Brussels: Centre for European Studies, Report 2002), p. 10

among the oldest matters of concern for certain segments of the European community.

Despite being an "old" issue in the EU, it was not until concern over trafficking was included in the TEU that the issue of trafficking evolved from a largely ignored topic, ridiculed in most Eurocratic and political circles, to a widely accepted and serious policy-issue.⁸¹ Efforts to combat trafficking needed to be addressed in the TEU because they came into fundamental conflict with the efforts to ensure the supremacy of the common market that the young EU had pledged to create. Trafficking in persons is referred to in Article 29, where it is classified to as a criminal activity which the EU is obligated to prevent and suppress. The TEU constrains such measures to cooperation between law enforcement agencies and judicial authorities as well as the "approximation" of laws, where member states must have a legal standard roughly approximate to EU guidelines. The EU's power to demand close approximation was, however, strictly limited in accordance with the terms of Article 31 of the TEU; which only empowers the Union in the realm of judicial cooperation in criminal matters and setting minimum standards for punishment of criminal acts such as organized crime, terrorism, and drug trafficking.⁸²

With the newly established competency over efforts to suppress human trafficking the EU required a means of enforcing anti-trafficking decisions. Maastricht established three mechanisms for implementing JHA policy: Joint positions, joint actions, and conventions. All of the mechanisms were transplanted from the Common Foreign and Security Policy (CFSP), however, the joint positions and actions in JHA were even less precisely defined

81 Brigit Locher, *International Norms and European Policy Making: Trafficking in Women in the EU*, (Presented at the Annual Meeting of the International Studies Association, Portland: 1 March, 2003), p. 7

82 Apap, p. 26

than their CFSP counter parts.⁸³ Moreover, the parliament and European Court of Justice (ECJ) were virtually excluded from JHA decision making, with limited cooperation done on an ad hoc basis. From the very outset JHA and policy concerning human trafficking were placed in an institutional environment rife for the advocacy of self-interested solutions that dominate garbage can decision making. The lack of regularized inter-institutional relations and cooperation provided an additional component of the garbage can, namely, fluid participation.

In actuality, the intergovernmental nature of JHA cooperation precipitated very little harmonization of legal and criminal standards. Europol, the EU organization created in 1993 to handle EU wide cooperation between law enforcement agencies, proved to be emblematic of the difficulties of the third pillar. Disagreements over Europol's proper role and the administrative technology to administer the organization occupied more time than any other JHA issue.⁸⁴ Europol relied on joint actions, and as should have been expected, this cumbersome and weak legal instrument proved to be largely toothless. The JHA pillar had important flaws including overlapping competencies between the first and third pillars. Also, the legal mechanisms of the third pillar - joint positions, joint actions, and conventions - are widely regarded as flawed. Member states view the legal effect of JHA instruments with ambiguity and thus tend to prefer sedate JHA policy.⁸⁵ It was widely and tacitly acknowledged that if the third pillar was to have any effect a major change was necessary to break the deadlock and apathy which prevented substantive action.

⁸³ Dinan, p. 567

⁸⁴ Apap, p. 29

⁸⁵ Arne Niemann, *Explaining Decision in the European Union*, (Cambridge: Cambridge University Press, 2006), p. 199

In reaction to the contentious and anarchic structure of JHA the Union sought to overhaul the third pillar at the treaty of Amsterdam. Indeed, as Dinan notes JHA would consume most of the IGC's time and effort, "Given is political and procedural complexity, justice and home affairs was one of the most thoroughly discussed issues and the [Amsterdam] conference."⁸⁶ Amsterdam changed the old TEU article B on justice and home affairs and bifurcated the pillar; splitting visa and asylum policy from police and judicial cooperation. Immigration and asylum policy under Title V were moved under the community method. Actions to combat human trafficking, explicitly mentioned under the Title VI in the Amsterdam Treaty, were under the intergovernmental method of police and judicial cooperation.⁸⁷ Rather than resolving the opaque and complex nature of JHA the Amsterdam treaty further complicated third pillar decision making. The unanimity required in the council for police and judicial cooperation is virtually unassailable, making the adoption of JHA actions nearly voluntary. Once again the ECJ had been excluded, preventing judicial review of Title VI actions. Under Article K4 of Amsterdam the Commission was supposed to be included in decision making, since first pillar resources are often necessary to enact third pillar policies, however the commission is only treated as a privileged observer.⁸⁸ The result has been a further complication of the technology necessary to enact JHA policy, keeping the EU under the pre-existing system of organized anarchy.

