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# Giving as Governance: Philanthrocapitalism and Modern-Day Slavery Abolitionism

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## Giving as Governance? Philanthrocapitalism and Modern-Day Slavery Abolitionism

Janie A. Chuang



### ABSTRACT

This Essay examines the potential influence of a new breed of actor in the global antitrafficking arena: the venture philanthropist, or “philanthrocapitalist.” Philanthrocapitalists have already helped rebrand “trafficking” as “modern-day slavery,” and have expressed their ambitions to lead global efforts to eradicate the problem. With their deep financial resources and access to powerful networks, philanthrocapitalists hold tremendous power to shape the future trajectory of the antitrafficking movement. This Essay warns, however, against the possibility that philanthrocapitalists could also reconfigure the landscape of global antitrafficking policymaking, marginalizing or even displacing other actors’ efforts to address the problem.

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Professor of Law, American University Washington College of Law. I am grateful for the feedback I received on the ideas presented in this Essay from the participants in the UCLA Law Review Symposium, and also from those who attended workshops held at Yale Law School and Georgetown University Law Center. Special thanks to Anne Gallagher, Daniela Kraiem, Ashley Parrish, and the *UCLA Law Review* editors for their insightful comments on drafts of the Essay, and to Sean Goldhammer for his excellent research assistance.

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## INTRODUCTION

At a time when the antitrafficking field is experiencing significant shifts, a powerful new actor has emerged in the global antitrafficking policymaking arena: the venture philanthropist, or “philanthrocapitalist.” Broadly speaking, philanthrocapitalism is a relatively new form of philanthropy, born of a new generation of the ultra-rich who aspire to use their business skills to fix the world’s social problems. Unlike earlier generations of philanthropists, who focused on funding third party initiatives, philanthrocapitalists are creating and actively managing their own ventures to show they have big ideas for shaping the world. Their deep financial resources and access to the global elite have enabled philanthrocapitalists to assume a direct role in global governance and bring their ideas to fruition.

Much as Microsoft Founder Bill Gates has singlehandedly shifted the terrain of global public health,<sup>1</sup> philanthrocapitalists eager to “end slavery” aspire to reshape and redefine the future of the antitrafficking field. They have promised to grow from “millions to billions” the large sums already being spent annually to combat trafficking worldwide.<sup>2</sup> With that resulting financial leverage, they aim to bring strategic focus and donor coordination to the antitrafficking field—a field that is notoriously complicated and overcrowded with actors intensely competing for funding.<sup>3</sup> Philanthrocapitalist involvement has already helped refashion “trafficking” as “modern-day slavery”—an umbrella concept intended to encompass all forced labor, trafficking, and slavery practices.<sup>4</sup> Using their deep resources and elite networks to engage directly in global antitrafficking policymaking, philanthrocapitalists can significantly influence the substantive approach to this complex problem, and even reconfigure the roles of other international actors in the field.

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1. See Andrew Bowman, *The Flip Side to Bill Gates' Charity Billions*, NEW INTERNATIONALIST (April 2012), <http://newint.org/features/2012/04/01/bill-gates-charitable-giving-ethics/> (noting how the Gates Foundation's giving to global health issues is exceeded only by the U.S. and British governments, and that its annual giving exceeded the operating budget of the World Health Organization); Caroline Preston, *Confronting the Gates Foundation's 'Brass-Knuckle' Dominance*, CHRON. OF PHILANTHROPY (Dec. 7, 2011), <https://philanthropy.com/article/Confronting-the-Gates/227581> (“While other philanthropies are trying to help get the ball across the goal line on issues they care about . . . Gates is ‘creating the ball, building the team, hiring the referees,’ and ‘funding the instant replay.’”).
  2. See Mike Dottridge, *Editorial: How Is the Money to Combat Human Trafficking Spent?*, 3 ANTI-TRAFFICKING REV. 3 (2014) (discussing the magnitude of funding being spent to fight human trafficking worldwide).
  3. See discussion *infra* Part II.A.
  4. Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 AM. J. INT’L L. 609, 611 (2014).

Philanthrocapitalist efforts to exert policy influence come just as the field is experiencing nascent, but significant, shifts. Once almost exclusively focused on sex-sector trafficking,<sup>5</sup> global antitrafficking policy is now increasingly attentive to *any* sector where exploitation for profit occurs.<sup>6</sup> This broadened attention has enabled labor advocates and agencies to draw attention to the myriad ways that vulnerability to trafficking arises from the structures that undergird global labor markets and labor relations, and to frame their fight against worker exploitation (particularly of migrants) as integral to the long-term prevention of trafficking practices. The International Labour Organization (ILO)'s 2014 adoption of a Forced Labour Protocol<sup>7</sup> and domestic efforts to better regulate foreign labor recruitment are prime examples of emerging strategies to prevent trafficking in the first instance.<sup>8</sup> Such measures are a substantive expansion beyond the now-standard antitrafficking interventions that favor post hoc penalization of traffickers and rescue of victims.<sup>9</sup> Although these latter interventions are crucial to any antitrafficking strategy, the near-exclusive focus on them in antitrafficking policy has thus far yielded, even by their own metrics of success, disappointing results. Alternative strategies—particularly those targeting the systemic causes of the problem—are thus a welcome addition.

Potential philanthrocapitalist dominance of the field could either encourage or hinder this nascent expansion of antitrafficking strategies. Thus far, certain aspects of philanthrocapitalist activities appear to favor traditional penalization and rescue approaches as preferred solutions. For example, in their efforts to re-brand forced labor and trafficking as “modern-day slavery,” philanthrocapitalists have deployed a superficial narrative of good (victims) and evil (enslavers) that lo-

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5. The U.S. government's efforts to shape other governments' antitrafficking policies through its controversial antitrafficking sanctions regime under the administration of President George W. Bush played a significant role in maintaining the focus on sex-sector trafficking. See Janie A. Chuang, *Rescuing Trafficking From Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1680–1705 (2010) (describing the rise of “neo-abolitionism,” a movement to eradicate prostitution writ large as a countertrafficking measure).
  6. With a reported 68 percent of the 20.9 million people in forced labor worldwide being exploited in agriculture, construction, domestic work, manufacturing, and other nonsexual labor sectors—compared to the 22 percent in forced sexual exploitation—this attention is long overdue. INT'L LABOUR OFFICE, ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS AND METHODOLOGY 13 (2012), available at [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_182004.pdf) [hereinafter 2012 ILO GLOBAL ESTIMATE OF FORCED LABOUR].
  7. Int'l Labour Conference, *Protocol to Convention 29* (June 11, 2014); Int'l Labour Conference, *Recommendation 203* (June 11, 2014).
  8. See, e.g., Fraudulent Overseas Recruitment and Trafficking Elimination Act of 2013, H.R. 3344, 113th Cong. (2013).
  9. See Chuang, *supra* note 4, at 640–41.

cates the root of the problem in individual deviant behavior. This limited frame, in turn, narrowly prescribes punishment of the traffickers (whether through criminalization or reputational and economic harm) and victim rescue as solutions. Philanthrocapitalists could, in the alternative, tell a more complex narrative about slavery—for example, comparing the political economy of chattel slavery to our current globalized economy’s reliance on exploitative migrant labor, and thus laying the groundwork for broader structural reforms of, for example, labor and migration frameworks.<sup>10</sup> Perhaps not surprisingly, however, the slavery-as-structural-problem narrative has *not* been featured in the sound bite advocacy philanthrocapitalists have used to mobilize the masses and generate broad-based support for modern-day slavery abolitionism. That more complex narrative reveals uncomfortable truths about how prosperous economies are undergirded by the same labor and migration structures that perpetuate and reward the exploitation of poor people’s labor. These are, after all, the very structures that produced a system from which philanthrocapitalists amassed tremendous wealth—and which labor-based approaches aim to reform by increasing workers’ economic and political power vis-à-vis those that profit off of their labor. Rather than seeking such structural changes, the slavery-as-individual-deviance framing conveniently focuses on simply curbing abuses of the existing system—encouraging better adherence to labor laws and more ethical procurement and consumption practices, for example, rather than challenging the system itself.

In addition to influencing the substantive choice of antitrafficking law and policy approaches, philanthrocapitalist involvement can affect the scope and depth of other international actors’ roles in global antitrafficking policymaking. With vast sums to invest in antitrafficking interventions of their own choosing, philanthrocapitalists risk marginalizing or even displacing the (often cash-

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10. Indeed, a renaissance in slavery scholarship in recent years has helped bring to light how deeply embedded nineteenth-century slavery was in American economic structures. See, e.g., EDWARD E. BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM* (2014) (noting, for example, how advances in modern accounting and finance were actually pioneered by slave owners). The comparison between modern and past slavery could therefore be far more effectively used to expose how resource-rich economies of today are built on exploitative labor (particularly of migrants). Telling that broader narrative could incentivize those moved to join the antislavery movement to support broader structural reforms that, for example, reduce migrant workers’ vulnerability to extreme exploitation. These might include—as antitrafficking advocates in the United States have been seeking—immigration relief, protections against retaliatory termination and deportation, more robust worker association rights, and guestworker rights to change employers. These are among many possible measures that, through worker empowerment, are crucial to protect against coercive exploitation. For an in-depth discussion of such strategies, see James Gray Pope, *A Free Labor Approach to Human Trafficking*, 158 U. PA. L. REV. 1849 (2010) (arguing that rights to organize and to change employers are critical components of a system of free and voluntary labor).

strapped) governments and international organizations responsible for overseeing and implementing antitrafficking regimes. Moreover, because they are not beholden to funders or governments for financial resources, or to an electorate or fee-paying membership for approval, philanthrocapitalists can operate free of the constraints (and accountability mechanisms) that governments, international organizations, or civil society organizations typically must navigate. Indeed, philanthrocapitalists' potential dominance in the marketplace of ideas—and their control of lucrative funding streams—can constrain other actors' ability and willingness to depart from, much less criticize, philanthrocapitalists' favored approaches.

It is too early to assess, or even predict, philanthrocapitalists' impact on the field. But their activities thus far signal tremendous—and largely unchecked—power to reshape both the substance and form of global antitrafficking policymaking. This Essay offers some preliminary observations regarding philanthrocapitalists' antitrafficking activities and identifies a set of issues to be explored further in future work. The Essay begins, in Part I, by situating in historical context the (relatively recent) philanthrocapitalist embrace of the antislavery movement. It traces how the philanthrocapitalists' increasing influence comes at a time when the field is at a crucial crossroads, faced with the possibility of a fundamental shift in how policymakers characterize and address the problem. Part II examines key features of philanthrocapitalism and the change in methods and approaches it represents in philanthropic engagement with social problems. Part III examines closely the activities of the Walk Free Foundation—an ambitious (and in some ways controversial) philanthropic endeavor that aspires to reshape the field and to end modern-day slavery within a generation. In many respects, its activities provide an instructive example of the possible pitfalls and promise of philanthrocapitalists' antitrafficking activities. The Essay concludes with some thoughts regarding philanthrocapitalists' potential to address the complex global problem of human trafficking.

## I. THE RISE OF THE MODERN ANTISLAVERY MOVEMENT

Assessing philanthrocapitalists' potential impact requires understanding how the antitrafficking field has evolved into a modern “antislavery” movement. The widespread slavery rebranding is not simply a change in advocacy rhetoric. It is also the product of discursive and doctrinal moves that have reconfigured which (and how) different actors in the field—whether international institutions, governments, and grassroots NGOs—are best positioned to shape and implement antitrafficking responses. Beneath this dynamic is a struggle over the fundamen-

tal framing and approach to the issue: Is it a problem resulting from individual deviant behavior, best addressed by post hoc penalization and rescue strategies, or is it a systemic problem best addressed by targeting its structural contributors such as weak migration and labor frameworks.

When the U.N. member states came together in 2000 to adopt the first antitrafficking treaty in a half-century—the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. Trafficking Protocol)—the international community agreed on the following legal definition of trafficking:

[T]he 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 . . .<sup>11</sup>

Notwithstanding the breadth of the trafficking definition, law and policy interventions focused almost exclusively on sex trafficking for most of the first decade of the modern antitrafficking regime. The imagery of women and girls trafficked into the sex sector better fit societal notions of the “iconic victim,” a necessary precondition for political action and funding.<sup>12</sup> Moreover, the sex trafficking focus aligned with the agendas of those dominating the antitrafficking field for most of its first decade—specifically, the George W. Bush administration and its allies, including neoconservative, faith-based groups, and feminist antiprostitution activists, who used the antitrafficking regime to pursue worldwide eradication of prostitution.<sup>13</sup> Although these were U.S.-based actors, they were able to utilize the U.S. State Department’s highly influential annual Trafficking in

11. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter U.N. Trafficking Protocol].

12. See e.g., Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 349–52 (2007) (discussing states’ tendency to weed out as “not trafficked” those who fail to fit the mold of the naïve, innocent, and unwilling migrants); Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157 (2007) (describing how conceptions of “iconic victims”—e.g., innocent women and girls lacking agency—animated the development of U.S. antitrafficking laws and regulations).

13. This motley assortment of interest groups share a view of prostitution as inherently exploitative. See Chuang, *supra* note 5, at 1680–93.



