

HOW THE GLOBAL ECONOMY FOSTERS HUMAN TRAFFICKING

Stefano Zamagni

University of Bologna (Italy)

The Johns Hopkins University, SAIS Europe

The Pontifical Academy of Social Sciences (Vatican City)

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1. Introduction

The topic of human trafficking has evolved from sensational interest in the early 1990s to maturity as a recognized global problem at the present moment. Fortunately, a wide range of state and NGOS programs are being implemented to address some of the most immediate issues of human rights violations and to aid those most victimized by the promise of a false dream. But this is no more than a remedial answer to an heinous crime. Much of the initial governmental and academic analysis on human trafficking has been concerned with narrowly descriptive questions, which, unfortunately, often results in highly speculative numbers in an attempt to procure more funding and lend it an air of scientific objectivity. This is to be expected, but we need to keep in mind that there is still much we do not understand about this phenomenon and its potential to transform civil societies.

Three grand myths persist in the way the global human trafficking is usually addressed. First, is the opinion that there is nothing new; trafficking is age-old – it is often said. Therefore, the skeptics would argue that since trafficking has always been more a nuisance than a scourge, it is a threat we can learn to live with as we have always done. But this attitude ignores the important transformations of the 1990s. The market – oriented economic reforms that swept the world in those years boosted incentives to break through the sealants that governments traditionally relied on to secure their national boards. Not only did the hold of governments on borders weaken, but the reforms amplified the rewards awaiting those who were prepared to break the rules.

The second myth is that trafficking is just about crime. It is true that criminal activities surged and became global in the 1990s. But thinking about trafficking as just another manifestation of criminal behavior misses a larger point: the role played by demanders of the services of trafficked people. Networks of stateless traders are changing the world.

The third myth is the idea that human trafficking is an “underground” phenomenon. Even accepting that it has grown in volume and complexity, many seek to relegate it to a different world than that of ordinary, honest citizens. This is the most dangerous of all illusions, since it treads on moral grounds and lulls citizens and public opinion into a sense of heightened righteousness and false security.

Human trafficking could be approached in multiple ways: as a moral issue, a public order problem, a labor question, a human rights problem, a migration issue or a matter of organized crime. So far, most of the focus has been on the migration and organized crime component of trafficking. The emphasis on trafficking as a migration problem has also led to the criminalization of victims who generally violate prostitution and immigration laws. Despite their traumatic victimization, these persons tend to receive only very limited assistance from the authorities in the countries in which they were forced to work. Neither regular admonitions by UN agencies, nor accusation by civil society organizations have changed this approach. To-day, it has become clear that the immediate repatriation of trafficked people because they are undocumented migrants generally thwarts the successful prosecution of the traffickers.

Data on human trafficking we can read in the *Global Report on Trafficking in Persons* (November, 2014) produced by UNODC signal that this phenomenon is not only on the rise, but its interplay with social crisis – conflict, corruption, injustices – is more complex than it has been since the abolition of the Atlantic slave trade. Those who benefit from human trafficking operations not always are careful to hide in the shadows. Many exercise their trade in the open, daring authorities to crack down on them or inviting them to collude. Let’s have a quick look at the major key findings of the *Report 2014*. 49 per cent of detected victims are adult women; 33 per cent are children (21 per cent girls and 12 per cent boys); the remaining 18 per cent are adult men. If one sums up the two figures referring to the female component of society, one obtains that 70 per cent of all trafficked persons belong to the feminine gender. On the other hand, 72 per cent of traffickers are men, and 28 per cent are women. No comment is needed about these figures, since they are self-explanatory.

Human trafficking happens everywhere, but most victims are trafficked close to home, within the region. Statistics show a correlation – not a causal relation – between the affluence measured in term of GDP of the destination country and the share of victims trafficked there from other regions. Richer countries attract victims from abroad, whereas less affluent countries are mainly affected by domestic or sub-regional trafficking flows. It follows that responses need to be tailored to national and regional specificities if they are to be effective at all. Another group of data of great interest are those referring to the fact that while the majority of trafficked victims are

subjected to sexual exploitation, other forms are increasingly detected. Trafficking for forced labor – manufacturing, cleaning, construction, catering, domestic work, textile production – has increased steadily in recent years. Trafficking that is neither sexual nor forced labor is also increasing: children for armed combat, for petty crime, forced begging and also trafficking in organs. To this regard, it should be noticed that organ trafficking is not classified as human trafficking since it is not possible, from a legal point of view, to ascertain whether the act of organ removal was committed against a living person or from a corpse. Yet organ transplantation (kidneys, livers, hearts, corneas) are commonplace today in many countries. The shortages of donor organs have given rise to an international organ trade in view of the fact that customers of organs are increasing year after year.

