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## From the Executive Editor:

### *The Retreat of the Rule of Law in Transnational Migration*

By Markus Zimmer



In 1651, the English philosopher Thomas Hobbes published his seminal work, *Leviathan, or the matter, forme, and power of a commonwealth, ecclesiasticall and civill*. In the absence of political institutions organized to maintain order and administer justice, human beings are consigned to an existence he described as "...a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other

security, than what their own strength...and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short."

Nearly four centuries later, the world's geography is framed by political boundaries that define 195 states of which all but two, the State of Palestine and the Holy See, comprise the United Nations, and all of which are founded on political institutions. Lamentably, the viability and legitimacy of those institutions fluctuate wildly from one state to another. Citizens of some enjoy the benefits and protections of rule-of-law-based justice institutions; others languish in uncertainty where the institutional framework of government either has not advanced beyond embryonic political infancy or has deteriorated into dysfunction as a consequence of public-sector corruption, ideological fractures and intransigence, a coup d'etat, descent into violence, sheer ineptitude or any combination thereof. The narratives of political corrosion and dysfunction are myriad. Those states deemed incapable of providing even the most basic public services function as failed states where the conditions described by Hobbes thrive.

Many individuals, for reasons based variously on despair and fear, hope and dreams, opt to abandon their states of origin, risking the treacherous status of transnational migrants or refugees. Most have neither wealth nor political connections; knowingly or not, they forfeit expectations of state-sponsored support and assistance once they cross borders. Residents of preferred destination states are increasingly disinclined to assimilate an endless succession of desperate migrants, even when their own genealogy leaks family origins in far-off lands. They legislate constraints to minimize the number granted access and benefits.

For a contracted price or commitment to indenture, these migrants entrust their transit to smugglers and traffickers who operate outside of diplomatic frameworks and who either contemptuously defy or pay off incompetent and/or corrupt border control, criminal justice, and judicial/court system officials. Use of transnational smugglers is a high-risk venture. Desperate for a better life, migrants and refugees commit themselves to exploitative contracts that consign family resources or conscript them to lengthy terms of indentured service or crime in exchange for presumptively safe passage. There are no guarantees. The destination may entail transit through multiple states; a typical route worms its way from states such as Nigeria in sub-Saharan Africa through Niger into Libya to the lawless shores of Tripoli. From there, they are jam-packed into inflatable or other often unseaworthy vessels to cross the perilous Mediterranean to Messina in northeastern Sicily, a gateway to Italy and other European countries.

The stakes are grim. Cities along transit routes are strewn with squalid brothels in which sub-Saharan girls and young women and, to a lesser extent, boys and young men, languish, their passage interrupted. Beaten, starved, drugged and raped into

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submission, they have little recourse. Some purchase passage on trucks across expanses of harsh desert between cities en route, only to be preyed upon by gangs of bandits who ransack valuables and siphon gasoline, before being abandoned by their drivers. Corrupted and compromised local criminal-justice sector officials supplement meager public-sector salaries with illicit payments that shield slavers, brothel owners, chain-gang enforcers, and other exploiters from any criminal sanctions provided for in the law. Indeed, the vast majority of these hapless and innocent victims of circumstance, of the banality of human evil, never cast a shadow in the entrance to a court of law.

Circa 150,000 migrants and refugees traversed the Mediterranean from Libya to Europe in 2015; nearly three thousand others drowned en route. For those fortunate enough to elude drowning and to complete their transit into Southern Europe, the battle continues to the next phase. Although the Mediterranean and Adriatic states may have more advanced political institutions than their northern African counterparts, all are plagued by public-sector corruption that compromises efforts to absorb and assist these migrants and refugees. Other aggravating factors that adversely affect their treatment are public-assistance resource constraints on what can be provided for these wretched souls, epidemic levels of compassion fatigue among governments, and the resurgence of nationalism, bigotry, xenophobia and intolerance among many locals. Clearly there are humane and caring locals who shelter and feed them but they, too, are overwhelmed by the need.