Persons Report (TIP Report)—and its attached sanctions regime—to export this view abroad.<sup>14</sup> The U.N. Trafficking Protocol’s overarching crime control paradigm<sup>15</sup>—prioritizing ex post prosecution of traffickers and protection of victims—aligned with the dominant players’ view of sex trafficking (and prostitution writ large) as a form of violence against women, best addressed through individual perpetrator accountability.<sup>16</sup>

It was not until 2005—when the ILO staked a visible role in the global antitrafficking arena with the release of its quadrennial Forced Labor Report—that the issue of human trafficking began to be framed as a labor issue.<sup>17</sup> And while the U.S. TIP Office thereafter included, for the first time, substantive coverage of nonsexual labor trafficking in its annual TIP Report,<sup>18</sup> it was only after the election of President Barack Obama that the U.S. government made concerted efforts to draw international attention to nonsexual labor trafficking. Doing so was no small task, however, as the previous focus on sex trafficking and the dominant view that sex could never be equated with labor had effectively marginalized nonsexual labor trafficking as an issue of concern.

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14. The U.S. State Department’s annual TIP Report assesses and ranks every country’s efforts to combat trafficking according to a set of “U.S. minimum standards for the elimination of trafficking.” See U.S. DEPT OF STATE, *TRAFFICKING IN PERSONS REPORT* (2015). Countries receiving a low ranking may be subject to U.S. sanctions. These sanctions are non-humanitarian-related and non-trade-related, and include withdrawal of both U.S. direct financial assistance and U.S. support for multilateral aid packages. 22 U.S.C. §§ 7106(a), 7107(d)(1) (2012). Countries receiving the lowest ranking (Tier 3) in the annual TIP Report have a 90-day grace period during which to improve their performance before the sanctions determination is made. The U.S. President can, however, waive sanctions in the national interest or to promote the goals of the Trafficking Victims Protection Act, or to avoid significant adverse effects on vulnerable populations. *Id.* § 7107(d).
  15. The U.N. Trafficking Protocol is framed as a crime control treaty, and focuses on fostering international cooperation among law enforcement agencies in order to eradicate the transnational crime of human trafficking. For in-depth discussion of the Protocol’s development, see Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975, 1002 (2001). Tellingly, the text of the treaty requires States to prosecute traffickers as a matter of hard obligation, whereas States are to *endeavor* to protect victims. Compare U.N. Trafficking Protocol, *supra* note 11, at art. 5 (criminalization of trafficking), and art. 6 (assistance to and protection of trafficking victims).
  16. See Aziza Ahmed, “*Exploitation Creep*” and *Development: A Response to Professor Janie Chuang*, AJIL UNBOUND (Summer 2015, at <http://www.asil.org/blogs/ajil-unbound>) (discussing the “carceral” approach to sex trafficking as a feminist project); Chuang, *supra* note 5.
  17. The 2005 report garnered worldwide attention for offering the first global statistics on the number of people in forced labor (12.3 million)—and in its trafficking subset (2.4 million)—using fully explained statistical methods. INT’L LABOUR OFFICE, *A GLOBAL ALLIANCE AGAINST FORCED LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON THE FUNDAMENTAL PRINCIPLES AND RIGHTS OF WORK* (2005) [hereinafter 2005 ILO FORCED LABOUR REPORT].
  18. U.S. DEPT OF STATE, *TRAFFICKING IN PERSONS REPORT* 6 (2006) (noting that the 2006 Report focuses on “slave labor *and* sexual slavery”) (emphasis in original).

To enable this shift, the Obama administration promoted a problematic “exploitation creep”—a series of discursive and doctrinal moves to recast (1) forced labor as trafficking, and (2) trafficking (and forced labor) as slavery.<sup>19</sup> Deeming forced labor practices a subset of trafficking made the link between trafficking and labor explicit, thus laying the groundwork for policymakers and advocates to draw long-overdue attention to nonsexual labor trafficking. Moreover, recasting forced labor and trafficking as slavery had the strategic benefit of marshaling outrage and political will to support initiatives targeting nonsexual forced labor practices. Such practices had typically attracted less public opprobrium than sex trafficking, having arguably become normalized in our globalized economy.<sup>20</sup>

But while the shift helped cast overdue scrutiny on nonsexual labor trafficking, it was not intended, at least as a matter of U.S. policy, to shift the dominant antitrafficking approach *away* from its crime-control focus. Indeed, the trafficking/forced labor conflation could be viewed as a bureaucratic move to stave off the growth of labor-based perspectives and approaches that were (belatedly) gaining traction at the time. By then, the ILO had assumed a greater stake in the global antitrafficking policy arena, while on the ground, labor advocates were becoming increasingly involved in antitrafficking advocacy campaigns. Labor advocates were able to direct mainstream attention (and funding) to a broad range of labor exploitation-related issues—and to build a broader narrative that traces vulnerability to trafficking to weak labor frameworks. Bringing forced labor under the rubric of trafficking helped elevate crime-control-focused antitrafficking strategies in the face of growing demands for labor-based alternatives.

The U.S. government’s efforts to further recast both forced labor and trafficking as slavery bolstered its efforts to prioritize crime-control-focused antitrafficking strategies. Explicit statements from former Secretary of State Hillary Clinton and especially from President Obama—as the nation’s first African American President—have served as a clarion call for the global reframing of trafficking as slavery.<sup>21</sup> The slavery frame—at least as currently constructed—

19. Chuang, *supra* note 4, at 610–11.

20. J. J. Gould, *Slavery’s Global Comeback*, ATLANTIC (Dec. 19, 2012), <http://www.theatlantic.com/international/archive/2012/12/slaverys-global-comeback/266354/>.

21. See, e.g., Hilary Rodham Clinton, U.S. Sec’y of State, Remarks for the Release of the 2012 Trafficking in Persons Report (June 19, 2012) (transcript available at <http://www.state.gov/secretary/20092013clinton/rm/2012/06/193368.htm>) (noting that when Secretary Clinton first started talking about trafficking, people wondered whether she was referring to road safety, whereas with the term slavery, “there is no mistaking what it is, what it means, what it does”); Barack Obama, U.S. President, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012) (transcript available at <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>) (“I’m talking about the injustice, the outrage, of human trafficking, which must be called by its true name—modern slavery.”).

feeds a narrative of trafficking-cum-slavery as the product of individual deviant behavior rather than a structural problem. According to sociologists Julia O'Connell Davidson and Bridget Anderson, the highly charged rhetoric of combating the evil of slavery adopted by the U.S. government—and propagated by the philanthrocapitalists, as discussed below—is a “discourse of depoliticization.” To wit, slavery rhetoric creates a simple moral imperative with enormous popular appeal, while it depoliticizes and absolves—behind a humanitarian agenda—the state (and its corporate partners) for their role in creating and maintaining conditions that foster the coercive exploitation of workers.<sup>22</sup> It fosters continued reliance on penalization and rescue strategies by recasting forced laborers and trafficked persons as perennial victims who, like the trans-Atlantic slaves, must have been kidnapped or otherwise brought to the destination countries against their will. This imagery conveniently fuels a victim-savior ethos that treats trafficked persons as objects of rescue and pity rather than as individuals acting in pursuit of a livelihood.<sup>23</sup> Slavery imagery thus perpetuates a reductive understanding of the problem as rooted in the deviant behavior of individual actors, rather than as the product of global disparities in wealth and social exclusion, as well as discrimination in labor and migration frameworks.

The ongoing struggle over framing the trafficking-cum-slavery problem, and responses thereto, has brought us to a crucial choice: Do we maintain the traditional emphasis on penalization and rescue as favored interventions? Or do we broaden the possible prescriptions to include strategies that target the systemic contributors to extreme exploitation in our global economy? Which narrative—whether slavery as deviance, or slavery as structural problem—gets told depends on who has the power to define and tell the story. In this regard, philanthrocapitalists have an outsized role.

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22. See Bridget Anderson & Rutvica Andrijasevic, *Sex, Slaves and Citizens: The Politics of Anti-Trafficking*, 40 *SOUNDINGS* 135 (2008); Julia O'Connell Davidson, *Absolving the State: The Trafficking-Slavery Metaphor*, 14 *GLOBAL DIALOGUE* (2012), available at <http://www.worlddialogue.org/print.php?id=532>; Julia O'Connell Davidson, *New Slavery, Old Binaries: Human Trafficking and the Borders of Freedom*, 10 *GLOBAL NETWORKS* 244, 256 (2010).
  23. See DENISE BRENNAN, *LIFE INTERRUPTED: TRAFFICKING INTO FORCED LABOR IN THE UNITED STATES* 7–10 (2014) (explaining that glossing over the element of agency is fundamentally at odds with how trafficked persons view themselves); MIKE KAYE, *ANTI-SLAVERY INTERNATIONAL, THE MIGRATION-TRAFFICKING NEXUS: COMBATING TRAFFICKING THROUGH THE PROTECTION OF MIGRANTS' HUMAN RIGHTS* 3 (2003), available at [http://www.antislavery.org/includes/documents/cm\\_docs/2009/t/the\\_migration\\_trafficking\\_nexus\\_2003.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/t/the_migration_trafficking_nexus_2003.pdf) (describing push/pull factors driving international migration and human trafficking); Rebecca Surtees, *Trafficked Men as Unwilling Victims*, ST. ANTHONY'S INT'L REV. 16 (2008) (discussing male trafficking victims who consistently self-identify as unlucky migrants).

## II. GIVING AS GOVERNANCE: THE RISE OF PHILANTHROCAPITALISM

As antitrafficking rhetoric has shifted towards a slavery frame, it has also been embraced by a new generation of philanthropists eager to bring about social change. Inasmuch as the U.S. government's adoption of a slavery frame is significant given U.S. dominance in global antitrafficking policymaking, the philanthropic support of this framing is equally noteworthy, if not moreso. Unlike the old breed of philanthropist who, in considering which proposals to fund, weighed various stories told by others to determine which vision to fund, this new breed of philanthropist *is* the storyteller.<sup>24</sup> Inspired by their *own* visions and narratives about the reforms necessary to make the world a better place, the new philanthropists are creating and managing their own foundations and NGOs to tackle specific problems. Using their powerful networks and skills to gain seats at global policymaking tables, the new philanthropists have the resources to make their visions come true. Embedded in these visions is a deep ideological commitment to market-based solutions that, having enabled the new philanthropists to amass their great wealth, they presume can now be directed at solving the world's problems. Inasmuch as the antitrafficking field might benefit from such methods, however, questions remain as to whether they can sufficiently address the social complexities of the trafficking phenomenon. Moreover, free of the constraints other global policymakers must navigate (for example, an electorate), there is a risk that philanthrocapitalist activities may too readily be shielded from the scrutiny and accountability necessary for sound and effective decisionmaking.

### A. The Rise of the Philanthrocapitalists

The increased gap between rich and non-rich over the last decade has led to the rise of a new "super-elite" class that, to a notable extent, consists of first-generation wealth.<sup>25</sup> Its members are "economic meritocrats" who worked hard to create their wealth (as opposed to inheriting it), and whose peers are transglobal, rather than limited to their countrymen.<sup>26</sup> One defining characteristic of these twenty-first-century "plutocrats" is that arguably the most coveted status symbol

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24. See James Shulman, *The Funder as Founder: Ethical Considerations of the Philanthropic Creation of Nonprofit Organizations*, in *GIVING WELL: THE ETHICS OF PHILANTHROPY* 220, 223 (Patricia Illingworth et al. eds., 2011). See also *The Birth of Philanthrocapitalism: The Leading New Philanthropists See Themselves as Social Investors*, *ECONOMIST* (Feb. 23, 2006), <http://www.economist.com/node/5517656>.

25. Chrystia Freeland, *The Rise of the New Global Elite*, *THE ATLANTIC*, Jan./Feb. 2011, at 46.

26. *Id.* at 49.

is not a racehorse or mansion, but a philanthropic foundation that is “actively managed in ways that show its sponsor has big ideas for reshaping the world.”<sup>27</sup> This dynamic perhaps accounts for the success of the Giving Pledge—a targeted campaign by Bill and Melinda Gates and Warren Buffett to have the world’s billionaires commit to giving away at least 50 percent of their net worth during their lifetimes or at death.<sup>28</sup> With over 120 billionaires enlisted, the pledge could change the face of philanthropy.<sup>29</sup>

Not only has philanthropic giving grown over the last decade, but philanthropic involvement has increasingly taken the form of “venture philanthropy,”<sup>30</sup> otherwise known as “philanthrocapitalism.”<sup>31</sup> Traditionally, philanthropy has been animated by the idea that because wealth-production can generate severe social inequalities that threaten the basis of democratic governance, giving by the wealthy can ease this contradiction by “adding ‘weight to the lighter scale’”<sup>32</sup>—in other words, giving back to the community “to atone for whatever were conceived of as the sins of business.”<sup>33</sup> As Peter Buffett, son of Warren Buffett, explains in discussing the rise of the “charitable-industrial complex,” philanthropy enables “conscience laundering,” or “feeling better about accumulating more than any one person could possibly need to live on by sprinkling a little around as an act of charity.”<sup>34</sup> In addition to its “moral rewards,” philanthropy can serve “as a pathway to social acceptance and even immortality.”<sup>35</sup> Hence, Andrew Carnegie is now remembered as “secular saint” rather than robber baron, and Alfred Nobel is known for something other than having invented dynamite.<sup>36</sup>

27. *Id.*

28. *Frequently Asked Questions*, GIVING PLEDGE, <http://givingpledge.org/faq.aspx> (last visited Mar. 31, 2015).

29. *See id.* Note that the Giving Pledge has generated some controversy, as the pledge permits participants to pledge their wealth to family foundations. One billionaire, a committed philanthropist, refused to sign the pledge because of this loophole for “bureaucracy-ridden sluggards.” Nicole Lewis, *Giving Pledge Signers Gave Big in 2013 but Not Much for Today’s Needs*, CHRON. OF PHILANTHROPY (Feb. 9, 2014), <http://philanthropy.com/article/Signers-of-the-Giving-Pledge/144567/> (describing concerns that too many of the billionaire-pledgers are putting money into foundations that may not dole out grants for many years).