More than 90 per cent of countries criminalize trafficking in person since the Palermo Protocol came into force more than twelve years ago. However, impunity prevails, with all too few consequences for the perpetrators. This reflects the fact that legislation does not always comply with the Protocol and even when legislation is enacted, implementation often falls short. The result is that the number of convictions globally has remained extremely low, while the number of detected child victims, particularly girls, has scandalously increased. I will suggest later some measures of how to cope with this specific problem. For the moment, I would like to draw the attention to the difficulties of the criminal justice systems to respond to trafficking in persons, in spite of the adoption in July 2010 by the Un General Assembly of the “Global Plan of Action to Combat Trafficking in Persons”.

What is striking in the by now vast literature dealing with human trafficking is the nearly total neglect of the demand side for trafficking flows. This is a point appropriately underlined by M. Archer (2015) where she writes: “If trafficked are recognized to be victims of modern slavery, we have to acknowledge that this has to be attributed to national and multinational demands for exploited labor or sexual exploitation”. This is a real paradox, to say the least. If one considers that trafficking is driven by high profits or – to be more precise – by rent-seeking attitudes, it is obvious that it is the demand side the engine sustaining this trade. It is the demand for cheap labor, for organ transplants etc. that explain how traffickers and their networks have continually adopted and refined their activities, even at the cost of temporary setbacks, such as jail sentences. Until traffickers face diminished incentives to trade, i.e. less demand and lower margins, it is futile to talk about increasing criminal justice measures.

The celebrated Say’s Law – which states that supply generates its own demand – does not apply to human trafficking, where it is rather demand that determines the direction and the intensity of the trade. It is true that the characters involved in trafficking are abominable criminals. But what

drives them is the search for rents. It is certainly true that the bands trafficking in women for sexual exploitation deserve the harshest possible punishment. But what about those who purchase these services? Or the families that rely on illegal aliens for domestic help? We will never make progress in the struggle against trafficking if all our attention is placed on the suppliers of most morally repugnant trades and not the upright citizens where appetite for them creates the incentives that make it all possible. Fighting trafficking is not a battle of “us” – honest citizens – against “them” – the criminals. Any solution has to include the customers, both individuals and enterprises.

2. The migratory question in the era of globalization

Much more than a subcategory of international migrations, human trafficking is a topic that intersects contemporary anxieties concerning the global political economy, ethnic and gender stratification, political corruption, human rights abuses and the (in)ability of states and global agencies to control any of these effectively. This is certainly true. However a brief consideration of the *res novae* of present-day migratory flows may help to better contextualize the human trafficking plague. Indeed, the trade in people is deeply entrenched and interwoven with the world’s ever more complex migration flows. The human impulses that drive migration are age-old. Migrants can be driven by opportunity, hope, despair, the need to survive. Human traffickers prey on these impulses and, due to their ability to elude government-imposed obstacles, they can turn human impulses into profits.

It has been common knowledge for some time that the migratory phenomenon is a theme with a high potential for conflict which often tends to divide public opinion in a radical way, and consequently the political powers. In particular, we all know that today, in Western societies, immigrants represent the only category of subjects that are both wanted and unwanted. For example, for at least four to five years, the Eurobarometer has been pointing out this contradictory attitude of Europeans towards immigration. On the one hand, there are segments of people who ask to expand the flows of arriving migrant workers because they are aware of the benefits that would derive from the flexibility of the European labor market and the management of public finances. Indeed, the aging of the advanced countries’ populations has made the existing structure of debits and credits of the social security systems no longer sustainable. On the other hand, there are other segments of the population that harbor various fears, three in particular: a) immigrants cause unemployment at the expense of the workers of the host country; b) immigrants take advantage of our welfare systems (In fact, the available evidence confirms that immigrants do receive welfare services to a proportionally greater extent than the native populations. As J.S. Mill already wrote in

the mid-nineteenth century: “It is useless to think that all the mouths which the increase in population brings into existence will also bring manpower with them. The new mouths require just as much food as the old ones, but their hands do not produce the same amounts as the old ones”); c) immigrants have already exceeded the saturation point to the extent that they jeopardize the host countries’ social cohesion because of the impossibility to implement balanced cultural integration policies. The electoral outcomes in not a few European countries and the public discussions on the theme, which are more animated than ever today, seem to indicate that the second type of citizens is in the numeric majority today.

It has been widely demonstrated by now that in the countries of the North of the world a real and proper vicious circle has been established. The people show a hostile attitude towards immigrants. This leads governors, who are always in search of political consensus, to restrict their entrances or make them uselessly difficult. In turn, policies of this kind end up increasing illegal immigration. It is estimated that there is a stock of 11 million irregular migrants in the world, many of whom entrust themselves to traffickers whose turnover has now surpassed that of drugs. Illegal immigration ends up creating a powerful incentive for criminal behaviors by those immigrants who cannot pay the high costs demanded by the criminal organizations to get them to the immigration countries and see themselves forced to find alternative sources of income other than work. Lastly, the sense of insecurity which illegality spreads ends up confirming the perceptions of hostility which thus tend to be self-fomenting.