The effect of this decision was to preserve a system prone to garbage can processes. Keeping anti-trafficking efforts tied to exiting channels proved convenient, but prolonged a

⁸⁶ Dinan, p. 569

⁸⁷ Niemann, p. 189

⁸⁸ Niemann, p. 200

system that was known to be ineffective in fighting trafficking. Refusing to include police and judicial cooperation, including human trafficking, in the community method preserved and even exacerbated a complicated set of institutional relationships. These relationships which were a virtual characterization of garbage can policies with poorly defined goals, unclear technology, and fluid, inconsistent, participation. The clarity of participation and institutionalized nature of the community method would certainly have been better at preventing the reign of garbage can policy than the intergovernmental method of organized anarchy. The effects have been clear, as cooperation on immigration and asylum seekers has yielded results, anti-trafficking efforts have continued to be ineffective. The failure to include Title VI under the community method must be regarded as a great missed opportunity on the part of the EU to improve anti-trafficking policy and police and judicial cooperation.

In the months leading to the meeting in Amsterdam, the EU became more active in its anti-trafficking efforts, in November 1996 the European Commission issued the “first communication,” on trafficking in women for the purpose of sexual exploitation, which proposed a pan-European strategy to prevent and fight against human trafficking. Also in 1996, the mandate for Europol was extended to enable the organization to combat trafficking in human beings.⁸⁹ In early 1997 the EU initiated the STOP program, which represented the first actual commitment of resources to Union wide anti-trafficking efforts. The program provided financial and legal support to NGOs fighting against trafficking in human beings. More important was the training programs aimed at judges; public prosecutors; police

89 European Commission, *Report: Trafficking in Women a Comprehensive European Strategy*, (Brussels: 2001), Online Access: <http://ec.europa.eu/justice_home/news/8mars_en.htm#a3>, accessed 15 March 2009

departments; civil and public services concerned with immigration and border controls; and legislation targeting trafficking and sexual exploitation as well as victim-support and treatment.⁹⁰ Operating with a budget of €6.5 million, the STOP program also sought to build relationships with officials responsible for preventing and combating trafficking in candidate countries. In addition, Europol began to host symposiums for investigators, and sponsor training programs for law enforcement officers. Unfortunately, despite the appearance of significant effort on the part of the EU these programs were not of significant impact.

Organized anarchy and garbage can policies continued to dominate not only policy formation, but also the execution of policy. Europol, the flagship institution driving police cooperation “was hobbled,” Dinan notes, “by entrenched national reservations about sharing confidential information, let alone conducting joint police operations.”⁹¹ Richardson identified the anarchic tendencies of the Union stemming from “different policy systems reflecting national power structures . . . [members] bring to the Brussels table their own public policy traditions . . . the EU is therefore, a huge cauldron of policy proposals.”⁹² These conditions are an ideal arena for policy advocates to push their pet policies, seeking to attach them to any problem that should be presented. The garbage can predicts that in such an environment the reflex to attach solutions to unrelated problems, with little logic other than supporting existing preferences and constructed institutional rules or symbols, would steer EU policy.

The integration of JHA was indeed a constructed institutional goal within the EU. In

⁹⁰ European Commission, *Report: Trafficking in Women*

⁹¹ Dinan, p. 578

⁹² Richardson, p. 14

1999 the European Council meeting at Tampere became the first IGC devoted exclusively to JHA.⁹³ The primary objective was to coordinate EU efforts to fight organized and trans-national crime, human trafficking, arms smuggling, and illegal immigration. Motivation for the focus on police and judicial cooperation was not grounded in a pragmatic approach to combating human trafficking, or resolving any criminal matter. The driving force behind the attempts to forge consistent policy were grounded in a reflex towards European integration. The prevailing sense was that, as Richardson observes, “For ‘the European project’ to move forward . . . [stakeholders] participation needs to be structured and institutionalized.”⁹⁴ It is precisely this desire to institutionalize interactions that drives EU policy formation, independent of any need to solve particular problems. The post-Amsterdam redefinition of the EU as, “an area of freedom, security, and justice, in which free movement of persons is assured,” must be regarded as lofty rhetoric. Goals such as the control of crime, illegal immigration, and smuggling are nebulous and it is virtually impossible to forge agreement on policy combating such issues.⁹⁵ Proclaiming such ambiguous issues as essential to the EU only significantly clouded the policy making environment.

