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The Role of Economic Incentives in Child Exploitation and Human Trafficking in Thailand

IIP: Thailand

Jasmine Dela Luna

June 25, 2018

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I. Introduction

Economic incentives explain the perpetuation of child exploitation and human trafficking in Thailand and can offer the solution to its mitigation and eventual abolition. Despite the promulgation of international conventions and a variety of domestic statutes that combat exploitation and trafficking, the problem still persists in brothels, factories, boats, street corners, and private residences located all around Thailand. The beginning of this problem is rooted in the economic benefits of exploitation, namely high profit at a low cost of investment with little risk of detection or punishment. The end of such exploitation could also rest on the strategic implementation of economic incentives. Economic motivation as a carrot and stick may spur countries to create and implement sustainable and effective anti-trafficking initiatives. Moreover, such initiatives paired with the economic empowerment of children susceptible to exploitation and trafficking may help solve the problem.

II. International Recognition of Child Exploitation and Human Trafficking

In the last decade, the international community has recognized the plight of human trafficking, prompting the promulgation of globally-recognized treaties. In 1989, the United Nations adopted the Convention on the Rights of the Child ("CRC"). Specifically designed to further the safety and well-being of children across the world, the CRC establishes four core principles including "non-discrimination, consideration of the 'best interests of the child'; the right to life, survival and development; and respect for the views of the child."¹ The CRC

¹ Lynne Marie Kohm, *Suffer the Little Children: How the U.N. Convention on the Rights of the Child Has Not Supported Children*, 22 N.Y. Int'l L. Rev. 57 (2009) (citing Convention on the Rights of the Child, http:// www.unicef.org/crc/index_protecting.html (last visited June 25,

demands that states recognize the child's right to be protected from economic exploitation, sexual exploitation, and any and all other forms of exploitation detrimental to the welfare of the child.² Addressing gaps in children's protection, the United Nations further adopted the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.³ This protocol calls on states to more effectively prosecute those who engage in the most egregious crimes committed against children including the commodification of children's bodies and the sale of child pornography.⁴ Moreover, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children directs states to combat trafficking in persons where trafficking is defined as

"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." ⁵

Specifically, the Protocol directs nation states to criminalize trafficking, protect victims, and establish policies and programs to combat trafficking in persons.⁶ Despite such formal

^{2018).}

² Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, 2171 U.N.T.S. 227. ⁴ Id.

⁵ U.N., Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Dec. 12, 2000.

⁶ Id.

international instruction to combat human trafficking and child exploitation, the problem still exists around the world, in countries that have signed and ratified these treaties.

III. A Brief Overview of Child Exploitation in Thailand

In Thailand, especially, children are constantly trafficked and exploited. These exploited children are either forcibly taken from their home countries or come to Thailand voluntarily to escape poverty in their home country. The victims of trafficking in Thailand include Thai and foreign nationals from the hills of northern and southern Thailand, Burma, Laos, Malaysia, and Cambodia.⁷ Thai-born and foreign nationals abuse these children in brothels, massage parlors, bars, hotels, and private residences.⁸ As early as the 1990's, stories of child trafficking circulated the globe. For example, *Time* magazine published a story of the coerced prostitution of a girl taken from her home in Chiang Rai who was forced to engage with clients in the sex tourism hotspot of Phuket.⁹ A recent raid of one of Bangkok's largest soapy massage parlors led to the identification of minors as young as twelve-years who were forced to provide sexual services to clients.¹⁰ In recent years, a more nuanced view of child trafficking has emerged as reports of "voluntary child prostitution" were brought into the spotlight. These reports claim that children

https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271297.htm (last visited June 23, 2018). ⁸ Id.

⁷ U.S. Dep't of State, 2017 Trafficking in Persons Report: Tier 2 Watch List, Office to Monitor and Combat Trafficking in Persons,

⁹ Heather Montgomery, *Defining Child Trafficking & Child Prostitution: The Case of Thailand*, 9 Seattle J. for Soc. Just. 774, 782-83 (2011) (citing Margot Hornblower, *Prostitution: The Skin Trade*, TIME, June 21, 1993, at 28).

