Labor Trafficking in Thailand's Fishing Industry: Opposition between Formal and Informal Institutions Leads to Distorted Incentives for Each Other

David K. Tian Johns Hopkins University

There exists a robust literature on both formal and informal institutions. However, what is missing in the literature is an investigation into how their interactions affect and distort incentives for each other. Using labor trafficking in Thailand's fishing market as an empirical case study, this paper uses qualitative methods to evaluate the interplay between them. It has been found that when formal and informal institutions oppose each other, the weaker one of them is, the stronger the influence of the other will be. Furthermore, formal institutions must also exceed informal ones in strength, or else they risk failing to them

INTRODUCTION

Major General Paween Pongsirin, a former senior police investigator in Thailand, fled to Australia in 2015 to seek asylum as a refugee. Earlier that same year, he had discovered that many influential peers of his in the Thai government, military, and police were involved in human trafficking, and as a result of this discovery, many of them wanted to have him killed (Alcorn et al., 2015). How is it that someone whose very job it was to help refugees - including victims of human trafficking - became a refugee himself? The answer lies in how formal institutions and informal institutions interact with each other in Thailand. There already exists a robust literature discussing formal and informal institutions, particularly in their economic impact (Williamson, 2009; Seyoum, 2011), labor trafficking (Dryhurst, 2013; Zhang, 2012), and even the roles of formal and informal institutions in relation to one another (Zhu and Cai, 2016; Horak and Restel, 2016; Chan et al., 2015). However, what is missing in the literature is a thorough investigation into how the interactions between the informal and formal institutions affect and distort incentives for each other. Additionally, in terms of area studies, while there exists a plethora of research on the dynamics between informal and formal institution in various industries of major countries such as China and the United States, few specifically look at Thailand's fishing industry. Adding this particular Thai case to the current discourse helps to both bolster existing theories to make them more generalizable, as well as adjust them to accommodate for more cases. Doing so is important because it not only influences our theoretical understanding of the role of institutions in society, but also has implications in the policy world as well.

Within a state's own territory, a state can avail itself of formal institutions, including criminal courts and law enforcement, to force its residents – citizens and non-citizens alike – into obedience and offer protection to its nationals. Although formal institutions are important in how a state functions and how its citizens are treated, informal institutions can often affect formal ones and sometimes counterbalance them

entirely. For the purposes of this paper, Helmke and Levitsky's 2004 definitions of formal and informal institutions will be used: "formal institutions are openly codified, in the sense that they are established and communicated through channels that are widely accepted as official" ... in contrast, informal institutions are "socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels" (Helmke and Levitsky, 2004, p. 727). Douglass North further specifies that informal institutions are as equally well known as formal ones in a given society, but they are not codified in writing and are generally more persistent than formal institutions (North, 1997). Thus, from North's observation, it would logically follow that it is not enough for formal institutions to be equal to informal ones in terms of strength and caliber, but that they must exceed informal ones.

THEORETICAL FRAMEWORK

Given the divide between traditional models and contemporary structures, institutions, and regimes, the questions of what I will refer to as the three Ws of citizenship, namely the "who, what, and where," are of paramount importance in this study. Linda Bosniak asks in her 2006 book *The Citizen and the Alien*: "To what extent should enjoyment of basic rights depend on being a status citizen, and to what extent should it depend on the fact of personhood and territorial presence alone?" (Bosniak, 2006, p. 33). The answers to these questions will also correspond to the answers for the three Ws. In essence, to what extent are rights exclusive to citizens within a territory?

What rights does having citizenship rights entail exactly? T.H. Marshall asserts that citizenship in fact comprises three distinct components, namely, civil, political, and social rights. In brief, *civil* rights refer to notions such as liberty, freedom of speech, and equality under the eyes of the law. Having civil rights ensures that individuals can carry out their daily lives and pursue their livelihoods as they choose, so long as they do not commit crimes in the process. In liberal democracies, those who have *political* rights have the ability to participate in the political decision-making process, normally demonstrated through voting. Finally, access to public goods such as social security and education are under the *social* rights category of the Marshallian model of citizenship (Marshall, 1977).

