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COMMENT

Looking for Love in All the Wrong Places: A Call to Reform State Law on Sex Trafficking

I. Introduction

In fall 1980, high school sophomore Theresa Flores relocated from her home in Ohio to Birmingham, Michigan, an affluent and mostly white suburb just outside Detroit.¹ Her father, a corporate executive, moved the family around often.² Like any fifteen-year-old girl, Theresa struggled with the adjustment to a new school and a new life.³ Leaving her friends behind, she endured the process of starting over again.⁴ After eight moves in fifteen years, she was becoming an expert at starting over.⁵ An average student of average looks,⁶ Theresa soon joined the track team and developed a steady social rhythm.⁷ But instead of settling into a nice, normal high school experience, Theresa discovered over the course of the next year the brutal realities of sex trafficking.⁸ She suffered a ravaged body and spirit, and nearly lost her life.⁹

Theresa's nightmare started with a seemingly innocent crush on an older Chaldean boy.¹⁰ His exotic cultural identity evinced a mystique that sent her swooning.¹¹ As they spent increased time together, the romance intensified.¹² What began one day as a kiss at his house became a grave miscalculation Theresa would inestimably regret.¹³

1. THERESA L. FLORES, *THE SACRED BATH: AN AMERICAN TEEN'S STORY OF MODERN DAY SLAVERY* 6-7 (2007).

2. *Id.* at 6.

3. *Id.* at 8.

4. *Id.* at 6.

5. *Id.*; THERESA L. FLORES & PEGGYSUE WELLS, *THE SLAVE ACROSS THE STREET: THE TRUE STORY OF HOW AN AMERICAN TEEN SURVIVED THE WORLD OF HUMAN TRAFFICKING* 28, 104 (2010).

6. FLORES, *supra* note 1, at 8.

7. *See id.* at 16-17.

8. FLORES & WELLS, *supra* note 5, at 45-118 (detailing the experience and trauma of being trafficked for sex).

9. *Id.*

10. *See id.* at 38; Mike Celizic, *Former Teen Sex Slave Says Trafficking Common*, MSNBC (Feb. 13, 2009, 11:53 AM), http://today.msnbc.msn.com/id/29181173/ns/today-today_news/t/former-teen-sex-slave-says-trafficking-common/#.UPB7NneLbh1.

11. *See* FLORES & WELLS, *supra* note 5, at 37-38.

12. *See id.* at 38.

13. *See id.* at 47-48.

Though uncomfortable with his pace of advance, and despite her repeated attempts to stop him, the boy forced himself on and raped Theresa in the apparent privacy of his bedroom.¹⁴ Unbeknownst to Theresa, the entire liaison was a setup from the beginning—an attempt to coerce her into the employ of a sophisticated criminal syndicate.¹⁵ While the boy raped her, his cousins took photographs from a hidden vantage, making the entire event appear consensual.¹⁶ Ashamed and embarrassed by the graphic photographs and what they suggested, Theresa decided she would do whatever it took to keep the pictures from reaching her parents, classmates, and teachers—exactly what the men threatened unless she acquiesced to their demands.¹⁷

For the remainder of the school year, men transported Theresa from her house at night after her parents went to bed.¹⁸ They took her to different parts of the city and repeatedly sold her for sex.¹⁹ Some days, Theresa would come home to find the carcass of a dead animal in her mailbox.²⁰ The macabre message communicated that she had no way of escape.²¹ A new level of hopelessness and fear welled up in her heart.²² These men owned her.²³

Though arresting and tragic, Theresa's story is not unique.²⁴ Studies suggest that over twenty-seven million people globally are held captive as slaves—some for manual labor, and others, like Theresa, for sexual exploitation.²⁵ The Department of Justice reports that from 2008 to 2010, federally funded human trafficking task forces identified over 2500 suspected cases of human trafficking in the United States alone, 82% of

14. *Id.*

15. *See id.* at 111-12.

16. *Id.* at 52-53.

17. *See id.* at 51-54, 57-60.

18. *See id.* at 57-66.

19. *See id.* at 57-66, 77.

20. *See id.* at 92.

21. *See id.* at 97-98.

22. *See id.* at 98.

23. *See id.* at 99-102.

24. *See generally* DAVID BATSTONE, *NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE—AND HOW WE CAN FIGHT IT* (rev. ed. 2010) (recounting various child sex trafficking stories from around the world).

25. KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY* 3, 6 (2009).

which were classified as sex trafficking.²⁶ Moreover, 83% of confirmed sex trafficking victims in those investigations were United States citizens.²⁷ Similarly, a 2008 Global Report on Human Trafficking in Persons, published by the United Nations Office on Drugs and Crime, found that 79% of the trade in people involved sex trafficking.²⁸

The pervasiveness of sex trafficking notwithstanding, exploiters buy and sell people to fulfill a number of economically profitable roles, including agricultural workers, construction laborers, landscapers, domestic servants, restaurant employees, assembly line attendants, and launderers.²⁹ Despite the prevailing popular perception, human trafficking is not simply a “third world problem.”³⁰ It is as alive and well in Detroit, Michigan,³¹ as it is in Phnom Penh, Cambodia.³²

Research suggests that twice as many slaves exist in the world today than during the entire 350 years of the transatlantic slave trade.³³ But today’s underground oppression is met with broad governmental and social disapproval,³⁴ unlike the public subjugation that flourished in antebellum America.³⁵ From 2000 to 2002, 117 nations formally stated their commitment to the prohibition, prevention, and diligent prosecution of human trafficking.³⁶ Additionally, as of 2008, there were “twelve

26. DUREN BANKS & TRACEY KYCKELHAHN, U.S. DEP’T OF JUSTICE, NCJ 233732, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010, at 1 (2011), available at <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

27. *Id.*

28. U.N. OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 6 (2009), http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

29. BALES & SOODALTER, *supra* note 25, at 6.

30. *See id.* at 3, 6.

31. *See* Patricia Montemurri, *Mich. Law Clinic at Forefront of Human Trafficking Fight*, USA TODAY (Nov. 9, 2010, 1:52 PM), http://www.usatoday.com/news/nation/2010-11-07-human-sexual-trafficking_N.htm.

32. *See* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 106-08 (2012), available at <http://www.state.gov/documents/organization/192594.pdf>.

33. BALES & SOODALTER, *supra* note 25, at 3; *see also* KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 8-9 (rev. ed. 2004).

34. *See* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 38 (2011) [hereinafter 2011 TIP REPORT], available at <http://www.state.gov/documents/organization/164452.pdf> (showing global trends in trafficking prosecution and legislation).

35. *See* A HOUSE DIVIDED: THE ANTEBELLUM SLAVERY DEBATES IN AMERICA, 1776-1865, at 5-6 (Mason I. Lowance, Jr. ed., 2003) (charting an increase of legally held slaves in the United States from roughly 697,000 in 1790 to at least 3,900,000 in 1860).

36. *See* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted Nov. 15, 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319, 386-89

international conventions banning the slave trade, and over three hundred international treaties banning slavery.”³⁷

Despite the widespread public disapproval of institutionalized slavery, its ubiquity persists largely unabated.³⁸ The unrestrained flow of slave labor proceeds not because of governmental ignorance or public indifference, but because it is immensely profitable.³⁹ The International Labour Organization has declared human trafficking a \$31.6 billion per year industry.⁴⁰ Individually, the average enslavement in the United States lasts four to five years,⁴¹ generating a potential \$292,000 in revenue each year.⁴² On average then, an adroit trafficker can conservatively expect to generate \$1.168 million from a single captive.⁴³ Conversely, the cost of acquiring an entrapped person for economic exploitation rarely exceeds “a few hundred dollars.”⁴⁴ To place this trend in historical perspective, the adjusted-for-inflation cost of a slave on the open market in 1850 was, in today’s currency, \$40,000.⁴⁵

This illegitimate market potential threatens to thwart centuries-long jurisprudential and legislative attempts to abolish slavery.⁴⁶ Given the gaping disparity between capital costs and profit potential, it is unsurprising

(entered into force Dec. 25, 2003) [hereinafter United Nations Protocol]. The short list of abstentions from the initial protocol agreement included countries such as China, the Congo, and Iraq. *Id.*

37. Richard Holbrooke, *Foreword* to E. BENJAMIN SKINNER, *A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN-DAY SLAVERY*, at xiii (2008).

38. See 2011 TIP REPORT, *supra* note 34, at 51-58 (demonstrating the global nature of human trafficking).

39. See BALES & SOODALTER, *supra* note 25, at 13.

40. Patrick Belser, *Forced Labour and Human Trafficking: Estimating the Profits* 17 (Int’l Labour Org., Working Paper No. 42, 2005), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>.

41. BALES & SOODALTER, *supra* note 25, at 5.

42. An average Korean-operated massage parlor-brothel in the United States makes \$1.168 million annually by prostituting four women, which breaks out to roughly \$292,000 per year per victim. Donna M. Hughes, *The Demand for Victims of Sex Trafficking* 14 (June 2005) (unpublished manuscript), available at http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf. Similarly, in London, gangs can make an estimated £300,000 to £400,000 per year prostituting a single sixteen-year-old girl. *Id.* at 13.

43. See *id.* at 14 (\$1.168 million represents the product of \$292,000 per year for four years).

44. BALES & SOODALTER, *supra* note 25, at 6.

45. *Id.*

46. See generally ERIC METAXAS, *AMAZING GRACE: WILLIAM WILBERFORCE AND THE HEROIC CAMPAIGN TO END SLAVERY* (2007) (chronicling the British history of abolition and subsequent developments).

that opportunists worldwide view human exploitation as an attractive commercial concept.⁴⁷ Far from novel, the unimaginable cruelty of human trafficking simply reflects an ancient sentiment: *lupus est homo homini, non homo*—the words Roman playwright Plautus first used to convey the invariable reality that “man is a wolf and not a man.”⁴⁸

The United States has laudably, though imperfectly, positioned itself against human trafficking.⁴⁹ As the twenty-first century began, with millennia-old crimes still occurring, Congress passed the first comprehensive response to human trafficking: the Victims of Trafficking and Violence Protection Act of 2000 (TVPA).⁵⁰ While critical, this statutory response (with its subsequent reauthorizations and amendments in 2003,⁵¹ 2006,⁵² and 2008⁵³) merely represents a good first step. As with all remedial legislation targeting complex social problems, both the TVPA and its state-level progeny need refinement to fulfill their ambitious intentions. For anti-trafficking efforts in the United States to achieve maximum efficacy, state and federal law must together accomplish three things: (1) extend criminal sanctions to focus more intently on the demand-creating “customers,” (2) impose more significant economic disincentives and costs upon traffickers and syndicates, and (3) aggressively promote public awareness and key practitioner training.

Part II of this comment broadly situates human trafficking within the historical context of slavery’s evolution and economic import in global societies. Part III explores the complexity of modern-day slavery, including the controversy surrounding its nomenclature and definition, and specifically targets slavery as an economic and social problem. Part IV

47. See SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 242 (2009) (demonstrating the economics of slavery in Bangkok, Thailand massage parlors).

48. PLAUTUS, *ASINARIA* act 2, line 495 (Wolfgang de Milo ed. & trans., Harvard Univ. Press 2011).

49. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 8, 18, 22 U.S.C.).

50. See *id.*

51. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, 22 U.S.C.).

52. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 8, 18, 22 U.S.C.). Although titled as an “Act of 2005,” the 2005 reauthorization was not enacted until January 10, 2006. See *id.*

53. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 8, 18, 22 U.S.C.).

summarizes the current federal and state responses in the United States, focusing primarily on the seminal TVPA and subsequent state responses, and discusses the strategic role states play in confronting human trafficking. Part V analyzes how state law can mirror current federal legislation, close the enforcement gap, and more effectively reduce sex trafficking.

II. A Historical Perspective on Global Slavery

The human mind struggles to fully comprehend how and why people exploit one another in such diverse, cruel, and, at times, creative ways. The notion of systematic subjugation seems antiquated and primitive—yet it remains. Although one can approach human trafficking from a strictly pragmatic perspective, focusing solely on decreasing its occurrence, no resulting policy can fully respond to the problem without first considering its historical anthropology.⁵⁴ Failing to examine slavery's most profound origins and impetuses will produce an anemic response.⁵⁵ Although the temporal context of slavery has changed, the underlying causes remain the same. President George W. Bush asserted in a 2003 speech to the United Nations General Assembly that:

The founding documents of the United Nations and the founding documents of America stand in the same tradition. Both assert that human beings should never be reduced to objects of power or commerce, because their dignity is inherent. . . . [B]oth recognize a moral law that stands above men and nations.⁵⁶

54. Consider George Santayana's axiom, "Those who cannot remember the past are condemned to repeat it." 1 GEORGE SANTAYANA, *THE LIFE OF REASON: OR THE PHASES OF HUMAN PROGRESS* 284 (1905).

55. See generally *A HOUSE DIVIDED*, *supra* note 35, at 1-5 (discussing the early American abolition movement and its reliance upon deeply moral and religious reasoning); Benedict M. Ashley, *A Philosophical Anthropology of the Human Person: Can We Know the Nature of Human Persons?*, in *RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW* 52 (Michael A. Scaperlanda & Teresa Stanton Collett eds., 2007) (exploring societal understandings of "humanity" and their effect on culture); BALES & SOODALTER, *supra* note 25, at 5 ("The simple truth is, humans keep slaves; we always have. To understand this, we must come to know what is in the human heart that makes slavery possible.").

56. President George W. Bush, Address to the United Nations General Assembly (Sept. 23, 2003), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/09/20030923-4.html>.

Despite whatever political misgivings may exist regarding President Bush's Blackstonean declaration,⁵⁷ the assertion demands consideration. How do we understand the morality of forced bondage and exploitation? Is there a higher authority than mere local government that requires a particular response? Historically, the answers to these questions determined the speed and thoroughness of society's reactions.⁵⁸ Likewise, our current understanding of the answers will determine the timeliness and seriousness of our response.

A. From Antiquity to Modernity: Forms and Formulas

Exhaustive coverage of slavery's history exceeds the scope of this comment. Instead, this section merely highlights the important epochs in slavery's sociocultural development and illustrates the economic dynamics in play through the course of its progression. Slavery presumably predates much of recorded history.⁵⁹ Though impossible to pinpoint its beginnings, a survey of its historical evolution proves invaluable to the understanding of its modern-day analog—particularly when considered in light of its pecuniary importance. Even when examining modern slavery solely in America, a global perspective is indispensable. Though slavery is local, it is never entirely localized.⁶⁰

57. The great English jurist and commentator Sir William Blackstone was a proponent of the "Natural Law" philosophy, holding that true law is essentially determined by nature—or God—and stands above merely positive, man-made law. See 1 WILLIAM BLACKSTONE, COMMENTARIES 41 (photo. reprint 1978) (Richard Burn ed., 9th ed. 1783) ("This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."); see also BLACK'S LAW DICTIONARY 1127 (9th ed. 2009) (defining "natural law").