A few statistics are enough to make us understand the scope of the migratory phenomenon. In 2005, the United Nations estimated that there were 200 million international migrants in the world, including approximately 9 million refugees. Around the world today, one person in 35 is an international migrant. (According to the UN definition, an international migrant is someone who resides outside his/her own country for a minimum period of one year). Even more striking than the stock of migrants is the migratory flow which in the five-year period from 2000-2005 amounted to 13 million people (an average of 2.6 million a year). Moreover, while before 1990 most migrants lived in the developing countries, today the opposite is true. Since that date, the presence of immigrants in the developed countries went from 48 to 100 million and from 52 to 65 million in the developing countries. Regarding the direction of the flows, it should be noted that the flow from the South of the world to the North has generated 62 million people present in the North; the flow from North to North, 53 million; from the South to the South, 61 million, and from the North to the South, 14 million. Therefore, the migratory current from the North to the South is the only one that experienced a reduction in relative terms. (Cf. K. Koser, *The international migrations*, 2009).

While it is relatively easy to estimate the bulk of immigrants in the countries of arrival (60 million in Europe; 44 million in Asia; 41 million in North America; 16 million in Africa; 6 million in Latin America and in Australia), it is much more difficult to know what countries the immigrants come from. This is due to the fact that the statistics of the countries of origin do not take into account their citizens residing abroad. In any case, it is estimated that there are 35 million Chinese abroad; 20 million Indians; 9 million Pakistanis and 8 million Filipinos. Finally, it is not possible to ignore the great moves on the intra-regional level. For example, there are approximately 5 million Asian workers in the countries of the Persian Gulf, 8 million irregular immigrants living in South Africa, almost all from Black Africa, and so on.

A major element of profound differentiation between today's migrations and those of the past is that the thesis in vogue since the 80s of last century does not seem to be supported by the facts. According to the thesis the most effective instrument for reducing the migratory pressure would be to increase the employment potentialities in the developing countries. That is, the only credible way to stop the *increase* in the migratory flows would be to intervene on the process of economic growth of the countries that generate the flows. How solid is this conviction? It is often stated that economic development, by increasing pro capita income, reduces the incentive to emigrate. This belief is fallacious for two reasons: on the one hand, as the well-known "Kuznets curve" teaches, in the first phases of the development process the increase in income is always accompanied by an increase in the inequalities between social groups. That is, the increase in income *never* takes place in an equi-proportional way among all the segments of the society. And as we all know, an increase in inequalities is a powerful factor that encourages emigration. On the other hand, empirical evidence confirms that in the initial phases of the development process an increase is always recorded in the propensity to emigrate as a result both of the structural change (development expels workers from agriculture in order to channel them towards the industrial sector, but this takes time and so a part of the ones expelled takes off for abroad), and the change in expectations in life (once the old equilibrium of stagnation is broken, not everyone feels like waiting for the definitive take-off and so they take off for abroad).

My conclusion is that it would be irresponsible to make people think that the migratory problem could be solved by aiming at restrictive and/or discriminatory policies of one kind or another. (The USA's ten-year experience with regard to Mexico offers us eloquent confirmation of this). Instead, what is urgent is to take note once and for all that the strongest encouragement today to the magnification of the migratory flows comes from globalization. While globalization has created and continues to create a global market of capitals and goods, it has still not succeeded in laying the bases for a global labor market. It is not possible to want one thing and not the other

from globalization. The only certain result that derives from this pragmatic contradiction is plain for all to see: a worrying, inhuman increase in illegal immigration sustained by the new industry of organized crime, the trafficking of human beings. We should not forget, in fact, that legal and illegal immigration can replace one another. The whole body of empirical research agrees on this: the more the conditions of access to regular entry permits are restricted, the more the offer of illegal migrations increases.

I do believe that a consensus could be found to give a foundation to a sustainable policy of immigration (and not merely a policy *for* immigration) based on two reasonable and surely applicable lines of intervention. First, migrations must turn to be in the interests both of the countries of origin and the countries of arrival. Second, in the case of migrations the object of exchange are labor services that cross the national confines *incorporated* in people. Adam Smith already understood this fact very clearly when he wrote in *The Wealth of Nations* (1776): “Of all the kinds of baggage, human being is the most difficult to transport”. To presume to regulate the flows of labor services without “seeing” the human being who conveys them would be real economic shortsightedness and grave political irresponsibility.

