

# A New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act

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A NEW PARADIGM FOR HUMAN TRAFFICKING: SHIFTING  
THE FOCUS FROM PROSTITUTION TO EXPLOITATION IN  
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*If you see sexual slavery, you call the police; if you  
see domestic slavery, you call the “wife” and take  
her word as to what is occurring; if you see agricul-  
tural slavery, you call the Department of Labor and  
have the men deported.<sup>1</sup>*

INTRODUCTION

Human trafficking has become an increasingly public issue in the United States and abroad during the past century,<sup>2</sup> with international

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1. Cynthia L. Wolken, *Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 407, 436 (2006).

2. From 1903 to 1949, only three international conventions were passed regarding human trafficking. See JO DOEZEMA, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, in GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION 36, 47 nn. 8-9 (Kamala Kempadoo & Jo Doezema eds., 1998) (discussing the 1904 White Slave Traffic Agreement and the International Covenant for the Suppression of the Traffic in Women of Full Age in 1933); see also United Nations Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others, *opened for*

treaties and conventions as well as domestic legislation accumulating quickly; this is perhaps an indication of the attention governments have been paying to the issue.<sup>3</sup> Much of the attention is attributable to the efforts of people and non-governmental organizations with an anti-prostitution, also known as abolitionist, stance.<sup>4</sup> These abolitionist organizations brought the topic of human trafficking to the public's attention by focusing on what they term "sex trafficking," or trafficking for the purpose of commercial sexual exploitation, paying only slight attention to persons trafficked for other purposes.<sup>5</sup> In 2000, Congress passed the Trafficking Victims Protection Act (TVPA)<sup>6</sup> to protect victims, prosecute perpetrators, and prevent further human trafficking.<sup>7</sup> Despite its alleged goal of reducing human trafficking as a whole, in reality it continues to concentrate on sex trafficking and anti-prostitution efforts with minimal attention paid to all other forms of human trafficking.<sup>8</sup>

Statistics about human trafficking are extremely unreliable, so it is difficult to know how many people are actually trafficked into the United States or other nations every year, and for what purpose.<sup>9</sup> From 1999 to 2005, the United States government's estimate of the number of victims trafficked into the United States ranged from as many as 50,000 to as few as 17,000.<sup>10</sup> The Government Accountability Office (GAO) has stated that there are methodological weaknesses,

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*signature* Mar. 21, 1950, 96 U.N.T.S. 271 (being the first United Nations convention to address human trafficking). There were no domestic laws addressing human trafficking as such until the late 1990s. ANTHONY M. DE STEFANO, *Introduction to THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* xvi (2007). Within the past eight years, several international covenants regarding human trafficking and slavery have been adopted by the United Nations, and domestic legislation in the United States has also increased. *See id.* at 32-46, 104-17 (discussing examples of this legislation).

3. DE STEFANO, *supra* note 2, at 33-45 (discussing the history of human trafficking law in the United States).

4. *Id.* at 108-10.

5. *Id.* at 69. What exactly "commercial sexual exploitation" means depends upon the group defining it: some consider only forced sex work to be commercial sexual exploitation, and some consider all forms of sex work to be commercial sexual exploitation, whether it is voluntary or involuntary. DOEZEMA, *supra* note 2, at 37.

6. Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101-7102 (2000).

7. *Id.* § 7101(a) ("The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.").

8. DE STEFANO, *supra* note 2, at 69.

9. U.S. GOV'T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING, BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 2 (2006) [hereinafter GAO REPORT].

10. DE STEFANO, *supra* note 2, at 41; POLARIS PROJECT, HUMAN TRAFFICKING STATISTICS 2 (2009), available at <http://nhtrc.polarisproject.org/materials/Human-Trafficking-Statistics.pdf> (discussing other human trafficking statistics).

gaps in data, and numerical discrepancies in the government's estimates.<sup>11</sup> In addition, the report points out that the distinctions between trafficking, smuggling, and migration are blurred.<sup>12</sup> While there are some clear differences in the definitions of smuggling in persons and trafficking in persons,<sup>13</sup> in practice the line is hard to draw.<sup>14</sup>

Migrant smuggling is defined as “[t]he procurement of the illegal entry of a person into a country of which the person is not a national or a permanent resident. Illegal entry means crossing borders without complying with the necessary requirements for legal entry into the relevant country.”<sup>15</sup> Smuggling is distinguished from human trafficking by several elements, the two most important being a lack of force, fraud, or coercion, and lack of exploitation after the person has been transported.<sup>16</sup> Despite these asserted differences, many smuggled migrants are exploited, and it is not clear whether they should be classified as victims of human trafficking.<sup>17</sup> Smuggled migrants may be forced into debt bondage to pay for the smuggling, or abused before, during, or after the illegal entry, so that the exploitative end result is the same.<sup>18</sup> The Trafficking in Persons (TIP) reports, released annually as required by the TVPA, make no attempt to distinguish between persons who are smuggled and persons who are trafficked.<sup>19</sup> The United States government's numbers are not the only questionable ones; depending on the organization and the year, estimates of trafficking victims range from 480,000 to four million worldwide.<sup>20</sup>

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11. GAO REPORT, *supra* note 9, at 10. The report goes on to state that the estimates are promulgated by one individual, that the source of much of the information is kept confidential, and that the resulting estimates are not replicable, casting further doubt on their reliability. *Id.*

12. *Id.* at 15 tbl.3.

13. SILVIA SCARPA, *TRAFFICKING IN HUMAN BEINGS: MODERN SLAVERY* 68 (2008).

14. *Id.*

15. U.S. Dep't of State, Human Smuggling and Trafficking Ctr. Charter and Amendments, <http://www.state.gov/m/ds/hstcenter/41444.htm> (last visited Mar. 28, 2010).

16. HUMAN SMUGGLING AND TRAFFICKING CTR., *FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING* 4 (2006), <http://www.state.gov/documents/organization/90541.pdf>.

17. SHELDON X. ZHANG, *SMUGGLING AND HUMAN TRAFFICKING IN HUMAN BEINGS: ALL ROADS LEAD TO AMERICA* 108 (2007) (describing some of the threats that illegal immigrants may face from their smugglers).

18. *Id.*

19. Susan W. Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 38 *CASE W. RES. J. INT'L L.* 249, 271 (2006-2007); *see also* U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT: JUNE 2008* 290 (2008), available at <http://www.state.gov/documents/organization105501.pdf> [hereinafter 2008 TIP REPORT] (stating that consent of the victim is irrelevant if threat, coercion, abduction, fraud, deceit, deception, or abuse of power is used to bring the victim into the State in order to take part in prostitution or pornography or various forms of exploitation, such as debt bondage or domestic servitude).

20. *See, e.g.*, U.N. Educ., Scientific & Cultural Org., *Trafficking and HIV/AIDS Project, Data Comparison Sheets: Trafficking Estimates*, <http://www.unescobkk.org/culture/>

Many analysts agree, however, that victims of sex trafficking generally account for half or less than half of all human trafficking in the United States.<sup>21</sup>

The right not to be held in slavery or servitude is generally recognized as a fundamental human right.<sup>22</sup> Why, then, do victims of sex trafficking get so much more attention than all other victims of human trafficking? Perhaps it is because the idea of women forced into sex work and horrifically abused is much more appalling and therefore more appealing to the media and politicians who are seeking to please their viewers and constituents, than the idea of men and women who are forced into domestic servitude, agricultural slavery, or other forms of forced labor, which are not nearly as titillating.<sup>23</sup> The difference between a victim of sex trafficking and other forms of

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our-projects/ (last visited Mar. 29, 2010) (follow "Trafficking and HIV/AIDS Project" hyperlink; then follow "Trafficking Statistics Database" hyperlink; then follow "data comparison sheets" hyperlink) (stating that the U.N. High Commissioner for Refugees reported in 2008 that 2.5 million people are trafficked worldwide each year; the U.N. Development Fund for Women reported 500,000 to two million in 2008; and the United States government has reported from 600,000 to 800,000 in 2008); U.N. Educ., Scientific & Cultural Org., Trafficking Project, Data Comparison Sheet #1 (v.2): Worldwide Trafficking Estimates by Organization (Feb. 2008), [http://www.unescobkk.org/fileadmin/user\\_upload/culture/Trafficking/statdatabase/Worldwide\\_Estimatates\\_Feb2008.pdf](http://www.unescobkk.org/fileadmin/user_upload/culture/Trafficking/statdatabase/Worldwide_Estimatates_Feb2008.pdf) (stating that the FBI reported up to two million in 2001 and the U.N. reported approximately one million in 2000). One factor behind the huge discrepancy may be that the definition of trafficking varies between countries and organizations. GAO REPORT, *supra* note 9, at 15 tbl.3.