58. See, e.g., A HOUSE DIVIDED, *supra* note 35, at 1 (discussing the integral role of faith communities in driving the early American abolition movement); METAXAS, *supra* note 46, at 41-101 (discussing the indispensable role of Wilberforce's religious conversion and moral reasoning in deciding to adopt abolition as a chief political aim).

59. See Daniel C. Snell, *Slavery in the Ancient Near East*, in 1 THE CAMBRIDGE WORLD HISTORY OF SLAVERY 4, 4-5 (Keith Bradley & Paul Cartledge eds., 2011) (hypothesizing about the true genesis of slavery).

60. See KARA, *supra* note 47, at ix-xv (discussing the complex relationships among trafficking in different parts of the world and describing a critical economic nexus between them).

1. Early Origins & Modern Influence: Slavery in the Roman Empire

Much of modern Western culture can be attributed to the inventions and developments of the Roman Empire—including slavery.⁶¹ The history of recorded slavery in Rome spans from approximately the mid-fifth century BCE to the first century BCE, when slaves were most commonly acquired by force from conquered enemy armies.⁶² Examination of Rome's first codified body of law, the Twelve Tables, demonstrates that slavery had a social and structural centrality in Rome as early as 450 BCE.⁶³ In this scheme, slaves were both qualitatively and quantitatively valued beneath free people: where the law assigned a monetary remedy for personal injury to a citizen, it assigned a lesser value to the slave.⁶⁴ The Roman Republic represented a “slave society” in many ways, and its slave population tended to increase with its geographic expansion.⁶⁵ Ancient historians recorded the immensity of this institution, noting that the Romans may have taken captive tens of thousands or even hundreds of thousands of slaves during any given conquest.⁶⁶ “The degree of human misery the growth of the imperial Republic generated can hardly be imagined.”⁶⁷

The method of Roman slave acquisition ensured a mostly male, but ethnically diverse, indentured population.⁶⁸ In Sicily, the slaves were eventually used as agricultural laborers for landowners, whose regimen of control included severe physical punishment and cruel personal treatment⁶⁹—a method emulated by slaveholders today.⁷⁰ These slaves, though controlled, exhibited indomitable spirit as they twice revolted en masse, causing two separate wars of three years each.⁷¹ Subsequently, M.

61. See CARL J. RICHARD, *WHY WE'RE ALL ROMANS: THE ROMAN CONTRIBUTION TO THE WESTERN WORLD*, at xi-xv, 10-20, 48 (2010) (observing that Roman culture not only viewed slavery as socially acceptable, but codified slaveholding as a legitimate part of civilized law).

62. Keith Bradley, *Slavery in the Roman Republic*, in 1 *THE CAMBRIDGE WORLD HISTORY OF SLAVERY*, *supra* note 59, at 241, 241-43.

63. *Id.* at 243.

64. *Id.*

65. *Id.* at 244-46.

66. *Id.* at 246.

67. *Id.*

68. *Id.* at 247.

69. *Id.*

70. See, e.g., GARY A. HAUGEN & GREGG HUNTER, *TERRIFY NO MORE* 4-5 (2005) (detailing squalid living conditions for captive children in the village of Svay Pak, Cambodia, including being held in small, enclosed spaces and regularly abused).

71. Bradley, *supra* note 62, at 247.

Terentius Varro wrote a public treatise on agricultural management in the first century and included precise instructions to slaveholders on maintaining power over their subjects.⁷² It contained suggestions of which races were best suited for which jobs, the regimen slaves should follow, and how to “accommodate slaves’ sexual appetites.”⁷³

Due to the geographic and chronological diversity of the Roman Republic, the living conditions and life experiences of slaves varied.⁷⁴ By the time the empire entered its final phase of existence, slaves had been used as domestic companions, academic assistants, and even herdsmen, vying for their lives in the harsh wilderness and mountainous terrain.⁷⁵ Roman slaves rebelled against their masters, murdered their owners, fell in love with their captors, and even, on occasion, willingly gave their lives in their oppressors’ steads.⁷⁶ Despite the diverse realities of Roman captivity, one thing is certain: the Romans firmly established the cultural normalcy of commodifying and owning other human beings.⁷⁷

2. Learning to Profit from People: Slavery in Ancient Greece

Much like the Romans, the Greeks relied heavily on captives from war to populate their slave ranks.⁷⁸ Before the sixth and seventh centuries BCE, Greek slaves were acquired almost exclusively through conquest, and almost never through purchase.⁷⁹ The economic value of slaves at that time derived primarily from agricultural productivity rather than trade or sale.⁸⁰ In modern economic terms, early Greek slaves realized no “capital appreciation,” but did provide a consistent stream of “dividends” to their owners.⁸¹ Such economic exploitation of neighboring peoples, who were viewed as morally inferior, seemed to the Greeks rightly intended by nature.⁸² Because this early slavery was largely tethered to agricultural

72. *Id.*

73. *Id.*

74. *Id.* at 251.

75. *Id.* at 252.

76. *Id.* at 253-54.

77. *See generally* THOMAS WIEDEMANN, GREEK AND ROMAN SLAVERY 1-13 (1981) (surveying the cultural normalcy of slavery in Rome over time).

78. *See* Dimitris J. Kyrtatas, *Slavery and Economy in the Greek World*, in 1 THE CAMBRIDGE WORLD HISTORY OF SLAVERY, *supra* note 59, at 91, 91.

79. *See id.* at 92-93.

80. *See id.*

81. *See id.* (showing little residual financial gain from ownership, but healthy profit during use).

82. *Id.* at 91, 93.

practice, it resembled Middle Age European serfdom.⁸³ Remarkably, some Greek slave-laborers became a self-sustaining and reproducing culture, holding traditions and beliefs separate from those of their owners.⁸⁴

As Greek society changed and international trade routes matured, money became a more common commercial currency and slaves began yielding value through exchange and trade.⁸⁵ As slaves gained liquidity, their chattelization developed and Greeks increasingly began viewing them as mere belongings to be used at whim.⁸⁶ Through this process, slaves were increasingly dehumanized in the eyes of their captors⁸⁷—a trend that would continue into the nineteenth century CE.⁸⁸ Greek slavery became so common that, by the fourth century BCE, all but the poorest citizens in Athens owned some number of slaves.⁸⁹ Of the Greek population, one segment in particular was overwhelmingly comprised of enslaved workers—prostitutes.⁹⁰ Unfortunately, this development carried over straight into modernity. As do most traffickers today,⁹¹ the Greeks knew that one of the most effective ways to profit from another's bondage was by stripping his dignity, selling his body, and disposing of him once he lost market appeal.⁹²

3. The Ancient Near East: Innovation & Advancement on an Industrial Scale

Probably no ancient culture shares such a striking parallel with, or provided such a straight path toward, modern-day slavery as that of the

83. *Id.* at 92.

84. *Id.*

85. *Id.* at 94-95.

86. *Id.* at 106.

87. *Id.* (“As the Greeks saw it . . . slaves were property and could be used like other belongings.”).

88. FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE 27 (Random House 2000) (1845) (referring to “the dehumanizing character of slavery”).

89. Kyratas, *supra* note 78, at 98.

90. *Id.* at 108 (noting that prostitutes, as well as miners and domestic servants, “were overwhelmingly slaves”).

91. BALES & SOODALTER, *supra* note 25, at 6 (noting that it is often more affordable to allow slaves to die than to pay for the medical care necessary to keep them alive).

92. See Kyratas, *supra* note 78, at 106-08 (demonstrating the Greek view of slaves as property to be dominated and exploited). Masters occasionally allowed slaves to purchase their own freedom through the process of manumission, but typically only when it was commercially advantageous to the owner (for example, when the owner could then purchase a younger, more productive slave with the ransom). *Id.*

Near East—lands including “the modern Middle East from Iran to Turkey to Egypt.”⁹³ “Scholars of the ancient region have consequently been quick to point out that nowhere [else] do we see [that] kind of mass exploitation . . . [until] the sixteenth century of our era.”⁹⁴ Although the ancient Near East provides the earliest recorded writings detailing slavery, it does not deserve credit for inventing the practice.⁹⁵

Some scholars believe the earliest occurrence of slavery probably developed among nomadic chieftaincies where “[t]he greed to acquire more hands to do work overcame the need to establish a stable peace. . . . It stands to reason . . . that the first such [slaves] were women . . . [who] could be subdued, raped and exploited more easily.”⁹⁶ Unfortunately, victim profiling has changed little since then.⁹⁷ Early inferential evidence suggests that institutionalized slavery may have existed in the Ubaid period in Mesopotamia, as early as 5500 BCE to 4000 BCE.⁹⁸ Artifacts from the Early Dynastic period of 2400 BCE demonstrate that slaves were viewed primarily in economic terms, with their values stratified according to their fiat prices.⁹⁹ Such indexing of slaves continued through the Old Akkadian period of 2334 BCE to 2195 BCE, and into the Neo-Babylonian age of 605 BCE to 333 BCE.¹⁰⁰

Regardless of where it started, the Near East possessed 2000 years of slave history in varied forms before Alexander the Great’s exploits supplanted it with revised models.¹⁰¹ A significant number of Near Eastern slaves were bought or sold during their lifetime, rather than merely captured and retained.¹⁰² In many ways, these early expressions of slavery helped establish the transactional formula of the modern slave trade.

Reflecting an ancient willingness to terrorize almost anyone for profit, further evidence suggests that people bought and sold children as early as 2004 BCE in the Old Babylonian period, commoditizing them in a manner

93. Snell, *supra* note 59, at 4 (noting, however, that “some [scholars] have tried to deny that there even were slaves in the ancient New East”).

94. *Id.*

95. *Id.* at 6.

96. *Id.* However, this theory is generally based on sensible deduction, without strong surviving evidence to support it. *Id.*

97. 22 U.S.C. § 7101(b)(4) (2006) (“Traffickers primarily target women and girls, who are disproportionately affected by poverty . . .”).

98. See Snell, *supra* note 59, at 7.

99. See *id.* at 9.

100. *Id.*

101. *Id.* at 20-21.

102. *Id.*

similar to oxen.¹⁰³ A letter from that period explicitly advised a slave trader to purchase young girls only if they were physically attractive.¹⁰⁴ This was, presumably, meant to maximize their potential resale values. This same philosophy permeates traffickers' purchasing decisions today.¹⁰⁵ Another text from 247 BCE depicts "girls as young as five" years old enslaved as laborers.¹⁰⁶ Today's industrious traffickers frequently follow their professional predecessors; current raids on brothels and arrests of predators often reveal children under the age of five among the victims.¹⁰⁷

B. Integrating Past Lessons into Current Responses

While motives among slave owners have inevitably varied throughout time, one prominent, animating theme is predominant: profit motive.¹⁰⁸ Even as the world "globalizes," becoming increasingly integrated and accessible across previously restrictive geographic borders,¹⁰⁹ people still love money. Very often this narrow motivation causes people to disregard human decency and lawfulness where those principles fail to advance their financial ambitions.¹¹⁰ In that sense, little has changed in 6000 years. If legislative responses aim to effectively address the twenty-first century slave crisis, they must account for the same methodological developments, depraved human conditions, and, most importantly, economic aspirations that have driven slavery for the past several millennia.

III. Modern-Day Slavery: Understanding the Current Climate

Turning to slavery in the contemporary context, authorities disagree on drawing definitional boundaries.¹¹¹ Many victim advocates and human trafficking survivors contend that the current phenomenon is most

103. *Id.* at 8.

104. *Id.* at 10.

105. See VICTOR MALAREK, *THE NATASHAS: INSIDE THE NEW GLOBAL SEX TRADE* 57 (2003) (explaining the added value of young, pretty girls).

106. Snell, *supra* note 59, at 16.

107. HAUGEN & HUNTER, *supra* note 70, at 216.

108. See *infra* Part III; cf. KARA *supra* note 47, at 16-37 (discussing the business and economics of sex slavery).

109. See generally THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2005) (demonstrating a rapidly globalizing culture and economy).

110. See *infra* Part III.

111. See generally Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655 (2010) (addressing the definitional quagmire regarding human trafficking).

accurately described as “slavery.”¹¹² Others maintain that calling modern human trafficking “slavery” misrepresents the sociopolitical reality, denigrating populations that lived through more historical and conventional periods of institutionalized oppression.¹¹³ Compounding the controversy, advocates and policy makers hold vastly disparate views on how some aspects of the issue should be characterized—namely sex trafficking and its constituent elements of prostitution and sex work.¹¹⁴ Finally, because the crisis is manifold—encompassing economic, criminal, and social mores—stakeholders struggle to agree on the precise crux of the problem and the most effective solution.¹¹⁵

A. Controversial Term

In attempting to construct a sufficient intellectual and social context for the problem of human trafficking, difficult existential and pragmatic questions arise. What is slavery? Can prostitution ever truly be a legitimate, consensual commercial arrangement? Does commercialized sex possess moral relevance? Is it ever okay for adults to have sexual relations with children?¹¹⁶ These philosophical questions precede more concrete and tangible legal questions. Upon the resulting philosophical and moral foundations, lawmakers and advocates work to understand the practical consequences, such as the difference between human trafficking and human smuggling,¹¹⁷ and the significance of consent where a woman prostitutes

112. See, e.g., SKINNER, *supra* note 37, at 106-07 (discussing John Miller, the second director of the Office to Monitor and Combat Trafficking in Persons within the United States Department of State, and the development of the term “modern-day slavery.”).

113. *Id.*

114. See BALES & SOODALTER, *supra* note 25, at 109-10 (comparing “antiprostitution” and “anti-human trafficking” ideologies).

115. Compare Chuang, *supra* note 111, at 1694-1702 (arguing that the problem of sex trafficking is overstated and overemphasized when viewed in proportion to other forms of trafficking), with Hughes, *supra* note 42, at 14 (arguing that, in order to make significant progress against human trafficking, decreasing commercial sexual demand must be a touchstone).