3. Human smuggling versus human trafficking

It is commonly asserted that, in spite of some overlaps, human trafficking is not to be confused with human smuggling. The argument runs as follows. Human smuggling involves consent and quite often pays the smuggler for passage. On the other hand, trafficking victims either never consented or, if they initially did, that consent has been rendered meaningless by the coercive or deceptive action of the traffickers. Moreover, migrant smuggling ends with the migrant’s arrival at their destination; trafficking involves the ongoing exploitation of the victim. (UNODC, 2013). Now, apart from practical considerations such as “voluntary” smuggled migrants are left with exorbitant debts that lead them into sweatshops or other exploitative working conditions, I do believe that, even at the conceptual level, the presumption of voluntary action in as a prerequisite to differentiate smuggling and trafficking is not as robust as it might appear. (M. Archer, 2014). In substance, the reason is the following.

The market is the place where the coordination of economic decisions is carried out through voluntary cooperation. And this is fundamentally because “both parties in an economic transaction benefit from it, provided that the transaction is bilaterally voluntary and informed” (M. Friedman, *Capitalism and Freedom*, Chicago, Chicago University Press, 1962, p.13). As a consequence, when two (or more) parties, with no trick or coercion, and therefore free to make their own choices,

originate an economic transaction, they also agree to any consequences. This is the ethical justification, in economics, of consequentialism. The concept of consent based on freedom of choice is well explained by R. Posner when he writes: “I personally believe that he who buys a lottery ticket and loses, agrees to the loss if there was no fraud or coercion” (*The Economics of Justice*, Cambridge (Mass.) Harvard University Press, 1981, p.94).

Therefore, apart from these last cases, choosing freely means giving one's consent and agreeing means to legitimize. As is pointed out by F. Peter (“Choice, consent and the legitimacy of market transactions”, *Economics and Philosophy*, 20, 2004), the market does not need to ask for certificate of ethical legitimacy, because it is capable of legitimizing itself on its own. This is not the case of the State which, on the contrary, in order to be able to use coercion – which is the main tool for attaining its goals – needs the approval of the electorate, for only from them can the State be legitimized. What is the mistake in this reasoning? Basically, that it is almost never true that freedom of choice postulates consent. It would be so if the subject of the choice took part in the determination of the choice menu – which is never the case in real life. The parent voluntarily offering, under no obligation of any kind, to sell one of his organs to alleviate the poverty of his family, certainly does not agree to the consequences of his act. Free choice of an option has the power to legitimize only if the set of alternatives is somehow part of the subject's choice problem. If this set is *given*, this prerequisite is by no means fulfilled.

Everybody knows that the key role of the category of consent is typical of the tradition of social contract theory starting with Hobbes. The idea is that if I signed a contract with you to do something I now no longer want to do, your answer could be “but you agreed to do it at the time, now you have to abide to the terms of the contract”. That is, consent generates obligation. Among those who embrace the social contract theory, no one better than J. Rawls was able to show that in order for consent to produce obligation the constraints under which the parties to the contract take their decisions must be shared by everyone. Only if it can be proved that the parties to the social contract agreed (or intended to agree) to the rules of the game they are in, can it be legitimately claimed that the agreement reached through consent implies obligation.

Of course, it is evident that in our market economies this condition is never fulfilled, in practice. Indeed, freedom of choice describes the absence of coercion by others. It has to do with the *possibility* of choice, that is to say with the existence of a domain or space within which the subject can exercise his/her sovereignty. But this still says nothing about the *ability* to choose, in other words the real exercise of the choice. Having a large number of possible choices is not enough if you don't know how to choose or if you don't have the resources to translate the means into the capability of promoting your own goals. This is the great lesson taught by pope Benedict XVI and

pope Francis when they remind us that the use of freedom is somehow essential to its definition. Someone who is free to put into practice his/her action plan, but who does not possess the capacity to do it, cannot really be said to agree to the consequences of his/her actions. Therefore, if the market is not capable of finding within itself the reasons upon which to construct its justification, the reference to ethics becomes fundamental.

In may 2007, humanity witnessed a truly turning point in world history. For the first time ever, just over half of the global population was confirmed as living in urban environments. No less than 95% of the current urban growth is accounted for in developing countries, all of which are having to absorb five million people each and every month in cities, compared to a growth rate of half a million in developed countries. Unlike in the first wave of urbanization, to-day's process has been radically decoupled from industrialization, sometimes even from development *per se*. The present urbanization process is driven by nothing else than poverty. It is no longer true that "all roads lead to the towns" (F. Braudel); they lead to the slums.

Human development has in large part been a story of mobility. People move to seek a better job or a better life and when they succeed they move up the socioeconomic ladder, whether as assessed by income or by capabilities. People's aspirations fuel these efforts; yet aspirations can be quashed by poverty, or social exclusion. Upward mobility is a dynamic counterpart of equality, offering the possibility that those born in poverty might escape it. Support for basic capabilities, especially in the areas of health and education, is essential to enabling such upward mobility. That is why the Catholic Church insists so much, in its many documents, on the attention to be given to those forced to flee epidemics, economic crises, natural disasters, human conflicts, human trafficking. Importantly, the Church insists on the point that people aspire to agency as well as to well-being. People seek democracy and liberty. Aspirations deserve study because they represent a deeper layer of human psychology than is ordinarily captured by preference-based models.