30. Shulman, *supra* note 24, at 221–22 (characterizing “venture philanthropists” as including “grant makers who make fewer grants, take an active interest in the enterprises being funded, supply additional nonfinancial help (such as hiring consultants or executive coaches), and rely upon . . . clear goals and metrics to define and gauge a grantee’s progress”).

31. *See* MATTHEW BISHOP & MICHAEL GREEN, PHILANTHROCAPITALISM: HOW THE RICH CAN SAVE THE WORLD (2008).

32. David Bosworth, *The Cultural Contradictions of Philanthrocapitalism*, 48 SOC’Y 382, 387 (2011).

33. Robin Rogers, *Why Philanthro-Policymaking Matters*, 48 SOC’Y 376, 377 (2011).

34. Peter Buffett, *The Charitable-Industrial Complex*, N.Y. TIMES (July 26, 2013), <http://www.nytimes.com/2013/07/27/opinion/the-charitable-industrial-complex.html>.

35. Freeland, *supra* note 25, at 50.

36. *Id.*

Philanthrocapitalism differs from traditional modes of philanthropy in significant respects, however. As sociologist Robin Rogers explains, philanthrocapitalism involves the “three M’s: Money, Markets, and Measurement”:

The first M, money, is the idea that the wealthy, particularly the super wealthy, should take greater responsibility for using their wealth for the common good. This often is paired with an explicit call for philanthropists to be more “hands on” in their giving. The second M, markets, is the idea that market forces should sort effective social programs from ineffective social programs. The third M, measurement is the idea that resources should be used in a targeted and rational way based on data in order to identify and scale successful social programs.<sup>37</sup>

Philanthrocapitalists are thus founding NGOs and taking on operational roles to more directly effect change.<sup>38</sup> In the words of eBay founder Pierre Omidyar and his wife Pam, for example: “[w]e don’t just write checks; we engage deeply with the organizations we support to help them reach and improve the lives of millions.”<sup>39</sup> Moreover, rather than simply offering compensation for the system’s flaws, philanthrocapitalism also demands conversion to that same system’s philosophy.<sup>40</sup> Philanthrocapitalist activities reflect “a deep[] investment in the philosophical presumption that material quantity . . . can reliably generate social quality.”<sup>41</sup> Therefore, the same techniques, management styles, and value systems that helped generate the excessive income that philanthropists made (and now want to give away) can also correct the social defects historically associated with income inequality.<sup>42</sup> Since “more engenders better,” philanthropy (and most everything else) should be conducted in the manner of a corporate business: by and for “the numbers.”<sup>43</sup> This “quantifilia” feeds what Kavita Ramdas, former CEO of the Global Fund for Women, characterizes as a “metrics-driven, efficiency seeking, technology focused approach to social change.”<sup>44</sup>

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37. Rogers, *supra* note 33, at 378.

38. Shulman, *supra* note 24, at 221–22.

39. Letter from Pierre and Pam Omidyar (Aug. 3, 2010), *available at* <http://givingpledge.org/index.html>.

40. Bosworth, *supra* note 32, at 387.

41. *Id.* at 382.

42. *Id.* at 383.

43. *Id.*

44. Kavita N. Ramdas, *Philanthrocapitalism: Reflections on Politics and Policy Making*, 48 SOC’Y 393, 395 (2011). It is worth noting that the (over)emphasis on quantitative measures pervades many areas beyond the antitrafficking field. *See generally* GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS (Kevin E. Davis et al. eds., 2012) (describing the use of indicators in public health, development, and humanitarian assistance, among other fields).

## B. Concerns Raised by Philanthrocapitalism

Armed with vast capital and networking capabilities, philanthrocapitalists have assumed an outsized role in a variety of social causes.<sup>45</sup> Not surprisingly, philanthrocapitalists have drawn criticism regarding their methods and impact on global policymaking. Critics question the ready equation of success with wisdom, pointing out that being skillful at accumulating wealth and power does not necessarily mean one is good at creating social value.<sup>46</sup> More specifically, critics question the wisdom of trying to fix problems with methods that created the problem in the first place—global philanthrocapitalism is far too deeply embedded in the current economic and political status quo of global capitalism.<sup>47</sup> Philanthrocapitalism avoids exploring what is wrong at the systemic level. There is no “deeper questioning about what ails a global economic system that seems to produce endemic inequality, crushing poverty, and food insecurity . . . .”<sup>48</sup>

Critics furthermore point out that philanthropic work is increasingly motivated by a “fix-the-problem” mentality, designed to yield measurable and fairly quick solutions.<sup>49</sup> Lacking a certain nuance and humility, this approach fails to recognize how “development has to do with people, with human and social complexity, with cultural and traditional realities” and that one must grapple with “the messy and multifaceted aspects of a problem . . . .”<sup>50</sup> The focus on quantification measures to track a problem—and to evaluate the effectiveness of responses thereto—only facilitates avoidance of such complexities.

Perhaps even more concerning to critics is how philanthrocapitalists have been able to monopolize the market of ideas through their enormous policymaking and agenda-setting powers—what Rogers refers to as “philanthro-policymaking.”<sup>51</sup> Wealth is becoming even more concentrated in the hands of a few who, particularly in the West, are selecting and funding global social initiatives that are akin to global public policymaking.<sup>52</sup> Given their vast resources and extensive networking capabilities, philanthrocapitalists who found their own NGOs (funder-founders) in particular, lack the constraints that typically affect nonprofits in

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45. For example, George Soros has spent billions of dollars on issues as diverse as marijuana legalization and civil society in central and eastern Europe; Mark Zuckerberg has donated \$100 million to improving the public schools of Newark, New Jersey; and Bill Gates has donated billions to global public health issues and supporting charter schools. *See* Freeland, *supra* note 25, at 50.

46. *See* Ramdas, *supra* note 44; Buffett, *supra* note 34.

47. Buffett, *supra* note 34.

48. *See* Ramdas, *supra* note 44, at 394.

49. *Id.*

50. *Id.*

51. Rogers, *supra* note 33, at 376; Ramdas, *supra* note 44, at 395.

52. *See* Rogers, *supra* note 33, at 381.

their field. For example, philanthrocapitalists are free from the expectations of outside funders (including governments), or the priorities of a fee-paying membership base. Lacking such constraints—which, for other actors, can serve as accountability mechanisms<sup>53</sup>—there are few outside mechanisms to check the validity of funder-founders' ideas, thus heightening the risk of unreflective action.<sup>54</sup>

Helping to maintain the echo chamber are at least two other background dynamics: media capture, and the chilling of criticism. As one critic put it, we cannot rely on the media to assume their watchdog role because of “arrant favoritism” resulting from “American obsequiousness to the royalty of the super wealthy—producing a general sense that it is rude to criticize large-scale acts of generosity, and media dependence on the same policy experts who have been co-opted by the foundations in question.”<sup>55</sup> Complicating matters, philanthrocapitalists have made generous donations to media outlets, even buying them outright or founding new ones.<sup>56</sup> Furthermore, in a world where philanthrocapitalists are seemingly above reproach, and particularly while other sources of funding (like government) are flagging, critique of philanthropic endeavors can result in the practical equivalent of professional defunding.<sup>57</sup> This dynamic can operate to silence activists, policymakers, and academics who might otherwise question, for example, the funder's choice of intervention, the methodology used, the intervention's impact on target and collateral populations, or its unintended consequences vis-à-vis other social or justice causes.<sup>58</sup>

53. See generally Peter J. Spiro, *NGOs and Human Rights: Channels of Power*, in RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW (Sarah Joseph & Adam McBeth eds., 2010) (discussing internal and external accountability regarding NGO power); Peter J. Spiro, *Nongovernmental Organizations in International Relations (Theory)*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 223 (Jeffery L. Dunoff & Mark A. Pollack eds., 2013); Kenneth Anderson, “Accountability” as “Legitimacy”: *Global Governance, Global Civil Society and the United Nations*, 36 BROOK. J. INT'L L. 841 (2011) (discussing the accountability of NGOs to the globalized world as political actors).

54. Shulman, *supra* note 24, at 222–23.

55. Bosworth, *supra* note 32, at 384.

56. Examples include Giving Pledge participants Jeff Bezos—who acquired the *Washington Post*—and Pierre Omidyar, who briefly considered buying the *Washington Post*, but ultimately decided to spend \$250 million to start a new media empire from scratch, launching First Look Media in February 2014. Several philanthropists have pursued projects in nonprofit journalism, in response to a concern about the ability of the press to hold government and other large institutions accountable. For a discussion of these efforts, see David Donadio, *A \$250 Million Experiment, Investigative Philanthropy?*, PHILANTHROPYROUNDTABLE, [http://www.philanthropyroundtable.org/topic/excellence\\_in\\_philanthropy/investigative\\_philanthropy](http://www.philanthropyroundtable.org/topic/excellence_in_philanthropy/investigative_philanthropy) (last visited Apr. 12, 2015).

57. See *infra* discussion at Part III.B.3.a.

58. See Bosworth, *supra* note 32, at 384 (“[A]cademics, activists, and the policy community live in a world where philanthropists are royalty’ whose disapproval can result in the practical equivalent of



### III. PHILANTHROCAPITALIST EMBRACE OF MODERN-DAY SLAVERY ABOLITIONISM

The above-described dynamics are increasingly being brought to bear on the antitrafficking field, which has drawn considerable funding and attention from philanthrocapitalists eager to “end slavery.” For example, Omidyar’s foundation, Humanity United,<sup>59</sup> has contributed over \$60 million over the last 10 years, funding numerous nonprofits and on-the-ground projects in multiple countries.<sup>60</sup> Among other initiatives, Humanity United created the Alliance to End Slavery and Trafficking (ATEST) in 2007 to convene and provide financial and administrative support to a small coalition of prominent antitrafficking NGOs in the United States;<sup>61</sup> this move significantly elevated the individual organizations’ profiles, and transformed them into a powerful lobbying coalition. The Legatum Foundation<sup>62</sup>—a foundation linked to Dubai-based private equity firm Legatum—and Google have each donated about \$13 million to antislavery projects.<sup>63</sup> Legatum, Humanity United, and the Walk Free Foundation (discussed below), have each contributed \$10 million in seed money for the Freedom Fund, the world’s “first private donor fund dedicated to ending modern slavery” and designed to bring “much-needed financial resources and strategic focus to the fight against slavery.”<sup>64</sup>

While it is too soon to assess philanthrocapitalist impact generally, close examination of one of the most ambitious antislavery philanthrocapitalist

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professional defunding.”) (quoting FREDERICK M. HESS, *WITH THE BEST OF INTENTIONS: HOW PHILANTHROPY IS RESHAPING K-12 EDUCATION* 9 (2005)).

59. See *Our Story*, HUMANITY UNITED, <http://www.humanityunited.org/our-story/> (last visited June 10, 2015).

60. Clare O’Connor, *Inside eBay Billionaire Pierre Omidyar’s Battle to End Human Trafficking*, FORBES (Nov. 8, 2012, 5:58 PM) (reporting \$50 million spent), <http://onforb.es/QRXktg>; Humanity United, 2013 Performance Report (reporting \$5.6 million for its “advancing freedom” portfolio), <http://www.humanityunited.org/performance-report2013/>; Humanity United, 2014 Performance Report (reporting \$9.3 million for its “advancing freedom” portfolio), <http://www.humanityunited.org/2014-performance-report>.

61. See *About ATEST*, ALLIANCE TO END SLAVERY & TRAFFICKING, <http://www.endslaveryandtrafficking.org/about-atest> (last visited June 10, 2015).

62. See *Who We Are*, LEGATUM FOUND., <http://www.legatum.org/whoweare> (last visited June 10, 2015).

63. Martina Ucnikova, *OECD and Modern Slavery: How Much Aid Money Is Spent to Tackle the Issue?*, 3 *ANTI-TRAFFICKING REV.* 133, 148 (2014).

64. FREEDOM FUND, <http://www.freedomfund.org/about-us> (last visited June 10, 2015). The Freedom Fund was officially announced by President Bill Clinton in September 2013 at the Clinton Global Initiative. In December 2014, the Freedom Fund announced a \$6 million investment from a new “anchor donor,” the Stardust Fund. In March 2015, it received a €2.4 million investment from the C & A Foundation. *Id.*

endeavors—spearheaded by Australian mining magnate Andrew Forrest<sup>65</sup>—offers an insightful case study into philanthrocapitalism’s tremendous potential to reshape the antitrafficking field. Forrest established the Walk Free Foundation (WFF), with a mission “to end modern slavery in our generation by mobilizing a global activist movement, generating the highest quality research, enlisting business and working with government to drive change in those countries and industries bearing the greatest responsibility for slavery today.”<sup>66</sup> In less than three years’ time, WFF’s multiple, ambitious global initiatives have already generated a great deal of attention—and concern. Its mediagenic re-branding of antitrafficking as a fight against the “world’s greatest evil”—“modern-day slavery”—has helped shift the terms of global public discourse. Its access to major media outlets<sup>67</sup> has enabled WFF to broadcast its (highly questionable) claims regarding the prevalence and risk of modern slavery worldwide—apparently gaining credibility through repetition. Meanwhile, its outsized role as a major funder appears to have insulated its methods and impact from public criticism. WFF’s activities thus bring to the surface vexing questions about philanthrocapitalists’ potential impact on the antitrafficking field. Specifically, what happens when well-resourced foundations, eager to make quick change, enter a field that is deeply in flux regarding the very scope and nature of the problem being targeted? What might their impacts be on an overcrowded field of governmental and nongovernmental actors fiercely competing for attention and funding?