¹⁰ Yvonne Bohwongprasert, *Going from Strength to Strength*, Bankgkok Post, Feb. 19, 2018, https://www.bangkokpost.com/lifestyle/social-and-lifestyle/1414415/going-from-strength-to-strength.

may not be forcibly taken from their homes or sold into slavery by their families as often as the popular media indicates. Rather, these children voluntarily "entertain" their guests, viewing the selling of their bodies as an independent choice, a necessary means to provide for their families. Other forms of exploitation run rampant in the streets of Thailand. While not always sexually exploited, children in Thailand can be abused in myriad different ways. Some children are forced to sell flowers and beg on busy streets, or work as domestic helpers in big cities.¹¹ Others are recruited by military groups in the southern regions of Thailand and trained to commit arson, serve as scouts, and accomplish other tasks to further the groups' agenda.¹² Lastly, children are overworked, underpaid, and subjected to dangerous working conditions in areas of voluntary employment like the seafood industry.¹³ In summary, Thailand is home to a thriving practice of child trafficking and exploitation of different kinds.

IV. Economic Incentives as the Root of the Problem

Using a simple cost-benefit analysis as applied to the two main kinds of actors: 1) the trafficker/employer and 2) the trafficked victim, I argue that child exploitation is most prominently rooted in the incentives attached to different economic benefits resulting from the use of child exploitation, which include trafficking, prostitution, and other forms of hard labor.

¹¹ 2017 Trafficking in Persons Report: Tier 2 Watch List, supra note 8

¹² *Id*.

¹³ The Asia Foundation & ILO, *Migrant and Child Labor in Thailand's Shrimp and Seafood Supply Chains: Labor Conditions and the Decision to Study or Work* (Sept. 2015), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_402971.pdf.

A. Traffickers and Employers

The promise of increased profits at low cost drives the continuation of child exploitation and human trafficking. Because of the significant price of labor, employers of a variety of different firms recruit trafficked victims. Compared to the cost of a slave in the 1800's, today's trafficked individual is a low-cost purchase of a few hundred to a few thousand dollars, depending on the industry.¹⁴ Such an investment is sure to yield a high rate of return because of the possibility of the continuous labor potential of a trafficked individual. This high return on investment is particularly true for children whose age translates to significantly more years of working potential relative to an adult trafficked victim, presuming the children work under conditions that enable them to remain sufficiently healthy. If a trafficked victim escapes, dies or otherwise fails to yield an optimal level of productivity that satisfies the employer's bottom line, the trafficked victim can be easily disposed and replaced.¹⁵ Moreover, by employing trafficked individuals, employers save significant amounts on fair wages and funds spent on complying with sufficient working condition regulations, constitutional rights, safety standards, and employee benefits.¹⁶

Because the labor of trafficked victims remains in high demand, traffickers are economically incentivized to continue recruiting these victims. While some employers may act as the actual trafficker, in the majority of these instances, the traffickers serve as the

¹⁴ Elizabeth M. Wheaton, et al., *Economics of Human Trafficking*, 48 Int'l Migration 114 (2010); Siddharth Kara, *Supply and Demand: Human Trafficking in the Global Economy*, 33 Harvard Int'l Rev. 66 (2011).

¹⁵ Wheaton et al., *supra* note 16.

¹⁶ Wheaton, et al., *supra* note 16

intermediaries that recruit laborers for the employer.¹⁷ Like the employer, the trafficker is interested in turning a profit by engaging in this illicit industry. Depending on the market, the average revenue of a trafficked victim can reach \$13,000, a small fortune compared to the costs incurred.¹⁸