In the light of what precedes, one can understand the fundamental role that in present-day market economics is being played by socially responsible consumers. (See *Caritas in Veritate*, n.66, where for the first time in an official document of CST it is stated that the consumer, as such, has a specific social responsibility). It is by now a fact that the figure of the consumer as a passive receiver of offers coming from producers is transforming ever more into a subject who wants still to consume, but in a critical way. This means that through his/her purchasing decisions, and in general, his/her "voice", the consumer seeks to "create" the offer of the goods and services he/she wants to see in the market. The relationship between price and quality no longer suffices, he/she wants to know *how* that good was produced and *if* in the course of production the company has

violated, let's say, fundamental rights of the people working for them or has polluted the environment in an unacceptable way and so forth.

Let's take the by now classic example of the multi-national company, Nike. After a few consumer associations sued Nike for its using child labor and enforcing unfair labor policies that gave way to below minimum wages in India and Pakistan, Nike's stocks sank from 66 dollars in August 1997 to 39 dollars in January 1998, following a well-orchestrated boycott. Similar experiences happened to Reebok and Nestlé. And how can we forget what happened to the companies that produced napalm during the Vietnam War or to those who supported Apartheid in South Africa during the 60s and the 70s? And yet, there's more. Recent market studies have shown that 80% of European consumers declare themselves ready to support the development of companies involved, in some way or measure, in social responsibility activities. They would pay a higher price for goods if they had a guarantee that the companies were certified socially (e.g. Social Accountability, SA 8000) or if they committed themselves to relevant social causes.

Corporate boycotts, which first surfaced in the 70s to protest against napalm producers, spread all over advanced, Western countries, following technological advances in telecommunication infrastructure and the rapid diffusion of social networks. Success cases, other than the Nike example, are found in movements that targeted the company behavior of ExxonMobil, Shell, and Starbucks. Now, if it's true that the successes registered until now shouldn't be overestimated—as the road is still long until the various consumer associations unite to create a power strong enough to instill a full affirmation of Corporate Social Responsibility—, it's also true that you can't deny being in front of a true novelty. So much so that it's logical to think that in the near future, the various associations will be able enact new strategies of protest and advocacy based on alliances between groups of critical shareholders and responsible managers, a phenomenon which is actually already happening.

This trend seems to confirm the intuition of the great economist, John Stuart Mill, who around the mid-1800s, had formulated in advance the principle of the sovereignty of the consumer. (The principle states that the consumer is sovereign when, given his/her purchasing power, is able to direct, according to his/her own values, the supply side). If then the times weren't mature for this sovereignty to be enforced, now it is clearly evident that the transformation of the client-consumer to the citizen-consumer is concretely possible.

The citizen-consumers act as agents who don't limit themselves to the services that they prefer, but instead “demand” to co-create with the supply what they need. The citizen-consumer hence takes advantage of available opportunities given by new technologies, particularly communication

networks, to create forms of aggregated demand capable of reaching a satisfying economic scale by which to interact from strong point with the powers of the supply. This means that companies must recognize the capacity of consumers, organized in NGOs, foundations, or associations to become active partners in the planning process and production of goods and services. At the same time, companies who have captured the profound meaning of today's consumption, have every advantage in renouncing the risk of going without the input of its consumers and to include them as advisors, consultants and collaborators.

Today's companies in fact are learning—slowly—that respecting the autonomy of citizen-consumers doesn't mean the “surrender” of the supply, and hence it's not worth hindering or ignoring the positive aspects of the transition occurring from freedom of choice as a means of self-determination (freedom is evaluated by what it consents to do and obtain) to the freedom of choice as a means of self-realization, or in other words, as an “having in order to be” in order to give meaning to one's consumption. This is why today it would be counterproductive for a company to think of consumption as merely a transmission belt of production, and not as an important opportunity to seize to civilize the market, which is the virtue behind the phenomenon of “voting with the wallet”: the tool with which consumers express social responsibility. The citizen-consumer, through his consumption choices and savings, is today able to reward the companies that can combine economic value with dignified work, respect for the environment, human rights, etc.

Another significant novelty that has been occurring in the last 30 years is the diffusion of Sustainable and Responsible Investment (SRI). The history of SRI starts in the second half of the 18th century when the Quaker Reverend John Wesley started his battle against those companies that harmed the territory and exploited its workers, by prohibiting his religious community from investing their savings, however big or small, in them. The innovative idea that Wesley had was that the principle of responsibility doesn't concern solely what one does, but also that which you allow others to do with the resources that s/he has at hand. So if I invest my savings in a company that works against my moral values, and I'm aware of this, I'm indirectly responsible for the consequences that come from the operations of that company.

