

TULANE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW

VOLUME 14

SPRING 2006

NO. 2

Old Poison in New Bottles: Trafficking and the Extinction of Respect

Winston P. Nagan*
Alvaro de Medeiros†

I. INTRODUCTION	255
II. THE CHANGING NATURE OF HUMAN RIGHTS VIOLATIONS	256
III. SLAVERY: THEN AND NOW	256
IV. AFRICAN SLAVERY	257
V. THE ORGANIZED CRIME CONVENTION AND THE PROTOCOL ON THE SUPPRESSION OF TRAFFICKING.....	259
VI. TRAFFICKING: THE STATISTICAL CONTEXT	261
VII. CORE CONCEPTS IN THE NEW U.N. PROTOCOL ON TRAFFICKING	261
VIII. U.S. LAW AND POLICY ON TRAFFICKING	262
IX. TRAFFICKING AND THE POSSIBILITY OF A MORE COMPREHENSIVE DESIGN OF STRATEGIC SANCTIONS.....	266

I. INTRODUCTION

The new form of slavery comes by that relatively innocuous title, “trafficking.” Trafficking is an illustration of the dynamic character of the social and antisocial forces that conspire to undermine the idea of human dignity in the world community. The forms of crime are in fact dynamic. Frequently the institutional forces behind crime have capital, lethal functionaries, technology, and a capacity to advance criminal

* FRSA, Sam T. Dell Research Scholar Professor of Law; Honorary Professor, University of Cape Town; Director, Institute for Human Rights, Peace and Development, University of Florida, Levin College of Law.

† Research Fellow, Institute for Human Rights, Peace and Development, University of Florida, Levin College of Law.

interests, both within states and across state lines. To the extent that crime itself is dynamic it must as well be acknowledged that human rights violations in general also have a dynamic character. In short, when we prescribe rules and principles to prohibit and punish human rights violations, we must also recognize that those rules and principles target two distinct audiences: the potential human rights victims and the potential human rights violators.

II. THE CHANGING NATURE OF HUMAN RIGHTS VIOLATIONS

It is an incorrect assumption that human rights violators are stupid or dull. To the contrary, their ability to improvise or find creative ways to skirt or avoid human rights sanctions demonstrates their intelligence and cunning. Even governments well known for protecting human rights are seduced into these kinds of practices. For example, recently, governmental lawyers within the executive branch of the United States sought to redefine the law that outlaws torture. The revised definition limits those acts which would constitute torture. This would essentially permit torture and yet provide a colorable defense against prosecution for violations involving torture. At another level, there are cases where families arrange marriages for young women because religion ostensibly permits plural marriage. In fact the marriage is a sham. The young woman is used for coercive servitude including sexual services under the guise of the sanctity of marriage and family. The exposure and policing of this kind of practice is difficult because of the barriers traditionally erected to protect the rights of the family and family intimacy.

Trafficking today is the legal symbol used to describe practices whereby human beings are physically moved either within or across state lines into situations in which their power over freedom of choice and respect is expropriated or extinguished for profit by those who have acquired control over them through fraud, misrepresentation, deceit, and coercion.

III. SLAVERY: THEN AND NOW

The trafficking problem in global terms is defined by staggering statistics and immense misery and tragedy for the victims. Trafficking shares with its first cousin, slavery, a central economic insight. Human beings are simply seen as resources to be plundered for the sole profit of the plunderer.

Roman culture was significantly driven and sustained by a slave culture. Owning slaves was a major indicator of wealth, power, and

prestige. Imperial wars were fueled by the prospect of capturing human resources for use as slaves. Enslaved women were considered a special prize because they could provide for male sexual needs in addition to labor. In short, enslaved women were a passport to the dominant and dominating male world of sexual fantasy.

IV. AFRICAN SLAVERY

A British missionary, the Reverend Josiah Tyler, notes in his book *Livingston, Lost and Found* that the East African slave trade was flourishing during his lifetime in the nineteenth century. Tyler claims that the tens of thousands sold into slavery in East Africa (Zanzibar) involved sales to “Arabia.” It is the gender aspect of the trade at that time which is most revealing. According to Tyler there were “choice female specimens” who were particularly sought after:

Females are the special favorites with the Arabs, and it is a revolting sight to see a lascivious Arab, wishing to add to the number of his harem, examining the objects of his purchase before closing a bargain. The average price of male slaves is from fifteen to twenty dollars, while the female sells at from forty to one hundred and twenty dollars.²

According to Tyler, nearly two-thirds of the slaves imported into Arabia were women “designed for the purpose of concubinage.”³ Today, a particular factor connecting the various forms of slavery across geographical boundaries and over time is the high value placed on the sexuality of female slaves by dominant male exploiters.