The actualization of certain costs associated with trafficking individuals are minimal for both employers and traffickers. While some of these different costs are directly translatable to a cash amount, most costs for both the employer and trafficker manifest in certain risks. For the employer, loss of reputation, and therefore, lack of business, may result from any public discovery of the use of trafficked labor. Such a risk will unlikely manifest in industries such as sex tourism. In environments like brothels and karaoke bars, the clients may have more to lose from any kind of public disclosure of their engagement in that business. Moreover, the level of the supply chain in which trafficking takes place in the agricultural and fishing industries may prove too attenuated from the finished good to raise consumer concern to a level that would place the employer or trafficker in any real jeopardy. In the face of operational, physical, psychological, and criminal costs, traffickers often choose the quick and lucrative benefit of trafficking.¹⁹ Moreover, the risk of detection is slim to none for both employers and trafficked victims. While there may be laws that have been passed that criminalize trafficking and purport to place the needs of the victim first, those laws are poorly implemented, if implemented at all.²⁰

¹⁷ Wheaton, et al., *supra* note 16

¹⁸ Wheaton, et al., *supra* note 16.

¹⁹ *Id*.

²⁰ Kara, *supra* note 16.

If such laws are acted upon, the prison sentences and economic penalties are weak and rarely enforceable.²¹ Moreover, the corruption of law enforcement and the judiciary decrease any possibility of punishment.

B. Trafficked Victim

Economic incentives cause children to enter or stay in scenarios of exploitation. While stories of trafficking often follow the same formula of trickery and exploitation, recent literature has analyzed children's autonomous decisions to enter a life of exploitation. Prompted by filial duty to contribute economically to the family, girls may "voluntarily" submit themselves to being trafficked.²² For some, sex work is a way to make money, gain protection, and live independently. Sex work is seen as a means to an end, a method of contributing to the family, rather than a source of shame. In a case study of a rural Thai community where children voluntarily sold themselves to Western clients, interviews with children revealed that prostitution was seen as the better alternative to working in a sweatshop, scavenging for garbage, begging, or toiling for a hairdresser.²³

By adopting a more detached view of their situation, children choose to avoid the reality of serious costs associated with trafficking. AIDS, sexually-transmitted diseases of all kinds, PTSD, and depression, are few of the infinite number of problems that sexual and physical exploitation may produce. For those who voluntarily acquiesce to child prostitution and

 21 *Id*.

²² Crawford, *supra* note 12.

²³ Montgomery, *supra* note 10.

exploitation, such possibilities are set aside. The height of these decisions are seen in children's decisions to stay within scenario of exploitation.

Regardless of the way in which they entered, some children may stay voluntarily. Specifically, some children who were exploited decide not to leave their lifestyle. Others choose to return to work in the sex industry after escaping it in the first instance. The perks of prostitution may enable the children to disassociate their current state from any labels of harm like trafficking and prostitution. Moreover, children view their abusers as clients.²⁴ In the same case study previously cited, the Western clients were not perceived as rapists by the community, but as friends, and protectors of the child and the child's family.²⁵ The gifts the clients produce, coupled with the money they exchanged for sex bought the clients the loyalty of the children they harmed. This loyalty often translated to insulation from any kind of investigation or public prosecution. In Thailand, a family in a particular impoverished community offered character references on behalf of a Western client who was suspected of child trafficking and exploitation.²⁶ Such actions seem irrational, but these children's decisions may serve as logical methods of psychologically coping with the horror of their situation. Changing their perspective and avoiding the reality of their exploitation by translating it to a more digestible scenario may help these children survive.

While a disillusioned view of their circumstances may attribute to the children's choice in staying, the material wealth gained from prostitution may also compel them to stay. For those

²⁴ Id.

²⁵ Id.

²⁶ Id.

who have the option of leaving, they choose not to abandon their life of comfort where they are able to acquire money, new clothing, a mobile phone, and an urban home for the first time. ²⁷ While such an observation can be easily deemed materialistic and superficial, these children's motives must be taken within the context of their extreme poverty. In the face of the need to survive and the obligation to financially provide for their families, prostitution is simply the "least bad option."²⁸ For those without legal status, sex work may be the only kind of employment they are able to find.²⁹The inability to speak and understand Thai and a lack of any kind of labor skill, limit employment choices for many children. When burdened with the plight of poverty and violence, the act of staying or returning to a life of exploitation can never truly be a fully autonomous decision. It may not be correctly characterized as a choice at all.