#### A. Walk Free Foundation Activities

In November 2014, the WFF released its 2014 Global Slavery Index, finding that 35.8 million people are living as “slaves” across the globe.<sup>68</sup> Within days

65. *Board of Directors, About Fortescue*, FORTESCUE, [http://www.fmgil.com.au/about\\_fortescue/Board\\_of\\_Directors](http://www.fmgil.com.au/about_fortescue/Board_of_Directors) (last visited June 10, 2015); Jamie Smyth, *Andrew Forrest, the Founder of Fortescue Metals Group*, FIN. TIMES (Aug. 24, 2014, 12:48 pm), <http://www.ft.com/intl/cms/s/0/24bae83a-17d8-11e4-a82d-00144feabdc0.html#axzz3Tv9epxAc>.

66. WALK FREE FOUND., <http://www.walkfreefoundation.org> (last visited June 10, 2015).

67. For example, the Walk Free Foundation’s (WFF) launch was widely publicized. *See e.g., Press Release*, MTV EXIT (Dec. 16, 2012), <http://press.mtvexit.org/61142-70-000-fans-join-international-and-local-artists-in-historical-act-of-solidarity-to-fight-human-trafficking-at-mtv-exit-live-in-myanmar> (describing how MTV partnered with WFF, USAID, AusAID, and ASEAN to sponsor a concert in Myanmar in which 70,000 “fervent” fans joined international and local artists in a “historical act of solidarity to fight human trafficking”—an event that was aired by MTV in “more than a half-billion homes” in March 2013).

68. THE GLOBAL SLAVERY INDEX 2014, <http://www.globalslaveryindex.org/> (last visited June 10, 2015) [hereinafter 2014 GSI].

of this statistic grabbing the headlines of major media outlets,<sup>69</sup> the CEO of the then soon-to-be-launched Global Fund to End Slavery delivered an address to the ILO, laying out her vision for helping governments and businesses fight slavery.<sup>70</sup> The following month, the Vatican hosted a gathering of the Global Freedom Network, bringing together world religious leaders to sign a pledge to work together “to eradicate slavery by 2020.”<sup>71</sup> Two months later, in February 2015, U.S. media outlets featured pictures of U.S. Senators with red “X”s on their hands in support of *The End Modern Slavery Initiative Act of 2015*.<sup>72</sup> At the urging of the Global Fund, Senator Bob Corker (R-Tenn.) created and successfully marshaled legislation through the U.S. Senate Committee on Foreign Relations to establish a \$1.5 billion fund through government and private sector funding—including a \$250 million contribution from the U.S. government over the course of seven years—“to bring an end to modern slavery.”<sup>73</sup>

All of these initiatives can be traced back to Forrest’s ambition to end slavery—initially within his lifetime but now more modestly proposed as within a generation.<sup>74</sup> Inspired by his daughter’s experiences working with Nepalese orphans whom she believed were later trafficked into the sex industry, Forrest ran a “slavery audit” on his own company, Fortescue Mining Group. He discovered—and immediately sought to correct—“slave labor” in his supply chain.<sup>75</sup> Citing the New Testament, Forrest espoused his commitment to helping the less fortunate, including “those suffering the unbearable yoke of modern slavery and forced labour.”<sup>76</sup> As a member of the inaugural

69. See, e.g., Reuters, *Millions Forced to Live as Slaves, a Human Rights Group Reports*, N.Y. TIMES (Nov. 17, 2014), [http://www.nytimes.com/2014/11/18/world/millions-forced-to-live-as-slaves-a-human-rights-group-reports.html?\\_r=0s](http://www.nytimes.com/2014/11/18/world/millions-forced-to-live-as-slaves-a-human-rights-group-reports.html?_r=0s).

70. See Jean Baderschneider, CEO, The Global Fund to End Slavery, Address to The International Labour Organization (Nov 12, 2014) (transcript available at [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/meetingdocument/wcms\\_319636.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/meetingdocument/wcms_319636.pdf)).

71. John Hooper, *Pope and Welby Joined by Imams and Rabbis for Anti-Slavery Declaration*, THE GUARDIAN (Dec. 2, 2014); Nick Miller, *Australian Grace Forrest Inspires Pope Francis and Other World Religious Leaders to Sign Pledge to Eradicate Slavery by 2020*, SYDNEY MORNING HERALD (Dec. 2, 2014).

72. See, e.g., Medha Imam, *Senators Introduce Bill to Combat Human Trafficking*, U.S. NEWS & WORLD REP. (Feb. 25, 2015, 5:12 pm EST), <http://www.usnews.com/news/articles/2015/02/25/senators-introduce-bill-to-combat-human-trafficking>.

73. End Modern Slavery Initiative Act of 2015, S. 533, 114th Cong., (2015) (introduced by Senator Bob Corker, and co-sponsored by Senators Robert Menendez, John McCain, Marco Rubio, Jeanne Shaheen, Lamar Alexander, Richard Blumenthal, Chris Coons, Rob Portman, Kelly Ayotte, Mark Kirk, Ben Cardin, and Johnny Isakson) [hereinafter EMSI Act].

74. See Smyth, *supra* note 65.

75. See *id.*

76. Letter from Andrew and Nicola Forrest, available at [http://givingpledge.org/pdf/letters/Forrest\\_Letter.pdf](http://givingpledge.org/pdf/letters/Forrest_Letter.pdf).

group of international billionaires to sign the Giving Pledge, Forrest is reported to have spent tens of millions of dollars each year in his bid to end slavery.<sup>77</sup> Within the span of less than three years, WFF has developed multiple initiatives to mobilize grassroots support for its mission, and to bring philanthrocapitalist methods directly to bear on the problem, through massive fundraising, application of quantitative measures, and corporate management guidance.<sup>78</sup>

### 1. Mobilizing the Masses: The Walk Free Movement and the Global Freedom Network

Forrest launched WFF in December 2012 with the explicit goal of mobilizing a movement to fight “modern slavery.”<sup>79</sup> From its inception, WFF has garnered high-level support: the U.S. and Australian governments, the Association of Southeast Asian Nations (ASEAN), and the United Nations Inter-Agency Project Against Human Trafficking (UNIAP) cosponsored its launch at a historic rock concert in Myanmar that was broadcast worldwide by MTVExit.<sup>80</sup> To generate grassroots support for its antislavery campaigns, WFF began with a website that enables one to join other WFF “members” in pledging to help end slavery with just the click of a mouse.

The WFF website claims its movement includes millions of people (the figure purportedly grows by 50,000 people per week<sup>81</sup>), “fighting to end one of the world’s greatest evils: modern slavery.”<sup>82</sup> Website visitors can, for example, participate in automated letter-writing to target governments and corporations to demand that they rid their global supply chains of modern-day slavery practices. They can also peruse WFF’s multimedia materials designed to help people “better understand” the realities of modern day slavery.<sup>83</sup> The central

77. See *id.*; Smyth, *supra* note 65. Note that the details of where that money has gone (beyond the contribution to the Freedom Fund and presumably substantial overheads associated with a large secretariat) are unclear.

78. *About the Foundation*, WALK FREE FOUND., <http://www.walkfreefoundation.org/about/> (last visited June 10, 2015). See also discussion *infra* Part III.A.

79. See WALK FREE, <http://www.walkfree.org> (last visited June 10, 2015).

80. See *Press Release*, *supra* note 67.

81. *Guide Overview*, WALK FREE FOUND., <https://www.walkfree.org/business/> (last visited June 10, 2015). In May 2015, the WFF website claimed to have 8.8 million people participating in its movement—a figure that appears to represent the number of visits and ‘clicks’ the website has received. But as of late June 2015, the website has curiously reduced this figure to 2.3 million members. See WALK FREE, *supra* note 79.

82. WALK FREE, *supra* note 79.

83. See, e.g., *Free Mauritania’s Anti-Slavery Activists*, WALK FREE FOUND., <http://www.walkfree.org/mauritania/> (last visited Apr. 5, 2015); *Multimedia*, WALK FREE FOUND., <http://www.walkfree.org/multimedia/> (last visited Apr. 5, 2015).

message communicated by the website is that governments, corporations, and individuals can all be modern-day abolitionists by engaging in more ethical consumption of goods and services.

To generate further popular support for the cause, Forrest created the Global Freedom Network (GFN) to bring world religious leaders into the movement. In a December 2014 meeting at the Vatican, numerous religious leaders convened by GFN pledged to “inspire spiritual and practical action by all global faiths and people of goodwill everywhere to eradicate modern slavery across the world by 2020 and for all time.”<sup>84</sup> Visitors to the GFN website are directed to sign a pledge committing “to do all within [one’s] power to end slavery within [one’s] lifetime.”<sup>85</sup>

## 2. Exposing the Problem: Global Slavery Index

Perhaps WFF’s most visible work product to date is its annual Global Slavery Index (GSI), launched in 2013.<sup>86</sup> Forrest established the GSI at the advice of Bill Gates, on the theory that, at least in “management speak, if you can’t measure it, it doesn’t exist.”<sup>87</sup> With the GSI, WFF aims to “inject[] actionable empirical evidence into anti-slavery discussions and responses.”<sup>88</sup> It uses “quantitative methods [to] provide[] the first measure of the prevalence of modern slavery in every country and places these figures in the context of what governments are doing to tackle it.”<sup>89</sup> Providing country-by-country rankings and statistics regarding the prevalence and risk of slavery, the GSI is intended to guide “efforts

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84. Nick Miller, *Australian Grace Forrest Inspires Pope Francis and Other World Religious Leaders to Sign Pledge to Eradicate Slavery by 2020*, SYDNEY MORNING HERALD (Dec. 3, 2014), <http://www.smh.com.au/world/australian-grace-forrest-inspires-pope-francis-and-other-world-religious-leaders-to-sign-pledge-to-eradicate-slavery-by-2020-20141202-11ytpw.html>. See also *Declaration*, GLOBAL FREEDOM NETWORK, <http://www.globalfreedomnetwork.org/declaration/> (last visited June 10, 2015) (reproducing the pledge, signed by Pope Francis, Her Holiness Mata Amritanandamayi (Amma), the Chief High Priest of Malaysia, Rabbi Dr. Abraham Skorka, Rabbi Dr. David Rosen, Sheikh Omar Abboud, and the Archbishop of Canterbury, along with representatives of the Zen Master Thich Nhat Hanh, the Grand Imam of Al-Azhar, the Grand Ayatollah Sheikh Basheer Hussain al Najafi, and His All-Holiness Ecumenical Patriarch Bartholomew); John Hooper, *Pope and Welby Joined by Imams and Rabbis for Anti-Slavery Declaration*, GUARDIAN (Dec. 2, 2014, 13:23 EST), <http://www.theguardian.com/world/2014/dec/02/religious-leaders-pope-vatican-slavery-declaration>.

85. GLOBAL FREEDOM NETWORK, *supra* note 84.

86. 2014 GSI, *supra* note 68.

87. See Elisabeth Behrmann, *Gates Helps Australia’s Richest Man in Bid to End Slavery*, BLOOMBERG (Apr. 14, 2013, 7:49 PM), <http://www.bloomberg.com/news/2013-04-10/gates-helps-australia-s-richest-man-in-bid-to-end-slavery.html>.

88. *About the Foundation*, *supra* note 78 (describing the GSI).

89. *Id.*

to eradicate all forms of modern slavery.”<sup>90</sup> The GSI has garnered coverage in mainstream media for the statistics<sup>91</sup> it reports concerning the number of slaves worldwide: 29.8 million in the 2013 GSI,<sup>92</sup> and 35.8 million in the 2014 GSI.<sup>93</sup> These impressively large figures are significantly greater than previous forced labor and trafficking estimates. For example, in 2012, the ILO reported 20.9 million in forced labor;<sup>94</sup> before that, in 2005, the ILO reported that 12.3 million people were in forced labor worldwide, of which trafficking comprised 2.4 million.<sup>95</sup> The overall effect has been to quantify and promote the idea that modern-day slavery is a massive problem worldwide that demands significant attention and resources.<sup>96</sup>

### 3. Coordinating a Global Response: the Global Fund to End Slavery and the Freedom Fund

From WFF’s perspective, the roughly \$124 million being spent by OECD donors<sup>97</sup> annually on combating modern slavery is paltry compared to the reportedly \$150 billion in profits made from enslaving nearly 36 million people world-

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90. *Id.*

91. See, e.g., Reuters, *supra* note 69; Euan McKirdy, *World Has 35.8 Million Slaves, Report Finds*, CNN (Jan. 4, 2015, 1:15 PM), <http://www.cnn.com/2014/11/17/world/walk-free-global-slavery-index-2014/>; Rick Noack, *Map: The World’s 36 Million Slaves*, WASH. POST (Nov. 18, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/11/18/map-the-worlds-36-million-slaves/>; Catherine Phillips, *India Tops Global Slavery Index With Over 14 Million People Enslaved*, NEWSWEEK (Nov. 17, 2014, 2:37 PM), <http://www.newsweek.com/india-tops-global-slavery-index-over-14-million-people-enslaved-284950>.