These waves of African refugees and migrants identify western European states as their ideal final destination, but shifting public attitudes toward them in those states are spawning new laws that suffocate migration and the conferral of refugee status. European governments exerting diplomatic pressure and deploying surveillance along the Mediterranean Africa coastline are stemming transnational migrant and refugee smuggling, culminating in a buildup at point Libya in the transit pipeline, spawning ad hoc detention camps where migrants subsist under grossly inhumane conditions. The International Organization for Migration reported in March 2017 the re-emergence of slave markets in Libya, distantly evocative of the North African Barbary slave trade in the 16th through the 18th centuries. Pirates repeatedly raided and looted coastal European towns from the northern Mediterranean and western European coastlines as far north as Scandinavia, kidnapping impoverished Europeans and marketing them in northern African coastal city slave markets. The same fate awaited persons aboard ships captured by the pirates, much of it in collusion with leaders of the North African Ottoman provinces and Morocco's Sultanate, which authorized the kidnapping of Christians. Even the distant United States was coerced into payment of tribute to guarantee safe passage of its ships, crews and passengers in the region.

As the trucks transporting prepaid migrants complete their cross-desert passage into cities such as Sebha in Libya, drivers may demand payment, claiming smugglers did not pay them. They deliver their destitute human payloads to parking-lot slave markets where they are auctioned off to Libyans who take them into custody, detain them in "connection houses," and coerce them to contact their families by mobile phone to arrange for payment by Western Union or Money Gram to secure their release, often beating them while in contact to heighten the drama. Upon payment, they may or may not be released. Some are utilized for manual labor and subsequently resold. Those unable to pay are returned to the market and re-auctioned; families may require weeks or months to arrange for payment while the victims struggle to survive on a single daily meal, their detention laced with frequent beatings. Some die in captivity; others who are uncooperative or troublesome simply disappear. Women are frequently purchased by wealthy Libyans and kept as sex slaves. Prices for them start at the equivalent of €2,000 – more than double what the slavers pay for men. The absence of credible institutions of justice and the dysfunctional rule of law contribute to a milieu of lawlessness of the sort described by Hobbes.

Those who manage to beat the odds and surreptitiously enter Southern European states without diplomatic authorization live in constant fear and anxiety of apprehension as they struggle to survive. Women and pubescent girls raped by their abusers may arrive penniless, pregnant and traumatized. Targeted by unscrupulous predators who warn these migrants and refugees against alerting law enforcement where a worse fate looms, they are further victimized and exploited, without recourse to institutions that administer justice. Access to justice remains a chimera, often reinforced by threats that failure to cooperate will result in referrals to immigration police. For a sense of the numbers, the European Union's Frontex border agency reported that 23,000 migrants transited through Libya in the first quarter of 2017.

Migrant enslavement is not confined to Northern Africa. In October 2017, *The Independent* reported that following demolition of the Calais shantytown, near the French entrance to the underground Eurotunnel, which connects to England and serves as a conduit to the UK for human smuggling and trafficking, thousands of desperate families now subsist in the nearby woods between Calais and Dunkirk. Having negotiated with smugglers for passage through the Chunnel at exorbitant rates, their wait is laced with fear and anxiety. More desperate are the destitute and unaccompanied children and teens preyed upon by criminal trafficking and smuggling networks, which offer them free passage in exchange for extended terms of forced labor or criminal activity, such as illicit drug distribution and prostitution equivalent in labor value to thousands of dollars. Here again, their access to justice is precluded out of fear of being deported, fear that their criminal handlers routinely refresh and stoke. These immigration trafficking networks are proliferating and adopting increasingly brazen recruiting tactics. Reuters reported on 30 October 2017 that traffickers in Britain now prowl the environs around soup kitchens, homeless shelters, and charitable organizations serving street people, stalking hapless and vulnerable undocumented migrant and other recruits for domestic servitude, forced labor and sexual exploitation.