In contrast to those who "voluntarily" stay, there are children in sex and other laborintensive industries who are not able to escape. Restriction on children's ability to leave is made through different mechanisms of exploitation that employers can use against their trafficked victims. While chains may still be used in some instances around the world, employers and traffickers hold their victims captive through more discrete means. Debt bondage is a common way in which employers keep their trafficked employees. By setting an egregiously significant and arbitrary debt, charging inflated fees for room and board, and keeping wages at a low rate, employers manipulate the trafficked individuals to continue working until their debt is paid.³⁰

²⁷ *Id.* at 840.

²⁸ Montgomery, *supra*, note 10.

²⁹ Id.

³⁰ See Stephanie Hepburn & Rita Simon, *Hidden in Plain Sight: Human Trafficking in the United States*, 27 Gend. Issues 1 (2010).

This type of exploitation is especially effective for victims trafficked outside of their home country whose forms of identification are confiscated until their debt is settled. Such restriction on the victim's freedom to leave the workplace supplemented by threats of deportation and violence aimed at the trafficked individuals or their families abroad are other common, proven methods of exploitation. Where such blatant abuse is the norm, international and state intervention is necessary.

V. Economic Incentives as the Solution

A. TIP Reports Affect the Internalization of International Obligations

The main source of international motivation is the U.S. Department of State's Trafficking in Persons (TIP) Report. While the TIP reports may seem to be a source of social motivation (e.g. a form of naming and shaming), the reports serve as the catalyst for economic sanctions, a proven method of incentivizing countries to internalize international obligations. Sanctions can include the withholding of "non-humanitarian aid, non-trade-related assistance, and certain development-related assistance and aid from international financial institutions, specifically, the International Monetary Fund and multilateral development banks such as the World Bank."³¹ The TIP report ranks countries according to certain data on human trafficking, including whether the countries are destination states of human trafficking, the degree of government intervention on behalf of trafficked victims, and the potential for further government action to combat human trafficking in light of the government's economic ability and overall capacity.³² Each country is

³¹ Catherine Renshaw, *Human Trafficking in Southeast Asia: Unconvering the Dynamics of State Commitment and Compliance*, 37 Mich. J. of Int'l L 611 (2016).

³² Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 Mich. J. of Int'l L. 437 (2006) (citing Trafficking Victims Protection Act

given a certain ranking: 1) Tier 1, full compliance with the minimum standards; 2) Tier 2, no full compliance, but has demonstrated significant efforts to reach full compliance; and 3) no compliance, and has not demonstrated significant efforts to do so.³³ Many have criticized the TIP reports, taking issue with the possibility that U.S. economic sanctions, rather than a genuine desire to eradicate human trafficking are motivating state-led initiatives.³⁴ Moreover, countries who have been ranked by the U.S. State Department find fault in the method by which countries are designated their rankings. Moreover, it is argued that Thailand's initiatives far surpass the efforts of other countries who are also given Tier 2 status.³⁵ On the International Immersion Program trip to Thailand, my discussion with former Prime Minister Abhisit Vejjajiva revealed his frustration with the way in which Thailand had been ranked during his tenure.³⁶ Understandably, the United States is limited in the way in which they can surmise every country's anti-trafficking efforts. The statutes put in place and the statistics reported on paper are but a small glimpse of the larger efforts to combat human trafficking and child exploitation on the ground. While such criticisms may be credible, there is still strong evidence that the TIP

of 2000, Pub. L. No. 106-386 § 2A, 114 Stat. 1464 (2000) [hereinafter TVPA], as supplemented by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 [hereinafter 2003 TVPRA], and the Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) [hereinafter 2005 TVPRA] (codified at 22 U.S.C. § 7101)).

³³ *Id*.

³⁴ *Id.* at 456.

³⁵ Ralph Simpson and Peerasit Kamnuansilpa, *Slavery Report Undervalues Thai Efforts*, Bangkok Post, Jul. 1, 2017, https://www.bangkokpost.com/opinion/opinion/1278851/slavery-report-undervalues-thai-efforts.