92. WALK FREE FOUND., THE GLOBAL SLAVERY INDEX 2013 (2013), [http://www.ungift.org/doc/knowledgehub/resource-centre/2013/GlobalSlaveryIndex\\_2013\\_Download\\_WEB1.pdf](http://www.ungift.org/doc/knowledgehub/resource-centre/2013/GlobalSlaveryIndex_2013_Download_WEB1.pdf), at 1–2 [hereinafter 2013 GSI].

93. 2014 GSI, *supra* note 68, 1–2.

94. 2012 ILO GLOBAL ESTIMATE OF FORCED LABOUR, *supra* note 6.

95. 2005 ILO FORCED LABOUR REPORT, *supra* note 17, at 14.

96. Interestingly, the numbers being used now are exponentially greater than the U.S. trafficking statistics that—at 14,500–17,500 trafficked into the United States, and 600,000–800,000 trafficked across borders worldwide—less than a decade ago had generated criticism for being *overinflated*. U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2014); U.S. GOV’T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTI-TRAFFICKING EFFORTS ABROAD 2–3 (2006) (concluding that the “accuracy of [trafficking] estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies”); Jerry Markon, *Human Trafficking Evokes Outrage, Little Evidence*, WASH. POST (Sept. 23, 2007), [http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401_pf.html) (questioning the accuracy of U.S. trafficking statistics).

97. The OECD is the Organisation for Economic Co-operation and Development. See OECD, <http://www.oecd.org/about/> (last visited June 10, 2015). Most of its 34 member states are high-income countries.

wide.<sup>98</sup> Mounting a serious attack on the massive problem of modern-day slavery thus requires a major scaling up of resources devoted to the issue and strategic coordination of global responses.

To that end, WFF created the Global Fund to End Slavery, a public-private partnership created to escalate the resources available to fight slavery by “go[ing] from millions to billions of government and private sector spending.”<sup>99</sup> As explained by its CEO Jean Baderschneider (formerly the Vice President of Procurement for Exxon-Mobil), it aims to “[e]nsure global coordination to avoid fragmented interventions” and to “[e]stablish robust monitoring and impact evaluation efforts to ensure” sharing and scaling of “only the most effective practices and programs.”<sup>100</sup> The Global Fund has been actively creating vehicles for massive fundraising—as exemplified by the introduction of the End Modern Slavery Initiative Act of 2015 (EMSI Act) in the U.S. Congress.<sup>101</sup> The proposed EMSI Act authorizes a 501(c)(3) nonprofit grant-making foundation in the District of Columbia that will seek to raise \$1.5 billion, consisting of \$251 million in authorized funds from the United States over fiscal years 2015–2022, \$500 million from foreign governments, and \$750 million in private funding.<sup>102</sup> There is talk that Forrest has pledged to personally contribute \$250 million to the fund in hopes of inspiring other private donors to invest.<sup>103</sup>

In addition to enabling the necessary “scaling up” of interventions, the massive fundraising serves another crucial end: providing WFF leverage to coordinate global responses to trafficking-cum-slavery. This is a goal WFF shares with its philanthrocapitalist partners in the Freedom Fund. As Randy Newcomb, the CEO of Humanity United, has explained:

[O]ne of the guiding propositions of The Freedom Fund is to foster aligned strategies among private donors in order to encourage growth of the most promising anti-trafficking solutions around the world. Taking a page from the playbook of donors in the global public health space or emerging donor partnerships to address climate change, The Freedom Fund aims to significantly reduce, if not end, human traf-

98. *Why We Need a Global Fund*, GLOBAL FUND TO END SLAVERY, <http://www.fundtoendslavery.org/#about> (last visited June 10, 2015).

99. Baderschneider, *supra* note 70, at 6.

100. *Id.*

101. EMSI Act, *supra* note 73.

102. *Id.* § 5(c)(1)–(2) (conditioning U.S. funds on matching funds from foreign governments and the private sector); *id.* § 4(g) (the Foundation will be responsible for raising \$500 million of the \$750 million in private funding).

103. While this contribution has not yet been publically announced, those involved with the bill’s passage who did not want to be quoted on the record anticipate a public announcement of this commitment soon.

*ficking through far greater coordination. Any donor or set of donors bringing ten million dollars to address human trafficking practices will gain far more leverage and impact through coordination rather than operating in isolation.*<sup>104</sup>

With Freedom Fund and Global Fund operations still in their infancy, how this coordination manifests remains to be seen. The Freedom Fund appears to be targeting its funds at slavery “hotspots”—or geographic areas known (at least partly based on the GSI) to have a high incidence of modern slavery—in Northern India, Southern India, Thailand, Ethiopia, Brazil, and Central Nepal.<sup>105</sup> The Global Fund plans to support antislavery projects (outside of the United States), subject to stringent monitoring and evaluation, with progress tracked against baseline data (based on the GSI) to achieve a 50 percent reduction in slavery.<sup>106</sup>

#### 4. Positioning Corporations as Change Agents

The WFF’s initiatives furthermore envision corporations as crucial change agents. With combined purchasing power of over \$80 trillion, ethical procurement by companies (and governments) has the power to “massively influence the fight against slavery.”<sup>107</sup> WFF thus has been developing tools to assist—and incentivize—corporations to take a “zero tolerance” approach to slavery in their supply chains. WFF has published a guide for supply chain and sustainability professionals that offers “concrete guidance on how to reduce or eliminate the risk of modern slavery occurring in their supply chains, either as a direct or indirect result of their procurement practices.”<sup>108</sup> The guide provides step-by-step practical advice and sample tools to help companies to establish a code of conduct, conduct risk assessments and on-site audits of high-risk suppliers, establish mechanisms for taking corrective action, and improve suppliers’ efforts to clean up their supply chains.<sup>109</sup> To promote compliance, the WFF is developing a Global Business Authentication (GBA) system that aims to work with

104. Randy Newcomb, *Debate: Lessons Learnt From 10 Years and USD 50 Million of Grant Making to End Human Trafficking*, 3 ANTI-TRAFFICKING REV. 152, 153 (2014) (emphasis added).

105. *See Our Approach*, FREEDOM FUND, <http://www.freedomfund.org/our-work/> (last visited June 10, 2015).

106. EMSI Act, *supra* note 73, §§ 8, 3(1).

107. Walk Free Foundation, *Global Business Authentication: WFPN Collaboration Strategy*, Nov 21, 2014 (PowerPoint Presentation on file with author).

108. WALK FREE FOUNDATION, *TACKLING MODERN SLAVERY IN SUPPLY CHAINS (A GUIDE 1.0)* 4 (2014).

109. *See id.*



the world's largest corporate organizations to certify that their supply chains are slave free.<sup>110</sup>

To incentivize companies to join the fight against slavery, WFF has been arguing the “business case” for cleaning up their supply chains. Specifically, there is a great risk of harm in not acting: The reputational harm that comes from using slavery could lead to loss of future sales and investment, loss of employees, and whatever penalties that might issue from noncompliance with applicable regulations. By contrast, ridding supply chains of slavery gives companies competitive advantage through demonstrated leadership, consumer trust, and improved production efficiency.<sup>111</sup> To bolster its arguments, WFF has undertaken a series of consumer polls, surveying consumers in the United States, the United Kingdom, India, and Brazil, which reportedly reveal that most consumers would either switch brands or pay more to avoid purchasing goods with modern slavery.<sup>112</sup> At the helm of both the GBA and the Global Fund are former corporate executives—as opposed to individuals with substantive expertise in antitrafficking issues<sup>113</sup>—signaling WFF's philanthrocapitalist faith in business methods and expertise as preferred tools for addressing modern-day slavery.

## B. Walk Free's Influence on the Antitrafficking/Slavery Movement

In the few short years since WFF's launch in December 2012, Forrest's multipronged antislavery efforts have rapidly gained prominence in the antitrafficking field. The WFF's “virtually unfettered access to the global elite”—exemplified by its resounding endorsements from heads of state, masters of industry, celebrities, and even religious leaders—has helped groom its approach for mass public con-

110. WALK FREE FOUND., *Global Business Authentication: Working With You to Identify and Eliminate Modern Slavery Hidden Within Your Business Operations and Supply Chains*, [http://assets.globalfreedomnetwork.org/2015/01/GBA-flyer\\_January2015.pdf](http://assets.globalfreedomnetwork.org/2015/01/GBA-flyer_January2015.pdf) (last visited June 10, 2015) (noting that “[w]e are uniquely positioned to help protect and enhance corporate reputations by offering modern slavery management toolkits and risk analytics”); Peter Nicholls, WALK FREE FOUND., <http://www.walkfreefoundation.org/our-people/#peter-nicholls> (last visited June 10, 2015) (describing what WFF's Global Business Authentication (GBA) does).

111. WALK FREE FOUND., *supra* note 110, at 10.

112. *Slavery Alert: Consumer Polls*, WALK FREE FOUND., <https://www.walkfree.org/business/> (last visited June 10, 2015).

113. See WALK FREE FOUND., *Our People*, <http://www.walkfreefoundation.org/our-people> (last visited June 10, 2015) (describing GBA CEO Peter Nicholls' extensive background in the private sector); GLOBAL FUND TO END SLAVERY, *Our Team*, <http://www.fundtoendslavery.org/#ourteam> (last visited June 10, 2015) (describing CEO Jean Baderschneider's work as an ExxonMobil Vice President, along with her positions on the boards of various antitrafficking organizations).

sumption.<sup>114</sup> Taking advantage of this elevated stature, WFF has been able to compete with governments and cash-strapped international organizations in shaping global antitrafficking/slavery policy. With its ambitious plan to raise over a billion dollars to fund its strategies—and to work closely with governments and corporations to design and implement them—WFF is positioning itself to set the global antitrafficking/slavery agenda.

While WFF's activities are too new to evaluate for effectiveness, they do raise important questions that warrant close consideration as to the potential risks and benefits of philanthrocapitalist involvement. WFF has attempted to claim a role in global governance via indicator creation, using the GSI to establish expertise in “modern-day slavery”—a WFF-created concept which, unlike its constituent parts, lacks a consensus definition under international law. Building on that claim to expertise, WFF has promoted its own (highly controversial) data and narrative concerning the nature and extent of the problem and how best to eradicate it. Such actions reveal the potentially problematic dynamics of global philanthro-policymaking, not only with respect to philanthrocapitalist influence over substantive policy choices, but also their potential impact on other actors' engagement in the policymaking process.

### 1. Claiming a Role in Global Governance

WFF's “flagship report”—the GSI—signals in many respects WFF's ambition to establish itself as global philanthro-policymaker. Given the ILO's quadrennial forced labor report and the U.S. government's annual TIP Report, it is not entirely clear what, if any, added value the GSI brings to our understanding of the prevalence and risk of extreme exploitation. Nonetheless, close examination of the GSI's use, and responses thereto, illustrates how the GSI has played a crucial role in enabling WFF to claim a role in global antitrafficking governance.<sup>115</sup>

As Kevin Davis, Benedict Kingsbury, and Sally Engle Merry—experts on the use of indicators in global governance—explain:

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114. Anne Gallagher, *The Global Slavery Index: Seduction and Obfuscation*, 50.50 INCLUSIVE DEMOCRACY (Dec. 4, 2014), <https://www.opendemocracy.net/5050/anne-gallagher/global-slavery-index-seduction-and-obfuscation>. WFF is not alone in exerting this level of influence. For example, at a speech at the 2012 annual Clinton Global Initiative conference in New York, President Barack Obama announced a partnership between Humanity United and the White House, financed by \$6 million from sponsors including Goldman Sachs. The resulting initiatives would bolster Humanity United's work at the federal level, including training for police, transportation providers, teachers, and others likely to encounter “slaves” to better identify victims. See O'Connor, *supra* note 60.

115. Kevin E. Davis et al., *Introduction to GOVERNANCE BY INDICATORS*, *supra* note 44, at 3–28 (explaining how indicators can be used as technologies of global governance).

An indicator is a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically over time, and to evaluate their performance by reference to one or more standards.<sup>116</sup>

An indicator can even create the phenomenon it claims to measure—much as, for example, the development of IQ tests helped create the concept of intelligence.<sup>117</sup> An indicator “represents an assertion of power to produce knowledge and to define or shape the way the world is understood.”<sup>118</sup> As “exercises in social power,” they can “mobilize and inform domestic actors, embarrass specific policy makers, and sometimes even activate other transnational pressure and move markets.”<sup>119</sup> Hence, by creating indicators, powerful actors can further amplify the effect of their own moral, institutional, and material resources.<sup>120</sup>

Indeed, indicator creation has been a crucial tool for establishing global authority in the antitrafficking field. The annual TIP Report and attached sanctions regime<sup>121</sup> enabled the U.S. government to solidify its role as global sheriff on trafficking, wielding outsized (and controversial) influence over other governments’ antitrafficking responses.<sup>122</sup> This power has enabled the U.S. government to engage in controversial normative manipulation regarding the scope of the trafficking definition—for example, whether to bring all forced labor<sup>123</sup> or noncoerced adult prostitution/sex work<sup>124</sup> within its confines. In a similar vein, through its periodic release of global estimates on forced labour, the ILO has asserted its

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116. *Id.* at 6.

117. *Id.* at 8.

118. *Id.* at 8.

119. Judith G. Kelley & Beth A. Simmons, *Politics by Number: Indicators as Social Pressure in International Relations*, 59 Am. J. Pol. Sci. 55, 59 (2015).

120. *Id.*

121. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 §2A, 114 Stat. 1464 (2000), at §108 (establishing the U.S. minimum standards for eliminating trafficking), §110 (establishing the annual U.S. State Department Trafficking in Persons Report and its attached sanctions regime).