In conditions with such problematic preferences and nebulous goals the garbage can model predicts that furthering institutional norms and existing notions of appropriateness will dominate decision making at the expense of problem solving. Symbols such as "the project of European Integration" or "combatting human trafficking" are of vital importance to institutions. March identifies the logic of appropriateness as a primary motivational factor

93 Dinan, p. 572

94 Richardson, p. 9

95 Niemann, p 188

driving institutional choice. Symbols, rituals, and myth convey legitimacy and give meaning to process. Actions are fitted into this constructed meaning, which is not dependent upon outcome.⁹⁶

Despite the ineffectiveness of existing JHA mechanisms the EU continued on with the existing formula. Reacting to the conclusions from the European Council in Tampere the JHA policy gave “clear priority to the fight against trafficking in human beings.”⁹⁷ The European Council issued a mandate in 2000 calling for the creation of a framework to base EU counter trafficking efforts on. The Commission presented a proposal for a Council Framework decision to combating trafficking in human beings in December 2000. The Commission's proposal sought to create a standard definition for human trafficking separate from the UN Trafficking Protocol. Another objective was to harmonize EU Member States' legislation against trafficking and standardize penalties for engaging in trafficking.⁹⁸ The Council Framework proposed targeted initiatives to ensure that the question of trafficking remains high on the political agenda with reinforced international and European co-operation; a strong multidisciplinary approach focusing on both prevention, research, law-enforcement and effective sentencing of traffickers; support for victims; and the use of the accession process to make candidate countries responsible for combatting trafficking through national measures and cooperation with the EU. The Council's vision, unfortunately, would not be transformed into reality.

Garbage can process predict that difficult problems and decisions are less likely to be

⁹⁶ March, p. 51

⁹⁷ European Commission, *Report: Trafficking in Women*

⁹⁸ European Commission, *Report: Trafficking in Women*

resolved than are their relatively unimportant counterparts.⁹⁹ In the case of anti-human trafficking policy, the unclear technology of third pillar legal mechanism has proved that translating poorly defined JHA preferences into action is indeed difficult. The intergovernmental nature of title VI meant that council frameworks, or even commission mandates, would not be the final word on anti-trafficking policy. The garbage can and desire to channel solutions into entrenched structures and ways of thinking prevailed. Within the organized anarchy of police and judicial cooperation the Union is not the key player, the Member States are. Playing to domestic audiences, Member States thought it was crucial to address different forms of illicit movement of people that international criminal organizations directed and controlled, which often ignored the condition resulting from trafficking. The French President stressed the need to design policies that combatted the illegal entry, stay, and residence of trafficking victims, as opposed to an approach centered on victim protection or preventing exploitation.¹⁰⁰ The result was that EU policy had a different focus than the UN Trafficking Protocol, with a focus on the movement of persons illegally, rather than on the existence of exploitation.

The Council Framework was enhanced again in 2002 with the adoption of another Council Framework Decision which set minimum requirements for the criminalization of trafficking in human beings.¹⁰¹ Under the banner of fighting trafficking, the mandate of Europol's Drug Unit (EDU) was extended to include human trafficking and it was empowered to establish a directory of specialized contacts for law enforcement agencies.