How can we account for the extraordinary evolution and fast acceleration of SRI practices in last quarter of the century? We should remember that in 1971 the Baptist Reverend Leon Sullivan entered—and not without difficulty—into the Board of Directors at General Motors to start a strategy of pressure (through counter-arguments) on the multinational companies that contributed to maintain Apartheid alive in South Africa. His work was so successful that in 1977, he was able to publish *Sullivan Principles*, seven principles that now form a sort of *Magna carta* for the active

shareholder. The important point to highlight is that a society that offers concrete opportunities that facilitate virtuous behavior is a society that prioritizes the diffusion of SRI practices. This is why the work of civil society organizations is simply crucial, NGOs in particular. Consider, as a laudable example, the work carried on in the last decades by ICMC (the International Catholic Migration Commission, based in Geneva and created after the war by Mgr. Montini, the late pope Paul VI). Its anti-trafficking strategy includes initiatives such as supporting local structures in assisting victims to be protected from further abuse, legally disengaging them from abusive signed contracts possible. Or developing specific programming including prevention through awareness-raising on the human trafficking risks related to migration as well as cross-border initiatives to curb trafficking and debt bondage of women and girls. And, above all, advocacy and policy work with governments and civil society.

SRI can be compared with the hornet. According to Newton's laws of physics, the hornet shouldn't be able to fly because the small opening of his wingspan isn't sufficient to hold the weight of his body. And yet, the hornet flies. Likewise, according to official economic theory (specifically the celebrated portfolio theory by Nobel Prize winner, Harry Markowitz), SRI can't function well or for long because the meta-economic objectives would hinder over the long run the achievement of the economic objectives (every obstacle to the diversification of the portfolio of products reduces in fact the profitability of the investment). On the other hand, if SRI can last over time—it's upheld—it's due to the intervention of exogenous factors that compensate: fiscal advantages, legislative favors or political collateralism. That this doesn't reflect how things actually are is well known, even if it's true that in some cases—very limited ones—those factors can play an important role.

4. The role of transnational corporations in human trafficking activities.

Human trafficking has been conspicuously neglected by economics. On the other hand, there is a huge literature on organized crime and illegal markets, such as black markets dealing with prostitution, gambling, stolen goods, contraband, tax evasion. How to explain this state of affairs? The general reason is that economics, since its constitution as a scientific discipline, has always devoted much more attention to the supply side of the economic problem than to the demand side. Indeed, the theory of production is much more developed and sophisticated than the theory of demand. The specific reason is that there are much fewer people operating on the supply side than those positioned on the demand side. Which implies that it is simpler to pass legislation to penalize

traffickers than the customers. Yet the potential contribution of multinational enterprises (MNE) to the creation of more and better jobs is large, mostly in their supply chains but also through foreign direct investments. Despite this enormous potential, MNEs are not sufficiently living up to expectations. Many have come increasingly under pressure to demonstrate what they operate in a socially responsible manner. But we are yet at the beginnings.

Consider, for instance, the role that can be played by MNEs to overcome the problems stemming from the lack of international legal personality and the limited liability of enterprises, as well as the consequences arising when their activity is performed within the territory of those states that are not willing or not able to protect human rights.

It's a fact that over the last few decades the systemic violation of human rights, of this special category of moral rights (known as *iurahominum*), has been associated with the action of multinational companies (the UN estimates that today there are over 70 thousand multinational companies worldwide). Globalization in fact has highlighted a novelty, unknown by the ages preceding it: that while multinational companies work globally, the governments regulate nationally. The consequence is that the legal tools that best fit into the process of economic transformation are not the authoritative ones, but those forged by those who work in the market, like the contracts that have by now become the top regulating source. The international circulation of atypical contractual models is ever more intense. Legal offices—as well illustrated by Galgano [2010]—of big multinational companies and international entrepreneurial associations create them. This is how the business community—a real and proper example of soft law— created a communal law that surpasses the juridical discontinuities of national legislature.

For (almost) all of the 20th century problems like those now highlighted have been conceptualized as political problems, whose solution should be entrusted to public actors whose job it is to fix the laws (and enforce them), while the companies should follow the laws. What is happening today is the result of the disappearance of adequate mechanisms of enforcement should the norms be broken. The phenomenon of global outsourcing of production—started in the 80s with Nike, Levi Strauss, Apple and others—, if on the one hand boosted production levels and profit margins enormously; on the other hand, brought to light the problems of human rights and gave birth to a new interpretation of the principle of responsibility, i.e. multinational companies have to be held responsible not only for what they do directly but also for what happens along the entire supply chain, by way of the ethical principle of the capacity to choose—which shouldn't be confused with the possibility of choosing. The capacity to choose implies the capacity to consent to the consequences that come from the choices made.