122. For in-depth analysis of the U.S. antitrafficking sanctions regime, see Anne T. Gallagher & Janie Chuang, *The Use of Indicators to Measure Government Responses to Human Trafficking*, in GOVERNANCE BY INDICATORS, *supra* note 44, at 327; Kelley & Simmons, *supra* note 119; Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437 (2006).

123. See *supra* discussion in main text accompanying footnotes 19–23; Chuang, *supra* note 4.

124. See Chuang, *supra* note 5.

relevance and authority in the antitrafficking field, and staked its position on the legal relationship between forced labor and trafficking.<sup>125</sup>

Following suit, creating the GSI has helped the WFF lay claim to a global governance role in the very crowded antitrafficking field. By establishing the GSI to measure it, WFF has attempted to create the—legally nonexistent—concept of “modern-day slavery,” and, moreover, positioned itself as the leader in the fight to eradicate it. The GSI defines modern-day slavery as comprising forced labor, trafficking, slavery-like practices, and slavery—practices that have long been separately defined and separately regulated under international law.<sup>126</sup> Tellingly, the GSI does not offer an explanation of how its own definition of modern-day slavery is better than those codified by nation-states and accepted in international law.<sup>127</sup> Nonetheless, building an indicator around the modern-day-slavery concept gives it content and perhaps even credibility—the underlying statistical analysis projecting, after all, at least the appearance of scientific authority, rationality, and impartiality.<sup>128</sup>

In what could be viewed as an effort to bolster the GSI’s credibility and the WFF’s expertise in modern-day slavery, WFF hired well-known antislavery academic and entrepreneur Kevin Bales to produce and oversee the GSI.<sup>129</sup> As political scientist Clifford Bob has found, “if marketing is central to a movement’s gaining international support, a gifted salesman, one who identifies himself completely with his “product,” is especially valuable.”<sup>130</sup> Bales is one such fig-

125. See e.g., 2012 ILO GLOBAL ESTIMATE OF FORCED LABOUR, *supra* note 6; 2005 ILO FORCED LABOUR REPORT, *supra* note 17; Chuang, *supra* note 4.

126. See Convention Concerning the Abolition of Forced Labour, *opened for signature* June 25, 1957, 320 UNTS 291 (entered into force Jan. 17, 1959); Convention Concerning Forced or Compulsory Labour, *opened for signature* June 28, 1930, 39 UNTS 55 (entered into force May 1, 1932); Int’l Labour Conference, *Protocol to Convention 29* (June 11, 2014); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime Art. 3, *opened for signature* Nov. 15, 2000, 2237 UNTS 319; Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 60 LNTS 253 (entered into force Mar. 9, 1927); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 UNTS 40 (entered into force Apr. 30, 1957). The trafficking field having long been mired in debates over the parameters of a legal definition and relationship to those other practices, the simplicity of an umbrella concept has its appeal.

127. See Andrew Guth et al., *Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index*, 2 SOCIAL INCLUSION 14, 16–17 (2014) (criticizing the GSI’s methodology).

128. It bears noting that the proposed EMSI codifies the concept of “modern slavery” although it curiously uses as its proposed legal definition the current U.S. legal definition of “severe forms of trafficking in persons.” Compare EMSI Act, *supra* note 73, at §9(3), and TVPA, *supra* note 121, at §103(8), (9).

129. Behrmann, *supra* note 87.

130. Clifford Bob, *Merchants of Morality*, FOREIGN POLICY (Nov. 13, 2009).

ure for the modern-day slavery abolitionist movement. Bales' 1999 bestseller, *Disposable Peoples* had captured widespread media attention with its then-shocking claim that at least 27 million people worldwide were enslaved in a "new slavery" that was worse than "old slavery" because new slaves are "disposable."<sup>131</sup> Since then, Bales has engaged in extensive, high-profile antislavery activities,<sup>132</sup> even seeking, in 2006–2007, to establish a U.S. slavery commission that would track and report on slavery practices worldwide<sup>133</sup>—much as the GSI now enables Bales to do, but from an international perch and with far greater influence and resources.

Ultimately, creating an indicator to track "modern-day slavery" has been a useful device for simplifying understandings of the complex problem of extreme exploitation. Focusing on modern-day slavery allows one to assume away or gloss over complicated questions regarding which practices fit within the contested legal parameters of the trafficking and slavery definitions—most controversially, the inclusion or exclusion of prostitution/sex work and forced labor.<sup>134</sup> Instead, as political scientists Joel Quirk and André Broome point out, modern-day slavery acquires "[a] fixed and unproblematic meaning[]...presumed to be universally applicable irrespective of cultural context."<sup>135</sup> Having thus offered a simplified description of the problem, the GSI then offers to measure it, "crudely converting the social world into numerical values."<sup>136</sup> The GSI's ordinal rankings of countries—visually captured on the GSI's "heat map" color-coding best (pale yellow)

131. See KEVIN BALES, *DISPOSABLE PEOPLES: NEW SLAVERY IN THE GLOBAL ECONOMY* 2–9 (1999); see also Ian Burrell, *Slavery 'Worse Now Than Under Roman Empire'*, INDEP. (Dec. 2, 2000), <http://search.proquest.com/docview/311780005?accountid=14512>; Sherwood Ross, *Workplace: Low Wages? 27 Million Slaves Work for Nothing*, REUTERS (Sept. 25, 2000), <http://www.hishows.bizland.com/JEWELS/News/slaves.html>.

132. For a description of Bales' activities in the field, see KEVINBALES, <http://www.kevinbales.net> (last visited June 10, 2015).

133. See Congressional Commission on the Abolition of Modern-Day Slavery Act, S3787, 109th Cong. (2006) (sponsored by Senators Santorum, Pryor, and Dole); Congressional Commission on the Abolition of Modern-Day Slavery Act, H.R. 6328, 109th Cong. (2006) (sponsored by Representatives Christopher Smith (R-NJ) and John H. Lewis (D-GA)); Congressional Commission on the Abolition of Modern-Day Slavery Act, H.R. 2522, 110th Cong. (2007) (sponsored by Representative John H. Lewis (D-Ga)).

134. See e.g., ANNE GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 12–53 (2012) (recounting debates over the parameters of the legal definition of trafficking in persons under international law); JEAN ALLAIN, *THE LEGAL UNDERSTANDING OF SLAVERY* (2012) (an edited volume containing articles by historians, sociologists, and property law scholars debating the scope of the slavery definition).

135. Joel Quirk & André Broome, *The Politics of Numbers: The Global Slavery Index and the Marketplace of Activism*, OPEN DEMOCRACY (Mar. 10, 2015), <https://www.opendemocracy.net/beyondslavery/joel-quirk-andré-broome/politics-of-numbers-global-slavery-index-and-marketplace-of-ac>.

136. *Id.*

to middling (orange) to the worst (red) countries— enable easy country and regional comparisons. As political scientists Judith Kelley and Beth Simmons point out, such comparisons “once promulgated, are difficult to dislodge from public discourse.”<sup>137</sup> India with its purported fourteen million slaves, for example, has already been singled out in the media for topping the list of slavery-ridden countries.<sup>138</sup> Wielding, through the GSI, the power to name a problem, measure it, and rank country performance, the WFF has thus carved out a role for itself in global antitrafficking governance.

## 2. Framing the Problem and the Response

WFF has used this role to articulate its own vision of the nature and scope of modern-day slavery, and, true to philanthrocapitalist form, is investing vast resources in operationalizing its own solutions. As such, WFF could significantly influence whether global antitrafficking responses will expand beyond the traditional *ex post* penalization and rescue-focused interventions to also include alternative strategies that target the broader systemic problems that foster vulnerability to extreme exploitation in the first place. Indications so far suggest, however, that although WFF is bringing much-needed attention to the role of corporate actors in facilitating modern-day slavery, its preferred strategies hew to the standard approaches that have dominated the antitrafficking field from inception.

Indicators often have embedded in them “what some might call an ‘ideology’— of what a good society is, or how governance should ideally be conducted to achieve the best possible approximation of a good society or good policy.”<sup>139</sup> The WFF’s ideology, as expressed in the GSI and echoed in its other activities, aligns with views of slavery as a crime and moral evil best addressed by solutions that maximize individual (and corporate) capacity and willingness to act more ethically. The GSI, for example, identifies “crime prevention theory” as its underlying theoretical framework for assessing government responses to modern slavery, and suggests, among other measures, that governments “create a climate that induces guilt or shame on those who commit the crime, and strengthen the moral condemnation of modern slavery by both local and global communities.”<sup>140</sup> Private

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137. Kelley & Simmons, *supra* note 132, at 55. See also GOVERNANCE BY INDICATORS, *supra* note 44, at 10.

138. See Phillips, *supra* note 91.

139. Kevin E. Davis, et al., *supra* note 115, at 9.

140. 2014 GSI, *supra* note 68, at 120. The GSI explains that using this theoretical framework, it developed a conceptual framework to identify its performance indicators. The conceptual framework is organized around five goals: (1) “[s]urvivors of modern slavery are identified, supported to exit slavery and remain out of modern slavery”; (2) “[c]riminal justice mechanisms

actors can also be crucial change agents in the abolitionist cause simply by committing to act more ethically. Companies can adopt corporate codes of conduct and commit to enforce—particularly in areas with weak law enforcement and labor inspection systems—existing human rights and labor standards. Companies that do so can earn a slave-free certification from the GBA process. Meanwhile, those that do not, risk public opprobrium and moral condemnation by WFF members, who might engage in mass letter-writing campaigns and join consumer boycotts to compel remedial action.

These strategies are, ultimately, dressed up variants of the standard penalization and rescue strategies that have dominated the antitrafficking field for fifteen years. Disappointingly, however, the numbers of victims identified and perpetrators prosecuted and convicted are far too few<sup>141</sup> and too skewed away from nonsexual labor trafficking for governments to declare success.<sup>142</sup> Against this backdrop, the EMSI Act's target of a 50 percent reduction in the number of modern slaves in the countries of highest prevalence by 2022 seems all the more elusive.<sup>143</sup> Moreover, for all of WFF's faith in corporate actors to lead the an-

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address modern slavery"; (3) "[c]oordination and accountability mechanisms for the central government are in place"; (4) "[a]ttitudes, social systems and institutions that enable modern slavery are addressed"; and (5) "[b]usinesses and governments through their public procurement stop sourcing goods and services that use modern slavery." *Id.* at 119.

141. According to the 2014 TIP Report, in 2013, the combined authorities of more than 180 countries officially identified only 44,758 victims (.1 percent) out of the 35.8 million that the GSI purports to be enslaved worldwide. 2014 GSI, *supra* note 68, at 6; U.S. DEPT OF STATE, *supra* note 96, at 45. Of those identified cases, a total of 9460 prosecutions were brought against the perpetrators, resulting in 5776 convictions. U.S. DEPT OF STATE, *supra* note 96, at 45. Note, however, that the disparity between estimated and identified victims is partly due to the difficulty of detecting, investigating, and prosecuting trafficking without active victim cooperation. Victims come forward at significant risk—for example, of deportation, prosecution for crimes committed during the course of the trafficking, retaliation by the traffickers, and retraumatization by the judicial process. See, e.g., Haynes, *supra* note 12, at 351–52. In the United States, even the prospect of gaining residency status has provided little incentive for cooperation in trafficking prosecutions. Of the estimated 14,500–17,500 people trafficked into the United States each year, during fiscal years 2002 through 2012 only 5820 victims (not including family members of victims) applied for residency status and benefits (of which 3309 were successful). U.S. DEPT OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2012, 37–38 (2014) available at <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/10/28/agreporthumantrafficking2012.pdf>.

142. Nonsexual labor trafficking accounted for only 1199 (12.7 percent) of the cases prosecuted, and 470 (8 percent) of the convictions obtained, despite ILO estimates that *nonsexual* forced laborers comprise 68 percent of forced laborers in the private economy worldwide. U.S. DEPT OF STATE, *supra* note 96, at 45; INT'L LABOUR OFFICE, *supra* note 6, at 13.

143. *Id.* at § 7(a)(2). Notably, that there was a nearly 6 million person increase between the 2013 and 2014 GSI estimates of slaves worldwide appears *not* to have unsettled WFF's faith in its own numbers.

titrafficking charge through adoption of corporate codes of conduct, there is scant evidence to justify its faith in corporate actors' willingness and ability to rid their supply chains of modern-day slavery. A cursory glance at the history of failed efforts to hold U.S. government contractors accountable for violating trafficking and forced labor practices<sup>144</sup> is disquieting in this regard—and that is in a context where strong laws and regulations exist,<sup>145</sup> as opposed to voluntary corporate social responsibility standards.

Indeed, inasmuch as WFF's initiatives might reference workers' rights, there is a telling absence, if not resistance, to the role of labor standards and labor inspection in WFF's metrics and prescriptions. For example, of the 37 variables the GSI considers in determining vulnerability to modern slavery, only two reference labor concerns: "monitoring of labour practices" and worker's rights—neither of which utilizes data from available labor databases.<sup>146</sup> The "monitoring of labour practices" variable is based on the analysis contained in the annual TIP Report<sup>147</sup>—rather than any of the multiple trafficking and forced labor reports produced by agencies with labor expertise: the U.S. Labor Department's International Labor Affairs Bureau, or even the ILO.<sup>148</sup> Similarly, the EMSI Act relies almost exclusively on the trafficking expertise of the State Department rather than of the Labor Department to advise the fund's governing body and its substantive funding decisions.<sup>149</sup>

144. See Sarah Stillman, *The Invisible Army*, NEW YORKER (June 6, 2011), <http://www.newyorker.com/magazine/2011/06/06/the-invisible-army> (describing trafficking of foreign workers into U.S. military bases in Iraq and Afghanistan); Cam Simpson, *Pipeline to Peril*, CHI. TRIB. (Oct. 9, 2005), <http://www.chicagotribune.com/news/nationworld/chi-nepal-specialpackage-special.html> (describing the trafficking of Nepalese men to work for U.S. army contractors in Iraq).