116. See Press Release, B4U-ACT, B4U-ACT Holds Scientific Symposium on Pedophilia and the DSM (Aug. 17, 2011), available at <http://b4uact.org/news/20110817.htm> (discussing an academic conference involving panelists from Harvard Medical School, The London School of Economics, and The University of Illinois, among others, addressing a proposal for the American Psychiatric Association to normalize pedophilia and remove its classification as a mental disorder).

117. Jim Finckenaer & Min Liu, *State Law & Human Trafficking*, in MARSHALING EVERY RESOURCE: STATE AND LOCAL RESPONSES TO HUMAN TRAFFICKING 3, 6 (Dessi Dimitrova ed., 2007).

herself initially, but then later revokes that consent.¹¹⁸ How should the law view her?

Jim Finckenauer and Min Liu observe that much of the confusion regarding the definition of “trafficking” arises from a false conflation of the terms “human trafficking,” “sex trafficking,” and “human smuggling.”¹¹⁹ The distinction turns upon movement, consent, and purpose.¹²⁰ Human trafficking does not require any movement whatsoever and can occur without victims ever leaving home.¹²¹ Human smuggling, however, requires not just movement, but generally movement across an international border.¹²² Where human smuggling involves the elements of force, fraud, or coercion, it rises to the separate and distinct offense of human trafficking.¹²³ The distinction between “human trafficking” (or “severe forms of trafficking in persons”) and “sex trafficking” is not without an important difference.¹²⁴ When “trafficking in persons” results in a victim being “recruit[ed], harbor[ed], transport[ed], provi[ded], or obtain[ed] . . . for the purpose of a commercial sex act,” it becomes “sex trafficking.”¹²⁵ Not all human trafficking is sex trafficking, but all sex trafficking is human trafficking.¹²⁶

Reflecting these complex definitional problems, the United States and the United Nations debated an adequate definition of “trafficking in persons” for two years before reaching an agreement in the United Nations Protocol of 2000:¹²⁷

[T]he recruitment, transportation, transfer, harbouring [sic] or receipt of persons, by means of the threat or use of force or other

118. See Terry Coonan, *Anatomy of a Sex Trafficking Case*, 5 INTERCULTURAL HUM. RTS. L. REV. 313, 338-40 (2010) (describing Latin American women who initially agreed to “work off” their smuggling debt as prostitutes once safely inside the United States, only later to have their abilities to consent nullified upon discovering that their prostitution services would be violently managed by their smugglers, including “be[ing] required to undergo 25-35 sex transactions nightly”).

119. Finckenauer & Liu, *supra* note 117, at 4.

120. See *id.* (discussing the necessary presence of “force, fraud, or coercion” to transform smuggling into trafficking, but noting that “rape, assault, and kidnapping” could occur without having the same transformative effect).

121. See *id.* at 4-6 (explicating the nuances of defining human trafficking).

122. *Id.* at 6.

123. *Id.* at 4, 6.

124. See 22 U.S.C. § 7102(8)-(9) (2006).

125. *Id.*

126. See *id.*

127. Finckenauer & Liu, *supra* note 117, at 5.

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 [sic] or services, slavery or practices similar to slavery, servitude or the removal of organs. . . .¹²⁸

Another and perhaps more significant disagreement emerges in the debate between “abolitionist” advocates and “anti-human trafficking” advocates.¹²⁹ The abolitionists, or “antiprostitution” adherents,¹³⁰ generally agree that prostitution is very rarely consensual, and therefore virtually always a form of exploitation.¹³¹ Their argument centers on the proposition that women, even when ostensibly working volitionally, will not “freely and truly choose to become a prostitute,” and that “all the pressures that drive [a woman] into prostitution should be considered coercion and call for serious corrective legal action.”¹³²

Abolitionists exist across the ideological spectrum. But some of the most ardent advocates come from religious and faith communities who see the consequences of commercial sex and human trafficking as reaching beyond the merely physical and temporal.¹³³ As Victor Hugo observed in his mid-nineteenth century classic, *Les Misérables*, “The sacred law of Jesus Christ governs our civilization, but it has not yet managed to permeate it. They say that slavery has vanished from European civilization. That is wrong. It still exists, but it now preys only on women, and it goes by the name of prostitution.”¹³⁴ It would be disingenuous, however, to suggest that the prohibitionist movement is fueled primarily by religious fervor.¹³⁵ The Ivy

128. United Nations Protocol, *supra* note 36, 2237 U.N.T.S. at 344.

129. *See* BALES & SOODALTER, *supra* note 25, at 108-14.

130. *See id.* at 110-11.

131. *See id.* at 108-14; *see also* Finckenauer & Liu, *supra* note 117, at 4.

132. BALES & SOODALTER, *supra* note 25, at 114.

133. *See id.* at 113.

134. VICTOR HUGO, *LES MISÉRABLES* 158 (Julie Rose trans., Random House 2008) (1862).

135. For example, Dorchen Leidholdt, who cofounded the highly prohibitionist Coalition Against Trafficking in Women, serves as an adjunct professor of law at Columbia Law School and a director at New York City’s Sanctuary for Families, none of which would be considered even approximating “religious” institutions. *Dorchen A. Leidholdt*, COLUMBIA LAW SCHOOL, http://www.law.columbia.edu/fac/Dorchen_Leidholdt (last visited Dec. 17, 2012).

League affiliation of several figures within the prohibitionist movement diffuses claims¹³⁶ that its proponents are overly entangled with conservative political agendas or “Christian right” dogmatism.¹³⁷ In fact, Siddharth Kara is unabashedly critical of religion’s role in the subjugation of women in Thailand and the prevalence of sexual oppression there.¹³⁸

Some “anti-human trafficking” proponents, on the other hand, consider prostitution a legitimate commercial choice that governments should preserve for women.¹³⁹ Responding to growing efforts by abolitionists to increase penalties on consumers of commercial sex, The Sex Workers Project, a project of the Urban Justice Center in New York City,¹⁴⁰ warned against “a dangerous slippage into an anti-sex work, anti-male and homophobic mindset which, under the guise of protecting sex workers, is another way of undermining sex workers’ autonomy and causing more harm to them. To trivialize this issue by . . . appealing to male shame and female chastity is a travesty.”¹⁴¹

Sophisticated and passionate arguments on each side of the debate notwithstanding, one examination of an international trafficking ring in

136. Presumably, each of the Ivy League institutions enjoys the work and contributions of faculty, staff, and students from various backgrounds and belief systems—including, perhaps, the “Christian right.” Even still, those affiliated institutions have developed a reputation for being somewhat antagonistic toward “fundamentalist” religious movements, at least modernly, and would not seriously be considered a platform for proponents of a “Christian right” agenda. For an exploration of the “secularization” of American Universities and religion’s waning role and influence at institutions like Harvard and Yale, see John F. Wilson, *Introduction* to JON H. ROBERTS & JAMES TURNER, *THE SACRED AND THE SECULAR UNIVERSITY* 3, 3-16 (2000) (focusing specifically on the rise of independent academic specialties and the separation from seminary education as the driving force). *Cf.* GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF* 265-350 (1994) (arguing that the decline of religious presence in American universities and curricula resulted not just from structural academic transition, but also from cultural and legal changes).

137. Several commentators have attempted to frame the effort to stem sex trafficking as a religious moral crusade. *See, e.g.*, BALES & SOODALTER, *supra* note 25, at 108; Chuang, *supra* note 111, at 1660-1710 (claiming that politically conservative and religious ideology underlies the sex trafficking emphasis).

138. *See* KARA, *supra* note 47, at 173-76.

139. *See* BALES & SOODALTER, *supra* note 25, at 109-13 (outlining the overarching policy arguments of many “anti-human trafficking” advocates, some of whom claim that when sex work emerges as the best “job” a woman can attain, she should have the right to pursue it).

140. *About the Sex Workers Project*, SEX WORKERS PROJECT, <http://www.sexworkersproject.org/info/> (last visited Dec. 18, 2012).

141. Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 45 (2008).

Florida suggests that the issue might not be quite so binary.¹⁴² Because of the various degrees of consent that may exist at the different stages of a prostitution scenario, and the transformation of a woman's state of mind throughout,¹⁴³ it might be that "an extreme 'abolitionist' approach (with its insistence that no woman can truly consent to prostitution) is as inaccurate as the opposing view which insists that prostitution can be a form of labor that is neither inherently degrading nor exploitative."¹⁴⁴ Semantic struggles and definitional difficulties aside, the international community continues to reiterate its disdain for human trafficking and increase its commitment to ending it.¹⁴⁵

B. A Growing Public Awareness

Studies suggest that "awareness campaigns can play a successful role in reducing trafficking risks," and that "[t]he incidence[s] of trafficking [are] considerably lower in regions where the awareness of the phenomenon of human trafficking is high."¹⁴⁶ Fortunately, the public profile of human trafficking continues to increase at a tremendous rate. From 1950 through 1990, newspapers ran fewer than one hundred stories covering human trafficking, while in the next ten years, from 1991 through 2000, almost 400 appeared.¹⁴⁷ In 2001 and 2002, almost 1000 human trafficking stories emerged, essentially doubling in two years the issue's exposure from the previous fifty.¹⁴⁸

Most stories, however, focus on cases of national and international (rather than local) human trafficking.¹⁴⁹ Further, publications generally

142. See Coonan, *supra* note 118, at 314-15 (proposing a third model entitled "Commercial Sex as a Compromised Choice").

143. Cf. *id.* at 338-40 (discussing a United States Attorney's decision to treat egregiously prostituted women as trafficking victims even though they had initially given consent to work off their smuggling debts through commercial sex).

144. *Id.* at 314.

145. See 2011 TIP REPORT, *supra* note 34, at 38 (showing global trends in trafficking prosecution and legislation).

146. See Toman Omar Mahmoud & Christoph Trebesch, *The Economic Drivers of Human Trafficking: Micro-Evidence from Five Eastern European Countries* 5 (Kiel Inst. for the World Econ., Working Paper No. 1480, 2009), available at <http://www.econstor.eu/dspace/bitstream/10419/24876/1/591303515.PDF>.

147. Daniel Tichenor, *The Politics of Modern Slavery in America: Advocacy Groups and Human Trafficking Reform*, in MARSHALING EVERY RESOURCE: STATE AND LOCAL RESPONSES TO HUMAN TRAFFICKING, *supra* note 117, at 35, 38-39.

148. *Id.*

149. *Id.* at 44.

emphasize sex trafficking over labor trafficking.¹⁵⁰ Articles often depict “young girls forced into prostitution by conspiracies of foreign organized criminal networks,”¹⁵¹ which some advocates say presents a skewed picture of the statistical reality.¹⁵²

“What’s enthralled the media, the Christian right and the Bush administration is not the demanding, multi-layered narrative of migrants, but the damsels in distress, the innocents lured across borders for the purpose of prostitution. In other words, their concern over human trafficking has become, in practice, a concern over what they deem sex trafficking.”¹⁵³

Even the executive director of the United Nations Office on Drugs and Crime offered a critique of the media in 2010, assigning a “grade” of “C or even less.”¹⁵⁴ He called for an increased focus on action, and a greater depth of analysis in the coverage of human trafficking.¹⁵⁵ Whether the recent uptick in media exposure accurately portrays the crisis with all of its nuances and complexities remains uncertain. Undeniably, however, the media has astutely identified the growing public fascination with this topic.

Perhaps more anecdotal, but no less significant regarding the importance of increased visibility, is the chorus of celebrity voices having recently sounded the alarm.¹⁵⁶ The “Hollywood effect” has not been limited to

150. Amy Farrell, *State Human Trafficking Legislation*, in MARSHALING EVERY RESOURCE: STATE AND LOCAL RESPONSES TO HUMAN TRAFFICKING, *supra* note 117, at 17, 20 (analyzing print media reports from 1990 through 2006).

151. *Id.*

152. Finckenauer & Liu, *supra* note 117, at 5.

153. BALES & SOODALTER, *supra* note 25, at 113 (quoting Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT’L & COMP. L. 269, 274-75 (2006)).

154. Sherry Ricchiardi, *Navigating the Underworld of Human Trafficking*, GLOBAL JOURNALIST (Nov. 26, 2010), <http://www.globaljournalist.org/stories/2010/11/26/navigating-the-underworld-of-human-trafficking/>.

155. *Id.*

156. In 2006, Daryl Hannah began working to educate people about the reality of human trafficking by producing a documentary in which she revealed the appalling conditions in many of the world’s brothels by disguising herself and taking footage from a hidden camera. *Daryl Hannah’s Mission: Ending Sex Slavery*, AMERICA’S MOST WANTED (Nov. 21, 2006), http://www.amw.com/features/feature_story_detail.cfm?id=1299. In 2008, several mainstream contemporary musicians—including Moby, Switchfoot, and Talib Kweli—joined for the documentary *Call + Response* to raise awareness about the issue. See *CALL + RESPONSE* (Fair Trade Pictures 2008); *Movies and Documentaries on Human Trafficking*, UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, <http://www.ungift>.

movie stars and musicians; the film industry itself has joined in stimulating public dialogue about modern-day slavery. The recent full-length feature films *Traffic*¹⁵⁷, *Taken*¹⁵⁸, and *Slumdog Millionaire*¹⁵⁹ grossed \$208.3 million,¹⁶⁰ \$225.5 million,¹⁶¹ and \$375.8 million,¹⁶² respectively, in worldwide box office receipts. Each highlighted human trafficking in sharp detail. More recently, beginning in 2011, the Cable News Network (CNN) began what it labeled *The CNN Freedom Project*: a blog dedicated to breaking news in the fight against human trafficking.¹⁶³ The blog provides daily news covering advocacy and enforcement efforts, as well as video, user comments, and hyperlinks to help readers become personally engaged

org/ungift/knowledge/resources.html (last visited Dec. 19, 2012); *About*, CALL + RESPONSE, <http://www.callandresponse.com/about.php> (last visited Dec. 19, 2012). Dr. Cornel West of Princeton University provided the narration, deftly connecting the importance of music in the nineteenth century abolition movement with the power of music to advance freedom for slaves today. *See id.* In 2010, Demi Moore and Ashton Kutcher launched a media campaign, *Real Men Don't Buy Girls*, which featured cameos of other high-profile celebrities to bring awareness to child sex trafficking. Laura M. Holson, *Charity Fixer to the Stars*, N.Y. TIMES (Dec. 3, 2010), <http://www.nytimes.com/2010/12/05/fashion/05TREVORNEILSON.html?pagewanted=all>. Lucas Kavner, *Ashton Kutcher and Demi Moore Launch "Real Men Don't Buy Girls" Campaign (VIDEO)*, HUFFINGTON POST (Apr. 11, 2011, 2:28 AM), http://www.huffingtonpost.com/2011/04/11/ashton-kutcher-demi-moore-trafficking_n_847291.html. Similarly, Ashley Judd has become an impassioned advocate for sex trafficking victims and has even spoken about the issue before the United Nations General Assembly. Anemona Hartocollis, *Actress/Activist*, N.Y. TIMES (July 23, 2010), <http://www.nytimes.com/2010/07/25/education/edlife/25conted-t.html?pagewanted=all>. Judd recently completed a master's degree in public administration to further her work in this area, prompting Syracuse University professor Stuart Bretschneider to praise the helpfulness of celebrities engaging in this type of "Bono model" work. *Id.* (using the term "Bono model" as a reference to "the U2 lead singer who raises money to fight global poverty").