21. See, e.g., Kevin Bales et al., *Hidden Slaves: Forced Labor in the United States*, 23 BERKELEY J. INT'L L. 47, 48 (2005) (stating that prostitution and sex services make up forty-six percent of forced labor; domestic service makes up twenty-seven percent; agriculture is ten percent; sweatshop/factory is five percent; and restaurant and hotel work is four percent); 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, 284 (2006) (stating that the International Labor Organization projects that "[forty-three percent] of those who are trafficked are put into forced labour for 'commercial sexual exploitation' . . ."); Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives From the Field(s)*, 3 STAN. J. C.R. & C.L. 317, 324-25 (2007) (stating that service providers for victims of human trafficking report that only one-third of their cases involve victims of sex trafficking); INT'L LABOUR ORG., A GLOBAL ALLIANCE AGAINST FORCED LABOR, REPORT I(B) 14 fig. 1.4 (2005), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf> [hereinafter GLOBAL ALLIANCE] (projecting that forty-three percent of trafficking victims are trafficked for purposes of commercial sexual exploitation).

22. See U.S. CONST. amend. XIII, § 1 (abolishing slavery in the United States); see also Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(22) (2000) ("[T]he Declaration of Independence[] recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights."); Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253, 263 (illustrating the adoption of certain measures to prevent and suppress slavery by many nations).

23. This has been put forth as a reason by multiple commentators. See, e.g., Wolken, *supra* note 1, at 414 (discussing how the media has portrayed sex trafficking).

trafficking is not so easily drawn, however, and it has been argued that many “victims” of sex trafficking are in fact voluntary prostitutes who are migrating in order to find a better life.<sup>24</sup> It is undisputed that many victims of other forms of trafficking suffer extreme emotional, physical, and sexual abuse at the hands of their captors.<sup>25</sup> The harms that victims of labor trafficking face track the harms inflicted upon victims of sex trafficking<sup>26</sup> and should not be considered distinguishable merely because the source of the harm differs.

Human trafficking has become a political issue, not in small part because of a conflation of prostitution with human trafficking.<sup>27</sup> Prostitution has been vilified in United States society<sup>28</sup> and politics, and as a result, equating human trafficking with prostitution may have been a politically expedient way to attack the human trafficking problem while furthering the abolitionist agenda. The political choice to link human trafficking with prostitution may have helped bring sex trafficking into the public discourse,<sup>29</sup> but it ignores labor trafficking and all the harms inflicted upon those victims.

This Note argues that sex trafficking should not be distinguished from other forms of human trafficking in the TVPA. While individual states within the United States have also implemented anti-trafficking laws,<sup>30</sup> this Note will concentrate on the TVPA.<sup>31</sup> Part I will discuss

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24. KAMALA KEMPADOO, *Introduction: Globalizing Sex Workers' Rights*, in GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION, *supra* note 2, at 15-17.

25. Wolken, *supra* note 1, at 433-34; *see also* Bales et al., *supra* note 21, at 71 (stating that the victims of labor trafficking are often sexually abused).

26. *See infra* Part II.

27. *See, e.g.*, 22 U.S.C. § 7110(g)(2) (2006) (disallowing government aid to non-governmental organizations unless they state in their policy statements that they do not support, promote, or advocate prostitution or help prostitutes who continue to work as prostitutes).

28. *See infra* Part I for a discussion of the evolution of American societal, cultural, and political views on prostitution.

29. *See infra* text accompanying notes 37-71 for a discussion of how fears about prostitution gradually transformed into fears about sex trafficking.

30. HEATHER J. CLAWSON ET AL., ICF INT'L, PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES 4 (Sept. 2008) (unpublished, on file with the National Institute of Justice), *available at* <http://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf>; PHYLLIS J. NEWTON ET AL., NAT'L OPINION RESEARCH CTR., FINDING VICTIMS OF HUMAN TRAFFICKING 6 (Oct. 2008) (unpublished, on file with the National Institute of Justice), *available at* <http://www.ncjrs.gov/pdffiles1/nij/grants/224393.pdf>. One report by the National Institute of Justice found that most trafficking cases are referred to the Immigration and Customs Enforcement (ICE) or the Federal Bureau of Investigations (FBI), even if the investigation starts at the state level. *Id.* at 54.

31. For a comprehensive analysis of state trafficking legislation and recommendations for further state action with respect to human trafficking, *see* Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83 (2009).

the historical difference in attitudes between sex work and forced labor in the United States and how these attitudes contributed to the political choice to develop human trafficking into two categories within the TVPA: “sex trafficking” and “other human trafficking.” Forced labor, while no longer acceptable in the United States, does not garner the abhorrence that sex work, often seen as “evil,” does.<sup>32</sup> Part II will compare the treatment of victims of the different forms of human trafficking, both by their captors and by the TVPA. The separation into “sex” and “other” forms of trafficking harms victims of human trafficking by allowing the government to easily make the argument that human trafficking is primarily sex trafficking, and sex trafficking springs from prostitution, thus abolition of prostitution will solve the problem of human trafficking.<sup>33</sup> While the government’s attention in the TVPA is focused on anti-prostitution efforts, victims of actual trafficking are suffering, and the true issue of people forced into modern-day slavery is ignored.<sup>34</sup> The final Part will argue that combining sex trafficking and other forms of human trafficking into one category within the TVPA that does not distinguish between forced sex and forced labor is a possible solution to the problems that arise from the false distinction drawn between forced sex work and other forms of forced labor.

#### I. SEX TRAFFICKING AND TRAFFICKING FOR FORCED LABOR: SEPARATE AND DISTINCT?

The perceived connection between prostitution and human trafficking has impacted domestic anti-trafficking efforts and, to a lesser extent, international anti-trafficking efforts. Both the United States and the international community have separated the issue of trafficking for sexual exploitation from that of trafficking for labor exploitation, over-emphasizing the link between human trafficking and prostitution.<sup>35</sup> As a result, both communities have been much slower to address labor trafficking than they were to address sex trafficking.<sup>36</sup>

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32. See *infra* text accompanying notes 30-48 and 68-96.

33. See, for example, E. BENJAMIN SKINNER, *A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN-DAY SLAVERY* 53 (2008), in which Michael Horowitz, one of the biggest influences on the TVPA, stated that “[i]f you want to end the enslavement of those in debt bondage in the brick factories in India, the best thing you can do is put all of the sex traffickers in jail, and just drive a stake right through the heart of that system.” Similarly, John Smith, the Director of the United States Department of State Office to Monitor and Combat Trafficking in Persons, said that “trafficking in women, the sex pillar of slavery, cannot be viewed separately from prostitution.” Berman, *supra* note 21, at 274.

34. See *infra* text accompanying notes 159-74.

35. See *infra* text accompanying notes 39-69 and 94-104.

36. See *infra* text accompanying notes 39-69 and 94-104.

*A. The History of Prostitution and its Perceived Link to Human Trafficking*

Prostitution has been called the “oldest profession” in the world.<sup>37</sup> The United States has never legalized prostitution, although anti-prostitution laws have been enforced to varying degrees throughout its history.<sup>38</sup> Anti-prostitution sentiment has ebbed and flowed,<sup>39</sup> but the government tolerated prostitution as a “necessary evil”<sup>40</sup> until the early twentieth century.<sup>41</sup> This tolerance may be explained by the increasing visibility of prostitution throughout the years leading up to 1918: as commercialization and industrialization increased, women began leaving the home to help support their families and ended up working in situations where sexual exploitation was common, becoming part of the “potential supply” of new prostitutes.<sup>42</sup> As prostitution increased, so too did disapproval of the “profession.”<sup>43</sup>

Anti-prostitution reforms in the United States began developing in the nineteenth century.<sup>44</sup> These reforms centered on the idea of women as morally corrupt, although efforts ranged from purely abolitionist efforts to including in the reforms attempts to aid prostitutes.<sup>45</sup> By the late nineteenth century, efforts had shifted almost entirely to abolitionism, strongly supported by the feminist movement.<sup>46</sup> Legalization of prostitution in Europe gave rise to fears of “white slavery,”<sup>47</sup>

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37. See, e.g., NILS JOHAN RINGDAL, *LOVE FOR SALE: A WORLD HISTORY OF PROSTITUTION* 4 (Richard Daly trans., Grove Press 1st ed. 2004) (1997) (“It is an adage that prostitution is the world’s oldest profession.”); RUTH ROSEN, *THE LOST SISTERHOOD: PROSTITUTION IN AMERICA, 1900-1918*, at 1 (1982) (“Calvinists had certainly inherited a harsh judgment of women in the ‘oldest profession.’”); GENE SIMMONS, *LADIES OF THE NIGHT: A HISTORICAL AND PERSONAL PERSPECTIVE ON THE OLDEST PROFESSION IN THE WORLD* 13 (2008) (referring to prostitution as the “first profession”).

38. STEVEN SEIDMAN, *THE SOCIAL CONSTRUCTION OF SEXUALITY* 115 (2003). For example, forced sexual service of indentured servants and slaves was called prostitution before indentured servitude and slavery became illegal. ROSEN, *supra* note 37, at 2.