145. See, e.g., Executive Order—Strengthening Protections Against Trafficking in Persons in Federal Contracts (Sept. 25, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>.

146. See 2014 GSI, *supra* note 68, at 127–31 (listing the annual U.S. TIP Report as the source for the "monitoring of labour practices" variable, and a human rights database for the workers' rights variable).

147. *Id.* at 128.

148. See, e.g., *International Child Labor and Forced Labor Reports*, Bureau of International Labor Affairs, U.S. DEP'T. OF LABOR, <http://www.dol.gov/ilab/reports/child-labor/> (last visited June 10, 2015). The ILO's quadrennial forced labor reports are also a potential resource. See, e.g., 2012 ILO GLOBAL ESTIMATE OF FORCED LABOUR, *supra* note 6; 2005 ILO FORCED LABOUR REPORT, *supra* note 17; INT'L LABOUR OFFICE, THE COST OF COERCION (2009), available at [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—relconf/documents/meeting\\_document/wcms\\_106230.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meeting_document/wcms_106230.pdf).

149. For example, the EMSI Act contemplates assigning the Ambassador at Large and Director of the U.S. TIP Office an advisory role in the foundation's governance structure. EMSI Act, *supra* note 73, § 4(h)(i)(1)(B) (provision empowering the Board of Directors to appoint non-voting advisory directors). Moreover, it identifies the TIP Report findings as a basis for deciding which country's programs and projects the EMSI will fund, and to which other donor governments' efforts will be



All told, WFF's initiatives serve to legitimize the status quo—not simply with respect to antitrafficking approaches, but also with regard to how our global economy is fundamentally structured. Nothing in its multipronged strategy suggests a departure from the philanthrocapitalist assumption that “more engenders better”—indeed, the GSI's metrics reflect a built-in assumption that raising a country's level of economic development will reduce the prevalence and risk of slavery.<sup>150</sup> As geographers Siobhan McGrath and Fabiola Mieres point out, in the GSI's heat map, “we see the politics of rescue projected onto the global scale.”<sup>151</sup> Africa is “bleeding red” (signifying the highest prevalence of slavery), with the Middle East and Asia hardly any better, while Latin America appears to be making progress, and Western Europe, North America, Australia and New Zealand are doing well.<sup>152</sup> As McGrath and Mieres argue, the map suggests the problem of slavery is localized—poor governments blamed for not doing better to protect their citizens—rather than related to the interdependence and interaction between the developed and developing world.<sup>153</sup> In this regard, that a country like the United States—where migrant workers face tremendous vulnerability to forced labor because of lax labor frameworks—ranks so highly in the GSI is highly suspect, but not surprising considering the GSI's underlying “more engenders better” metrics. This project ultimately aligns with what philanthropist Peter Buffett has identified as the tendency of the “charitable industrial complex”—or “the world of philanthropy as practiced by the very rich”—to engage in the “philanthropic colonialism” of sprinkling a little charity around while keeping the existing structure of inequality in place.<sup>154</sup>

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directed. *See id.* §§ 7(b)(1), 7(c)(1), 6(c). By contrast, the only role the EMSI Act contemplates for the Labor Department is as a participant in a U.S. government interagency consultation process, designed to provide the views of the U.S. government to the EMSI. *See id.* § 7(f).

150. This is manifest in the heavy emphasis on development measures as variables for determining vulnerability to slavery, for example. 2014 GSI, *supra* note 68, at 127–31.

151. Siobhan McGrath & Fabiola Mieres, *Mapping the Politics of National Rankings in the Movement Against “Modern Slavery,”* ENVIRONMENT AND PLANNING D: SOCIETY AND SPACE (Nov. 28, 2014), <http://societyandspace.com/material/commentaries/mapping-the-politics-of-national-rankings-in-the-movement-against-modern-slavery/>.

152. *Id.*; 2014 GSI, *supra* note 68, at 15.

153. McGrath & Mieres, *supra* note 151.

154. Peter Buffett, *The Charitable-Industrial Complex*, N.Y. TIMES (July 26, 2013), [http://www.nytimes.com/2013/07/27/opinion/the-charitable-industrial-complex.html?\\_r=0](http://www.nytimes.com/2013/07/27/opinion/the-charitable-industrial-complex.html?_r=0). Buffett, the son of Warren Buffett, chairs the NoVo Foundation, which itself has been an active funder of antitrafficking programs. *See People*, NOVO FOUND., <http://novofoundation.org/about-us/people/> (last visited Apr. 7, 2015); *Sex Trafficking: Ending Sex Trafficking and Commercial Sexual Exploitation*, NOVO FOUND., <http://novofoundation.org/ending-violence-against-girls-and-women/strategic-approach/sex-trafficking/> (last visited Apr. 7, 2015).

### 3. Transforming the Advocacy/Policymaking Landscape

Not only might WFF influence the choice of global antitrafficking responses, but it could transform the nature and scope of *other* actors' roles in antitrafficking policymaking and implementation. The promise of WFF funding has already produced a chilling effect on other actors' ability and desire to criticize the GSI—even notwithstanding some glaring and potentially harmful flaws in its methods. The muting (however unintentional) of critical perspectives risks displacing those with much-needed expertise from meaningful engagement in policy discussions and decision making. In addition to undermining the quality of the substantive decisions taken, this dynamic could have serious implications for structure and legitimacy of antitrafficking global governance. Increased philanthro-policymaking raises, for example, the specter of marginalizing or displacing (particularly financially strapped) governments and institutions responsible for developing and implementing antitrafficking responses. That potential shifting of public responsibilities to private hands in turn invites criticism that antitrafficking public policymaking suffers from a democratic deficit, and consequently, a lack of mechanisms to hold philanthrocapitalists to account for the effects of their decision making.

#### a. Potential Displacement Effect

Responses to the GSI thus far are extremely telling as to how WFF's rapid ascendance in the antitrafficking field might affect other actors in the field. Unlike the TIP Report—which has from inception garnered much criticism from governments, academics, and NGOs alike<sup>155</sup>—critique of the GSI has been muted and thus far mainly comes from academics.<sup>156</sup> Those critiques reveal such deep flaws in the GSI's methodology<sup>157</sup> that the largely uncritical acceptance of the GSI's findings suggests a troubling chilling effect at work—and, consequent-

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155. See, e.g., Gallagher & Chuang, *supra* note 122, at 326–28; Kelley & Simmons, *supra* note 119, at 60; Chuang, *supra* note 122, at 474–83.

156. See e.g., Guth et al., *supra* note 127; Ronald Weitzer, *Miscounting Human Trafficking and Slavery*, OPEN DEMOCRACY, (Oct. 8, 2014), <https://www.opendemocracy.net/beyondslavery/ronald-weitzer/miscounting-human-trafficking-and-slavery> (criticizing the 2013 Global Slavery Index (GSI)). Note that, at the urging of a concerned academic, the Washington Post “fact checker” column very recently raised concerns about the GSI. To the best of this author's knowledge, this is the first critique penned by a journalist for a mainstream media outlet. Glenn Kessler, *Fact Checker: Why You Should Be Wary of Statistics on 'Modern Slavery' and 'Trafficking'*, WASH. POST (April 24, 2015).

157. *Id.*

ly, potential displacement of crucial actors and perspectives from the global policymaking arena.

It bears emphasizing from the outset that the GSI purports to measure a phenomenon—modern-day slavery—that lacks a consensus definition under international law. The GSI offers its own definition of modern-day slavery, but that definition changes from year to year,<sup>158</sup> is legally inaccurate,<sup>159</sup> and perhaps is not even used in the primary and secondary sources from which the GSI derives its data.<sup>160</sup> Indeed, the secondary sources cover a ten-year span that predates the GSI.<sup>161</sup> Moreover, because the secondary data consist of “records kept by governments, international agencies, nongovernmental organizations, and other groups” about what they consider to be “specific cases of slavery or indications of slavery,” *what* the secondary data actually measure is uncertain and likely inconsistent from country to country.<sup>162</sup> The GSI’s use of primary data—based on its sampling of 19 countries—is equally problematic. For example, as Anne Gallagher has noted, the 2014 GSI claims 45,006 as a low estimate of slave numbers in Brazil, and almost one million as an upper estimate, and then arrives at a final, unexplained figure of 155,300.<sup>163</sup> The GSI then extrapolates from such

158. The 2013 GSI states that “[m]odern slavery includes slavery, slavery-like practices (such as debt bondage, forced marriage, and sale or exploitation of children), human trafficking and forced labor.” 2013 GSI, *supra* note 129, at 2. The 2014 GSI states that “[m]odern slavery involves one person possessing or controlling a person in such as [sic] a way as to significantly deprive that person of their individual liberty, with the intention of exploiting that person through their use, management, profit, transfer or disposal.” 2014 GSI, *supra* note 68, at 11.

159. The GSI claims that modern-day slavery encompasses trafficking, slavery, slavery-like practices, and forced labor, and listing the legal definitions of each, but its portrayal of the trafficking definition’s legal parameters is wrong. Compare 2014 GSI, “trafficking in persons” definition, *supra* note 68, at 11 (providing a finite list of types of exploitation), with U.N. Trafficking Protocol, *supra* note 11, art. 3.44 (providing a non-exhaustive list of examples of exploitation).

160. *Id.* at 17. Cf. WALK FREE FOUND., GLOBAL SLAVERY INDEX 2014: METHODOLOGY (2014), available at [http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2015/01/GSI2014\\_full\\_methodology\\_new-op.pdf](http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2015/01/GSI2014_full_methodology_new-op.pdf) [hereinafter 2014 GSI Methodology Paper].

161. WALK FREE FOUND., *supra* note 145, at 2.

162. Academic researchers working on the ground have already protested the accuracy of the GSI’s findings—for example, the GSI’s ranks Benin as among the top 10 states with the highest prevalence of slavery, with significant numbers of children reportedly trafficked into slavery in the domestic and mining sectors. See, e.g., Neil Howard, *Keeping Count: The Trouble With the Global Slavery Index*, GUARDIAN (Jan. 13, 2014, 11:17 EST) <http://www.theguardian.com/global-development-professionals-network/2014/jan/13/slavery-global-index-reports> (arguing that far from having been kidnapped or compelled to work, the vast majority of girls and boys working in Benin migrated independently for work).

163. Anne Gallagher, *The Global Slavery Index is Based on Flawed Data, Why Does No One Say So?*, GUARDIAN (Nov. 28, 2014, 08:52 EST), <http://www.theguardian.com/global-development/poverty-matters/2014/nov/28/global-slavery-index-walk-free-human-trafficking-anne-gallagher>. A longer version of Gallagher’s critique can be found on the Open Democracy Beyond Trafficking and Slavery blog. See Gallagher, *supra* note 114.

suspect sample estimates (for Brazil and 18 other countries) to arrive at slavery figures for the remaining 148 countries.<sup>164</sup> But these extrapolations are based on crude notions of similarities between countries that appear to assume away obvious and significant cultural differences. For example, the number of slaves in Singapore is based on it being half like Sweden and half like Japan, with Japan's figure based on it being just like South Korea, whose figure is based on it being somewhere between Cyprus and Western Europe.<sup>165</sup>

But what is even more striking than the deep flaws in methodology is the uncritical acceptance of them in mainstream policy discourse—signifying the power WFF holds in the antitrafficking/slavery field. For example, as Anne Gallagher noted in her trenchant critique of the GSI<sup>166</sup>—one of the only critiques published in mainstream press—there has been a resounding silence from other prominent trafficking experts in the face of the GSI's obvious flaws.<sup>167</sup> The muted response is in some respects not surprising. Philanthropies are, after all, a crucial source of highly competitive funding for NGOs, international organizations, and governments engaged in antitrafficking efforts worldwide. Grant seekers thus might refrain from criticism of potential funders out of a legitimate worry that doing so could result in their defunding. Indeed, an alarming number of experts who would otherwise be potential critics of the funders' methods have—or have had—partnerships and advisory roles with WFF and its partners.<sup>168</sup> This signals either the possibility of co-optation, or of a hopeful desire to exert some moderating influence on the work of this powerful actor. The responses to Gallagher's article suggest, however, a chilling effect at play at least vis-à-vis certain grantseekers. Despite the online version being directly shared over eight hundred times on social media platforms Twitter and Facebook, Gallagher's article received a disproportionately small number of comments.<sup>169</sup> This combination suggests the piece had resonance among many readers, but few who were emboldened to either defend the GSI or support Gallagher's critique.<sup>170</sup> That assumption is strengthened by several of the many emails Gallagher received thanking her for the article, but ex-

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164. See 2014 GSI Methodology Paper, *supra* note 160.