Keep in mind the Nike, a multinational company that doesn't have its own factories but buys from a myriad of manufacturers around the world all of what it needs to package sport shoes. When the NGOs' awareness campaigns shed light on the human rights violations done by Nike and encouraged a boycott, the multinational company changed its production strategy giving itself a code of conduct in which it clearly states among others: "We conduct business with all of our partners on the basis of trust, teamwork, honesty and mutual respect e we expect that our partners in turn operate on the basis of the same principles".

Philip Knight, the founder of Nike, not only recognized the several situations of exploitation that Nike was the cause of but also admitted their moral responsibility on the basis of the ethical principle cited above [Knight 2007]. There are many other cases that could be elaborated upon, coming from many different industries. For example from companies held to be accountable for the actions of its primary resource suppliers (Ford and Firestone; Starbucks and Fair Trade coffee; StarKist and tuna fishermen; Walmart and cleaning companies; McDonald's and farmers, etc.) or even from companies accountable for the way in which their clients use their products or services (weapons, gambling, cell phones, etc.).

In recent years, public discourse on the relationship between companies and human rights has been based on two distinct yet convergent processes. On the one hand, on the philosophical critiques of the principles of the UN's *Global Compact* on human rights launched in 1989; on the other hand, on the discussion that accompanied the conclusion of the work of the UN Commission for Human Rights's Special Committee. The Committee, which should have brought to an end the work done from 1997-2002 by Mary Robinson, at the time Head Commissioner of the UN for Human Rights, but actually ended with no results to speak of. In other words, it is not possible to find the necessary convergence of the notion of human rights. Hence, on April 20, 2005 the Commission adopted a resolution on "Human Rights and Transnational Companies and other companies", in which the UN Secretary General was asked to nominate a "special representative" to define a set of non-negotiable principles regarding the inalienable rights. Precisely because human rights cannot be given by the State but only protected, given that the rights exist even if a government doesn't welcome or protect them. A notable example comes from the US laws of racial segregation that until 1954 were considered Constitutional by the Supreme Court.

On July 28, 2005, UN Secretary General, Kofi Annan, nominated John G. Ruggie from Harvard University as the "special representative", to whom he entrusted to identify the most clamorous cases of human rights violations by companies and to compile a compendium of good practices. In April 2008, Ruggie published the report, *Promotion and Protection of All Human*

Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. The report presented guidelines for companies to follow and be judged by public opinion. As illustrated by Leisinger [2009], the Ruggie Report states that companies are held to respect human rights no matter what the national laws are. Whenever the national laws where the companies operate conflicts with the international standard, the multinational company must go by the latter, naturally taking into account the local contest. The report also specifies what it means to be complicit in human rights violations committed by others. The fact that the subsidiary company has to follow orders or follow contractual obligations according to the laws of the land is not enough to justify the violation of human rights. Lastly, companies are encouraged to apply *values management*, defined as the systemic use of “specific tools aimed at defining the moral constitution of the organization and its guiding principles”.

In the summer of 2011, Ruggie finished his term publishing “Guiding Principles”—those in 2008 were instead Guidelines—noted also as *Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework.* Which problems were brought up in the report? Firstly, the approach followed was traditional, according to which national governments were held responsible for human rights; the responsibility of companies came after, in a secondary position. The rationale of this principle is that these phenomenon, the incredible increase in delocalization processes and outsourcing and the diffusion of responsibility between all the members of the organization along the supply chain, have increased the places and centers of responsibility that the company is not able to know or control. (We should remember that bureaucracy was denominated the “rule of no one” exactly for this reason). Secondly—and this aspect is immensely intriguing—the ultimate reason for which human rights should be respected, wherever and in any case, is economic and not moral in nature: companies respect human rights—this is the message—because otherwise they would lose reputational capital accumulated over time after the sentence of the “tribunal of public opinion”.

This misleading (and reductive) conception of responsibility generates difficulty overall, but these difficulties become even more serious when applied to human rights. Paine’s [2000] position is clear: if the company behaves responsibly because ethics pay off, what will happen the day when it doesn’t pay off anymore? Moreover, Ruggie’s “Guiding Principles” suffer from a grave aporia, as postulated by Wettstein [2012]. In fact, to induce responsible behavior in companies, the *business case* has to entrust moral reproach. If the clients didn’t find the irresponsibility of companies reproachable, then they wouldn’t have any reason to boycott the products placed on the market. Likewise, if the investors didn’t find morally reprehensible the behavior of companies, why would

they have to abstain from investing in them? And if public opinion wasn't right to reproach the company, the company wouldn't see their reputational capital harmed. It's hence obvious that in any case referencing moral judgement is inevitable, even if we welcome the thesis of the *business case*. Bernard Williams wrote that reproach "is the characteristic reaction of the moral system every time we miss complying to our obligations" [Williams 1995, 177]. It should be noted that the thesis of the *business case*, that appeals to be applauded as a tool to acquire economic advantages, is symmetrical to the one based on reproach. In fact, you praise that which you repute an expression of the moral discretion of the agent.