³⁶ Personal communication.

reports have undeniably affected international efforts to combat human trafficking, particularly in Thailand.

B. Thailand's Response to Economic Incentives

Succumbed to the pressure of its international audience, Thailand has made strides to end the trafficking and exploitation of children. In light of Thailand's consistent Tier 2 designation during the past few years, the government has created different laws and initiated programs and partnerships to fully comply with the minimum U.S. standards. In 2008, Thailand passed the Prevention and Suppression of Human Trafficking Act, the revisions to which include severe penalties for trafficking.³⁷ On April 3, 2013, the Ministry of Social Development and Human Security drafted new anti-trafficking laws in light of TIP-report-related allegations that Thailand seafood exports were affected by child labor and human trafficking.³⁸ In late 2015, Thailand passed a law criminalizing the possession of child pornography.³⁹ Later that same year, the Thailand Internet Crimes Against Children (TICAC) Task Force collaborated with the U.S. National Centre for Missing and Exploited Children to share information about victims and abusers.⁴⁰ The Thai government maximized these efforts by increasing the TICAC staff from

³⁷ John Quinley III, *Why Does Human Trafficking Persist in Thailand*, Asia Dialogue (Jan. 11, 2018), http://theasiadialogue.com/2018/01/11/thailands-anti-trafficking-framework-is-strong-so-why-does-the-crime-persist/.

³⁸ Press Release, Ministry of Foreign Affairs of the Kingdom of Thailand, Invitation to Conduct News Reporting and Attend the Press Briefing for the Study Tour of the Diplomatic Corps, (Jan. 11, 2013), http://www.mfa.go.th/main/en/media-center/14/31530-Invitationto- conduct-news-reporting-and-attend-th.html.

³⁹ Matthew Friedman & Peerasit Kamnuansilpa, *Let's Make Thailand a Safe Haven for Kids*, Bangkok Post, Dec. 3, 2016, https://www.bangkokpost.com/opinion/opinion/1150653/lets-make-thailand-a-safe-haven-for-kids.

four to fifteen and investing in the recruitment and training of TICAC and Homeland Secruity Investigations (HIS).⁴¹ In 2016, the Thai government passed a Cabinet resolution that purported to protect formal witness of trafficking and provide work permits for trafficking survivors.⁴² Moreover, the Thai government approved regulations to grant citizenship to stateless or unaccompanied children.⁴³ Thailand has also denied entry to 2,054 known foreign sex offenders in 2016 and implemented initiatives to collaborate with tourists on identifying trafficked victims.⁴⁴ Funding allocations of the Thai government is also indicative of their efforts to combat human trafficking. The Thai government increased funding for anti-trafficking efforts from 2.08 billion baht (\$58.15 million) in the 2016 fiscal year to 2.58 billion baht (\$72.1 million) in the 2017 fiscal year.⁴⁵ In 2017, the Thai judiciary brought down a landmark case in the world of human trafficking, sentencing sixty-two defendants, including a formal army general, to prison for twenty-seven years for trafficking and organized crime.⁴⁶ Even after the rise of the military junta and the launch of its 20th Constitution, Thailand purports to continue the fight against human trafficking. For example, Norachit Sinhaseni, Spokesman of the Constitution Drafting

⁴⁴ Id.

⁴⁵ *Id*.

⁴¹ Prangthong Jitcharoenkul & Kornchanok Raksaseri, US, Thai Networks Join to Find Missing, Exploited Children, Bangkok Post, Mar. 30, 2017,

https://www.bangkokpost.com/news/general/1223564/us-thai-networks-join-to-find-missing-exploited-children.

⁴² Quinley, *supra* note 38.

⁴³ 2017 Trafficking in Persons Report: Tier 2 Watch List, supra note 8.

⁴⁶ Aria Bendix, *Dozens Found Guilty in Thailand's Largest Human Trafficking Trial*, The Atlantic, July 20, 2017, https://www.theatlantic.com/news/archive/2017/07/dozens-found-guilty-in-thailands-largest-human-trafficking-trial/534279/.