⁹⁹ Cohen et al, p. 11

¹⁰⁰ European Commission, *Report: Trafficking in Women*

¹⁰¹ Boudewijn de Jonge, *Eurojust and Human Trafficking – The State of Affairs*, (Report For Eurojust, Amsterdam October 2005), p. 20

Eurojust, established in 1999 to mirror Europol's police cooperation in European judiciaries, was expanded after 2001 to harmonize member states legislation for criminalizing and punishing human trafficking among other crimes. However, the effectiveness of harmonization was hampered and to quote Dinan, "There was uncertainty about Eurojusts precise role and function."¹⁰²

In addition to efforts at harmonization of standards the EU directly administered some programs aimed at fighting human trafficking. Anti-trafficking efforts included the STOP II program, an extension of the original STOP program, and a new program, DAPHNE, was created. Designed to combat violence against children, young people and women the DAPHNE program had a wider scope than STOP in that it covered the general issue of violence against women and children, which included trafficking. DAPHNE focused on providing funding for training about equality legislation to be provided to legal professions, labor inspectors, social partners, and NGOs in EU as well as candidate countries.¹⁰³ DAPHNE has proven to be one of the EU's most enduring anti-trafficking efforts, and is now in a third phase of renewal set to operate through 2013.¹⁰⁴ Despite the high rhetoric of the Framework Decision, existing programs such as DAPHNE are far weaker than the original calls for rigorous police and judicial responses.

In the face of weak responses and the continuing legacy of garbage can processes EU policy has failed to address human trafficking and has lead to policy fragmentation rather

¹⁰² Dinan, p. 579

¹⁰³ European Commission, *Report: Trafficking in Women*

¹⁰⁴ European Commission, *Prevent and Combat Violence Against children, Young People and Women and to Protect Victims and Groups at Risk*, (Brussels: 2009), Online Access: <http://ec.europa.eu/justice_home/funding/daphne3/funding_daphne3_en.htm>, accessed 25 August, 2009

than convergence. The continued inadequacy of anti-trafficking policy has not gone unnoticed. Official reports, academic publications, and numerous other sources agree that current policies against human trafficking are not successful, and in fact criticism of EU anti-trafficking policy is common. The insufficiency of anti-trafficking measures is also a matter of the structural weakness of the third pillar. “There has been overwhelming consensus in the literature,” Niemann argues, “concerning the failure of the third pillar [which] contained major weaknesses and glaring defects. It has not worked efficiently and surprisingly little has been achieved.”¹⁰⁵ The European Commission established a working group in 2003 entitled the “Experts Group on Trafficking in Human Beings,” to review EU policy and actions within Europe designed to combat human trafficking.

The Experts Group issued a report in 2004 that was highly critical of both the European Union's approach and the general perspective which justify contemporary anti-trafficking actions. The Experts Group noted that European policy did not pay sufficient attention to the slavery like conditions that are so often the outcome of human trafficking. They went on to charge that in applying the UN Trafficking Protocol there was an excessive focus “on the process through which people arrive in such [slave like] conditions,” and not enough attention paid to the states’ “obligation to prevent, investigate and punish human rights violations and to provide the victims thereof with adequate remedies.”¹⁰⁶

The Experts Group is not the only European organization to have criticized the failure of EU policy. Eurojust noted that current efforts are spotty, irregular, and largely ineffective due to policies that prevent the development of, “An integrated approach . . . [to] the whole

¹⁰⁵ Nieman, p. 198

¹⁰⁶ European Commission, *Report of the Experts Group on Trafficking in Human Beings*, (Brussels: 22 December 2004), p. 8

chain of criminal activities and aspects related to victims and proceeds of crime is thereby impeded.”¹⁰⁷ Given the aforementioned conditions of organized anarchy that govern the third pillar, this finding is not surprising. Indeed, the finding is exactly what should be expected and predicted from policy formed using a garbage can mode of decision making. The more glaring traits of OA and the garbage can present within the EU has translated into a lack of control over anti-trafficking policy and JHA affairs in general.

The EU is not ultimately in control what policies and actions combat human trafficking. The member states are the final and definitive arbiters of anti-trafficking measures and policies. Regrettably, their actions are inconsistent. National states' excessive concentration on politically charged rhetoric has led to measures designed to control crime and migration from a limited national perspective. This relatively limited focus has prevented unified action against human trafficking. The Experts Group's 2004 report was highly critical of the scope and approach of EU cooperation in JHA, and the anti-trafficking credentials of the Framework Decision. They charged that the Framework's approach towards human trafficking investigated and prosecuted the symptoms rather than the whole crime.¹⁰⁸ EU policy generally focuses on a limited part of the trafficking process, which is complex and has multiple links. Although the mandate of the Framework Decision claims to focus on the international nature of trafficking, in most cases it fails to expand beyond the local, or at best national level, and policing and prosecuting are still firmly the domain of the Member States.