In the Americas, burgeoning homicidal violence in the developing states of the northern triangle of Central America (NTCA), higher than in any other country including those engaged in armed conflict or war, has fueled equivalent transnational migration northward into Mexico, the United States and Canada. Open gang violence against innocent civilians in the NTCA countries has reached epic proportions, attributable in part to the forced repatriation of gang members apprehended and charged with violent crimes in the United States to their home countries, typically small and impoverished developing Central American states ill-equipped to engage them in constructive rehabilitation, education and employment training programs. The paradigm is one of these states as dumping grounds for vicious criminals spawned in the streets of U.S. cities. Deprived of legitimate opportunity, many resume their lives of violent crime in a much less restrictive setting where they prey on innocent civilians and perpetuate a culture of fear, insecurity and domestic terror. That culture manifests itself in sexual violence as an instrument to foster intimidation and subordination, the forced conscription of youth into gang ranks, illicit drug trafficking, blatant kidnapping for ransom, and homicide. The violence also is attributable to the illicit flow of firearms easily acquired in the U.S. and trafficked by U.S.-based criminal networks into Mexico and states south that sustains the reign of terror.

Because government law-enforcement institutions operate within a public-sector framework that is under-resourced, corrupted, and ill-equipped to constructively respond, the gangs organize themselves into powerful criminal networks that fill the vacuum left in the wake of the ineffective, overburdened and compromised public sector. Fearful of losing their children to those networks, desperate parents negotiate

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with smugglers for passage for their youngsters to the north into Mexico and from there to the U.S. The number of NTCA minors detained in 2011 exploded tenfold from 4,129 to 40,542 in 2016. Of children 11 years or younger, nearly 13% were registered as unaccompanied. Notwithstanding increasingly stringent enforcement of anti-immigration laws on the Mexican and U.S. borders and the risks posed by a variety of predators and organized crime networks, including human traffickers, lying in wait along the migration routes, many parents feel they have no recourse other than to dispatch them on the perilous journey northward. A *Médecins Sans Frontières* survey in 2015-2016 of migrants and refugees who managed to reach Mexico revealed that 68.3% had been victims of violence while underway; 38.7% reported more than one violent encounter. Frequently, the violence was of a sexual nature. Byproducts of the violence among these vulnerable populations are sustained emotional and psychological trauma, depression, anxiety and post-traumatic stress syndrome.

The violence, sexual abuse, and mental health trauma notwithstanding, these victims have limited access to the effective administration of justice and constructive medical treatment. Although the governments of Mexico and other Central and Latin American countries have cooperated with the Office of the High Commissioner for Refugees to implement conventions, declarations, laws, and other provisions intended to protect migrants, effective on-the-ground law enforcement along the migrant routes turns out to be more miss than hit. Not infrequently, sexual and other forms of migration violence are perpetrated by border control officers, local police, and other government officials whose jurisdictions oversee the perilous migration routes.

Moreover, for the vast majority of those apprehended by Mexican immigration control authorities, hopes are dashed. Of 152,231 NTCA migrants and refugees detained and processed in 2017 by government migration officials, 141,990 or 93% were deported, many within 36 hours, back to their states of origin and their cultures of violence. The head of the current political administration in the United States has made clear his priorities by repeatedly confirming his intent to finance construction with taxpayer-generated revenue of an enormous impenetrable wall along the entire length of the U.S./Mexico border. Such a wall is unlikely to impede human smugglers and traffickers. And in early November 2017, the Acting Secretary of Homeland Security announced cancellation of the legal authority effective January 2019 that enabled over 5,000 Nicaraguan immigrants who have lived and worked in the U.S. for two decades. The next round of cancellations is likely to affect 86,000 Hondurans, resulting in the potential deportation of nearly 100,000 back to their NTCA states of origin. And that is only the beginning.

Arguably, the role and function of court systems worldwide entail contributing to the discussion to determine practical ways in which to address improved access to justice for these wretched innocent victims driven by the desperate gamble for a better shot at life, the promise of a more profound future for their children, the hope for a life unencumbered by crime and violence, and the opportunity to access public institutions committed to protecting the innocent from Hobbes' succinct description of the state of nature.