Committee and the former Ambassador of Thailand to the United Nations, spoke of the newly established Human Rights Commission set in Thailand's new Constitution.⁴⁷

C. Problems that Persist Despite Thailand's Human Rights Initiatives

Thailand's efforts to combat trafficking and exploitation are not an infallible solution to the problem of human trafficking. Victims may be harmed more than they are helped by government intervention. In 1993, Asia Watch reported hideous treatment of Burmese victims working in brothels.⁴⁸ Rather than receiving treatment for their abuse, they were arrested by Thai police and deported back to Burma where the HIV-positive victims were killed.⁴⁹ While such treatment may be mitigated by better training of the Thai law enforcement, vestiges of that maltreatment still remain. Women and girls who are subjected to brothel raids by law enforcement, may be fined, incarcerated, and abused by the same officials who are tasked with their rescue.⁵⁰ Other children may be arrested, detained in youth correctional facilities, and prosecuted under immigration, prostitution, and illegal fishing charges.⁵¹ After this kind of treatment, these children are left on the streets, even more vulnerable than when they were first trafficked. As already analyzed, human trafficking victims may be re-victimized after their initial

⁴⁷ Personal communication.

⁴⁸ Montgomery, *supra* note 10.

⁴⁹ Id.

⁵⁰ Erin Kamler, *Carrots, Sticks and the TIP Report: Understanding the US Government's Anti-Trafficking Efforts in Southeast Asia*, East by Southeast (June 26, 2014, 5:09 PM), http://www.eastbysoutheast.com/carrots-sticks-tip-report-understanding-us-governments-anti-trafficking-efforts-southeast-asia/#.

⁵¹ 2017 Trafficking in Persons Report: Tier 2 Watch List, supra note 8.

rescue. Thailand needs to focus on the foundational causes of children's exploitation—namely, the economic disparity of trafficking and exploited victims.

D. A Victim-Based Approach to Rescue

Economic empowerment is most effective when paired with a comprehensive, victimbased framework of rescue. I propose that the Thai government adopt initiatives allowing for better advocacy of the best interests of the child. The Young Center for Immigrant Children's Rights, an organization developed in the United States, pairs Child Advocates with children in removal proceedings.⁵² Different from the role of a defense attorney, the Child Advocate represents the best interests of the child. The Advocate gains the child's trust through in-person contact, gathers information about the child's story, and puts together a best interest recommendation. Such a system would enable the Thai government to determine how best to help the child-filling a crucial gap of child advocacy in light of wanting pro bono services. This program can be implemented into Thailand's existing initiatives including the Hug Project's Child Advocacy Center.⁵³ While the Child Advocacy Center has done significant work in providing "one-stop care" for victims, the role of the Child Advocates should not be limited to immediate needs like food or counseling. Child advocates should connect children with nonprofit organizations who are willing to train the children with different skills and crafts, enabling them to create businesses and make money outside of labor trafficking. Fair wages will enable them to support themselves as well as their family, satisfying filial obligations. By empowering

⁵² <u>https://www.theyoungcenter.org</u> (last visited June 25, 2018).

⁵³ <u>http://www.hugproject.org/about-us/</u> (last visited June 25, 2018); Friedman & Kamnuansilpa, *supra* note 41.

children with the skills they need to create a livelihood for themselves, Child Advocates and nonprofit partnerships can enable children to leave the world of human trafficking for good. The end of child trafficking and exploitation can be found in the economic empowerment of vulnerable children.

VI. Conclusion

While economic incentives can help explain the roots of human trafficking and child exploitation, the end of child trafficking and exploitation can be found in the economic empowerment of vulnerable children. Notably, some economic programs already exist in Thailand. The Thai government, with support from the Thai family, established scholarships that provided money to families who continued to send their daughters to school until they were sixteen.⁵⁴ However, such a program is expensive and unsustainable absent a steady source of funding.⁵⁵ Further studies can be done on ex-ante, sustainable economic initiatives that serve as preventative measures to protect children from exploitation.

⁵⁴ Montgomery, *supra* note 10.

⁵⁵ See id.