157. *TRAFFIC* (USA Films 2000).

158. *TAKEN* (20th Century Fox 2009).

159. *SLUMDOG MILLIONAIRE* (Fox Searchlight Pictures & Warner Bros. Entertainment 2008).

160. *Traffic*, THE NUMBERS, <http://www.the-numbers.com/movies/2000/TRAFC.php> (last visited Dec. 19, 2012).

161. *Taken*, THE NUMBERS, <http://www.the-numbers.com/movies/2009/TAKEN.php> (last visited Dec. 19, 2012).

162. *Slumdog Millionaire*, THE NUMBERS, <http://www.the-numbers.com/movies/2008/SLUMD.php> (last visited Dec. 19, 2012).

163. *CNN Freedom Project*, CNN, <http://thecnnfreedomproject.blogs.cnn.com/> (last visited Dec. 19, 2012); *see also* Tony Maddox, *Modern-day Slavery: A Problem that Can't Be Ignored*, CNN FREEDOM PROJECT BLOG (Mar. 4, 2011, 11:17 AM), <http://thecnnfreedomproject.blogs.cnn.com/2011/03/04/modern-day-slavery-a-problem-that-cant-be-ignored/>.

in the issue.¹⁶⁴ Even MTV, traditionally known more for music videos and reality shows than humanitarian work, commenced a campaign entitled *MTV EXIT* (End Exploitation and Trafficking), featuring provocative videos of a teenage girl being sold to several men in a dingy motel room.¹⁶⁵ MTV's effort has predictably drawn from the celebrity-appeal approach by using popular musicians and actors to promote the issue.¹⁶⁶

New York Times columnist and editor Nicholas Kristof, perhaps the source most effective in catching the attention of professionals and older adults, began writing regularly about the horrors and abuses of the human trafficking industry in 2002.¹⁶⁷ His work culminated in the 2009 publication of the widely-read book,¹⁶⁸ *Half the Sky*.¹⁶⁹ Kristof, himself a pseudo-celebrity as a *New York Times* columnist, coopted the power of celebrity involvement by securing book endorsements from well-known actors.¹⁷⁰

This swell of media coverage has been consistent throughout the world.¹⁷¹ Sweden, for instance, implemented groundbreaking legislation aimed at quelling human trafficking in Scandinavia,¹⁷² and the resulting media coverage¹⁷³ mirrors growth patterns in the United States. One study revealed that from January 1990 through March 2004, 328 articles featuring the term "human trafficking" received publication in major Swedish news sources.¹⁷⁴ During the 1990s, only about ten articles appeared per year.¹⁷⁵

164. See *CNN Freedom Project*, *supra* note 163.

165. See *MTV EXIT: END EXPLOITATION & TRAFFICKING*, <http://www.mtvexit.org/en/> (last visited Dec. 19, 2012); see also *About MTV EXIT*, *MTV EXIT*, <http://mtvexit.org/about/> (last visited Dec. 19, 2012).

166. See *id.*

167. See, e.g., Nicholas D. Kristof, Op-Ed., *Bush vs. Women*, N.Y. TIMES, Aug. 16, 2002, at A17, available at <http://www.nytimes.com/2002/08/16/opinion/bush-vs-women.html?scp=2&sq=nicholas%20d.%20%20kristof%20human%20%20trafficking&st=nyt>.

168. See *Best Sellers*, N.Y. TIMES (Sept. 27, 2009), <http://www.nytimes.com/best-sellers-books/2009-09-27/hardcover-nonfiction/list.html>.

169. NICHOLAS D. KRISTOF & SHERYL WUDUNN, *HALF THE SKY: TURNING OPPRESSION INTO OPPORTUNITY FOR WOMEN WORLDWIDE* (2009).

170. See, e.g., *Meg Ryan*, *HALF THE SKY MOVEMENT*, <http://www.halfthesky.movement.org/pages/meg-ryan> (last visited Dec. 19, 2012) (noting that actress Meg Ryan, for instance, has joined the project).

171. See, e.g., Susan Holmberg, *Explorations into the Media Discourse on Human Trafficking in Sweden* 5-6, app. A at 19 (Jan. 14, 2006) (unpublished manuscript) (on file with author) (demonstrating foreign increase in media coverage).

172. In 1999, Sweden began criminalizing the purchase of sex, rather than sale. Hughes, *supra* note 42, at 32.

173. See Holmberg, *supra* note 171, at 5, app. A at 19.

174. *Id.* at 5. The study looked to the frequency of appearance of "människohandel," the Swedish term for "human trafficking." *Id.*

Beginning in 2001, the frequency rose dramatically.¹⁷⁶ In 2003, 136 such articles appeared, accounting for over 40% of the total volume for the study period.¹⁷⁷ Similar to American trends, the Swedish exposure tended to focus on “stories about . . . the sex trade in women and young girls with possible links to international organized crime.”¹⁷⁸

Increased media exposure alone may simply indicate that human trafficking makes for compelling stories, confirming the notion that “sex sells.” More likely, however, as Susan Holmberg observes, “[N]ational media [is] a key instrument in developing and maintaining a national consciousness,” and integral in galvanizing concepts of “nationhood.”¹⁷⁹ Holmberg’s analysis “suggest[s] that a particular country’s media coverage of human trafficking is likely to privilege dominant national values, including a tendency to project national definitions onto the global stage.”¹⁸⁰ Supporting Holmberg’s thesis, state and federal enforcement of human trafficking laws has followed these media trends over the last decade, or, at the very least, run corollary to them.¹⁸¹ To illustrate: from 2001 to 2006, the Department of Justice increased its prosecution of human trafficking cases by more than 300%, and obtained a 250% increase in convictions and guilty pleas, as compared to the previous six years.¹⁸²

C. The Business of Buying & Selling People: Human Trafficking as an Economic Issue

Human trafficking is undoubtedly a defining moral and human rights crisis of the twenty-first century.¹⁸³ Moreover, it is a particularly pernicious problem because of the vastly confounding sociological elements at work.¹⁸⁴ It is impossible to completely isolate human trafficking from the collateral issues of domestic violence, poverty, unemployment, illiteracy,

175. *Id.*

176. *Id.*

177. *See id.* at 5-6 (establishing that of the 328 articles containing the term “människohandel” appearing in Swedish news media from 1990 through March 28, 2004, 136 were in 2003).

178. *Id.* at 9.

179. *Id.* at 2.

180. *Id.*

181. *See infra* Part IV.B.2.

182. JEREMY M. WILSON & ERIN DALTON, HUMAN TRAFFICKING IN OHIO: MARKETS, RESPONSES, AND CONSIDERATIONS 39 (2007).

183. *See* 22 U.S.C. § 7101(b) (2006) (discussing the ongoing practice of slavery in the twenty-first century).

184. *See, e.g., id.* § 7101(b)(4).

sexual abuse, estrangement, psychological disorders, emotional imbalance, depression, and sickness.¹⁸⁵ Despite its social, spiritual, political, and criminal aspects, human trafficking remains essentially an economic problem.¹⁸⁶ Unfortunately, removing any one of the above collateral elements would fail to end human trafficking; reversing the economic profitability of trafficking, however, would frustrate its momentum entirely.¹⁸⁷ In light of this reality, legislative reformers must ensure that their policies incorporate thorough economic considerations.

1. The Profit Potential

At the foundation of any economic problem lie three essential elements: supply, demand, and price.¹⁸⁸ When demand for a product increases sufficiently to warrant an entrepreneur's response, a resulting supply of that product is thereby created.¹⁸⁹ Assuming adequate demand, and absent unnatural market intervention, the supplier will realize a profit after adjusting the selling price to meaningfully exceed costs.¹⁹⁰

To determine how many market participants will emerge, one need only look at the potential profitability of operating in that market.¹⁹¹ A large, sustainable profit potential will typically incent a greater number of aspiring market entrants, thereby intensifying competition.¹⁹² Effective methods for fostering profit include: (1) increasing sales volume, and (2) maintaining large margins.¹⁹³ When those two methods converge, they create an exceedingly profitable environment where businesses can generate a vast

185. *See id.* § 7101(b).

186. *See KARA, supra* note 47, at 32-37 (explaining that while the greed and depravity of men essentially create a market for sex trafficking victims, the magnitude of the issue is ultimately driven by market forces such as elasticity of demand and profit margins).

187. *See id.* at 200-19 (weighing the risk of detection and the expense of increased cost against the elasticity of demand).

188. *See* HUBERT D. HENDERSON, *SUPPLY AND DEMAND* 18-19 (Nisbet & Co. Ltd. 1928) (1922) (outlining three essential economic models of supply and demand theory).

189. *See Melluzzo v. Morton*, 534 F.2d 860, 864 (9th Cir. 1976) (discussing the relationship between supply, demand, and profit); *see also* HENDERSON, *supra* note 188, at 18-36).

190. *See Melluzzo*, 534 F.2d at 863-64.

191. *See* Michael E. Porter, *The Five Competitive Forces That Shape Strategy*, *HARV. BUS. REV.*, Jan. 2008, at 78, 80-82.

192. *See id.*

193. Sungwook Min & Mary Wolfinbarger, *Market Share, Profit Margin, and Marketing Efficiency of Early Movers, Bricks and Clicks, and Specialists in E-commerce*, 58 *J. BUS. RES.* 1030, 1031, 1038 (2005).

amount of wealth quickly.¹⁹⁴ Unfortunately, human trafficking represents precisely such a point of convergence.

The International Labour Organization estimates that human trafficking generates a profit of \$31.6 billion annually,¹⁹⁵ which “corresponds to an estimated [\$]13,000 of yearly profits for each forced labourer [sic].”¹⁹⁶ Assessments of criminal gangs’ annual profits from sex trafficking alone are “estimated [from] [\$]5 [billion] . . . to [\$]19 billion.”¹⁹⁷ One study demonstrated that in the United States, the typical mid-sized Korean-run “massage parlor” made \$1,168,000 annually by keeping just four women in its “employment.”¹⁹⁸ Similarly, typical residentially based brothels run by recent Latin immigrants made an average of \$821,250 annually by “employing” just three women.¹⁹⁹ Victor Malarek recounts the testimony of one trafficker who claimed: “You can buy a woman . . . and . . . make your money back in a week if she is pretty and she is young. Then everything else is profit.”²⁰⁰

The actual cost for a trafficker to acquire a marketable slave is often only “a few hundred dollars.”²⁰¹ In 2007, the “global average sale price” of a trafficked slave when sold to a brothel owner or pimp was \$1895.²⁰² Thus the initial transaction alone presents the criminal an opportunity to “flip” a captive for roughly \$1500 in profit, without even accounting for the residual value created by ongoing exploitation of that person. Siddharth Kara calculates that the profit margin for sex slaves, on a weighted global average, sits somewhere around 70%.²⁰³ By comparison, Kara points to the 2006 profit margins for several major multinational corporations: Google, 29%; Microsoft, 28.5%; Intel, 14.3%; and General Electric, 12.8%.²⁰⁴ Judging by those numbers alone, the smart money is evidently in selling people, not computers.

194. *See id.*

195. Belsler, *supra* note 40, at 17.

196. Mahmoud & Trebesch, *supra* note 146, at 6.

197. *Id.*

198. Hughes, *supra* note 42 at 14.

199. *See id.*

200. MALAREK, *supra* note 105, at 57.

201. BALES & SOODALTER, *supra* note 25, at 6.

202. KARA, *supra* note 47, at 19.

203. *Id.*

204. *Id.*

In 2005, the International Labour Organization estimated a very conservative²⁰⁵ total number of individuals in forced labor as a result of human trafficking at just over 2.5 million: 1.4 million of whom were believed to have been used for commercial sexual exploitation, with the remaining 1.1 million subjected to “other economic exploitation.”²⁰⁶ Within this data set, the study pegged the annual value added per worker at between \$360 (in Sub-Saharan Africa) and \$30,000 (in industrialized economies).²⁰⁷ However, annual profits for commercial sex, as opposed to other forms of labor, range from \$10,000 (in Sub-Saharan Africa) to \$67,000 (in industrialized economies).²⁰⁸ These numbers indicate that each year human trafficking generates \$3.8 billion through economic exploitation and another \$27.8 billion through sexual exploitation.²⁰⁹ In total, human trafficking tops out at an estimated \$31.7 billion industry²¹⁰—enough money to provide large swaths of the criminal underground significant job security. Given the vastly disproportionate profit created by sex trafficking as compared to labor trafficking, critics might forgive media, legislators, and abolitionists if they tend to overemphasize that particular aspect of the trade. Economists would certainly not quibble.

2. *The Supply of Disposable People*

For any market environment to generate the type of profit that human trafficking does, there must be an overwhelming and insatiable demand, a readily available and inexpensive supply, or, as here, both. Raimo Väyrynen describes why traffickers view people as the ideal durable asset: “[P]eople are a good commodity as they do not easily perish, but they can be transported over long distances and can be re-used and re-sold.”²¹¹

205. By 2012, the Organization’s global estimate for the number of individuals in “forced labour” (including both sex trafficking and labor trafficking) had increased to 20.9 million, which the organization still cited as “conservative.” INT’L LABOUR ORG., ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS AND METHODOLOGY 13 (2012) [hereinafter 2012 ILO ESTIMATE], available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.

206. Belsler, *supra* note 40, at 5 (assuming that of 600,000 forced laborers used for “mixed or undetermined” purposes, half belonged to the “commercial sexual exploitation” category and half belonged to the “other economic exploitation” category).

207. *Id.* at 8-14.

208. *Id.*

209. *Id.* at 17.