39. See ROSEN, *supra* note 37, at 4-5 (discussing the evolving views of prostitution throughout the Progressive and Victorian eras).

40. *Id.* at xi.

41. *Id.* at xii.

42. *Id.* at 2-3 (explaining how industrialization led to more of a dependence on cash as families became less self-sufficient and began buying things that they had previously produced).

43. *Id.* at 7.

44. *Id.*

45. *Id.* at 6-8 (pointing out that male reform groups portrayed prostitutes as evil women who wanted to corrupt “innocent young men,” while female reform groups thought that poverty, in addition to moral ignorance or corruption, was the cause of prostitution).

46. *Id.* at 11.

47. Despite the moniker “white slavery,” non-Caucasian women were included as victims of the trade. See *id.* at 12, 121 (discussing the booming trade in Chinese prostitutes on the West Coast during the middle nineteenth century to early twentieth century).



an international slave market comprised of young, white women, kidnapped from their homes and forced into the brothels of Europe.<sup>48</sup> Abolitionists expressed the view that prostitution was the *cause* of white slavery, and support for abolitionist work grew worldwide.<sup>49</sup>

With white slavery came the beginnings of the anti-trafficking movement. In 1909, a commission appointed by Congress reported that white slavery did exist in the United States, and that it was fueled by trade in women for the purpose of forced prostitution.<sup>50</sup> Some reformers considered all prostitutes to be victims of white slavery,<sup>51</sup> but did not seem to address the idea of white slavery as providing slaves for purposes other than prostitution, such as domestic servitude.<sup>52</sup> White slavery was an international concern, prompting the passage of the 1904 League of Nations International Agreement for the Suppression of the White Slave Traffic, which explicitly focused on women transported for “immoral purposes” only.<sup>53</sup> The United States government followed with implementation of the Mann Act, originally called the White Slave Traffic Act, making transportation of a woman or girl across state lines for “any . . . immoral purpose” a felony.<sup>54</sup> With such a historical focus on anti-prostitution sentiment, combined with fear that prostitution breeds a slave trade in women and trafficking in women breeds prostitution, it is little surprise that sex trafficking developed as a separate category from all other forms of trafficking in the United States and elsewhere. Since the 1904 White Slave Traffic Agreement, countries worldwide have increasingly participated in efforts to halt human trafficking, with a spotlight on sex trafficking.<sup>55</sup>

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48. *Id.* at 12. This is extremely similar to modern media attention paid to sex trafficking. *See, e.g.*, Wolken, *supra* note 1, at 414-15 (analyzing a made-for-TV documentary supposedly about human trafficking as a whole, when the only subjects are young, beautiful, white women who are forced into prostitution).

49. ROSEN, *supra* note 37, at 12-13, 15 (“The growing hysteria over white slavery greatly contributed to the momentum of the antivice movement.”).

50. *Id.* at 15.

51. *Id.* at 113.

52. *See* International Agreement for the Suppression of the White Slave Traffic art. 1, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83 [hereinafter 1904 White Slave Traffic Agreement] (stating that the agreement relates only to “the procurement of women or girls . . . in a view to their debauchery”); *see also* ROSEN, *supra* note 37, at 116-18 (explaining that white slavery began as the concept of factory workers held captive to their jobs, but quickly lost that meaning and became predominantly an alternative term for the idea of traffic in women).

53. 1904 White Slave Traffic Agreement, *supra* note 52.

54. White Slave Traffic Act, ch. 395, § 2-3, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (2006)).

55. *See infra* text accompanying notes 49-71.

*B. International Development of Sex Trafficking Conventions*

After the Agreement for the Suppression of the White Slave Traffic, the next international instrument to discuss human trafficking was the 1910 International Convention for the Suppression of White Slave Traffic, based primarily upon the 1904 White Slave Traffic Agreement.<sup>56</sup> It concentrated solely on women being transported for “immoral purposes,” and it added the caveat that the woman’s consent was irrelevant.<sup>57</sup> It also added language forbidding the use of “fraud, [] the use of violence, threats, abuse of authority, or any other means of constraint” in order to “hire[], abduct[] or entice[], a woman or a girl . . . .”<sup>58</sup> In addition, it provided for punishment of the trafficker, unlike the 1904 White Slave Traffic Agreement.<sup>59</sup>

The International Convention for the Suppression of the Traffic in Women and Children followed in 1921.<sup>60</sup> This convention also built upon the previous instruments; the signatories agreed to ratify or adhere to the 1904 White Slave Traffic Agreement and the International Convention of 1910,<sup>61</sup> and added language prohibiting the traffic of children of either sex.<sup>62</sup> In 1933, various nations adopted another convention, the International Convention for the Suppression of the Traffic in Women of Full Age, again building upon the previous instruments.<sup>63</sup> It did not make any substantial changes to the previous agreements in terms of defining human trafficking, but added more provisions relating to the prosecution of perpetrators.<sup>64</sup> In 1949, the United Nations (U.N.) passed the Protocol Amending the International Agreement for the Suppression of the White Slave Traffic and the International Convention for the Suppression of the

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56. International Convention for the Suppression of the White Slave Traffic art. 7, 8, May 4, 1910, 98 U.N.T.S. 101 [hereinafter White Slave Traffic Convention].

57. *Id.* art. 1.

58. *Id.* art. 2.

59. *Id.*; 1904 White Slave Traffic Agreement, *supra* note 52.

60. International Convention for the Suppression of the Traffic of Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415 [hereinafter International Convention Women and Children 1921]. Sixty-three States have ratified this convention. UNITED NATIONS, 1 MULTILATERAL TREATIES DEPOSITED WITH THE SEC’Y-GEN. 597-99 (2009) [hereinafter 1 MULTILATERAL TREATIES].

61. International Convention Women and Children 1921, *supra* note 60, at art. 1.

62. *Id.* art. 2.

63. International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 53 U.N.T.S. 49 [hereinafter International Convention Women of Full Age]. Only thirty-nine countries have ratified this treaty, but they include countries such as Iran and Sudan. 1 MULTILATERAL TREATIES, *supra* note 60, at 601-02.

64. International Convention Women of Full Age, *supra* note 63, at art. 3, 4.

White Slave Traffic,<sup>65</sup> and unlike the others, this entered into force in the United States in 1950.<sup>66</sup>

The first international convention to introduce new material after the creation of the U.N. was the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, in 1949.<sup>67</sup> It explicitly linked prostitution to trafficking and provided anti-prostitution provisions<sup>68</sup> as well as general anti-trafficking provisions.<sup>69</sup> It also mentioned men for the first time,<sup>70</sup> although it emphasized paying particular attention to women and children.<sup>71</sup>

The importance of these international conventions is the development of the idea that the victim's consent to being transported is irrelevant when the purpose of the transportation is "immoral."<sup>72</sup> While the treaties and agreements also added provisions regarding force, fraud, or coercion,<sup>73</sup> the longstanding stance against "immoral" acts has informed every subsequent international treaty.<sup>74</sup> These international conventions created a weak system to prohibit trafficking of persons for prostitution, without addressing any other form of abuse or exploitation to which the trafficked persons may be subjected. The most significant result of these international treaties, for the purpose of the TVPA, is the constant reinforcement of the conception that prostitution and human trafficking are inextricably and exclusively linked to one another.<sup>75</sup>

65. Protocol Amending the International Agreement for the Suppression of the White Slave Traffic and the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, T.I.A.S. No. 2332, 30 U.N.T.S. 23 [hereinafter Protocol Amending Agreements for the Suppression of the White Slave Traffic]. The 34 parties to this convention include Iran and Iraq, as well as the United States. 1 MULTILATERAL TREATIES, *supra* note 60, at 603-04.

66. Protocol Amending Agreements for the Suppression of the White Slave Traffic, *supra* note 65.

67. International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271 [hereinafter Convention for the Suppression of the Prostitution of Others]. There are ninety-five parties to this treaty, although the United States is not one of them. 1 MULTILATERAL TREATIES, *supra* note 60, at 614-16.

68. Convention for the Suppression of the Prostitution of Others, *supra* note 67, at art. 2.

69. *Id.* art. 1.

70. *Id.* art. 17 ("The Parties to the present Convention undertake . . . to check the traffic in persons of either sex for the purpose of prostitution.")

71. *Id.* art. 17(1), 20.

72. White Slave Traffic Convention, *supra* note 56, at art. 1.

73. *Id.* art. 2.

74. See *supra* text accompanying notes 37-55.

75. See Convention for the Suppression of the Prostitution of Others, *supra* note 67, at pmbl (calling human trafficking the "accompanying evil" of prostitution).