In Ghana, for example, the merchants who dealt in slavery had crafted certain peep holes in the tunnel under the fort leading to the ocean. This tunnel was the initial passage for captured slaves. They were herded in chains on the way to the slave ships for the passage across the Atlantic. Through these peep holes the slave dealers would examine the women they thought would be suitable for sexual pleasure prior to being disposed of as used resources. Today trafficking has many of the components of the trafficking of human beings in antiquity. Indeed, like antiquity, trafficking involves the rape of a community and subjugation of its people. The dominance of slavery over others is ubiquitously fueled by power over sex. Trafficking today is supported by private armies, ruthless functionaries, and the effective use of modern

1. JOSIAH TYLER, *LIVINGSTONE LOST AND FOUND, OR AFRICA AND ITS EXPLORERS* (1873).
2. *Id.* at 765. Note that the term “lascivious Arab” reflects Nineteenth Century colonial prejudice.
3. *Id.* at 769.

technology and communication, making it a highly profitable industry for its practitioners. Global society is trying to play catch up. It cannot be said that victory is in sight. *A luta continua*.⁴

Notwithstanding the fact that since the nineteenth century slavery has been a universal crime in international law, the ubiquity and variability of its practices have required a specific and consistent prescription of both international and domestic norms seeking to control both slavery and slave-like practices, including trafficking. For example, article 4 of the Universal Declaration of Human Rights prohibits slave holding and slave trading.⁵ This article specifically indicates that the prohibition applies to all forms of this practice. Article 8 of the International Covenant in Civil and Political Rights affirms article 4 of the Declaration and adds involuntary servitude and compulsory labor to the list of prohibited practices.⁶ These human rights standards must of course be read as a complement of the Slavery Convention of 1926 and the amending protocol, which formally brought it into the international human rights framework of the United Nations.⁷ The Supplementary Convention on the Abolition of Slavery broadens the scope of the Slavery Convention and its protocol, taking into account practices similar to slavery, such as debt bondage, serfdom (defined in modern terms), and certain forms of family dynamics which treat women as a sexual and family commodity.⁸

4. There are several important international legal instruments that strengthen the juridical framework for attacking the problem of modern trafficking at the international level. They are as follows: Convention (No. 29) Concerning the Forcing of Compulsory Labor, June 28, 1930, 39 U.N.T.S. 55; Convention for Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271; Convention Relating to the Status of Refugees, July 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/34/46 (Sept. 3, 1981); Convention on the Rights of the child, G.A. Res. 44/25, U.N. Doc. A/Res 44/736 (1989); Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, 2133 U.N.T.S. 163; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/54/49 (2000).

5. Universal Declaration of Human Rights art. 4, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 12, 1948).

6. International Covenant on Civil and Political Rights art. 8, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368.

7. *See generally* Slavery Convention of 1926, Sept. 25, 1926, 60 L.N.T.S. 263.

8. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery art. 2, Sept. 7, 1956, 266 U.N.T.S. 40.

V. THE ORGANIZED CRIME CONVENTION AND THE PROTOCOL ON THE SUPPRESSION OF TRAFFICKING

The most important current international instrument is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (U.N. Protocol).⁹ As the title of this document implies, the purpose of the U.N. Protocol is to “[p]revent, [s]uppress and [p]unish [t]rafficking in [p]ersons.”¹⁰ Placement of the U.N. Protocol within the context of the Transnational Organized Crime Convention is important. In blunt terms, a statistically significant volume of contemporary trafficking is directly or indirectly managed by organized crime. Organized crime does an immense and lucrative business in trafficking in women and female children, commercializing sex on a global basis.

Organized law enforcement must be effective in the detection, apprehension, prosecution, trial, conviction, and punishment of the perpetrators. The perpetrator is often created randomly. Even when a perpetrator is working in a group, the deviance is characterized by ad hoc, occasional behavior. Further, like other forms of deviant behavior, it poses a threat to the public order and civic freedom. When crimes morph from an occasional, isolated, or random occurrence into an institutional practice defined by systematic organization and sustained operations, it becomes a particular threat to world order. When organized crime marshals vast resources—such as capital, functionaries, and instruments of violence—the threat to the public order shifts from random and anecdotal to systematic and sustainable. It is in this manner that organized crime becomes a far greater danger than that of an isolated act of social deviance; it now represents an alternative structure of normative priority capable of threatening civil society. In this scenario, law and authority are challenged by a nonlaw scenario, the “values” of an immoral and amoral negative utopia become the norm, force is the rule, and legal authority is extinguished. This is a context in which global trafficking in persons is facilitated and fostered.