On another note you find the 1977 *Sullivan Principles* which were specifically elaborated for multinational companies operating in South Africa. These companies were asked to sign a clause that held them to operate to "eliminate laws and habits that impeded social, economic and political justice". The idea behind these principles is that the company has to hold itself responsible not only for what it does, but also for what it doesn't do; in other words, when facing a human rights violation that it could have prevented, the company cannot rest indifferent nor put itself to the side. The contrast of this point to Ruggie's "Guiding Principles" couldn't be more clear-cut. The principle 13b holds companies responsible for all direct and indirect human rights violations. Ruggie himself illustrated the rationale behind such a position with the argument that we must avoid fundamentalism when managing values from both those who refuse to consider human rights and those who consider them non-negotiable. Yet as history teaches *ad abundantiam*, in the moral sphere moderatism generates perverse consequences.

How to choose then between the Sullivan Principles and the Ruggie Principles? The theoretical proposal of Santoro [2000; 2012], based on the fair share theory of company responsibility on human rights, seems to me a simple and suitable way. The criteria by which to understand when a multinational (or any other) company commits a human rights violation has three distinct but related elements. The first is the relationship between the moral agent and the victim. The principle of benevolence, as enunciated by Davide Hume, sanctions that the closer the relationship is, the stronger the obligation is to help. The second element concerns the potential effectiveness of the moral agent to promote human rights. This is a particular application of the Kantian principle according to which "duty implies power": if the agent is able to do something, then it must. Finally, the capacity to contribute: those who are more able to sustain the costs for the tutelage and affirmation of human rights is obliged to intervene. In other terms, the rich have *coeteris paribus*, more responsibility than the poor.

It is up to the moral caliber of management to establish a system of points to attribute to the three judging elements and hence to determine whether to apply the Ruggie Principles or the Sullivan Principle to the situations at hand. In the specific case of South Africa, the Ruggie Principles wouldn't have required the multinational companies operating in that country to intervene against apartheid, which is instead what happened. Some of these companies stayed in the country practicing civil disobedience and eliminated every internal discrimination; others instead chose to leave South Africa to testify their aversion to apartheid even refusing highly profitable investments. This is an important case in which the "prophecy" of Peter F. Drucker—"Successful companies concentrate on responsibility instead of power, on the long run and on the reputation of society, instead of accumulating one short-term result on top of the other" [Drucker 1993, 57]—found a way to come true. We can't however say the same thing about the celebrated case of Shell. Towards the end of the 90s, this multinational oil company started to extract oil from the Ogoni territory in Nigeria, a country that was governed at the time by a military council offering adequate protection for its plants. When the opposing regime, Ken Saro-Wiwa, together with other human rights activists, started to criticize the oil extraction policies, the dictatorship didn't hesitate to take up weapons. On that occasion, Shell remained silent even if its voice and intervention would have avoided the executions. In the name of defending the interests of its stakeholders (shareholders, employees, clients), Shell accepted, that human rights be glaringly violated (cfr. Newbury e Gladwin [2002]).

Ruggie's Principles demonstrate their scarce effectiveness in facing the authentic novelty presented today, represented by the disintegration of the supply chain following the rise of delocalization (direct investment; partial or total tenders; creation of special economic zones): from acquisition of primary material to manufacturing; from final assembling to its transportation to the final user. At every link of the chain, a multiplicity of suppliers from different countries is associated. If the benefits of reorganizing the production process are evident, in terms of cost and time reduction, equally evident are the costs in terms of human rights violations (unjust salaries; inhumane working conditions; failing to respect human dignity; gender inequality; and more). What is the true and greatest risk that the global market is facing today? Giving birth to a *moral divide* between different countries and different areas within the same country. The plurality of ethical standards, associated with different cultural matrixes present in the various countries is a strong incentive for multinational companies and others to practice *moral shopping*: you choose to delocalize in countries where the moral canons are looser and the control systems are less strict. This is the great risk of the *race to the bottom* of moral integrity in the area of human rights.

The new economic order has brought to the forefront the principle actor of globalized capitalism: the transnational company as the real and true social institution, on which rests a new responsibility, to defend a democratic market economy. It's exactly for this role as a social institution that companies, especially big ones, cannot exempt themselves from contributing to and carrying out the public agenda, and particularly, cannot fail in contributing to resolving the moral divide. A divide formed by the absence of a global, polyarchical governance and subsidiary—here we're not talking about government—that doesn't consent to formulating standards that cannot be rendered enforceable universally. If instead, the company thinks only to make profit, it loses its "social license" to operate and its moral justification. In the presence of the declining normative power of nations, the company cannot exempt itself from the duty to contribute to forging a global market law that incorporates the values considered non-negotiable.