### C. Forced Labor and Human Trafficking

#### 1. A Brief History of Forced Labor in the United States

Meanwhile, both the political arena and the media have largely ignored forced labor in the United States,<sup>76</sup> despite the fact that the United States abolished slavery in 1865.<sup>77</sup> Unlike the “necessary evil” of prostitution,<sup>78</sup> American wealth and political power were built upon the backs of slaves, indentured servants, and others like them.<sup>79</sup> Indentured servitude existed even before the widespread use of slave labor.<sup>80</sup> In this system, laborers would contract with someone to provide labor for a set period of time, usually three to seven years, in exchange for the price of travel to the United States.<sup>81</sup> While under the contract, the indentured servant had few to no rights and was considered property, much like a slave, to the point that the “employers” would bequest their indentured servants to friends and family in their wills.<sup>82</sup> The similarities to modern-day trafficking are striking: many of the indentured servants were kidnapped or coerced into service;<sup>83</sup> the period of servitude or the debt to be worked off was often hazily defined, known only to the employer;<sup>84</sup> and the servants were abused or even sometimes killed, often with impunity.<sup>85</sup>

Indentured servitude tapered off to be replaced by slave labor,<sup>86</sup> which only further boosted the American economy.<sup>87</sup> Cultivation of cotton propelled the United States into the world economy, and the demands of the cotton industry ruled America’s economic policies.<sup>88</sup>

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76. HUMAN RIGHTS CTR., HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 9 (2004).

77. U.S. CONST. amend. XIII, § 1.

78. See *supra* text accompanying note 40.

79. See JAMES OLIVER HORTON & LOIS E. HORTON, SLAVERY AND THE MAKING OF AMERICA 7, 28, 33, 41 (2009) (describing slavery’s importance to the early American economy); 1 SLAVERY IN THE UNITED STATES: A SOCIAL, POLITICAL, AND HISTORICAL ENCYCLOPEDIA 110 (Junius P. Rodriguez, ed. 2007) [hereinafter SLAVERY IN THE UNITED STATES] (“The economic expansion of the United States was rooted in the interconnectedness that existed between raw cotton produced in the South by slave laborers and the textile mills of the North that spun southern cotton into manufactured products.”).

80. DON JORDAN & MICHAEL WALSH, WHITE CARGO: THE FORGOTTEN HISTORY OF BRITAIN’S WHITE SLAVES IN AMERICA 14 (2008).

81. SLAVERY IN THE UNITED STATES, *supra* note 79, at 86.

82. JORDAN & WALSH, *supra* note 80, at 108-09.

83. *Id.* at 127-36.

84. *Id.* at 122.

85. See *id.* at 198-200 (discussing one Maryland plantation owner who murdered one indentured servant and beat another).

86. SLAVERY IN THE UNITED STATES, *supra* note 79, at 345.

87. *Id.* at 109.

88. *Id.* at 110-11.

Maintaining economic growth required slaves, because only with the use of slaves could the plantation owners keep up with domestic and global demand for cotton.<sup>89</sup> With such a demand, slavery was widely regarded as an “important social role . . . in an ordered, class-based society.”<sup>90</sup> The South was not alone in needing slavery; while slaves cultivated cotton on southern plantations, northern manufacturers used the cotton to produce textiles that were sold throughout the world.<sup>91</sup>

The legacy of slave labor and indentured servitude has had a deep impact on American culture, particularly its work ethic.<sup>92</sup> Its influence can still be seen in the use of migrant labor in the United States, particularly in agriculture.<sup>93</sup> Sharecropping, in which laborers contracted with land owners to farm their land in exchange for a portion of the crop and a place to live, boomed once slavery was abolished and quickly spread throughout the South.<sup>94</sup> Sharecropping was also oppressive; it was not much of a step above slavery or indentured servitude,<sup>95</sup> but it remained a significant part of the southern economy into the 1930s.<sup>96</sup> Perhaps it is because forced or exploitative labor has always been more acceptable than prostitution in American culture that labor exploitation is not regarded as sternly as sex exploitation in American human trafficking law, exemplified in the TVPA, today.

Unlike prostitution, slavery is prohibited by the Constitution itself, rather than federal or state law.<sup>97</sup> Congress has also promulgated individual laws against various forms of forced labor that might approach the condition of slavery.<sup>98</sup> Nonetheless, enormous legal efforts such as the Mann Act, which criminalizes interstate or foreign transportation of persons for the purpose of prostitution,<sup>99</sup> stand in stark contrast to the few individual laws that Congress has enacted to prohibit forced labor, much less trafficking for the purpose of forced labor.<sup>100</sup>

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89. *Id.* at 109.

90. *Id.* at 114.

91. *Id.* at 110.

92. JORDAN & WALSH, *supra* note 80, at 281.

93. SLAVERY IN THE UNITED STATES, *supra* note 79, at 346.

94. *Id.* at 149.

95. Ian Ochiltree, *Mastering the Sharecroppers: Land, Labour and the Search for Independence in the US South and South Africa*, 30 J. S. AFR. STUD. 41, 46 (2004).

96. *Id.* at 59.

97. U.S. CONST. amend. XIII, § 1.

98. See 18 U.S.C. §§ 1581, 1584, 1589 (2006) (criminalizing peonage, involuntary servitude, and forced labor).

99. 18 U.S.C. §§ 2421-2423 (2006).

100. 18 U.S.C. §§ 1581, 1584, 1589 (2006).

## 2. *International Treatment of Forced Labor*

United States anti-trafficking efforts have had an enormous impact on the development of international human trafficking laws, so not surprisingly, international anti-forced labor efforts have been sluggish. The first international agreement to address slavery was the Slavery Convention of 1926,<sup>101</sup> over twenty years after the 1904 White Slave Traffic Agreement.<sup>102</sup> It explicitly differentiates slavery and forced labor, stating that the contracting parties must attempt to prevent forced labor from developing into slavery-like conditions, and allowing forced labor for public purposes only.<sup>103</sup> It did not address women at all.<sup>104</sup> The United States ratified it in 1929.<sup>105</sup> In 1930, the International Labour Organisation adopted the Forced Labour Convention, banning forced labor in all its forms, with certain exceptions, such as normal civic obligations of citizens and military service laws.<sup>106</sup> Unlike the Slavery Convention, the United States did not adopt the Forced Labour Convention,<sup>107</sup> although it did adopt the 1957 International Labour Organisation Abolition of Forced Labour Convention (No. 105) in 1991.<sup>108</sup> In 1956, the U.N. passed the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>109</sup> It includes a provision regarding women, although it relates to marriage rather than forced labor.<sup>110</sup> This entered into force in the United States in 1967.<sup>111</sup>

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101. Slavery Convention of 1926, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253 [hereinafter Slavery Convention]. Sixty-two countries, including the United States, have signed the Slavery Convention. UNITED NATIONS, 3 MULTILATERAL TREATIES DEPOSITED WITH THE SEC'Y-GEN. 113-14 (2009) [hereinafter 3 MULTILATERAL TREATIES].

102. International Agreement for the Suppression of the White Slave Traffic art. 1, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83.

103. Slavery Convention, *supra* note 101, at art. 2, art. 5.

104. *Id. passim*.

105. *Id.*

106. International Labour Organisation, Convention Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 55.

107. INT'L LABOUR ORG., STOPPING FORCED LABOUR 118-20 (2001). 156 other countries have ratified the convention, however. *Id.*

108. International Labour Organisation, Convention Concerning the Abolition of Forced Labour, June 25, 1957, S. TREATY DOC. NO. 88-11, 320 U.N.T.S. 291; International Labour Organisation, Convention No. C105, <http://www.ilo.org/ilolex/cgi-lex/ratifice.pl?C105> (last visited Mar. 28, 2010) [hereinafter Convention No. C105]. 169 countries aside from the United States have ratified this convention. Convention No. C105, *supra*.

109. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3.

110. *Id.* art. 1(c)(i).

111. 3 MULTILATERAL TREATIES, *supra* note 101, 121-22.

*D. The First International Combination of Sex and Forced Labor in a Human Trafficking Instrument*

The newest international effort to combat human trafficking, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Crime (U.N. Trafficking Protocol), which the United States ratified in 2005,<sup>112</sup> was the first to consolidate all aspects of trafficking in persons into one instrument. It provides a general definition of human trafficking,<sup>113</sup> although it concentrates particularly on trafficking of women and children,<sup>114</sup> and it addresses protection for victims<sup>115</sup> in addition to criminalization of trafficking activities<sup>116</sup> and preventive measures.<sup>117</sup> It defines human trafficking as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion . . . for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>118</sup>

Although this highlights and isolates prostitution from every other form of human trafficking by naming it specifically without

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112. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, S. TREATY DOC. NO. 108-16, 40 I.L.M. 335, *available at* [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf) [hereinafter U.N. Trafficking Protocol]. 156 countries are parties to this convention. United Nations Office on Drug and Crime, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/> (follow "Status of ratification" hyperlink; then, under Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime" subheading, follow "Status of ratification" hyperlink) (last visited Mar. 29, 2010).