The result of this excessively nationalized system of response is that only a limited,

¹⁰⁷ de Jonge, p. 5

¹⁰⁸ European Commission, *Report of the Experts Group*, p. 10

and highly visible part of the market for trafficked human beings is counteracted. The scope of criminal activity that should be countered is vast. There are specialized black market entrepreneurs who do not necessarily operate in the area of prosecution, with specialties such as recruitment of victims, transport, or those who are not directly involved but facilitate the crime, such as passport counterfeiters.¹⁰⁹ It is clear that given the trans-national nature of crime involved in human trafficking that a similarly trans-national response would be most desirable. In Europe the most capable institution would clearly be the European Union, with its large administrative capacity, and success in other trans-national areas such as monetary union and the common market. However, the grip of organized anarchy and the garbage can prevent the third pillar from functioning in this way.

The UN alleges that the lack of effective coordination has led to a situation where, “Human trafficking is a criminal offence [sic] in many States, although criminal investigations often do not result in conviction or, if a conviction is reached, it is usually lenient and does not reflect the severity of the crime.”¹¹⁰ In 2002 the International Organization for Migration (IOM) registered concern that EU policy was excessively fragmented. The IOM feared that the sense of political urgency attached to trafficking, combined with the lack of effective cooperation and coordination would result in an ad hoc approach to the problem. The report went on to state that there was almost an official indifference to the fates of the women and girls involved, owing to the fact that they are generally illegal migrants as well as involved in prostitution.¹¹¹ Moreover, there was a lack of

¹⁰⁹ Jonge, p. 28

¹¹⁰ United Nations, *The Vienna Forum report: A Way Forward to Combat Human Trafficking*, (UN.GIFT, Vienna: February 2008), p. 27

¹¹¹ Kelly, *Journeys of Jeopardy*, p. 51

specialized entities dealing with human trafficking. Even worse, the report stated that authorities often expressed little interest in the traffic of human beings; and in some cases they were even complicit with the perpetrators. The IOM called for EU law to recognize, “the principle that women and girls are not to be criminalized, and that they have a fundamental right to protection and redress.”¹¹²

The Experts Group concluded that the policies of the EU and Member States towards trafficking tended to concentrate on crime control and migration policies, but much less on the assisting and protecting the human rights of trafficked persons. They found that, “The neglect of the area of assistance and protection to trafficked persons forms both an obstacle to effectively address trafficking and falls short of the obligations that States have under international human rights law.”¹¹³ Trafficked persons, at best, have access to assistance, counseling, medical care, housing, protection, and compensation; but only if they agree to testify against their traffickers in open court. Given the fact that most victims are repatriated to their countries of origin, where they are vulnerable to other elements of the trafficking chain, the number of women who choose to cooperate is quite low.

The Experts Group observed a lack of an integrated approach within the EU. Anti-trafficking efforts revolve around the prevention of illegal immigration, which results in an unnecessary securitization of the issue that obscures more effective means to combat trafficking and respect the human rights of victims. The Experts Group found that,

To prevent trafficking, the EU and Member States should review policies that may compel people to resort to irregular migration and consider increasing the opportunities for legal

¹¹² Kelly, *Journeys of Jeopardy*, p. 52

¹¹³ European Commission, *Report of the Experts Group*, p. 13

labour migration, along with the protection of the human rights of all migrants, regular or irregular, internal or across international borders. Moreover, prevention strategies should counteract discrimination, marginalisation and social exclusion.¹¹⁴

The Framework Decision's basic mandate prescribed criminalization of multiple phases of human trafficking, from recruitment, to transportation and exploitation. The approaches of Member States, however, are not uniform. Some states have opted to follow the recommended approach of the Framework Decision and create one legal statute in which all aspects of trafficking are covered.¹¹⁵ But just as often, Member States choose for a more differentiated implementation. Eurojust critically noted that the wide variety and interpretations Member States used in implementing the harmonization standards produced a confused legal process. International cooperation is complicated because, “In some states, taking advance of a situation of vulnerability . . . constitutes cause for criminal liability, while in others a higher degree of coercion is required,” the ultimate consequence is that, “This approach results not only in overlaps, but also numerous omissions.”¹¹⁶ Yet, this heterogeneity of approaches is merely a consequence of larger institutional processes. The missed opportunity at Amsterdam to bring Title VI under the community method still haunts anti-trafficking efforts. The result has been that EU actions are largely symbolic and fraught with garbage can processes. EU policy is oriented towards the furtherance of institutional norms and a constructed culture of organizational interaction.