210. *Id.*

211. Raimo Väyrynen, *Illegal Immigration, Human Trafficking and Organized Crime* 3 (U.N. Univ. World Inst. for Dev. Econ. Research, Discussion Paper No. 2003/72, 2003),

Whereas a drug trafficker can sell a kilogram of cocaine only once, a sex trafficker can sell a person repeatedly. While the supply of vulnerable people has always been voluminous, the globally available supply erupted during the 1990s due to new migration trends.²¹² Because acquiring and transporting defenseless people proves so effortless and inexpensive, law enforcement struggles mightily—and possibly in vain—to seriously disrupt the supply side of slavery.²¹³

3. Demand for Cheap Sex

On the other side of the equation lies a colossal commercial demand for cheap labor and cheap sex.²¹⁴ Some academic explorations postulate that because demand rests in the hands of rational actors, education regarding the collateral effects of human trafficking will transform buyers' choices and attitudes.²¹⁵ Others place less hope in man's fragile morality and look purely to the economics.²¹⁶ Siddharth Kara, for instance, contends that a simple price increase will stifle demand, particularly where that demand is elastic.²¹⁷ Apparently, as the global price of sex slavery has decreased, consumers who were previously priced out of the market and unable to afford conventional prostitution have stepped forward with cash in hand.²¹⁸

available at http://www.wider.unu.edu/publications/working-papers/discussion-papers/2003/en_GB/dp2003-072/_files/78091733799863273/default/dp2003-072.pdf.

212. KARA, *supra* note 47, at 33 (describing the “mass migration trends unleashed during the 1990s” and the resulting profits gained by exploiting dislocated women and children).

213. *Id.* at 202-03.

214. *See id.* at 203.

215. *See, e.g.*, Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand Through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653, 683 (2008) (“As rational persons, johns will make different decisions if they learn that the financial, legal, and health costs of their actions outweigh the momentary physical benefit they gain from prostitution.”). *But cf.* Melissa Farley et al., Comparing Sex Buyers with Men Who Don't Buy Sex 5 (July 15, 2011) (unpublished manuscript), available at <http://www.prostitutionresearch.com/pdfs/Farleyetal2011ComparingSexBuyers.pdf> (“Two thirds of both the sex buyers and the non-sex buyers observed that a majority of women are lured, tricked, or trafficked into prostitution.”).

216. *See, e.g.*, KARA, *supra* note 47, at 203.

217. *Id.*

218. *Id.* at 34. For example, Kara shows the relative affordability of commercial sex by looking at the average income of various countries in relationship to the average price for sex. *Id.* He demonstrates that the services of a prostituted person in the United States cost a consumer just 1.4 hours of work income, while in Italy, the cost is 2.2 hours of income, and in India, 2.5 hours of income, assuming the national per capita income for each nation. *Id.*

Kara posits that steady consumer demand depends almost entirely on price, irrespective of consumers' sourcing awareness.²¹⁹ If Kara is correct, only an increase in price will significantly decrease demand—even when men²²⁰ know their sex is supplied by slaves.²²¹ Most importantly, Kara's analysis demonstrates that the demand component of the human trafficking business model is the most vulnerable structural weakness.²²² Therefore, he concludes that governments should focus their efforts on reversing the profitability ratio by adding risk and expense to purchasers and purveyors.²²³ The resulting increase in slave prices should produce not only a decrease in demand, but also a commensurate decrease in supply.²²⁴

Donna Hughes contends that child pornography feeds the pedophilia segment of the market, labeling it essentially a demand accelerant.²²⁵ Even more troubling, producers of pornography often seek out trafficked victims to use as "models" and "actors."²²⁶ Though many consumers of pornography remain unaware, their voyeurism actually contributes to the proliferation of sex trafficking.²²⁷ This reality underscores the complex interrelationship between and amongst different areas of the sex industry, spanning from the lawful to the illicit.

Consequently, the less work persons must perform to purchase sex, the more likely they will do so. *See id.*

219. *See id.* at 37.

220. People of each gender—both male and female—share responsibility for creating demand and for exploiting victims. Likewise, both genders are subjected to victimization. However, females bear a disproportionate burden as victims. The International Labour Organization's most recent estimates show that 98% of sex trafficking victims are female, as are 55% of all forced labor victims. 2012 ILO ESTIMATE, *supra* note 205, at 14.

221. KARA, *supra* note 47, at 37.

222. *Id.* at 200.

223. *See id.*

224. *Id.* at 203.

225. Hughes, *supra* note 42, at 26-28.

226. *Id.* For an example of domestic child pornography production, see Associated Press, *Hearing Set for Former McLoud Teacher Accused of Making Child Porn*, TULSA WORLD (Jan. 10, 2012 11:30 AM), http://www.tulsaworld.com/news/article.aspx?subjectid=12&articleid=20120110_12_0_OLHMIY160508.

227. *See, e.g.,* United States v. Daniels, 653 F.3d 399, 405 (6th Cir. 2011) (upholding conviction relating to trafficking children for sex and pornographic media production), *cert. denied*, 132 S. Ct. 1069 (2012). Though the court's holding in this case does not make explicit the connection between pornography production and sex trafficking, the nexus is apparent. *See id.* The profit potential of pornographic enterprise will be positively correlated with viewership demand. Because producers can increase profit margins by decreasing the cost of production, some will use trafficked persons as "models" or "actresses." *See* Hughes, *supra* note 42, at 26-28.

In addition to its importance as an economic argument, focusing on the demand for human trafficking over and above supply places the cultural examination more squarely where it should be: with perpetrators and purchasers. “When much of the focus is on the supply, the result is increasing scrutiny of the women’s lives, motivations, and circumstances, as if they are responsible for the crimes committed against them. . . . [I]t can inadvertently become a form of victim blaming.”²²⁸ Arrest rates of prostitutes, as compared to pimps and “johns,”²²⁹ support the claim that current cultural values place more disapproval on victims than on perpetrators.²³⁰ A demand-focused paradigm shift would allow a more robust and sophisticated response in combating these issues. According to many survivors and service providers, demand for victims is “the driving force of sex trafficking.”²³¹ The law will never fully eliminate the symptom (supply) until it adequately addresses the sickness (demand).

In Sweden, this emphasis on reducing demand shaped a creative effort in curtailing sex trafficking by criminalizing demand alone.²³² This model forbids the purchase of sexual services, but not the sale.²³³ “In the Swedish view, prostitution and human trafficking are linked by the sex buyers, whose money finances organized crime. In other words, the sex buyers make human trafficking both possible and lucrative.”²³⁴ In 2001, the Supreme Court of Sweden interpreted the penal code as allowing “50 days

228. Donna M. Hughes, *The Demand: The Driving Force of Sex Trafficking*, Address at the University of Hawaii, *The Human Rights Challenge of Globalization in Asia-Pacific-US: Trafficking in Persons, Especially Women and Children* (Nov. 14, 2002), in *VITAL SPEECHES OF THE DAY*, Jan. 2003, at 182, 184.

229. “Johns” describes those who seek to purchase commercial sex. Adrian Guzman, Note, *Making the Grade?: An Analysis of Rights- and Due Process-Based Concerns Related to John School Diversion Programs*, 20 B.U. PUB. INT. L.J. 79, 80-82 (2010).

230. See Steve Kanigher, *Life After Prostitution: Bill Would Erase Convictions in Some Cases*, LAS VEGAS SUN (Mar. 7, 2011, 2:00 AM), <http://www.lasvegassun.com/news/2011/mar/07/life-after-prostitution/> (“In Nevada, figures from 2009 showed that 3,555 women were arrested statewide for prostitution, compared with 459 men apprehended for prostitution-related crimes.”).

231. Donna M. Hughes, Univ. of R.I., Lecture on Sexual Exploitation at Queen Sofia Center, Valencia, Spain: Men Create the Demand; Women Are the Supply (Nov. 2000), available at <http://www.uri.edu/artsci/wms/hughes/demand.htm>.

232. KAJSA CLAUDE, *TARGETING THE SEX BUYER—THE SWEDISH EXAMPLE: STOPPING PROSTITUTION AND TRAFFICKING WHERE IT ALL BEGINS* 6 (Mireille L. Key trans., 2010); see BROTTSBALKEN [Brb] [Criminal Code] 6:12 (Swed.).

233. CLAUDE, *supra* note 232, at 6.

234. *Id.*

of fines proportional to [a sex buyer's] income."²³⁵ If a purchase occurs in connection with an organized prostitution business, the offender is eligible for additional sentencing and fines.²³⁶ This novel approach to criminalization and enforcement places proper emphasis on both the economic and human factors underlying trafficking. Sweden no longer treats women as the problem. Instead, it places accountability on consumers for their actions.

a) *Western Culture*

If prostitution is the "world's oldest profession,"²³⁷ then purchasing sex must be the world's oldest pastime. Though natural biological impulses generally create a healthy desire for sex in humans, one cannot ignore the modern cultural contributions to rapidly changing mores and appetites.²³⁸ Both Western²³⁹ and Eastern societies strongly evidence an evolving sexual climate.²⁴⁰

The United States stands as the second largest importer of sex trafficking victims, trailing only Germany.²⁴¹ Despite America's puritanical beginnings and the resurgence of some "traditional family values" enthusiasts,²⁴² the

235. *Id.* at 7.

236. *Id.*

237. "World's oldest profession" is a colloquial phrase used to connote prostitution, typically in a pejorative sense. *See, e.g.,* Knafel v. Chi. Sun-Times, Inc., No. 03 C 6434, 2004 WL 628242, at *4 (N.D. Ill. Mar. 25, 2004), *aff'd*, 413 F.3d 637 (7th Cir. 2005).

238. For example, as of July 2012, E L James's erotic thriller *Fifty Shades of Grey*, featuring explicit sadistic and masochistic sexual imagery, became the fastest selling paperback book in history. Paul Bentley, "Mummy Porn" *Fifty Shades of Grey* Outstrips *Harry Potter* to Become the Fastest Selling Paperback of All Time, MAIL ONLINE (June 17, 2012, 7:52 PM), <http://www.dailymail.co.uk/news/article-2160862/Fifty-Shades-Of-Grey-book-outstrips-Harry-Potter-fastest-selling-paperback-time.html#ixzz1y9SHlzQU>.

239. *See e.g.,* *Swedish PM Blasts Media Over Sex*, BBC NEWS (May 22, 2005, 7:28 GMT), <http://news.bbc.co.uk/2/hi/europe/4570217.stm> (discussing an upward trend in the Swedish media's public depiction of sex and nudity, quoting the Swedish Prime Minister on his desire to keep Sweden from going "in the same direction as . . . Britain"). *See generally* RODGER STREITMATTER, *SEX SELLS!: THE MEDIA'S JOURNEY FROM REPRESSION TO OBSESSION* (2004) (examining America's evolving sexual sensitivity over five decades, and the media's role in establishing the new status quo).

240. *See, e.g.,* Jun Hongo, *Child Porn Scantily Disguised as Art?*, JAPAN TIMES (May 3, 2007), <http://search.japantimes.co.jp/cgi-bin/nn20070503f1.html> (pointing to public depictions of pre-teen girls in lingerie as evidence of the rapidly changing Japanese sexual mores).

241. BALES & SOODALTER, *supra* note 25, at 107.

242. *See* Seth Dowland, "Family Values" and the Formation of a Christian Right Agenda, 78 CHURCH HIST. 606 (2009).

United States has become an increasingly sexualized society over the past few decades.²⁴³ This change might be most noticeable and alarming in the way that children are portrayed in relation to sex.²⁴⁴ Cultural commentators and academics alike note the increasingly early sexualization of children, evidenced not only by the content to which they are exposed, but also by how they are presented.²⁴⁵ Professor Teresa Downing-Matibag observes that:

Dressing girls like grown women . . . communicates that they have the sexuality of adults, in the bodies of children While little girls themselves likely have very little awareness of adult or even adolescent sexuality, or what sex is really about, the adults who are seeing them on the streets do. We are also communicating to adults that little girls are sexually appealing, and this message has tragic implications for their vulnerability to sexual abuse.²⁴⁶

The liberalization of cultural sexuality in the United States is certainly not limited to children. Following the lead of Europe, the media portrays adult sex with increasing frequency.²⁴⁷ In Las Vegas, for instance, “there were [only] 30 pages of advertisements for” sexual services in the yellow pages in 1989, each listed exclusively as “escort services.”²⁴⁸ By 2005, that number had increased fourfold, and “120 pages of advertisements for sexual services [appeared] under the heading of ‘entertainment services.’”²⁴⁹ The reclassification of commercial sex from “escort services” to “entertainment services” evinces an increasing familiarity and nonchalance of the American sexual attitude.²⁵⁰ More recently, and after much public protest, the popular website Craigslist finally agreed to remove

243. *See generally* STREITMATTER, *supra* note 239.

244. *See generally* M. GIGI DURHAM, *THE LOLITA EFFECT: THE MEDIA SEXUALIZATION OF YOUNG GIRLS AND WHAT WE CAN DO ABOUT IT* (2008) (describing the increasing rate of early sexualization of children in the United States).

245. *See* STREITMATTER, *supra* note 239;

246. Katia Hetter, *Avoiding Sexy Costumes for Kids*, CNN (Oct. 28, 2011, 9:47 AM), http://www.cnn.com/2011/10/28/living/sexy-costumes-kids/index.html?hpt=hp_c2 (internal quotation marks omitted) (offering parents alternatives to provocative Halloween costumes for children).

247. *See* STREITMATTER, *supra* note 239, at 115-25 (examining changing sexual mores as conveyed in advertising and the resulting media portrayal of the new status quo).

248. Hughes, *supra* note 42, at 21.

249. *Id.*

250. *Id.*

its “exotic services” section²⁵¹ regularly used by traffickers to advertise children for sex.²⁵²

The increasingly explicit sexuality in the United States is not without effect. One comprehensive study concluded that “[b]etween 244,000 and 325,000 American children and youth are ‘at risk’” of commercial sexual victimization domestically, which includes “child pornography, juvenile prostitution, and trafficking in children for sexual purposes.”²⁵³ In addition, Tom Moss, a former United States Attorney, observed that “[a]t any given time, 50,000 predators are prowling for children on the Internet It is not an exaggeration to say that we are in the midst of an epidemic of sexual abuse and exploitation of our children.”²⁵⁴

b) Eastern Tradition

To adequately address human trafficking in the United States, policy makers must resist the strong temptation to overemphasize the contributing international factors, thereby mistakenly casting trafficking as only an “international” or “Eastern” problem.²⁵⁵ Similarly, they must take care not to underemphasize the international paradigm, disregarding it as irrelevant to the more salient “domestic” issue. Globalization’s meteoric advance has,

251. Brad Stone, *Under Pressure, Craigslist to Remove “Erotic” Ads*, N.Y. TIMES, May 14, 2009, at B1, available at http://www.nytimes.com/2009/05/14/technology/companies/14craigslist.html?_r=0.