Historically, there are many cases in which individuals of certain groups or demographics had one or two of civil, political, or social rights, but not all three. Those individuals, groups, and demographics are the *who* in this framework. Bosniak describes such individuals – certain citizens who are deprived of rights that other citizens may have – by the term "second-class citizens" (Bosniak, 2006, p. 30).

The basic question of whether an individual should even be admitted into a territory is also open to debate, and the role of borders plays a primordial part of this debate. Joseph Carens advocates for increased rights for non-citizens, and argues that Western countries should admit immigrants from the third world (Carens, 1987). Michael Walzer, on the other hand, disagrees, and advances a communitarian argument against open borders (Walzer, 1983). This is the *where* in this three Ws framework. For Thailand specifically, do labor migrants, whether legal or illegal, get the same rights and access to justice as their Thai citizen counterparts simply by virtue of their human existence in a territory? Or are their rights limited owing to the fact that they do not possess legitimate Thai documentation?

Because labor trafficking in Thailand's fishing industry is particularly widespread, it has been chosen as the empirical case for this paper. In the empirical case of Thailand, the three Ws framework will be taken into consideration alongside the notions of formal and informal institutions. In particular, what rights do migrant laborers have to protection from the Thai Government, whether they are documented or not, simply because they are human beings present on Thai territory?

Methodology

This paper uses a qualitative approach to the study of both state capacities in the form of formal institutions and societal phenomena in the form of informal institutions, which will allow for an adjustment of current theories using empirical evidence. To do so, I combine bodies of scholarship on informal institutions as well as state capacities and citizenship rights with empirical data that come from sources such government documents, research reports, and other forms of media. This paper avails itself

of the empirical case study of Thailand's fishing industry in particular, taking an inductive approach to answering the research question mentioned above. I take a qualitative approach to the study because the research question is exploratory and "seeks new insights into phenomena and sheds light on ambiguous situations" (Mayer, 2015, pg. 53). Thus, qualitative analysis is the most appropriate because it allows a richer and more comprehensive approach to attain a deeper understanding of the issue in question.

Empirical Puzzle

In Thailand, government officials tasked with combatting labor trafficking often themselves either directly participate in the trade of human labor, or face repercussions for doing their jobs fighting it. Furthermore, law enforcement and trafficking rings often collude, when it is law enforcement's official duty to prevent these crimes from happening. What are the conditions that led to this situation in Thailand?

The collusion between brokers and certain corrupt authorities means that even if a forced laborer manages to escape, that individual does not know whom to trust, because he or she knows that a having uniform or a badge does not necessarily represent integrity. Part of the reason this crime is so prevalent is that there exists a general culture of reluctant acceptance of trafficking in Thailand. One particular problem is that Thai officials who seek to eradicate corruption in trafficking are sometimes themselves persecuted, as was the case with Major General Paween Pongsirin, who was mentioned in the introduction. At least partly owing to the lack of a proper system in place to punish and disincentivize perpetrators, as well as because victims themselves are often punished, perpetrators appear to put little to no effort into hiding their illicit activities, and can often do so with the full expectation of impunity.

In terms of Thailand's fishing industry, the majority of trafficked migrant laborers come from Thailand's neighboring countries, primarily out of reasons of poverty and desperation (Sylwester, 2014). Again, here is the interaction between formal institutions and informal institutions in Thailand. State actors understand implicitly that they do not get conferred particular advantages for combatting labor trafficking, and the laws in place punish those who have fallen victim to trafficking by deporting them. As a result, because trafficked migrants know that reporting trafficking rings to authorities would not result in them being punished, but the migrants themselves would be deported, this knowledge disincentivizes victims to report to police. Although the current literature explores formal and informal institutions extensively, and there exists an abundant amount of scholarship on human trafficking, few scholars have looked specifically at their interactions, particularly in a cause-and-effect manner. Thus, this paper aims to explore the research question: How do informal and formal institutions in Thailand interact to make the labor trafficking in Thailand's fishing industry so severe?

THE CASE OF THAILAND

One empirical case in which formal and informal institutions severely clash is in the case of Thailand's fishing industry, in which migrants, particularly male migrants, from nations such as Burma and Vietnam often fall prey to labor traffickers who take advantage of the migrants' vulnerability. Though Thailand passed sweeping new comprehensive anti-trafficking laws in November 2007 that expanded anti-trafficking efforts and specifically included new protections for male victims (United States Department of State, 2008), deeply ingrained informal institutions have prevented Thai law enforcement from effectively combatting Thailand's severe labor trafficking problem. These informal institutions include widely known social phenomena that I will refer to as profiteering and retribution, and both of these terms will be explained in further detail below.