113. U.N. Trafficking Protocol, *supra* note 112, at art. 3(a).

114. *Id.* art. 2(a).

115. *Id.* art. 6.

116. *Id.* art. 5.

117. *Id.* art. 9.

118. *Id.* art. 3(a). While organ harvesting is an activity that nets enormous amounts of money every year, it has not generally been accepted as a form of human trafficking, despite its mention in the U.N. Trafficking Protocol, because it is difficult to determine whether persons who have sold their organs meet the force, fraud, or coercion requirement. SCARPA, *supra* note 13, at 36.

mentioning any particular forms of forced labor (such as domestic servitude or agricultural labor), it does not separate sex trafficking and other forms of trafficking as distinctly as past treaties.<sup>119</sup> While a distinction exists in the U.N. definition, the United States split between sex trafficking and other forms of trafficking, exemplified in the TVPA, is more explicit and leads to an actual divergence in how the United States treats the different forms of trafficking.<sup>120</sup>

### *E. The Development of the TVPA and its Treatment of Human Trafficking*

Concern over the international white slave trade prompted the original anti-human trafficking conventions,<sup>121</sup> but the United States failed to ratify any of the subsequent treaties until after the formation of the U.N. in 1945.<sup>122</sup> Similarly, although the United States acceded to the 1904 White Slave Traffic Agreement, it did not have a domestic definition of human trafficking until the late 1990s, after a long battle to pass a comprehensive human trafficking law.<sup>123</sup>

On March 10, 1998, Senator Paul Wellstone (D-Minn.) and Senator Dianne Feinstein (D-Cal.) introduced Senate Concurrent Resolution 82 — Relative to a Violation of Fundamental Human Rights.<sup>124</sup> The resolution condemned international trafficking of women, defining such trafficking as

(1) [C]onsist[ing] of all acts involved in the recruitment or transportation of persons within or across borders involving deception, coercion or force, abuse of authority, debt bondage or fraud, for the purpose of placing persons in situations of abuse or exploitation such as forced prostitution, sexual slavery, battering and extreme cruelty, sweatshop labor or exploitative domestic servitude;

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119. *See supra* text accompanying notes 49-71 (explaining the history of the anti-trafficking movement and its links to movements to abolish prostitution) and notes 94-104 (explaining that the focus in much of the anti-trafficking arena has been on prostitution and suggesting that U.S. history may make the country more willing to accept forced labor than prostitution).

120. *See infra* text accompanying notes 182-213 (describing how U.S. law and resources are used to fight sex trafficking more vigorously than other forms of human trafficking).

121. *See supra* text accompanying notes 50-75 (surveying the history of anti-sex trafficking conventions and treaties).

122. *See supra* text accompanying notes 49-66 (describing the early treaties and noting that the first treaty that the United States signed was the Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, signed by the United States in 1950).

123. DESTEFANO, *supra* note 2, at xvi, xix-xx.

124. S. Con. Res. 82, 105th Cong. (1998).



(2) [A]lso involv[ing] one or more forms of kidnapping, false imprisonment, rape, battering, forced labor or slavery-like practices which violate fundamental human rights.<sup>125</sup>

In Senator Wellstone's comments to the Senate, he specifically stated that this resolution was intended to curb trafficking of women and girls for purposes of sexual exploitation, despite the language in the resolution about domestic servitude or other forms of forced labor.<sup>126</sup> This resolution passed, as did a similar resolution in the House.<sup>127</sup> This illustrates congressional intent to limit domestic legislation on trafficking to prostitution, despite acknowledging the existence of other forms of exploitation.

Senator Wellstone then attempted to pass an Act entitled the Comprehensive Antitrafficking in Persons Act of 1999, with a broad definition of "exploitative labor conditions," which would have encompassed forced sex work in addition to other forms of labor.<sup>128</sup> The definition given was:

labor or services of a person . . . obtained or maintained through any scheme or artifice to defraud, or by means of any plan or pattern, including but not limited to false and fraudulent pretenses and misrepresentations, such that the person reasonably believes he has no viable alternative but to perform the labor or services.<sup>129</sup>

The broad meaning of the definition is reinforced by the Act's definition of trafficking, which did not explicitly mention sex at all:

recruiting or abducting, facilitating, transferring, harboring or transporting a person, by the threat or use of force, coercion, fraud or deception, or by the purchase, sale, trade, transfer or receipt of a person, for the purpose of subjecting that person to involuntary servitude, peonage, slavery, slavery-like practices, or forced or bonded labor or services.<sup>130</sup>

This bill faced vehement opposition from abolitionist activists, however, and failed to pass.<sup>131</sup> Many abolitionists felt that all

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125. *Id.*

126. 144 CONG. REC. 3022-23 (1998) (statement of Sen. Wellstone).

127. DESTEFANO, *supra* note 2, at 14-15.

128. Comprehensive Antitrafficking in Persons Act of 1999, S. 1842, 106th Cong. § 1589(2)(b) (1999).

129. *Id.*

130. *Id.* § 3(1).

131. The Library of Congress, S. 1842 Bill Status, <http://thomas.loc.gov/bss/111search.html> (search the 106th Congress for Bill Number S. 1842; then follow hyperlink for "All

prostitutes were slaves, and that by giving equal attention to non-sex forms of trafficking, attention would be drawn from the main issue of sex slavery, the one issue that “galvanizes everybody.”<sup>132</sup> Senator Wellstone then introduced the Trafficking Victims Protection Act of 2000 (2000 TVPA), which incorporated some elements of his failed Comprehensive Antitrafficking in Persons Act, such as gender-neutral designations for victims of human trafficking,<sup>133</sup> allowing forced labor to enter the dialogue about human trafficking. The 2000 TVPA continued to separate sex trafficking from other forms of trafficking, but acknowledged that those other forms of trafficking existed and that they were potentially as damaging as sex trafficking.<sup>134</sup> The 2000 TVPA also authorized the Secretary of State to assemble an Office to Monitor and Combat Trafficking in order to implement the provisions in the Act;<sup>135</sup> this Act did pass.<sup>136</sup>

The 2000 TVPA defined sex trafficking as a separate offense from every other form of trafficking, while lumping those other forms (such as domestic servitude, agricultural labor, debt bondage, and slavery) into one category.<sup>137</sup> The TVPA does not give one general definition of human trafficking; instead, it defines different types of human trafficking.<sup>138</sup> It splits human trafficking into “sex trafficking” and “severe forms of trafficking in persons.”<sup>139</sup> The Act defines “sex trafficking” as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,”<sup>140</sup> where “‘commercial sex act’ means any sex act on account of which anything of value is given to or received by any person.”<sup>141</sup> “Severe forms of trafficking in persons” is then defined as:

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Congressional Actions”) (last visited Mar. 29, 2010); *see also* SKINNER, *supra* note 33, at 52-53.

132. SKINNER, *supra* note 33, at 52-53. Similarly, at an international anti-trafficking conference, when United States representatives advocated for use of the term “forced prostitution,” abolitionists wrote newspaper articles accusing them of indifference to the issue of sex trafficking. *Id.* at 53.

133. 22 U.S.C. § 7101 (2000).

134. *Id.* § 7101(b)(3) (“Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.”); *id.* § 7101(b)(6) (“Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.”). *But see* DESTEFANO, *supra* note 2, at 86 (“[S]ex trafficking was particularly odious because sex lay at the core of the economic transactions that supported the exploitation.”).

135. Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101-7102 (2000).

136. *Id.*

137. *Id.* § 7102 (8)-(9).

138. *Id.*

139. *Id.*

140. *Id.* § 7102(9).

141. *Id.* § 7102(3).

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>142</sup>

In other words, one of the severe forms of trafficking in persons is sex trafficking, but with the added element of force, fraud, or coercion.<sup>143</sup>

The 2000 TVPA essentially breaks trafficking into three categories: sex trafficking, severe sex trafficking (which requires the presence of force, fraud, or coercion), and all other forms of trafficking, which also require force, fraud, or coercion.<sup>144</sup> While sex trafficking is merely the harboring or obtaining of a person for commercial sex, the harboring or obtaining of a person for other forms of labor is left out of the TVPA if there is no element of force, fraud, or coercion.<sup>145</sup> Presumably, persons who have been transported or harbored for labor without any force, fraud, or coercion have been smuggled.<sup>146</sup> The only difference is the presence of commercial sex.<sup>147</sup> None of the subsequent renewals in 2003, 2005, and 2008 changed the definitions, so the categories remain intact.<sup>148</sup> This reflects the prevailing view in the government, as evidenced by the enacted language of the TVPA, that sex trafficking is somehow more harmful to the victims and society as a whole than other forms of trafficking, perhaps because of its perceived connection to prostitution.<sup>149</sup> Unlike sex trafficking, the

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142. *Id.* § 7102(8).

143. *Id.*

144. *Id.* § 7102(8)-(9).