252. See *United States v. Doerr*, No. 09-00031-01-CR-W-FJG, 2009 WL 4042759, at *2 (W.D. Mo. Nov. 20, 2009).

253. Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico 2* (2002) [hereinafter Abstract], available at: http://www.sp2.upenn.edu/restes/CSEC_Files/Abstract_010918.pdf. For the full results of Estes and Weiner’s study, see Richard J. Estes & Neil Alan Weiner, *The Commercial Exploitation of Children in the U.S., Canada and Mexico* (2002), available at http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf.

254. Press Release, U.S. Dep’t of Justice, *Man Sentenced to Life in Prison for Producing Video of Toddler Being Sexually Abused* (Apr. 16, 2007), available at http://www.justice.gov/opa/pr/2007/April/07_crm_249.html; see also BALES & SOODALTER, *supra* note 25, at 91. According to the Department of Justice, nearly half of all sex trafficking cases involve children. See BANKS & KYCKELHAHN, *supra* note 26, at 1.

255. Domestic production of commercial exploitation in the United States actually rivals, if not surpasses, that of imported victims. See WILSON & DALTON, *supra* note 182, at 16 (noting results of a study of trafficking victims in the State of Ohio, specifically those near the cities of Columbus and Toledo). In one study of juvenile victims of sex trafficking, almost all were females from ten to seventeen years old, and appeared to have been born in the United States. *Id.* (conceding, however, that a study by a different group in 2004 found that “the vast majority of reported victims [were] from other areas of the world, most notably Mexico, Central America, Asia, or Russia”).

and will continue to, quickly dissolve the formerly tidy boundaries between “domestic” and “international” issues.

The fastest growing race groups [in the United States] will continue to be the Asian and Pacific Islander population By the turn of the century, the Asian and Pacific Islander population [will] expand to over 12 million, double its current size by 2010, triple by 2020, and increase to more than 5 times its current size, to 41 million by 2050.²⁵⁶

For the United States to neglect the impact and influence of other global cultures in its response to human trafficking—regarding both supply and demand—would be disastrously naive and myopic.²⁵⁷

While the United States is among global leaders in the importation and production of trafficking victims, the epicenter of the problem has been strongly concentrated in Asia.²⁵⁸ In some Asian cultures, including those of “Japan, China, Korea, and Taiwan sex with a virgin is thought to bring good luck to a new business venture,” while at the same time posing a lower risk to perpetrators of contracting a sexually transmitted infection.²⁵⁹ Similarly, men in some Asian cultures believe that “sex with a young girl will cure [them] of sexually transmitted diseases or restore youth.”²⁶⁰ In some places, procuring sex with young children takes a more proactive and systematic form than might be presumed in a conventional brothel or escort situation.²⁶¹ “Japanese and Chinese men are known to pay parents years in advance to ‘sponsor’ a young child. The families receive a regular payment

256. Jennifer Cheeseman Day, *National Population Projections*, in U.S. DEP’T OF COMMERCE, POPULATION PROFILE OF THE UNITED STATES: 1995, at 8, 9, available at <http://www.census.gov/prod/1/pop/profile/95/p23-189.pdf>.

257. See generally KARA, *supra* note 47, at 16-43 (analyzing the complex relationships among trafficking scenarios in different parts of the world, and describing a critical economic nexus between them).

258. See, e.g., 2011 TIP REPORT, *supra* note 34, at 54 (showing only two Asian countries in tier one compliance: South Korea and Taiwan). “The [State] Department places each country in the 2011 TIP Report onto one of three tiers, as mandated by the TVPA. This placement is based [mostly] on the extent of government action to combat trafficking” *Id.* at 11. A tier one country “fully compl[ies] with the TVPA’s minimum standards for the elimination of human trafficking,” while a tier three country, on the other hand, is not fully compliant “with the minimum standards and [is] not making significant efforts to [comply].” *Id.* at 13-14.

259. BATSTONE, *supra* note 24, at 43-44.

260. Hughes, *supra* note 42, at 25.

261. See BATSTONE, *supra* note 24, at 44.

to raise a healthy daughter, and when the sponsor is ready, he will come and use her for sex.”²⁶²

To the extent that regional religious culture contributes to the overall conception of people’s intrinsic value, some contend that certain forms of Eastern religion severely degrade and devalue women and children (those most at risk of commercial exploitation).²⁶³

Buddhist religious traditions, woven deep into the fabric of Southeast Asian societies, reinforce the relegation of females to second-class status. In Thai (Theravada) Buddhism, women cannot even reach the highest levels of spiritual enlightenment. The best that they can hope for in this lifetime is to build up enough good karma to be born male in the next life. The reverse logic also holds true: to be born female in this present embodiment suggests that a woman acted sinfully in her previous existence.²⁶⁴

Furthermore, “The modes of achieving merit and the subordinated role of women in traditional Theravada society have been crucial factors in the evolution of the sexual exploitation of women, as a business, in Thailand.”²⁶⁵ Given the long history of patriarchal dominance in Thailand, it should not be surprising that prostitution expanded significantly after the royal government outlawed polygamy in 1934.²⁶⁶ “Rather than commit adultery, Thai society deemed it preferable for a man to purchase sex from prostitutes, many of whom would have been purchased as slave wives [under polygamy].”²⁶⁷ Predictably, exploiters disproportionately cajole the poor and uneducated young women in Thailand into filling that market supply.²⁶⁸

262. *Id.*

263. DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE—AND HOW WE CAN FIGHT IT 54-55 (2007); *see also* KARA, *supra* 47, 173-74 (discussing how some traditional Theravada Buddhist theology has led to the subjugation and commercial sexual exploitation of women).

264. BATSTONE, *supra* note 263, at 54.

265. KARA, *supra* note 47, at 173.

266. *Id.* at 175.

267. *Id.*

268. *Id.* at 175-76.

In Japan, sexual permissiveness and libertinism mark the culture in ways unimaginable in even a rapidly post-modernizing United States.²⁶⁹ Though traditionally unencumbered by some of the social constrictions familiar to Americans, recent trends in Japanese public sexuality have caused its own citizens to rethink appropriate boundaries.²⁷⁰ The term “Junior Idol” denotes semi-pornographic media featuring girls younger than fifteen years old, and has grown from an underground fetish to a mainstream phenomenon.²⁷¹ Increasingly, vendors sell Junior Idol product in the same locations as hard-core pornography, depicting girls as young as nine years old in provocative positions wearing thong-style bikinis and lingerie.²⁷² “Japan has slowly been implementing legal measures against child pornography, but the ambience, culture and religion of the country makes people less uncomfortable about such issues compared with Western societies.”²⁷³ Because the domestic trafficking problem is so symbiotically related to the international problem, and because America will likely remain “a nation of immigrants,”²⁷⁴ these Eastern influences should bear tremendously on a broad social response to the commercial sex crisis.

IV. Federal & State Responses

A. Victims of Trafficking and Violence Prevention Act of 2000 & Subsequent Reauthorizations: The Foundation

Due in part to the conceptual and philosophical differences concerning how to conceive of and address human trafficking,²⁷⁵ Congress undertook extensive discussion and political compromise²⁷⁶ before finalizing its

269. See Hongo, *supra* note 240 (discussing the Japanese pornography genre called “Junior Idol,” which features very young girls, clad only in underwear, striking provocative poses).

270. See *id.*

271. See *id.*

272. *Id.*

273. *Id.* (relaying assertions made by author and Okinawa University lecturer Koji Maruta).

274. See JOHN F. KENNEDY, A NATION OF IMMIGRANTS 1-2 (Harper Perennial rev. ed. 2008) (1964) (containing a short history of immigration in the United States).

275. See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 194 (2007) (discussing the abolitionist perspective).

276. Compare, e.g., 146 CONG. REC. S7925-02 (daily ed. July 27, 2000) (statement of Sen. Hatch), 2000 WL 1079590 (proposing an amendment to H.R. 3244 citing the annual number of people trafficked across international borders as being in the “millions”), with 22 U.S.C. § 7101(b) (2006) (including the compromised congressional finding that the annual

seminal anti-trafficking legislation, the Victims of Trafficking and Violence Protection Act (TVPA), in 2000.²⁷⁷ The preamble of congressional findings notes that “[a]s the 21st century begins, the degrading institution of slavery continues throughout the world,” and acknowledges that while “[t]rafficking in persons is not limited to the sex industry,” it does involve “primarily . . . women and girls, who are disproportionately affected by poverty, [and] the lack of access to education.”²⁷⁸ The passage of the TVPA signaled a transition from post-civil war conceptions of involuntary servitude crimes to a modern, victim-centered approach to criminal prosecution.²⁷⁹ The TVPA substantially improved the federal government’s ability to identify, investigate, and prosecute traffickers, while better protecting and caring for victims.²⁸⁰

Quite fundamentally, the TVPA created a bifurcated structure dividing human trafficking into two categories: “labor or services,” and “sex trafficking.”²⁸¹ Replete with provisions variously addressing the sizeable issue, the Act committed to providing ameliorative economic responses, including education and job training to at-risk populations, as well as important public awareness campaigns.²⁸² Strengthening the government’s ability to effectuate the bill’s directives, the TVPA provided almost \$100 million for the newly created enforcement and victim assistance programs.²⁸³ As a layer of accountability, and to facilitate a longitudinal analysis of the bill’s effectiveness, the law tasked the Secretary of Health and Human Services with providing annual reports on trafficking

number of trafficking victims was instead “at least 700,000”). *See also* Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 96-97 (2009) (noting that the Act was a “remarkable compromise between feminist positions”).

277. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 8, 18, 22 U.S.C.).

278. 22 U.S.C. § 7101(b)(1), (3)-(4).

279. Mark J. Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery*, 6 U. ST. THOMAS L.J. 9, 12 (2008).

280. *Id.*; Susan W. Tiefenbrun, *The Domestic and International Impact of the United States Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 2 LOY. U. CHI. INT’L L. REV. 193, 199-200 (2005).

281. *See* 22 U.S.C. § 7102(8).

282. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 106, 114 Stat. 1464, 1474 (codified as amended at 22 U.S.C. § 7104).

283. *Id.* § 113 (codified as amended at 22 U.S.C. § 7110) (outlining appropriations to various government entities).

incidences, prosecution, and program effectiveness.²⁸⁴ In addition to setting heavy criminal sanctions, including the possibility of life in prison and severe economic penalties for traffickers,²⁸⁵ the TVPA provided important grants to victim rehabilitation efforts²⁸⁶ and extended international trafficking victims protection from deportation.²⁸⁷

Ensuring the feasibility of its various provisions, the bill created an interagency task force to ensure effective monitoring, communication, prevention, and, ultimately, prosecution of trafficking cases.²⁸⁸ This ambitious and sweeping legislation emerged as the first formal response to human trafficking in the United States²⁸⁹ and served as the broad foundation for all future and subsequent work (including its various reauthorization progeny).

Subsequent to the initial TVPA in 2000, Congress passed several additional iterations to both continue and improve its corpus. In 2003, the first reauthorization passed, containing fiscal appropriations for another two years.²⁹⁰ This version shifted the reporting duty previously held by the Secretary of Health and Human Services to the Secretary of State.²⁹¹ The State Department's new reporting duties included creating a tiered system by which to monitor and rank non-compliant and problem countries that failed to aggressively address human trafficking within their borders.²⁹² Additionally, the 2003 reauthorization made Racketeer Influenced and Corrupt Organizations Act charges available for human trafficking cases,²⁹³ provided heightened civil remedies for victims against their traffickers in United States courts,²⁹⁴ and required the distribution of anti-trafficking laws

284. *Id.* § 107(b)(1)(D), *repealed by* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 6(a)(2), 117 Stat. 2875, 2880.

285. *Id.* § 112 (codified as amended at 18 U.S.C. §§ 1581, 1583-1584, 1589-1594; 22 U.S.C. § 7109).

286. *Id.* § 107(b)(1)(A), (2)(A) (codified as amended at 22 U.S.C. § 7105).

287. *Id.* § 107(e) (codified as amended at 8 U.S.C. §§ 1101, 1182, 1184; 22 U.S.C. § 7105).

288. 22 U.S.C. § 7103 (2006).

289. Barnhart, *supra* note 276, at 97-98.

290. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 7, 117 Stat. 2875, 2884-86 (codified as amended at 22 U.S.C. § 7110).

291. *See id.* § 6 (codified as amended at 22 U.S.C. § 7107).

292. *Id.* § 6(e). *See supra* notes 32, 34 for information on the relevant annual reports, called the "Trafficking in Persons Report."

293. Trafficking Victims Protection Reauthorization Act of 2003, § 5(b) (codified as amended at 18 U.S.C. § 1961(1)(A)).

294. *Id.* § 4(a)(4)(A) (codified as amended at 18 U.S.C. § 1595).

to travelers going abroad.²⁹⁵ It also required the inclusion of penalty-free contract cancellation provisions in all contracts between federal agencies and private entities.²⁹⁶ These provisions were intended, functionally, to prevent government contractors from using trafficked labor or procuring commercial sex during contracting periods.²⁹⁷

In 2005, Congress again reauthorized the TVPA, giving federal courts jurisdiction over federal employees and contractors for trafficking offenses committed while abroad.²⁹⁸ The 2005 reauthorization also granted an additional \$50 million to empower federal investigations and prosecutions of trafficking cases committed by federal employees or contractors.²⁹⁹ This expansion of prosecutorial power and extension of funds underscored the seriousness of the federal commitment to combat human trafficking.

Most recently, in 2008, Congress reduced the mens rea requirement under 18 U.S.C. § 1589, which addresses trafficking for forced labor.³⁰⁰ Congress further stipulated that where a “defendant had a reasonable opportunity to observe the person so recruited . . . the Government need not prove that the defendant *knew* that the person had not attained the age of 18 years.”³⁰¹ By lowering the government’s burden of proof, Congress increased the usability of the established anti-trafficking statute. Additionally, the 2008 reauthorization amendments addressed the importance of monitoring trafficking and collecting data by increasing the responsibility of the Office to Monitor and Combat Trafficking³⁰² and creating an interagency database for collaborative case management.³⁰³ Finally, with an eye toward economic solutions, the 2008 reauthorization increased the severity of disgorgement of traffickers’ profits and redirected them to victim restitution.³⁰⁴

295. *Id.* § 3(a)(2) (codified at 22 U.S.C. § 7104(e)(1)).