In this empirical case, several actors are involved, which include both state actors and non-state actors. State actors include government officials, law enforcement personnel, border patrol, and any other sort of patrol on the high seas. Additionally, not only is the Thai Government an actor, but the governments of sending states such as Burma and Vietnam are as well. Civil-society actors include nongovernmental organizations (NGOs) that aim to provide aid to victims of labor trafficking, the migrants themselves, and labor trafficking rings. While the roles of all actors that are involved in some way are important, this paper will limit itself to analysis of state actors that act on behalf of Thailand, and civil actors that are generally based in Thailand or that affect Thailand directly. The reason that the governments of Vietnam, Burma, Cambodia, etc. will not be analyzed in further depth is that they are the governments of *sending* states, whereas this paper aims to isolate the interactions between formal and informal institutions within one territory — in this case, that of Thailand. Thailand itself serves as both a sending state and a receiving state for migrants and trafficking victims, but analysis for the purposes of this paper will be limited to its role as a receiving state.

Profiteering and Retribution

The informal institution most at play in Thailand's case is the widespread knowledge that corrupt law enforcement officials and police officers themselves gain pecuniary advantages by looking the other way even when they are aware of trafficking that is taking place, or even going so far as to partake in trafficking themselves. Furthermore, law enforcement personnel are also aware that fulfilling the duties of their jobs, including the duty to protect vulnerable people, can cost them their livelihood. I will refer to the two phenomena of state actors actively partaking in trafficking and state actors fearing reprisal for fighting trafficking as *profiteering* and *retribution*, respectively. As recently as 2017, Shelby Stephens has noticed that even up to now law enforcement officials in Thailand often not only do not take measures to prevent labor trafficking, but in fact take in active role in facilitating it themselves (Stephens, 2017). Formal institutions are codified, transparent, and easy to observe such as laws and other government regulations, whereas informal institutions are less evident, which include tacitly understood social customs and norms. As Horak and Katja observe, "[f]ormal and informal institutions interact and thus determine the effectiveness of one another" (Horak and Katia, 2016, p. 525). With the understanding that labor trafficking is a profit-seeking business, though admittedly one that is unregulated and illegal, profiteering and retribution are highly intertwined with labor trafficking enterprises in Thailand.

State-Centric Model of Citizenship: An Outdated Model

One of the most oft-cited models of citizenship is the state-centric one (Marshall, 1977), which states that the duty to protect the rights of citizens falls upon the state. This model is limited to within a state's borders, and as a result, although sending states owe protection to their nationals *within* their borders, they are essentially powerless outside their borders. However, this model needs to be refined to reflect contemporary immigration patterns, including labor migration, both forced and voluntary. Furthermore, Marshall's 1977 model neglects one critical element present in the contemporary labor force: non-citizens (including illegal migrants) who are in a state in which they are not a member, which is to say, a non-national living outside the boundaries of his or her home state. With formal, multinational institutions that exist in the modern era such as the European Union (EU) and the Association of Southeast Asian Nations (ASEAN), state-centric models no longer capture the full extent of citizenship rights.

FINDINGS

The single largest destination for the products of forced labor at sea from Thailand is the United States, where the products are frequently turned into regular, day-to-day items that can be purchased in neighborhood grocery stores and supermarkets, including pet food. Thailand is the third largest exporter of seafood in the world, after China and Norway (Green Facts). However, a high percentage of Thai fishing vessels are unregistered, making them difficult for the government to monitor, leading to it being easier to traffic people for labor. Aboard Thai fishing vessels, 59% of victims interviewed reported having witnessed a murder take place aboard by the boat captain, among the countless other atrocities that occur on Thai fishing vessels (United Nations, 2009). Indeed, as of this writing, a quick search on Google for the keywords "Thailand seafood industry" will reveal a first page consisting entirely of headlines denouncing Thailand's trafficking and slavery problem in this industry.