145. *Id.*

146. *See supra* notes 13-18 and accompanying text for a discussion of human smuggling's similarities to and distinctions from human trafficking.

147. 22 U.S.C. § 7102(8)-(9).

148. *See* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C.) (keeping the same definition of "sex trafficking," "severe forms of trafficking in persons," and "commercial sex act"); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 18 U.S.C., 22 U.S.C., 42 U.S.C.) (stating that the definitions for "sex trafficking," "severe forms of trafficking in persons," and "commercial sex act" will remain the same as in the 2000 TVPA); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (to be codified in scattered sections of 6 U.S.C., 8 U.S.C., 18 U.S.C., 22 U.S.C., 28 U.S.C., 42 U.S.C.) (keeping the same definitions again).

149. *See* Berman, *supra* note 21, at 273-74 ("Conservative Christian groups . . . understand human trafficking as a practice almost exclusively involving the kidnapping and/or coercion of (especially) young, vulnerable women. . . . From this perspective, prostitution should never be seen as a means by which a woman may decide to earn an income.").

concept of labor trafficking developed almost as an afterthought. Labor trafficking does not have a specific definition; instead, it encompasses all types of human trafficking other than sex trafficking.<sup>150</sup> At a minimum, it includes debt bondage, peonage, involuntary servitude, and slavery.<sup>151</sup>

The Office to Monitor and Combat Trafficking in Persons has emerged, unfortunately, as a political tool for prostitution abolitionists, rather than a strong government agency that even-handedly deals with trafficking issues. Once the Office was established, the Secretary of State appointed John Miller to the position of Chairman of the Office to Monitor and Combat Trafficking in Persons.<sup>152</sup> Miller belonged to the abolitionist camp and began using his position to push anti-prostitution efforts, in the process aiding the association of human trafficking as a whole with sex trafficking, and sex trafficking with prostitution.<sup>153</sup>

Miller is not the only person to think this way; feminist and conservative Christian groups also adhere to this view.<sup>154</sup> These groups pushed for stronger anti-prostitution language in the Trafficking Victims Protection Reauthorization Act of 2003 (2003 TVPRA).<sup>155</sup> They succeeded, to some extent; while the 2003 TVPRA did not contain any explicitly abolitionist language, it did add provisions prohibiting sex tourism, in which Americans go abroad and engage in “illicit sexual conduct,”<sup>156</sup> and more strikingly added the requirement that the United States government would not award funding to non-governmental organizations (NGOs) if they “promote, support, or advocate the legalization or practice of prostitution.”<sup>157</sup> In 2005, this requirement was expanded so that in order to receive United States government funding, the organization would have to formally affirm in its policy statement that it does not support, promote, or advocate prostitution.<sup>158</sup> Furthermore, aid organizations may not

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150. 22 U.S.C. § 7102(8)-(9).

151. *Id.* § 7102(8)(B).

152. DEStEFANO, *supra* note 2, at 106.

153. *Id.* at 107; *see also* Berman, *supra* note 21, at 274 (discussing John Miller’s statement that “trafficking in women, the sex pillar of slavery, cannot be viewed separately from prostitution”).

154. Berman, *supra* note 21, at 272.

155. DEStEFANO, *supra* note 2, at 108-09.

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

157. *Id.*

158. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered sections of 18 U.S.C., 22 U.S.C., 42 U.S.C.); *see also* Letter from Daniel Levin, Acting Assistant Attorney General, U.S. Dep’t of Justice, to Alex M. Azar II, General Counsel, U.S. Dep’t of Health & Human Svcs. (Sept. 20, 2004), *available at* [http://www.globalrights.org/site/DocServer/Update\\_letter\\_on\\_funding\\_restrictions.2005.doc?docID=4224](http://www.globalrights.org/site/DocServer/Update_letter_on_funding_restrictions.2005.doc?docID=4224) [hereinafter Dep’t of Justice Letter] (stating

help prostitutes until the prostitutes have stopped the commercial sexual activity.<sup>159</sup> Programs, however, may aid victims while they are being trafficked.<sup>160</sup> The Act does not define “program,” nor does it clarify the difference between a program aiding prostitutes while they are being trafficked and an organization aiding prostitutes in general.<sup>161</sup> In addition, the permissible programs must not advocate or support either the legalization or the practice of prostitution.<sup>162</sup>

The United States government’s focus on its anti-prostitution agenda has corrupted its work on human trafficking. While international instruments also emphasize the difference between sex trafficking and labor trafficking, the United States’ distinction leads to the false impression that labor trafficking is not as serious as sex trafficking or that victims of labor trafficking suffer less than victims of sex trafficking. In reality, victims of labor trafficking face many of the same abuses as victims of sex trafficking,<sup>163</sup> and they are just as numerous if not more numerous than the victims forced into prostitution or other forms of commercial sexual exploitation.<sup>164</sup> Given the equality of harms suffered by the victims and the numerical comparability of sex trafficking and labor trafficking, the TVPA should not be a platform for abolitionist views; it should instead be a neutral law that works toward the elimination of all forms of human trafficking, regardless of its connection to commercial sex.

## II. VICTIMS OF HUMAN TRAFFICKING

The TVPA’s distinction between sex trafficking and labor trafficking is not representative of any difference in the way that captors treat victims of each form of trafficking. It does, however, correspond to the different ways the legal system treats victims. Federal prosecution and punishment under the TVPA are heavily focused on persons trafficked for commercial sexual exploitation rather than those who have been trafficked for labor exploitation.<sup>165</sup>

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that the DOJ was reversing its prior opinion and that now the TVPRA provision requiring NGOs to affirm its anti-prostitution policy would apply to U.S. as well as foreign NGOs).

159. 22 U.S.C. § 7110(g)(2) (2006).

160. *Id.* § 7110(g)(1).

161. *Id.* § 7110(g)(1)-(2).

162. *Id.*

163. *See infra* text accompanying notes 166-81 for a discussion of the abuses that victims of sex and labor trafficking face.

164. *See Bales et al., supra* note 21, at 48 (stating that prostitution and sex services make up forty-six percent of forced labor; domestic service is twenty-seven percent; agriculture is ten percent; sweatshop/factory is five percent; and restaurant and hotel work is four percent).

165. *See infra* text accompanying notes 182-213 (discussing the disproportionate amount of attention paid to sex trafficking).

### A. *Treatment by Traffickers*

Regardless of the form of exploitation that the captors intend for the trafficked persons, the captors use many of the same techniques to frighten and control their victims.<sup>166</sup> Traffickers will often steal the victims' official documents, such as their passport, so that they are left without any official identification.<sup>167</sup> The captors may transport the victims from place to place without informing them where they are going, thus keeping them disoriented.<sup>168</sup> Additionally, the captors tell the victims that the police will arrest or brutalize them if the victims try to get help.<sup>169</sup> The captors often also inflict or threaten to inflict violence on the victims and their families if the victims do not cooperate.<sup>170</sup>

There has been no documented difference in the way that traffickers treat labor trafficking victims as opposed to sex trafficking victims.<sup>171</sup> While up to ninety-four percent of trafficking victims are women and nine percent are men,<sup>172</sup> about half of trafficking victims are sent into exploitative labor situations.<sup>173</sup> Whether the victims are sent into forced sex or forced labor, and whether they are male or female, they often suffer sexual abuse.<sup>174</sup>

Trafficking often wreaks a severe psychological effect on the victims. Victims of labor trafficking may face physical repercussions as serious as limb amputation, chronic health issues from working in dangerous conditions, and injuries from physical abuse.<sup>175</sup> The victims may also feel "helplessness, shame and humiliation, shock, denial and disbelief, disorientation and confusion, and anxiety disorders including posttraumatic stress disorder (PTSD), phobias, panic

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166. *See infra* text accompanying notes 167-74 (discussing the fear and control tactics used by human traffickers).

167. KEVIN BALES & STEVEN LIZE, CROFT INSTITUTE FOR INT'L STUDIES, *TRAFFICKING IN PERSONS IN THE UNITED STATES* 37 (2005) (unpublished, on file with the National Institute of Justice), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>.

168. *Id.* at 47-48.

169. *Id.* at 38.

170. *Id.* at 39, 51-52.

171. *See supra* text accompanying notes 167-70 (discussing common techniques used by captors of sex trafficking victims and labor trafficking victims).

172. CLAWSON ET AL., *supra* note 30, at 18.

173. *See supra* text accompanying notes 18-21 (discussing the common exploitative end result for the victims of both labor and sex trafficking).

174. *See, e.g.,* DESTEFANO, *supra* note 2, at 6-7 (discussing the trafficking of deaf Mexican men into New York City for the purpose of street begging, and pointing out that they were subject to sexual abuse); 2008 TIP REPORT, *supra* note 19, at 9 (discussing boy victims of commercial sexual exploitation).