296. *Id.* § 3(b) (codified at 22 U.S.C. § 7104(g)).

297. *See id.*

298. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 103(a)(1), 119 Stat. 3558, 3562 (2006) (codified at 18 U.S.C. §§ 3271-72).

299. *Id.* § 204(d).

300. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222(b)(3), 122 Stat. 5044, 5068-69 (codified at 18 U.S.C. § 1589).

301. 18 U.S.C. § 1591(c) (Supp. II 2008).

302. 22 U.S.C. § 7103(e)(2) (Supp. II 2008).

303. *Id.* § 7109a(a)(5), (b).

304. 18 U.S.C. § 1595(a) (broadening the category of people subject to a civil suit for the purpose of victim restitution).

B. State Responses: Fractious and Fragmented, But Heading in the Right Direction

Despite increasingly effective federal legislation, federal prosecutors will receive only a fraction of trafficking cases, and lack the capacity to prosecute all of them.³⁰⁵ Moreover, even if federal prosecutors possessed the resources to pursue each case, generally “state and local law enforcement officers . . . initially identify these crimes and their victims.”³⁰⁶ Department of Justice studies suggest that roughly 68% of human trafficking arrests occur at the state level while only 26% occur at the federal level.³⁰⁷ Very often, even federal prosecution of trafficking cases actually begins as a state level case.³⁰⁸ For these reasons, among others, state laws must carry the same focus as federal laws to avoid major gaps in coverage and execution.³⁰⁹

1. The Ideal Role of State Laws

State statutory schemes should strive for uniformity in order to eliminate jurisdictional gaps. Such uniformity would help prevent traffickers and syndicates from strategically and geographically concentrating ventures in states with the lowest business costs and the most lenient punishments. Currently, major disconnects exist between some federal and state penal regimens.³¹⁰ For example, under federal law, a person convicted of trafficking a minor for sexual purposes faces a potential life sentence.³¹¹ In California, that same convicted individual would face a maximum sentence

305. See Hughes, *supra* note 141, at 50.

306. Coonan, *supra* note 118, at 325.

307. TRACEY KYCKELHAHN ET AL., U.S. DEP'T OF JUSTICE, NCJ 224526, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2007-08, at 10 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf>. The remaining 6% of arrests were reported by both a state agency and a federal agency. See *id.* Regardless, the point is clear: state law enforcement agencies execute the great majority of trafficking arrests.

308. Coonan, *supra* note 118, at 326-27.

309. See Hughes, *supra* note 141, at 50.

310. See SHARED HOPE INT'L, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK: METHODOLOGY § 2.7, at 5 (2011).

311. 18 U.S.C. § 1591(a)-(b) (2006 & Supp. II 2008).

of only eight years.³¹² Similarly, federal statutes treat minors linked to prostitution as victims, while some states still treat them as delinquents.³¹³

Confoundingly, state laws vary significantly on key provisions. For example, as of 2007, despite recommendations by various agencies that offered model state statutes—most notably, the Department of Justice, the Polaris Project, and a joint project between the Freedom Network and Global Rights—only two states (Illinois and Pennsylvania) had incorporated trafficker asset forfeiture.³¹⁴ By 2008, that number increased by only four states.³¹⁵ Vanessa Bouché conveyed the frustration of such hodgepodge schematics to the Ohio Senate’s Judiciary Committee, testifying that as of the end of 2008, “sixteen states [had] restitution provisions, six states include[d] asset forfeiture, nine states include[d] a civil action provision, and five states allow[ed] for affirmative defenses.”³¹⁶ These widely ranging models create unnecessary variance in the ways states handle trafficking crimes.

Of all of the provisions that differ amongst states, one of the most vital is that of asset forfeiture. As one Swedish prosecutor aptly commented following Sweden’s implementation of a similar provision: “‘Money is very important. It is what it is all about. Taking their cars and gold. That hurts them more than prison.’”³¹⁷ A recent proposal in Illinois to increase penalties for first time prostitution offenses (both solicitation and service) grants total immunity to minors for prostitution offenses (service) and heightens financial forfeitures of solicitors.³¹⁸ This initiative, entitled “End

312. CAL. PENAL CODE § 236.1(a)-(c) (Deering 2008 & Supp. 2012). The convicted individual could also be fined up to \$100,000 by the court. *Id.* § 236.1(g).

313. Tichenor, *supra* note 147, at 43. Compare ALA. CODE §§ 13A-12-120 to -122 (LexisNexis 2005) (providing no age-based exception for a prostitution offense), and KAN. STAT. ANN. § 21-6419(b) (Supp. 2011) (containing no exception for minors convicted of prostitution), with MICH. COMP. LAWS ANN. § 750.448 (West 2004) (criminalizing soliciting and accosting only for those over sixteen years of age, thus shielding at least a portion of minors from potential prosecution), and TENN. CODE ANN. § 39-13-513(d) (2010) (immunizing altogether juveniles less than eighteen years old from prostitution prosecution).

314. Farrell, *supra* note 150, at 24-25.

315. Vanessa Bouché, Advocate and Ph.D. Candidate/Researcher, Ohio St. Univ., Statement at the Ohio Senate Judiciary Criminal Justice Committee Hearing on SB 235: The Necessity of Passing Human Trafficking Criminalization Legislation in Ohio: Remedies Taken by Other States and the Implications of Not Passing (Apr. 13, 2010) (transcript on file with author) (testifying in support of Senate Bill 235, a measure to criminalize human trafficking).

316. *Id.*

317. Hughes, *supra* note 42, at 35.

318. H.B. 6462, 96th Gen. Assemb., Reg. Sess. (Ill. 2010).

Demand Illinois,” took its lead from the New York Safe Harbor for Exploited Children Act of 2008, and focuses directly on the asset forfeiture of traffickers and johns.³¹⁹ Upon arrest for soliciting a prostitute, police may impound the arrestee’s vehicle and offer it for redemption only upon submission of \$1000 (up from a previous \$200).³²⁰ If the defendant is convicted, half of the redemption fee will cover costs of the arresting agency, and the other half will go to the Violent Crime Victims Assistance Fund for the benefit of trafficking victims.³²¹ This increased impounding fee responds directly to the economic reality of trafficking by imposing financial penalties on johns, thereby increasing the net cost of sex and reducing demand.³²²

Another crucial aspect of Illinois law concerns the treatment of prostituted minors. Commonly deemed a “safe harbor” provision, the law treats minors under eighteen years old as presumptive victims, not criminals.³²³ It also employs the less stigmatizing “minor engaged in prostitution,” rather than the more traditional, condemning attribution of

319. *See id.* § 11.19.3.

320. *Id.* The asset forfeiture provision was codified in July 2011 as 720 ILL. COMP. STAT. ANN. 5/36.5-5(a) (LexisNexis Supp. 2012).

321. *Id.* 5/36.5-5(b). If the defendant is not convicted, the redemption fee will be refunded to him. *Id.* 5/36.5-5(c).

322. In contrast, Oklahoma’s asset forfeiture measure relating to human trafficking operations is similar but critically amiss. *See* 21 OKLA. STAT. § 1738 (2011). Inconceivably, legislators inserted a carve-out protection for johns, utterly crippling the state’s ability to implement a holistic, fiscally smart policy. *See id.* Moreover, the wording of the carve-out seems to communicate a wildly inappropriate nonchalance as to the moral and legal culpability of johns. The state applies the asset forfeiture measure to:

[A]ny equipment, vehicle, airplane, vessel or any other conveyance that is . . . used in any manner to facilitate or participate in the commission of any human trafficking offense . . . or used by any defendant when such vehicle or other conveyance is used in any manner by a prostitute, pimp or panderer to facilitate or participate in the commission of any prostitution offense . . . provided, however, that the vehicle or conveyance of a customer or anyone merely procuring the services of a prostitute shall not be included.

Id. The legislature’s use of the word “merely” to describe the unlawful purchase of commercial sex, which very often occurs with a trafficked person, is uninformed, dismissive, and ultimately harmful. While states like Oklahoma continue to enact some excellent legislation addressing human trafficking, there is still a vast deficiency with respect to the public’s comprehensive understanding of the issue.

323. *See* 705 ILL. COMP. STAT. ANN. 405/2-3(2)(vii) (establishing a presumption of abuse of any minor under eighteen years of age who is allowed to commit any act of prostitution by a parent or guardian); 720 ILL. COMP. STAT. ANN. 5/11-14(d) (immunizing minors under eighteen years of age from prosecution on charges of prostitution).

“prostitute.”³²⁴ Connecticut’s anti-trafficking statute contains similar language, likewise treating sixteen- and seventeen-year-olds as presumptive trafficking victims, rather than criminals.³²⁵ Similar legislation and judicial interpretations have begun appearing in other states as well, such as Minnesota, Tennessee, and Texas.³²⁶ State laws should, at a minimum, criminalize trafficking as a standalone felony, and provide stiff penalties for traffickers and johns in order to financially disincentivize the practice. Further, to achieve maximum continuity of coverage, state legislatures should synchronize state laws with federal amendments annually. Finally, in recognition of the fundamentally economic nature of this crime, states should enact more thorough financial penalties and cost-shifting measures to enhance the operational expenses of the buyers and sellers of illicit commercial sex.

2. Current Trend of State Laws

Though state legislatures were not early adopters of anti-trafficking measures, they have responded rapidly to the need for such laws, producing a wide range of coverage. In 2003, only one state—Texas—had enacted anti-trafficking laws into its code.³²⁷ By 2006, twenty-eight additional states had joined suit.³²⁸ In 2011, that number grew to a total of forty-seven.³²⁹ By June 2012, that number rose to forty-nine,³³⁰ leaving only one state—

324. *See id.* 5/11-18.1.

325. CONN. GEN. STAT. § 53a-82(c) (2011).

326. Bob von Sternberg, *Bill Seeks “Safe Harbor” for Child Prostitutes*, STARTRIBUNE (Apr. 13, 2011 8:30PM), <http://www.startribune.com/politics/statelocal/119811709.html> (referencing the then-proposed, now-enacted change in Minnesota law to “reclassify underage prostitutes as ‘sexually exploited youths’”); *see, e.g.*, MINN. STAT. § 609.093 (Supp. 2011) (taking effect Aug. 1, 2014); TENN. CODE ANN. § 39-13-513(d) (Supp. 2012); *In re B.W.*, 313 S.W.3d 818, 826 (Tex. 2010) (holding that a minor under fourteen years old could not be prosecuted for prostitution where she had not yet reached the age of consent under Texas law).

327. Farrell, *supra* note 150, at 21.

328. *Id.*

329. *See Fact Sheet on State Anti-Trafficking Laws*, CTR. FOR WOMEN POLICY STUDIES, 2 (Mar. 2012), http://www.centerwomenpolicy.org/documents/11.CWPS_FactSheetonStateAntiTraffickingLawsMarch2012_000.pdf.

330. Virginia enacted human trafficking legislation as of 2011. *See* VA. CODE ANN. § 18.2-48 (2009 & Supp. 2012). As of June 8, 2012, West Virginia became the forty-ninth state to enact human trafficking legislation. *See* W. VA. CODE ANN. § 61-2-17 (LexisNexis Supp. 2012).

Wyoming—without any law addressing human trafficking whatsoever.³³¹ Of potentially equal importance to the standalone criminalization of human trafficking is the legislatively mandated implementation of interagency task forces.³³² These cohorts monitor and measure trafficking patterns while collaborating in their enforcement efforts.³³³ As of 2011, only twenty-one states required such operations.³³⁴ While states have criminalized human trafficking at an energetic pace since 2003, some statutes incorporate terms too narrowly and fail to implement holistic measures aimed at providing sufficient investigatory and recovery resources.³³⁵

Despite the clear momentum of anti-trafficking laws at the state level, barriers to effective deterrence remain. Some states have enacted “safe harbor” provisions, treating legal minors as presumptive victims and thus exempt from prosecution as prostitutes.³³⁶ In other states, however, similar statutes fail to pass because of legislators’ desire to appear “tough on crime” for their constituents.³³⁷ Lawmakers hesitate to do anything that voters could construe as legalizing prostitution.³³⁸ In some cases, state legislatures that demonstrated an initial eagerness to support anti-trafficking laws are stepping back and calling for further empirical research to determine if actual occurrences match advocacy groups’ claims.³³⁹ Regardless of those inherent difficulties, the state trend toward comprehensive anti-trafficking schemes is an excellent start, and puts victims in an immeasurably better position than just ten years ago.

331. See Press Release, Polaris Project, Massachusetts Passes Its First Human Trafficking Bill (Nov. 15, 2011), *available at* <http://www.polarisproject.org/media-center/press-releases/524-massachusetts-passes-first-ever-human-trafficking-bill-nov-15-2011> (noting that only West Virginia and Wyoming lacked criminal laws against human trafficking). West Virginia has since criminalized human trafficking. See *supra* note 330.

332. 22 U.S.C. § 7103 (2006 & Supp. II 2008) provides a helpful structural model for a task force. States such as Texas have been effective in establishing state task forces that mirror the federal template. See TEX. GOV'T CODE ANN. § 402.035 (West Supp. 2012).

333. See, e.g., *id.* § 402.035(d).

334. *Fact Sheet on State Anti-Trafficking Laws*, *supra* note 329, at 2.

335. See e.g., COLO. REV. STAT. ANN. §§ 18-3-501 to -503 (West 2011) (outlawing labor trafficking without addressing sex trafficking per se or providing any relief for victims).

336. See, e.g., CONN. GEN. STAT. § 53a-82(c) (2012).

337. E.g., Interview with Glenn Coffee, Okla. Sec'y of State, in Okla. City, Okla. (Dec. 21, 2011).

338. *Id.*

339. *Id.*

V. An Integrated Approach

For anti-trafficking efforts in the United States to attain maximum effectiveness, state and federal law must together accomplish three things: (1) extend criminal sanctions to focus more intently on demand, (2) impose more significant economic disincentives and costs upon traffickers and syndicates, and (3) aggressively promote public awareness and key practitioner training.