The U.S. Secretary of State John F. Kerry characterizes the crime of trafficking in persons as "an insult to human dignity and an assault on freedom" (Kerry, 2015, p. 2). Trafficking in persons is a crime

that can potentially affect any person in any nation, but it is particularly likely to impact those from psychologically and economically vulnerable backgrounds. Perpetrators lure victims into what Jane N. Sigmon describes as being tantamount to modern-day slavery (Sigmon, 2008), through the means of force, fraud, or coercion. Countries afflicted by human trafficking are normally categorized as source, transit, or destination countries. These three labels are not mutually exclusive; a country can serve as any one of them, two of the three, or all three of them at once, depending on the particular circumstances of that country. Certain conditions will lead a country to be more likely to fall under one the categories than another. For example, poor countries are more likely to serve as source countries, whereas rich countries tend to be primarily destination countries. Similarly, populations that have a higher proportion of young females are more likely to be source countries for sex trafficking.

Trafficking in persons can come in many forms, including, but not limited to, forced labor, forced commercial sexual services, organ harvesting, and even the commercial offering of children as child brides and child soldiers. Because of the surreptitious nature of this crime, precise and reliable figures are notoriously difficult to establish. However, although sex trafficking receives the most attention from media outlets, it is generally understood that labor trafficking is the most common form of trafficking in the world today (Indiana University Bloomington). The observable gender bias in anti-trafficking interventions, in addition to the inadequate measures in place to prevent it from happening in the first place, leaves males at an increased risk of labor trafficking. In the case of Thailand, nowhere is this gender bias more apparent than in the fishing industry. Nevertheless, there is great overlap among the aforementioned kinds of trafficking and it is often difficult to separate one form from another.

In the 2015 Trafficking in Persons Report issued by the United States Department of State, Thailand was placed in Tier 3 for human trafficking, the lowest of the three tiers (United States Department of State, 2015). Tier 3 consists of those countries "whose governments do not fully comply with the minimum standards and are not making significant efforts to do so" (ibid., p. 54)

Thailand is ASEAN's second largest economy (Hong Kong Trade Development Council), and it is experiencing great economic progress. However, not all of its over sixty million residents are enjoying the same benefits of a rapidly growing economy. Because human trafficking is a profit-seeking business, and trafficking rings are profit-seeking enterprises, the booming cities of Thailand have become extremely attractive hubs for perpetrators. Off the shores of Thailand in the South China Sea, desperate migrants seeking better lives for themselves are duped into working on unregistered sea vessels, or "ghost ships," of whose existence the Thai government is unaware, and are forced to work in precarious conditions to bring in fish and other marine products (Urbina, 2015).

An "Endemic" Risk

Labor trafficking in Thailand's fishing industry is so widespread that Nestlé, a well-known global company, released a report that states that any company that purchases seafood from Thailand as part of its supply chain faces an "endemic" risk of participating in the slave trade there as well (Verité, 2016, p. 3). Conducted in 2014, this report, independently contracted to the company Verité by Nestlé, found evidence indicating widespread "forced labor, trafficking, and child labor to be present among seabased...workers" (ibid., p. 1) For the Thai fishing industry, perpetrators lure workers through deceptive recruitment practices, which include misleading workers about working conditions, the content or legality of their contracts, and even with false promises of marriage. Furthermore, the report faulted the entire industry for having inadequate measures in place to verify the ages of workers, and indeed the researchers were able to identify many underage workers engaging in sea-based labor. As for the sources of trafficked laborers, most of the victims were migrants – many undocumented – from Thailand's neighbors, such as Cambodia or Myanmar. Once they arrive in Thailand, they are given fake identity documents and sold to sea captains (Urbina, 2015). Kamal Sadiq refers to the phenomena of labor migrants being presented as citizens using false identification as "paper citizens" (see Sadiq, 2009).

Another way in which migrants arrive to Thailand and become trapped in a cycle of slavery is by hiring labor brokers – both those officially recognized by the state and those operating without a license – who serve as intermediaries between employers and job-seekers. By doing so, these migrant job-seekers

incur exorbitant debts, well beyond their means to repay. As a result, they become subjected to debt bondage. To ensure that these victims are unable to escape, brokers and employers will confiscate important travel documents and other forms of identification. What makes it particularly difficult to identify these victims is that many come willingly in search of jobs, often with the help of relatives, community members, or other informal networks. Consequently, these forced laborers have the appearance of working on their own free will, and thus authorities fail to realize the true nature of their employment. Some of these brokers collaborate with employers to lure victims and, at times, even collude with corrupt Thai law enforcement officials.