Organized crime is thus a clear and present threat to the sovereignty of the state, especially democratic states whose authority is rooted in the people. Large and powerful states may be more capable of limiting the

9. Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II U.N. Doc. A/55/383 (Nov. 15, 2000) [hereinafter U.N. Protocol].

10. *Id.*

power of organized crime to compromise and/or challenge their constitutional and public order foundations. Smaller states, however, may be more vulnerable to the assaults and challenges of organized criminal activity. Some sovereign states may be politically vulnerable to the penetration of cartels of organized crime syndicates. Other states may be drug-controlled, representative of the “narco-state,” or they may be penetrated to so high a level by corruption as to be fairly labeled “thug-controlled.” When the level of corruption becomes so great, the term “cleptocratic” state may be appropriate. Corruption is a hallmark of the commercial culture of trafficking in human beings.

Trafficking in human beings may be engaged in by organized criminal groups—which frequently use corruption to circumvent the law and money laundering to conceal their profits—but it can occur in other contexts. Consequently, the Council of Europe has developed the Convention on Action against Trafficking in Human Beings.¹¹ This Convention is the most comprehensive extant instrument for attacking the problem of trafficking. Its reach is continental but could significantly influence developments in other regions of the world by creating expectations among outside communities. In addition to the Convention, other relevant legal instruments regarding trafficking include portions of treaties that relate to human rights; children’s rights; social rights; victims’ rights and personal data; those designed to combat corruption, money laundering, and cybercrime; and the treaties on international cooperation in criminal matters.¹² The European Community has an important arsenal of international conventions which may be effective in combating human trafficking and protecting the victims thereof in the European context. This arsenal of tools could be developed for other continental regimes as well.

11. Convention on Action Against Trafficking in Human Beings, May 3, 2005, Europ. T.S. No. 197.

12. See Convention for the Production of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 5, *completed by* Protocol No. 3, May 6, 1963, Europ. T.S. No. 4, *amended by* Protocol No. 3, May 6, 1963, Europ. T.S. No. 45; Protocol No. 5, Jan. 20, 1966, Europ. T.S. No. 55; Protocol No. 8, Mar. 19, 1985, Europ. T.S. No. 118; see also European Convention on Extradition, Dec. 13, 1957, Europ. T.S. No. 24; Additional Protocol to the European Convention on Extradition, Oct. 15, 1975, Europ. T.S. No. 86; European Convention on Mutual Assistance in Criminal Matters, Apr. 20, 1959, Europ. T.S. No. 30; European Social Charter, Oct. 18, 1961, Europ. T.S. No. 35; Revised European Social Charter, May 3, 1996, Europ. T.S. No. 163; European Convention on the Compensation of Victims of Violent Crimes, Nov. 24, 1983, Europ. T.S. No. 116; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Nov. 8, 1990, Europ. T.S. No. 141; European Convention on the Exercise of Children’s Rights, Jan. 25, 1996, Europ. T.S. No. 160; Criminal Law Convention on Corruption, Jan. 17, 1999, Europ. T.S. No. 173; Civil Law Convention on Corruption, Nov. 4, 1999, Europ. T.S. No. 174; Convention on Cybercrime, Nov. 23, 2001, Europ. T.S. No. 185.

VI. TRAFFICKING: THE STATISTICAL CONTEXT

The United States Department of State reports that an estimated 600,000 to 800,000 persons (men, women, and children) are “trafficked” across national borders in the global community.¹³ It should be noted that persons trafficked internally in a state and subject to abuse and exploitation are not included in these statistics. For example, it is conceded that the number of persons involved in internal trafficking in the United States is much higher than foreign nationals being trafficked into the United States. From the internal perspective, it is estimated that some 200,000 children are at risk in the domestic commercial sex trade.¹⁴

Nongovernmental organizations (NGOs) maintain that the cross-border trafficking numbers of the State Department are potentially understated. All agree that trafficking is a growth industry. All agree that approximately seventy percent of the persons trafficked are women and some fifty percent are children. All agree that most of these trafficked persons are coerced into commercial sex.¹⁵ The geographical distribution of the origin of persons trafficked to the United States includes East Asia (statistically the largest volume), Latin America, Europe, and Eurasia.¹⁶ These numbers give only a glimpse into the depth of the problem and the scope of human misery it generates. It is to the credit of the international community as well as to the United States that aggressive action is being taken at all levels to respond effectively to the new slavery.