165. See sources cited *supra* note 163.

166. *Id.*

167. See *id.*

168. *Id.*

169. Telephone Interview with Anne Gallagher, Advisor, United Nations (Dec. 29, 2014).

170. *Id.* See Email from NGO to Anne Gallagher, Advisor, United Nations (Dec. 9, 2014, 4:01:36 pm) (on file with author) (from an NGO expressing concern over its experiences with WFF but explaining that it could not express this because of worries about being unable to access future funding).

plaining how WFF's dominance in the field and promise of funding precluded them from openly criticizing WFF's methods.<sup>171</sup>

Civil society organizations and individual experts are not the only actors affected by the WFF's skyrocketing stature in the field. Even the ILO—which has painstakingly sought to produce and refine global statistics on forced labor and trafficking over the last ten years—has not only been silent about the GSI's flaws, but has partnered with WFF to help launch the Global Fund to End Slavery.<sup>172</sup> As Gallagher notes, “[c]ash-strapped, like all UN agencies, and with an understandable desire to maintain its place as a key player on this issue, the ILO is hardly in a position to bite the hand that feeds so generously.”<sup>173</sup> One can only imagine what impact WFF might have on individual governments' efforts to address trafficking—particularly those lacking in expertise or capacity. Whether WFF's potential dominance in the global arena amplifies or detracts from other international actors' ability to formulate and apply antitrafficking policies remains a worrisome possibility.

#### **b. Philanthro-policymaking in an Echo Chamber**

Compounding the problem of potential marginalization or displacement of other actors is the stark absence of built-in mechanisms to hold WFF and other philanthrocapitalists accountable for their actions. Philanthro-policymaking can all too readily take place in an echo chamber, impervious to scrutiny, much less criticism. Unlike other actors, philanthrocapitalists do not have an electorate, shareholders, or outside funders or supervising authorities to whom they must account for the effects of their decisionmaking. However good their intentions might be, the absence of accountability mechanisms risks philanthro-policymaking yielding harmful impacts on the field.

If WFF's treatment of criticisms of the GSI is any indication, philanthrocapitalists can thus pursue their visions unburdened by the need to respond to, much less address, critical perspectives. Tellingly, the WFF has been able to maintain silence in the face of the devastating criticisms levied at the GSI. But as Gallagher rightly cautions, when poorly substantiated data provides the basis for decision making in the law and policy arenas, they can yield potentially highly damaging, unintended outcomes.<sup>174</sup> The GSI, for example, is designed to provide the empirical basis for WFF's activities: it apparently will provide baseline

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171. *Id.*

172. See Baderschneider, *supra* note 99.

173. See Gallagher, *supra* note 114.

174. See Gallagher, *supra* note 114.

data against which the progress of interventions funded by the Global Fund to End Slavery will be measured,<sup>175</sup> and also inform the Freedom Fund's identification of slavery "hotspots" to which it will direct its funding.<sup>176</sup> Moreover, since the GSI currently provides the only estimate of numbers of slaves per country, it will presumably be the measure by which the EMSI Foundation will, per the EMSI Act, "select[] and support[] innovative strategies with the aim of verifiably and sustainably reducing the prevalence of modern slavery by 50 percent in targeted populations within partner countries . . . with a high prevalence of modern slavery . . . ."<sup>177</sup>

Benin expert Neil Howard offers one example of how flawed data in the GSI could have damaging consequences on the ground. Contrary to the GSI's portrayal of Beninese youth as enslaved, Howard argues, research on the ground has found that the majority of girls and boys had decided independently to migrate for work, and worked under conditions that were hard, but not arising to the level of modern-day slavery.<sup>178</sup> Yet, Benin—listed in the GSI as among the 10 worst countries—has now been inappropriately "tarred with the brush of slavery" and will now be under significant pressure to criminalize the work or migration that forms part of the key economic strategies of the poor.<sup>179</sup>

### C. Maximizing Philanthrocapitalist Potential

Howard's prediction regarding Benin offers a glimpse of how and why experts are cautious regarding the impact of philanthro-policymaking on the trafficking field. It also underscores how, to maximize their potential for bringing positive changes to the field, philanthrocapitalists should make a conscientious effort to ensure that its policymaking is informed by the deep expertise that already exists in the field.

To be sure, refraining from the impulse to substantively define the goals of the field, along with the "best practices" to achieve them, takes a measure of hu-

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175. See *Progress*, GLOBAL FUND TO END SLAVERY, <http://fundtoendslavery.stage.grassriots.com/#progress> (last visited June 10, 2015) (stating that "[t]he Global Fund's approach will be informed by the Global Slavery Index, which is currently conducting national level surveys in high prevalence countries to improve baseline estimates of slavery").

176. See, e.g., *Brazil Hotspot*, FREEDOM FUND, <http://www.freedomfund.org/casestudy/brazil-hotspot/> (last visited June 10, 2015) (citing statistics from the 2014 GSI as indicators that Brazil is a slavery hotspot).

177. EMSI Act, *supra* note 73, § 3(1).

178. Neil Howard, *Keeping Count: The Trouble With the Global Slavery Index*, THE GUARDIAN (JAN. 13, 2014), <http://www.theguardian.com/global-development-professionals-network/2014/jan/13/slavery-global-index-reports>.

179. *Id.*

mility often elusive among those accustomed to power. Yet it is not impossible. The work of Humanity United offers a hopeful example of a philanthrocapitalist venture that has endeavored to adopt such an approach. In contrast to WFF, Humanity United has been engaged in the antitrafficking field for nearly a decade, yet the pace of its work has been comparatively glacial—known within policy and advocacy circles for its careful (albeit time-consuming) weighing of ideas before pursuing its various activities.<sup>180</sup> Its willingness to play a supporting role vis-à-vis other actors in the field has produced palpable, beneficial change in the field. For example, before Humanity United created ATEST, antitrafficking NGOs in the United States suffered from paralyzing in-fighting over prostitution reform. By establishing ATEST to provide funding and administrative support to the groups—with the goal of promoting coalition-building—Humanity United helped nudge the groups to find common ground and jointly advocate for a shared legislative agenda. Particularly noteworthy is that Humanity United refrained from defining ATEST's substantive agenda, encouraging the individual member NGOs to work through their differences to define a set of shared priorities. ATEST has since become a powerful lobbying coalition, bringing a deep bench of expertise to bear on U.S. legislative reform efforts.

Analysis of broader funding dynamics in the trafficking/slavery field suggests there is much to be gained from donors assuming more of a supportive role. Those working on the ground have noted how the basic design of the current funding system hinders proper selection of targets and goals for funding. Specifically, funding structures evince a top-down dynamic; needs are identified not by those working on the ground, but by those positioned at the top of funder bureaucracies, whether governmental or private.<sup>181</sup> These bureaucracies identify priorities and then hand them down to foreign aid agencies in developing countries, often with little consultation with the target beneficiaries or local practitioners to assess critical needs or the most effective initiatives to fund.<sup>182</sup> This top-down dynamic has fed a funder preference for projects that yield dramatic (and quick) results, such as victim rescues, rather than long-term, riskier projects like victim reintegration, which those working with trafficked people point to as desperately needed.<sup>183</sup> Funding streams also tend to track donor priorities, such

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180. This impression has been personally communicated to the author by several prominent antitrafficking experts and advocates in the field.

181. Victoria I. Nwogu, *Anti-Trafficking Interventions in Nigeria and the Principal-Agent Aid Model*, 3 ANTI-TRAFFICKING REV. 41, 48–49 (2014).

182. *Id.*

183. *See id.* at 48–49 (“Voters in the rich country and their representatives are the ones who choose the actions of the foreign aid agency. They love the Big Plans, the promises of easy solutions, the utopian dreams, the side benefits for rich-country political or economic interests, all of which hands

as government funding of projects that aim to reduce irregular (or undocumented) migration being prioritized over those that provide meaningful victim assistance.<sup>184</sup> Financially dependent on the funding streams for survival, local groups then adjust their mandates to donor preferences, however incommensurate they may be with the needs identified by those working on the ground.<sup>185</sup>

Philanthrocapitalists could do much good by actively countering this dynamic and soliciting frequent and candid input and feedback from local groups. Given the chilling effect that philanthrocapitalist positioning in the field can have, fostering genuinely candid engagement requires that philanthrocapitalists be transparent about their own failures.<sup>186</sup> In addition to improving project selection and design, such transparency—and the accountability it enables—may itself be “an essential ingredient of a new twenty-first century ‘social contract’ that will allow private means to fulfill their potential to help solve public problems.”<sup>187</sup> Proponents of philanthrocapitalism argue that philanthrocapitalists’ freedom from the “tyranny of shareholder demands” and the burdens of fundraising uniquely position them “to think long-term, to go against conventional wisdom, to take up ideas too risky for government, to deploy substantial resources quickly

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the aid agency impossible tasks.”) (quoting WILLIAM EASTERLY, *THE WHITE MAN’S BURDEN: WHY THE WEST’S EFFORTS TO HELP THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* 149 (2007)); *see also* DENISE BRENNAN, *LIFE INTERRUPTED: TRAFFICKING INTO FORCED LABOR IN THE UNITED STATES* 16–20 (2013) (discussing how trafficking survivors in the United States remain extremely vulnerable to exploitation, even re-trafficking); BARBARA LIMANOWSKA, *TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE* 54 (2005) (discussing funder preferences); Rebecca Surtees & Fabrice de Kerchove, *Who Funds Re/integration?: Ensuring Sustainable Services for Trafficking Victims*, 3 *ANTI-TRAFFICKING REV.* 64, 66 (2014).

184. *See* BRENNAN, *supra* note 183, at 16; Nwogu, *supra* note 181, at 50–51. For example, a vast amount of money is spent on awareness campaigns reminding potential migrant workers of the realities, dangers, and possible impacts of irregular migration—even in contexts that are already saturated with such messaging. Nwogu, *supra* note 181, at 52–53.

185. *Id.* at 49–50.

186. Omidyar’s essay taking responsibility for having invested in Global Horizons—a foreign labor supplier later found to have engaged in highly exploitative labor practices—without adequately investigating the company’s supply chain practices could be viewed as one such effort at transparency. *See* Pierre Omidyar, *Beyond Business: Global Horizons, Maui Land & Pineapple Yield Sobering Reminder*, HONOLULU CIVIL BEAT (May 7, 2010), at <http://www.civilbeat.com/2010/05/824-beyond-business-global-horizons-maui-land-pineapple-yield-sobering-reminder>.

187. Matthew Bishop, *Philanthrocapitalism: Solving Public Problems Through Private Means*, 80 *SOCIAL RESEARCH* 473, 476 (2013). For example, Humanity United’s efforts to undertake a “systems analysis” of its own work—entailing “critical analysis, detailed mapping of systems to determine where [its] resources would be the most impactful, rechecking [its] assumptions, and trying to anticipate and account for emerging trends” is perhaps an attempt to uphold its end of the ‘social contract.’ HUMANITY UNITED, *PERFORMANCE REPORT 2014*, *supra* note 60, at 3.



when the situation demands it—above all, to try something new.”<sup>188</sup> But safeguards to ensure transparency and accountability must be in place before we can have any faith in their ability to transform a field for the better.

### CONCLUSION

Bringing a perspective that is not “too close to the ground,” philanthrocapitalist involvement could offer, in Shulman’s terms, aspirin for many of the headaches that plague the sprawling and rudderless antitrafficking field.<sup>189</sup> The problems WFF (and Humanity United) have identified—fragmentation of efforts resulting at least in part from the intense competition for scarce funding, and the lack or absence of evaluative measures to test the impact of interventions<sup>190</sup>—are indeed chronic problems.<sup>191</sup> Philanthrocapitalist involvement could bring the infusion of much-needed funds, and impose discipline on their use.

But the centralization of substantial power in donor hands requires that that power be exercised judiciously. The lack of built-in accountability measures requires guarding against too deep a faith in the infallibility of one’s good intentions. At the same time, that freedom from the constraints that other actors experience uniquely positions philanthrocapitalists to take risks and innovate. They have the ability, for example, to look beyond the seemingly “quick fixes,” and seek to develop comprehensive, long-term prevention strategies that are so desperately needed yet so chronically overlooked. Serious and thoughtful engagement with substantive experts in the field could help them identify which of

188. *Id.* Philanthrocapitalists could, for example, offer a broader slavery narrative that, in comparing the political economies of old and new slavery, underscores the need for structural reforms to reduce migrant workers’ vulnerability to extreme exploitation. Or they could focus on other features of our global economy that drive people to migrate from their home countries for survival—e.g., greater scrutiny of structural adjustment programs that undercut an indebted government’s ability to provide basic social services, or how agricultural policies in one country (e.g., subsidies) might undercut job prospects in a corresponding agricultural sector in another country. Or they might focus on how local labor standards are affected by trade policies, and perhaps find ways to better reconcile the competing interests in pursuing economic growth while protecting workers.

189. Shulman, *supra* note 24, at 222–23 (describing the benefits of venture philanthropy).

190. *See supra* notes 104–07 and accompanying text.

191. The 2014 edition of the peer-reviewed interdisciplinary journal ANTI-TRAFFICKING REVIEW (ATR) sought to uncover long-elusive answers to a key question in the field: How is money to combat human trafficking being spent? For the guest editor of that edition, the limited information ATR was able to compile engendered “amazement (at the sums apparently involved), concern (at the lack of real insight into how money is allocated and spent) and cynicism (at what appear to be rather modest achievements).” Dottridge, *supra* note 2, at 3. Indeed, the modern antitrafficking movement has invited much criticism for the notable lack of efforts to engage in independent evaluation of funded projects. *See* U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 96, at 3; Frank Laczko, *Introduction to DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY*, 43 INT’L MIGRATION SPECIAL ISSUE 5, 9 (2005).

the many other problems that plague the antitrafficking field would best be suited for philanthrocapitalist intervention. Only through such careful weighing of risks and benefits to engagement can philanthrocapitalist make good on their promise to reduce, if not eradicate, modern-day slavery worldwide.