After recruitment and being transported to working sites, workers in the Thai seafood industry reported that the actual conditions of their work were much more severe than they were led to believe during their recruitment. Reported conditions include excessive overtime, zero break days, and few, if any, protections against dangerous working hazards (United States Department of State, 2015). If the workers failed to perform to expectations, they were punished with "intimidation, harassment, and verbal and physical abuse" (Verité, 2016, p. 1). Even if the sea-based workers receive pay, they had no way to verify whether or not their employers were withholding any money. Furthermore, their freedom of movement is severely restricted and the workers are under constant surveillance. Trafficking in persons has a plethora of well-documented, harmful effects on not only its victims, but also the victims' friends and families. By turning a blind eye to the problems of labor trafficking within its territory, Thailand is in dereliction of its official obligations to the very people its government is supposed to protect.

The Threat to National Security

Combatting labor trafficking is an important moral issue, but it is also one of national security as well, because human traffickers undermine the Thai Government's sovereignty, authority, and border security. Offering protection to victims constitutes the *what* of the three Ws framework. In terms of the *who* and the *where* of the three Ws framework, the Thai government has the duty to protect and preserve the wellbeing of *everyone* who enters its borders. Some common countries of origin for these kinds of migrants are: Burma, Cambodia, Laos, China, Vietnam, Uzbekistan, and India (United States Department of State, 2015). These countries are on average are poor, have gender imbalances of more males than females, and/or have significant income disparity. Knowledge of the national origins of trafficking victims in Thailand is important because it allows governments to collaborate with one another, and potentially pool their resources together to form multilateral anti-trafficking forces. Another factor that is unique to Thailand is the relatively high number of ethnic minorities and immigrants, who are even more vulnerable to traffickers than ethnic Thai citizens, as well as stateless individuals residing in Thailand. There are an estimated 12 to 15 million stateless individuals in the world, and approximately 3.5 million of them are in Thailand alone (The Thailand Project).

CONCLUSION

The powers of the state were originally thought to be limited by the state's geographic borders, meaning the state is virtually powerless beyond its own territory. However, recent scholarship as well as current and historical events have demonstrated that this way of thinking is no longer accurate. The establishment of formal, multinational institutions such as the European Union, NAFTA, and the United Nations means that member states now have powers and responsibilities that extend beyond their own boundaries. As a result, T.H. Marshall's 1977 state-centric model of citizenship must be revised to accommodate for modern developments.

The primary topic of concern for this paper was the interactions between informal institutions and formal institutions in a given state, and how such interactions impact a particular area. This paper has explored the empirical case of trafficking in persons for labor in Thailand's fishing market, and has discovered that the weaker formal institutions are, the more the public relies on informal institutions. Particularly in the case of Thailand, corruption – particularly profiteering – and the risk of retribution are stronger deterrents than the possibility of criminal charges in Thailand's legal system. On a practical level,

rectifying the discrepancy between written laws and law enforcement, reducing or eliminating corruption, and codifying laws that are more lenient on victims of trafficking can help re-instill public confidence in Thailand's formal institutions. Indeed, the Thai case has demonstrated that the two types of institutions can interact in unexpected ways, occasionally complementing the other, but more often counteracting and counterbalancing each other.

Future research can also examine intraregional infrastructure. Although the ASEAN was briefly mentioned in this paper, its role was not explored in depth. Therefore, future studies can also look at meso-level institutions and how they can interact with a state's informal and formal institutions. Furthermore, as mentioned previously, this paper was primarily concerned with the interactions between formal and informal institutions within Thailand or that affected Thailand directly, while the governments of sending states were mostly excluded. Future studies could also include analysis of multi-polar interactions between formal and informal institutions as well as these interactions beyond national borders. As this study used only the empirical case of Thailand, its findings cannot necessarily be generalized to other countries, territories, or regions. Finally, this study only examined labor trafficking in one specific industry, namely the fishing industry. Accordingly, studies that examine sex trafficking or labor trafficking in other industries may reach different conclusions as well.

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