114 European Commission, *Report of the Experts Group*, p. 12

115 de Jonge, p. 20

116 de Jonge, p. 21

V. Conclusion and Prospects for the Future:

How Can the EU More Effectively Fight Human Trafficking

In this thesis I have demonstrated that human trafficking is a complex and multifaceted problem which is best addressed at the European level. Indeed, member states are in a comparatively weak position to combat human trafficking due to its structural nature. Trafficking networks operate across national borders, obtain illegal documents, corrupt public officials, transport contraband, and criminally exploit human beings. Also, there are numerous push factors: underdevelopment, unemployment, poverty, and the marginalization of women in CEE countries. Furthermore, there are pull factors rooted in the core EU member states. Issues that affect human trafficking which the EU and its member states have competency over include: the legal and regulatory status of prostitution and sex industries; lack of protection for illegal immigrants; foreign aid and development policy affecting CEE; and transnational police cooperation. The transnational character, multidimensional combination of push and pull factors and mixed legal competencies required to regulate the underlying interlocking causes of human trafficking are best addressed in a supranational context.

However, this thesis has also argued that the EU is not capable of effectively combatting human trafficking, either directly or through policy convergence among member states. The European Union displays the characteristics of an organized anarchy, with

problematic preferences and goals; unclear technology; and fluid participation decidedly influencing the organization. These tendencies are particularly glaring in the policy area of justice and home affairs. The result of these processes is that the Union is more concerned with furthering the institutional norms and interpretive order than in solving problems. When choice opportunities present themselves the EU makes decisions through garbage can processes. Decisions are based upon the intersection of four streams within organizations; problems, solutions, participants, and choice opportunities, and the how the intersecting streams enter into an institutions normative organization. Participants advocate self-interested solutions and action plans, waiting for a convenient choice opportunity to attach their proposal regardless of its utility. As such, the EU's anti-trafficking policy is crafted in a fundamentally flawed manner, and is therefore ineffective at problem solving and leaves the actual problem of human trafficking woefully unaddressed. This leaves member states as the most effective actors capable of attacking the trade in human beings. The member states, however, lack coordination, consistency, and have a limited ability to combat a problem as expansive as human trafficking.

Despite the prevalence of normative theories explaining the failure of anti-trafficking policy in terms of flawed police programs, immigration legislation, development strategies, and social policies; there is a fundamental inadequacy in these approaches. To become more effective in combatting human trafficking the European Union cannot simply change the relative weight attached to a single policy area. There have been some limited successes, such as the two STOP programs and DAPHNE. Although these programs were effective in fulfilling their limited mandates, they were not able to significantly effect anti-trafficking

efforts. Small scale education and training programs are not forceful enough or comprehensive enough to shift national legislation, nor facilitate the wide range of both policy and "on the ground" responses necessary to meaningfully address the problem of trafficking.

Rather, a fundamental alteration of the decision making style of the EU must be enacted to ensure progress. There must be a concerted effort to rectify the mistake made at Amsterdam of leaving cooperation in police and judicial matters out of the community method. However, even this would certainly not go far enough. The defunct Constitutional Treaty's proposal to eliminate the pillar structure would have sharpened the currently blurred institutional technology, and the fluid nature of participation. Furthermore, there needs to be stronger legal instruments, which cannot be opted out of, or reduced to little more than voluntary cooperation. Such bold and fundamental change is necessary to overcome the legacy of organized anarchy and garbage can processes. In the absence of an essential revision of EU policy in justice and home affairs it is unlikely that the EU, or its member states will be able to effectively counter human trafficking.

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