175. U.S. Dep't of Health & Human Servs., Fact Sheet: Labor Trafficking, [http://www.acf.hhs.gov/trafficking/about/fact\\_labor.html](http://www.acf.hhs.gov/trafficking/about/fact_labor.html) (last visited Mar. 28, 2010) [hereinafter Fact Sheet: Labor Trafficking].

attacks, and depression . . . [, and] Traumatic Bonding or ‘Stockholm Syndrome’ . . . .”<sup>176</sup> Children, who are often forced into labor exploitation, may face permanent issues such as reproductive problems.<sup>177</sup> Victims of sex trafficking, on the other hand, face physical risks such as drug and alcohol addiction, sexually transmitted diseases, and physical injuries such as broken bones and vaginal/anal tearing.<sup>178</sup> Psychologically, they may experience “mind/body separation . . . , shame, grief, fear, distrust, hatred of men, self-hatred, . . . suicidal thoughts . . . [,] Posttraumatic Stress Disorder . . . [, and] traumatic bonding.”<sup>179</sup> While the terms used to describe the various types of harm differ, the actual problems being described do not: victims are harmed physically with beatings, sexual assault and rape, terrible work conditions, and are harmed mentally by feeling ashamed, fearful, distrustful, suicidal, and reliant on their captors and abusers.<sup>180</sup> Both suffer from forms of PTSD and Stockholm Syndrome.<sup>181</sup> The similarity of treatment ends at the hands of the victims’ captors, however; under the current TVPA, the U.S. legal system largely ignores labor trafficking while concentrating on sex trafficking.

### *B. Treatment by the Legal System*

The legal system pays victims of sex trafficking a disproportionate amount of attention. Somewhere around one-half of trafficking in the United States is for purposes other than commercial sex,<sup>182</sup> but

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176. *Id.* Stockholm Syndrome is the development of positive feelings between the captor and captive, a form of survival instinct. *Id.*

177. *Id.*

178. U.S. Dep’t of Health & Human Servs., Fact Sheet: Sex Trafficking, [http://www.acf.hhs.gov/trafficking/about/fact\\_sex.html](http://www.acf.hhs.gov/trafficking/about/fact_sex.html) (last visited Mar. 28, 2010) [hereinafter Fact Sheet: Sex Trafficking].

179. *Id.*

180. Fact Sheet: Labor Trafficking, *supra* note 175; Fact Sheet: Sex Trafficking, *supra* note 178.

181. Fact Sheet: Labor Trafficking, *supra* note 175; Fact Sheet: Sex Trafficking, *supra* note 178.

182. Chang & Kim, *supra* note 21, at 336; GLOBAL ALLIANCE, *supra* note 21, at 14 (projecting that forty-three percent of trafficking victims are trafficked for purposes of commercial sexual exploitation); *see also* Bales et al., *supra* note 21, at 48 (stating that prostitution and sex services make up forty-six percent of forced labor; domestic service is twenty-seven percent; agriculture is ten percent; sweatshop/factory is five percent; and restaurant and hotel work is four percent); Kevin Shawn Hsu, Note, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL’Y 489, 490 n.9 and accompanying text (2007) (stating that trafficking cases involving sex services makeup 46.4% of all trafficking cases, making sex trafficking the most prevalent form of human trafficking in the United States, with domestic servitude and agricultural labor coming in second and third, respectively); *cf.* Chang & Kim, *supra* note 21, at 324-25 (stating that service providers for victims of human trafficking report that only one-third of their cases concern victims of sex trafficking).

about two-thirds of federal human trafficking cases are sex trafficking cases.<sup>183</sup> From 2000 to February 2003, following passage of the TVPA, the Department of Justice brought fourteen sex trafficking cases and seven non-sex trafficking cases, meaning that sex trafficking cases comprised over two-thirds of the human trafficking cases brought that year.<sup>184</sup> From 2001 to 2005, the Department of Justice pursued sixty-eight sex trafficking cases and twenty-three labor trafficking cases.<sup>185</sup> Sex trafficking cases therefore made up two-thirds of the total. From the passage of the TVPA until December 2007, there were a total of 298 TVPA cases, 268 of which were prosecuted in federal court.<sup>186</sup> While fifty-five percent of the trafficking cases were forced labor cases, seventy-one percent of the TVPA-specific cases involved sex trafficking.<sup>187</sup>

These numbers would seem to suggest that the TVPA encourages the view that victims of sex trafficking are somehow more victimized than victims of non-sex trafficking. Some authorities have argued that sex trafficking is prosecuted more often because investigators recognize it more easily or are investigating prostitution independently of any trafficking investigation.<sup>188</sup> However, those same authorities admit that only about ten percent of investigators would recognize victims of either variety of human trafficking if they encountered them.<sup>189</sup> Furthermore, other reports state that most trafficking cases are discovered because the victim escapes or private citizens discover and report the abuse.<sup>190</sup>

In any case, many victims who do not meet the TVPA's definition of victims of sex trafficking, a definition that unjustifiably concentrates on the commercial sex trade, are abused emotionally, physically, and sexually.<sup>191</sup> For example, in *United States v. Adaobi Stella*

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183. CLAWSON ET AL., *supra* note 30, at 18 (finding that approximately seventy-one percent of cases prosecuted in federal court involved sex trafficking, with the rest concerning labor trafficking).

184. Tiefenbrun, *supra* note 19, at 258.

185. Chang & Kim, *supra* note 21, at 336.

186. CLAWSON ET AL., *supra* note 30, at 12 tbl.1, 13 tbl.2.

187. *Id.* at v, 14.

188. *See, e.g.*, NEWTON ET AL., *supra* note 30, at 67 (stating that the forty-three percent of suspected trafficking cases discussed in the study were reported by vice operations). Newton posits that this is because law enforcement lacks specialized training that would allow the officers to recognize the difference between an illegal immigrant and a trafficking victim. *Id.* at 42-44. Aside from difficulties recognizing trafficking victims, law enforcement officers may face resistance from the victims themselves, either because the victims lack English speaking ability, or fear retribution from their captors, among other difficulties. *Id.*

189. *Id.* at 44.

190. BALES & LIZE, *supra* note 167, at 5; *see also id.* at 55 (discussing a case study conducted by the authors in which "the majority of victims either escaped or were helped by a 'good Samaritan'").

191. *See* DESTEFANO, *supra* note 2, at 6, 48, 70, 77-78, 81 (giving examples of both individuals and large groups who were abused as victims of non-sex trafficking); BALES



*Udeozor*,<sup>192</sup> George Udeozor induced a fourteen-year-old Nigerian girl (the victim) to enter the United States, promising to send her to school and to send payment to the victim's family back in Nigeria.<sup>193</sup> Instead of providing schooling and caring for her, she became a domestic slave in addition to working at the wife's medical practice as a secretary without pay.<sup>194</sup> Udeozor and his wife beat the victim regularly, and Udeozor soon began raping her on a regular basis.<sup>195</sup> Udeozor's wife was convicted *inter alia* of conspiracy to hold another in involuntary servitude, but not of any sex trafficking charges.<sup>196</sup> In fact, there was no mention of sex trafficking in the entire opinion.<sup>197</sup> In other words, because the victim was not paid for the sex acts that she was forced to perform, she presumably did not qualify as a victim of sex trafficking. Furthermore, bringing charges for sex trafficking in labor trafficking cases where the woman (or girl, boy, or man) was also sexually assaulted is difficult for prosecutors because the victims are often ashamed and scared and will not cooperate with the investigation of that portion of their mistreatment.<sup>198</sup>

Similarly, in the case *United States v. Djoumessi*,<sup>199</sup> a fourteen-year-old girl from Cameroon was trafficked into the United States to act as a domestic servant for the Djoumessi family.<sup>200</sup> During her three years of servitude, she was repeatedly beaten and sexually assaulted by Mr. Djoumessi.<sup>201</sup> Just as in *United States v. Adaobi Stella Udeozor*,<sup>202</sup> the defendants were not prosecuted for sex trafficking, but for holding the victim in involuntary servitude, conspiracy to hold the victim in involuntary servitude, and harboring an alien for private financial gain.<sup>203</sup> While the court does not explain why the involuntary servitude statutes were used rather than the sex trafficking statutes, it is reasonable to presume that, because the victim did not receive anything of value for the sexual services she was required to perform, she did not meet the definition of sex trafficking under the TVPA.<sup>204</sup>

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& LIZE, *supra* note 167, at 41 (finding that many women who were not trafficked into sex work were still sexually assaulted and often witnessed sexual assaults on other women).

192. 515 F.3d 260 (4th Cir. 2008).

193. *Id.* at 263.

194. *Id.*

195. *Id.* at 263-64.

196. *Id.* at 263.

197. *Id.* at 263-72.

198. BALES & LIZE, *supra* note 167, at 85-87.

199. 538 F.3d 547 (6th Cir. 2008).

200. *Id.* at 549.