A. Identifying the Truest Culprit: A Renewed Focus on Demand

As with any “free market issue,” the phenomenon of human trafficking relies on both supply and demand for its continued existence.³⁴⁰ Its proliferation remains profit-driven, and the supply (people) is, in the basest sense, “fungible.”³⁴¹ Therefore, throttling demand represents the greatest opportunity to disrupt the flow of illicit commerce.³⁴² In one sense, prosecutors have erred heavily on the side of targeting supply side actors—namely “prostitutes” and “pimps.”³⁴³ Additionally, prosecutors generally possess a greater degree of comfort dealing with statutes intended to deal with supply side problems.³⁴⁴

The first necessary shift requires both statutory emphasis and prosecutorial efforts to refocus on the true economic driver: purchasers of commercial sex. Legislators, especially in traditionally conservative states, desire to convey a consistent “tough on crime” persona to constituents.³⁴⁵ In light of this reality, past law has quite visibly criminalized the offense of prostitution.³⁴⁶ Seen as a public nuisance at best, and inimical to public morals at worst, laws in many states classify prostitution as a

340. See *supra* Part III.C.

341. See *supra* Part III.C.

342. See *supra* Part III.C.

343. See, e.g., Kanigher, *supra* note 230 (citing a disproportionately large number of prostitute arrests as compared to pimps).

344. Supply side criminalization and prosecution have existed for at least one hundred years. See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 642-53 (2005). Demand side enforcement is to some degree an invention of the TVPA 2000. See *Human Trafficking Rescue Project*, U.S. ATTORNEY'S OFFICE, W. DIST. OF MO., <http://www.justice.gov/usao/mow/community/human.trafficking.html> (last visited Jan. 12, 2013); Kari Lerum, *The Sexual Politics of Anti-Trafficking Efforts*, THE SOCIETY PAGES (Oct. 8, 2009, 12:27 PM), <http://thesocietypages.org/sexuality/w009/10/08/the-sexual-politics-of-anti-trafficking-efforts-first-in-a-series-on-sexual-trafficking/>.

345. Interview with Glen Coffee, *supra* note 337.

346. Prostitution laws date back to at least the middle of the nineteenth century. See Abrams, *supra* note 344, at 642-53.

misdemeanor.³⁴⁷ Vice squads have become expert at rounding up “street walking” violators, regardless of age.³⁴⁸ While criminalizing and prosecuting prostitution may seem initially intuitive, its rationale becomes questionable in view of the fact that the average prostitute enters the “trade” at twelve to fourteen years of age.³⁴⁹ What might first appear like an immodest “career choice” by a tawdry subsection of the population typically turns out to be something quite different. Without an economic element “demanding,” in the most literal sense, commercial sex, thirteen-year-olds do not typically make vocational choices to sell their bodies.³⁵⁰ Currently, state laws frequently protect the thirteen-year-old prostituted girl but, once she turns sixteen, those same laws saddle her with criminal liability.³⁵¹ The fact that some line of personal responsibility and legal culpability must exist goes without saying. A subtler course of greater sensitivity to victimized children, however, would recognize the person purchasing sex as the immeasurably more culpable agent in the transaction. Federal law already recognizes this reality. For instance, 18 U.S.C. § 2423(b) prohibits traveling across state lines or into the United States “for the purpose of engaging in any illicit sexual conduct” and carries a thirty year maximum sentence.³⁵² Going forward, state legislators must possess the wherewithal to make this moral-legal judgment from a position of evidence based education. Legislators with the firm conviction that they must remain “tough on crime” may do so with full integrity, and with greater accuracy, by simply redefining the subject of the crime. The Illinois asset forfeiture scheme addresses this very notion by dramatically increasing penalties imposed on johns for solicitation.³⁵³ This single act has the capacity to begin changing the economic dynamics of commercial sex in Illinois, as well as the state’s ability to police it.

347. See, e.g., ALA. CODE § 13A-12-122 (LexisNexis 2005); ARIZ. REV. STAT. ANN. § 13-3208(A) (2010); CONN. GEN. STAT. § 53a-82(d) (2011); GA. CODE ANN. § 16-6-9, -13(a) (West 2009 & Supp. 2012); KAN. STAT. ANN. § 21-6419(b) (Supp. 2011); MO. ANN. STAT. § 567.020(2) (West 2012); N.Y. PENAL LAW § 230.00 (Consol. 2000); 21 OKLA. STAT. §§ 1029, 1031(A) (2011).

348. Youth Radio, *Arresting Youth in Sex Trafficking Raises Debate*, NAT’L PUB. RADIO (Dec. 7, 2010, 4:26 PM), <http://www.npr.org/2010/12/07/131757175/arresting-youth-in-sex-trafficking-raises-debate>.

349. Estes & Weiner, Abstract, *supra* note 253, at 92.

350. See *id.* at 99-104 (addressing the various exigencies pushing children into prostitution, including abandonment and homelessness).

351. See, e.g., 21 OKLA. STAT. § 1029 (2011).

352. 18 U.S.C. § 2423(b) (2006).

353. H.B. 6462, 96th Gen Assemb., Reg. Sess. (Ill. 2010).

Relatedly, the recognition that purchasers of commercial sex represent the economic driver behind the entire “industry” should logically engender the corollary conclusion that minors who engage in prostitution are overwhelmingly victims, not entrepreneurs. Some states—Michigan, for instance—protect minors with a presumption of victimization only until they reach sixteen years old,³⁵⁴ the “age of consent” for the purpose of statutory rape.³⁵⁵ While statutory rape implicates similar underlying policy considerations, a sixteen-year-old girl engaging in consensual sex with her eighteen-year-old boyfriend represents a vastly different scenario than a sixteen-year-old girl selling her body for sex with innumerable and anonymous “customers.” The law must recognize that difference. States should not treat the two acts equally for the sake of schematic convenience. Sweden’s dramatic step in this direction by solely criminalizing the purchase of commercial sex might simply face too many political barriers to succeed in the United States. However, that reconceptualization of the issue, if adopted here, would facilitate similarly effective statutory reform.

B. Reconfiguring the Equation: A Renewed Focus on Cost

Intimately related to narrowing the law’s punitive focus on purchasers, fines associated with arrest and conviction of soliciting or controlling a prostitute should be increased significantly. Not only does this redistribute the force of anti-trafficking law to those responsible for its existence, it creates a higher entrance barrier for potential market participants—in this case, traffickers and consumers. Again, basic rules of supply and demand dictate that where one hundred men will purchase sex for \$50 per hour, some smaller number will purchase the same “service” for \$200 per hour.³⁵⁶ If the going “market rate” for an hour with a prostitute hovered around \$50 an hour, but the prospect of apprehension, arrest, and prosecution increased significantly, the constructive “market rate” would functionally increase to account for the new risk.³⁵⁷ When a commodity becomes more expensive, it necessarily commands a smaller pool of willing and able buyers.³⁵⁸ Returning to previous profit estimates for an average trafficking

354. MICH. COMP. LAWS ANN. § 750.448 (West 2004).

355. *Id.* § 750.520e.

356. See HENDERSON, *supra* note 188, at 19.

357. See KARA, *supra* note 47, at 200-19 (discussing the effect of increased risk of detection on cost and demand elasticity).

358. HENDERSON, *supra* note 188, at 19.

syndicate,³⁵⁹ assume a trafficker can generate \$292,000 annual revenue from a single victim.³⁶⁰ Further, assume a 30% increase in the associated cost of those victim's services because of increased detection, prosecution, and penalties. If the increased cost diminished demand by, say, 25%, the profit yield on that victim will invariably and commensurately decrease. Such a decrease, even if small individually, holds the potential to aggregately transform the industry. Once trafficking in people becomes less profitable than similarly contemplated enterprises, the "product supply" will retreat proportionately.³⁶¹

Underlying this legislative decision remains a philosophical question: "Is the purchase of commercial sex ever a legitimate and permissible action?" Though the vast majority of states currently outlaw prostitution,³⁶² lax enforcement³⁶³ and anemic penalties³⁶⁴ communicate an acceptableness that belies the proscription. Consider a hypothetical jurisdiction where: (1) driving in excess of sixty miles per hour is outlawed, (2) a violation is penalized at only \$5, and (3) transgressors typically evade detection and enforcement by police officers. That jurisdiction sends a clear message, albeit tacitly, that its citizens may speed freely. Were the penalty for speeding in that jurisdiction to increase to \$5,000 per infraction, however,

359. See Hughes, *supra* note 42, at 14 (contemplating an average Korean-operated massage parlor-brothel in the United States, which yields roughly \$292,000 in revenue each year per trafficked woman); see also *supra* notes 40-42 and accompanying text.

360. See Hughes, *supra* note 42, at 14.

361. Basic economic theory holds that "[r]ational [p]eople [t]hink at the [m]argin." N. GREGORY MANKIW, *PRINCIPLES OF ECONOMICS* 6 (6th ed. 2011). In other words, "[a] rational decision maker takes an action if and only if the marginal benefit of the action exceeds the marginal cost." *Id.* at 7. Granted, human traffickers act in ways that appear irrational to many law abiding citizens. However, the correlation between trafficking profits and trafficking proliferation seems to suggest that in whatever other ways traffickers behave irrationally, economic decision making is not among them. See *supra* Part III.C.1 (discussing the profitability of human trafficking). Therefore, if a criminal entrepreneur can make more money with less risk by trafficking a commodity other than people, he will. "You don't have to arrest everybody. You just have to get enough that it sends a ripple effect and changes the calculations. That changes the pimps' behavior. You can drive traffickers of virgin village girls to fence stolen radios instead." KRISTOF & WUDUNN, *supra* note 169, at 27 (internal quotation marks omitted).

362. Currently, Nevada is the only state in the United States to legalize some forms of prostitution. See NEV. REV. STAT. ANN. § 244.345 (West 2000 & Supp. 2012).

363. Jonathan M. Barnett, *The Rational Underenforcement of Vice Laws*, 54 RUTGERS L. REV. 423, 424-26 (2002) (discussing the phenomenon of chronic underenforcement of vice laws, including those addressing prostitution).

364. See, e.g., 21 OKLA. STAT. § 1031(A) (2011) (classifying general prostitution related offenses as misdemeanors).

with a two-infraction maximum before license revocation, the jurisdiction would thereby convey an entirely different (and more effective) message about speeding. Similarly, if states are serious about ending sex trafficking, they must increase the cost of “acquiring” a prostitute and send a decisive message about the commercial sex industry as a whole. States have already established that purchasing sex is unacceptable.³⁶⁵ Now they must reinforce that message with convincing seriousness and efficacy.

C. Communicating Harsh Realities: A Renewed Commitment to Awareness and Education

The architects of the first version of the TVPA demonstrated acute insight into the complexity of human trafficking when they included provisions not only for criminal definitions and penalties, but also for victim care and public awareness.³⁶⁶ Over time and through revised iterations of the TVPA, Congress demanded even more from the government in the way of education. Specifically, Congress called for training for first responders so that cases would receive correct initial identification³⁶⁷ and for an interagency database allowing agencies to work collaboratively on cases.³⁶⁸ The importance of educational programming cannot be overstated. Indeed, the very success of the entire statutory scheme relies on it. As one advocate notes:

[A]mong the most critical [elements of schemes to deter and prevent human trafficking] is mandated training for first responders, and especially law enforcement officials. Many state reports and other studies have identified the lack of training of law enforcement and other first responders as the greatest barrier to identifying and investigating cases of human trafficking. The Cincinnati Human Trafficking Report found that those who learned about human trafficking through a training seminar were significantly more likely to rate their awareness of the problem as good or excellent than those who did not receive training or

365. For a sampling of state statutes making the purchase of sex unlawful, see *supra* note 347.

366. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 106, 114 Stat. 1464, 1474 (codified as amended at 22 U.S.C. § 7104) (requiring the establishment of both public awareness programs and international initiatives to prevent and deter trafficking, such as microcredit lending, education, and programs of public awareness).

367. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(e), 122 Stat. 5044, 5081.

368. *Id.* § 108 (codified at 22 U.S.C. §§ 7107(b)(1), 7109a(a)-(b)).

learned about human trafficking from the media or another source. Training is going to be a key variable in the enforcement side of the law.³⁶⁹

Following the wisdom of federal lawmakers,³⁷⁰ states must incorporate provisions that require collaboration between state law enforcement and social agencies, thus creating greater efficiencies. Further, because human trafficking so often goes unrecognized, the public—including law enforcement, medical providers, educators, social workers, and clergy—needs training on how to identify trafficking situations. Advocacy groups currently perform much of the training that occurs,³⁷¹ but they simply lack sufficient resources to address each of those sectors. By earmarking asset forfeitures for public awareness and training campaigns (as Illinois has done),³⁷² states can realistically fund the necessary educational programming. Simultaneously, states will position themselves to increase the number of successful preventions and future prosecutions.

VI. Conclusion

Slavery remains more prevalent today than at any time in human history. In recognition, the United States has taken immense strides to eradicate it. Many individual states have responded nobly by attempting to legislatively correct the issue. But despite increasingly thoughtful efforts by advocates and law enforcement agencies, stories like that of Theresa Flores continue. Men and women like Theresa's captors, who profit from the commercial trade in people, will not wilt simply because the media gives the issue greater coverage or because state legislators form committees and hold hearings. In fact, the only thing that will deter modern-day slave traders is a reversal in the profit ratios attending the purchase and sale of humans. By reshaping anti-trafficking laws to more seriously criminalize demand, imposing greater economic disincentives upon the purveyors of trafficking, and educating the public in such a way that detection and enforcement

369. Bouché, *supra* note 315.

370. 22 U.S.C. § 7103 (2006 & Supp. II 2008) (establishing a federal task force that will interact with both governmental and nongovernmental agencies in prevention and recovery efforts).

371. *See, e.g.*, TRUCKERS AGAINST TRAFFICKING, <http://truckersagainstrafficking.org/> (last visited Dec. 21, 2012) (training truck drivers about the realities of sex slavery behind the "prostitutes" commonly found at truck stops nationwide).

372. *See* 720 ILL. COMP. STAT. ANN. 5/36.5-5(b) (LexisNexis Supp. 2012).

become commonplace,³⁷³ states will put intent to action and substantially contribute to ending modern-day slavery. If “[i]njustice anywhere is a threat to justice everywhere,”³⁷⁴ then today we possess the potential to vanquish a measure of oppression in the most important somewhere: here.

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373. BALES & SOODALTER, *supra* note 25, at 7 (noting that police solve less than 1% of all U.S. trafficking cases each year, as compared to about 70% of murder cases).

374. Martin Luther King, Jr., *Letter from Birmingham Jail*, in WHAT COUNTRY HAVE I? POLITICAL WRITINGS BY BLACK AMERICANS 117, 118 (Herbert J. Storing ed., 1970).