201. *Id.*

202. 515 F.3d 260 (4th Cir. 2008).

203. *Djoumessi*, 538 F.3d at 549-50.

204. See 22 U.S.C. § 7102(3) (2006) (defining a "commercial sex act" as "any sex act on account of which anything of value is given to or received by any person").

The sentencing mandated by the TVPA also differentiates between labor trafficking and sex trafficking.<sup>205</sup> The punishments for violation of the TVPA are set out in section 222 of the 2008 TVPRA.<sup>206</sup> For peonage,<sup>207</sup> involuntary servitude,<sup>208</sup> and forced labor,<sup>209</sup> the maximum punishment is twenty years in prison and a fine, unless the captor commits or attempts to commit aggravated sexual abuse, in which case the maximum punishment is life.<sup>210</sup> There is no minimum sentence.<sup>211</sup> For “severe forms” of “sex trafficking,” the *minimum sentence* is fifteen years, up to a maximum punishment of life imprisonment.<sup>212</sup> The only difference between “severe forms” of “sex trafficking” and peonage, involuntary servitude, or forced labor is the presence of “commercial sex acts.”<sup>213</sup>

### III. A DIFFERENT WAY OF LOOKING AT HUMAN TRAFFICKING

The purported purposes of the TVPA are to prosecute perpetrators, prevent human trafficking, and protect victims.<sup>214</sup> The current definitions of human trafficking in the TVPA do not further any of these goals because they are confused and unclear. By differentiating between labor trafficking and sex trafficking, the Act makes it difficult for law enforcement officers to identify victims and for prosecutors to prosecute effectively.<sup>215</sup> All three goals would be furthered by a different definition of human trafficking, one which does not distinguish between sex trafficking and labor trafficking.

Human trafficking under the TVPA should be defined as the forceful, fraudulent, or coercive transportation or recruitment of persons into exploitative labor, without regard for what sort of compensation, if any, the victim receives for the labor he or she is forced to do. Correspondingly, “labor” should be defined as any sort of work

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205. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, Title II, § 222(b)(3)-(5), 122 Stat. 5044 (to be codified at 18 U.S.C. §§ 1589-1591).

206. *Id.*

207. 18 U.S.C. § 1581 (2006).

208. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, Title II, § 222(b)(2), 122 Stat. 5044 (to be codified at 18 U.S.C. § 1584).

209. *Id.* § 222(b)(3) (to be codified at 18 U.S.C. § 1589).

210. *Id.* § 222(b)(3)-(5) (to be codified at 18 U.S.C. §§ 1589-1591).

211. *Id.*

212. *Id.* § 222(b)(5)(C) (to be codified at 18 U.S.C. § 1591).

213. *See* Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102(8)-(9) (2006) (including peonage, involuntary servitude, and forced labor in the definition of “severe forms of trafficking in persons,” but distinguishing it from “sex trafficking”).

214. *Id.* § 7101(a) (“The purposes of this chapter are to combat trafficking in persons . . . [and] to ensure just and effective punishment of traffickers, and to protect their victims.”).

215. NEWTON ET AL., *supra* note 30, at viii, 5-6, 44.

a person is forced to do. These definitions would encompass those victims forced into servitude or slavery, such as the domestic servants, and those forced into peonage or debt bondage, such as many of the agricultural laborers and sex workers as well as those forced into sex work. By eliminating the need to show what sort of compensation the victim received and for what acts, the TVPA will obviate the problems encountered in *United States v. Adaobi Stella Udeozor*<sup>216</sup> and *United States v. Djoumessi*,<sup>217</sup> in which the victims were sexually abused, but presumably did not meet the definition of a “sex trafficking victim” because the sexual abuse was incidental to the purpose for which they were trafficked, and therefore they did not receive anything of value in exchange for the sexual acts.<sup>218</sup> While the defendants in those cases were charged with various labor trafficking violations,<sup>219</sup> as discussed above, sex trafficking cases and labor trafficking cases engender different penalties, even when the only distinction is the presence of “commercial sex.”<sup>220</sup> If the legal distinction between sex trafficking and labor trafficking as defined in the TVPA were abolished, with the penalties determined only by the severity of the abuse rather than the category, prosecution of offenders would be more uniform. Abolishing this distinction would also shift the attention from sex trafficking to trafficking as a whole, recognizing that the horrors that victims of labor trafficking face are just as terrible as those suffered by victims of sex trafficking.

Changing the definition in this way will also help with prevention of human trafficking, the second stated goal of the TVPA.<sup>221</sup> Once the definition is clearer, it may be easier to distinguish between smuggling and trafficking, an acknowledged problem for law enforcement.<sup>222</sup> This would not be possible without also requiring more specialized training for law enforcement officials, particularly in high trafficking areas such as Florida, California, and New York.<sup>223</sup> Once officers are trained to recognize victims of human trafficking and are no longer as confused by the difference between smuggling and trafficking, prevention will be a much easier task.

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216. 515 F.3d 260 (4th Cir. 2008).

217. 538 F.3d 547 (6th Cir. 2008).

218. See *supra* notes 196 and 203 and accompanying text for a discussion of the crimes for which the defendants were actually prosecuted in these cases.

219. See *supra* notes 196 and 203 and accompanying text for a discussion of the crimes for which the defendants were actually prosecuted in these cases.

220. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, Title II, § 222(b)(3)-(5), 122 Stat. 5044 (to be codified at 18 U.S.C. §§ 1589-1591).

221. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(a) (2006).

222. NEWTON ET AL., *supra* note 30, at 30-31.

223. Kathleen K. Hogan, Comment, *Slavery in the 21st Century and in New York: What has the State's Legislature Done?*, 71 ALB. L. REV. 647, 650-51 (2008).

Last, changing the definition would help with aid for the victims. The conflation of human trafficking with prostitution is a distraction from the true issue of exploitation of human beings. By focusing on the fact of exploitation rather than the purported connection between all human trafficking and prostitution, both the government and aid organizations can work to get to the root of the problem. Without provisions that shift the attention to prostitution, such as the anti-prostitution affirmation that aid organizations must make in order to receive government funding,<sup>224</sup> labor trafficking may begin to receive the attention that it deserves from all sectors. While there is no difference on paper in the way that labor trafficking victims and sex trafficking victims are treated, the fact that the focus slants so sharply toward sex trafficking means that both law enforcement and aid organizations largely ignore labor trafficking victims, either as a result of ignorance of the victims' plight or as a result of underestimating the harm that victims of labor trafficking face.

#### CONCLUSION

By conflating prostitution and human trafficking, the TVPA is doing a disservice to all victims of human trafficking. The victims largely face the same risks of physical, mental, and emotional abuse.<sup>225</sup> Victims who are trafficked into commercial sexual exploitation are raped, impregnated, forced to obtain abortions, and face other atrocities, but victims who are trafficked into labor exploitation are also often sexually abused and experience many of the same long-term consequences.<sup>226</sup>

Aside from the fact that victims suffer the same abuses, whether they are trafficked for sex or for labor, the TVPA's method of differentiating between the forms of trafficking engenders confusion and hampers the efficiency of law enforcement efforts. Many investigators and prosecutors have a hard time telling the difference between "severe forms of trafficking in persons" and "regular" trafficking; they also have problems distinguishing between victims of sex trafficking and victims of labor trafficking, and between migrants who are smuggled into the country, and victims who are trafficked in.<sup>227</sup> Furthermore, many investigators and prosecutors lack clarity and awareness of

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224. 22 U.S.C. § 7110(g)(2) (2006); Dep't of Justice Letter, *supra* note 158.

225. *See supra* text accompanying notes 174-81 (discussing the physical, mental, and emotional abuse suffered by all victims of human trafficking).

226. *See supra* text accompanying notes 174-81 (discussing the physical, mental, and emotional abuse suffered by all victims of human trafficking).

227. NEWTON ET AL., *supra* note 30, at viii, 5-6, 44.

the difference between prostitution and sex trafficking.<sup>228</sup> One respondent to the Newton study said that, to the best of his knowledge, human trafficking has “no department definition. Basically it’s restricting human beings by bringing them here and selling them for prostitution.”<sup>229</sup>

The focus on prostitution and victims of sex trafficking under the TVPA means that victims of labor trafficking do not get the attention that they deserve in order to help them escape modern slavery. It also impedes efforts to stop human trafficking as a whole by diverting attention from the issue of exploitation and confusing it with prostitution. The development of the TVPA as a political tool to tackle prostitution, rather than to truly concentrate on sex *and* labor trafficking as a unitary problem, stands in the way of reaching a solution that will actually make inroads into the human trafficking problem in the United States. By changing the United States’ definition of human trafficking to stop differentiating between sex trafficking and labor trafficking, many of the problems that the TVPA faces today would be ameliorated, and both the government agencies as well as non-governmental organizations could work more efficiently to actually address human trafficking as a whole.

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228. *Id.* at 31.

229. *Id.*

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