VII. CORE CONCEPTS IN THE NEW U.N. PROTOCOL ON TRAFFICKING

This Part begins by outlining the core elements of the U.N. Protocol on trafficking and its obvious connection to the organized crime convention. The U.N. Protocol seeks to broaden the level of international cooperation required to control the growth of “trafficking.” The twin aims of the U.N. Protocol are to prevent and combat trafficking.¹⁷ It also provides measures for the protection of victims and victim assistance.¹⁸

13. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 15 (2004), *available at* <http://www.state.gov/documents/organization/34158.pdf> [hereinafter 2004 TIP REPORT].

14. U.S. DEP’T OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003 (2004), *available at* <http://www.usdoj.gov/ag/050104agreporttocongresstvprav10.pdf>.

15. 2004 TIP REPORT, *supra* note 13, at 15.

16. U.S. DEP’T OF JUSTICE, ET AL., ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS (2004), *available at* http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf.

17. U.N. Protocol, *supra* note 9, art. 2.

18. *Id.* art. 6, art. 8.

The comprehensive theme of the U.N. Protocol is reflected in the breadth of the phrase “trafficking in persons.” The U.N. Protocol defines trafficking as the “recruitment, transportation, transfer, harbouring or receipt of persons” by improper means, such as force, abduction, fraud, or coercion, for the purpose of exploitation.¹⁹ The term “exploitation” includes forced or coerced labor, servitude, slavery, and sexual exploitation.²⁰

Countries that ratify the U.N. Protocol are obligated to enact domestic laws that make trafficking-related activities a criminal offense, if such laws are not already in place.²¹ It is widely acknowledged that this protocol applies with special force to trafficking in women and children. An important aspect of the U.N. Protocol is the way it approaches the question of protection and partial rehabilitation of the victims of trafficking, including the provision of housing, medical care, counseling, legal assistance, and more. The U.N. Protocol addresses the issue of migration and repatriation of trafficked persons. This remains a complex problem and requires flexibility in terms of the actual placement of the person to ensure the safety and security of the victim.²² The U.N. Protocol seeks cooperation on a number of practical issues, such as the identification of offenders and victims, methods of training for investigation, enforcement, and victim-support, as well as matters of border security and standards for the technical quality of travel documents.²³ An important component of the U.N. Protocol is that a states party ratifying this protocol also ratifies the principle of mandatory rather than discretionary cooperation.²⁴

VIII. U.S. LAW AND POLICY ON TRAFFICKING

The United States has taken strong action to combat trafficking, which it recognizes as a matter of policy as a global problem. Its policy approaches the policing and prevention of trafficking on both an international and domestic level. In October 2000, the United States

19. See *id.* art. 3(a) (defining “trafficking in persons”). Because of the emphasis placed on trafficking in women and children in the U.N. Protocol, it should be considered as a supplement to the United Nations Convention against Transnational Organized Crime. For this reason, the two instruments must be read together. *Id.* art. 1.1.

20. *Id.*

21. *Id.* art. 3.

22. *Id.* arts. 7(1), 8.

23. *Id.* arts. 10-13.

24. *Id.* art. 5.

adopted the Trafficking Victims Protection Act (TVPA).²⁵ In 2003 and 2005, President George W. Bush reaffirmed the government's support for this issue by signing the Trafficking Victims Protection Reauthorization Acts of 2003 and 2005.²⁶ These laws are designed to facilitate the detection, apprehension, prosecution, conviction, and punishment of traffickers. They also seek to rehabilitate trafficking victims.

In a broad sense, U.S. legislation is an important complement to developments at the international level. In December 2002, President Bush endorsed the TVPA's goals when he signed the National Security Directive 22.²⁷ Through this directive, the President sought to strengthen the role of federal agencies in their coordinated efforts to suppress and punish trafficking.²⁸ The directive explicitly notes that trafficking nearly always involves prostitution and that prostitution largely destroys women.

In 2003, Congress confronted the issue of sexual tourism, especially the exploitation of children in this industry. Congress enacted the Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003 (Protect Act).²⁹ Under the Protect Act, it is a criminal offense for a person within the United States, or for a U.S. citizen or permanent resident traveling in a foreign country, to engage in illicit sexual conduct with children.³⁰ The President has also created an interagency task force to oversee the war on trafficking.³¹ The Secretary of State chairs the task force, and policy is implemented by a senior policy operating group drawn from different agencies and departments within the government.³²

Several U.S. government agencies currently coordinate the strategy, tactics, and specific forms of intervention which prohibit, suppress, apprehend, and otherwise sanction traffickers. The most important of these are the Department of Justice, the Department of Health and Human Services, the Department of Homeland Security, and the Department of State. U.S. government officials report that these efforts

25. Trafficking Victims Protection Act of 2000, 18 U.S.C. §§ 1589-1594, 22 U.S.C. §§ 7101-7110 (2000).

26. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 2875 (2005).

27. U.S. Dep't of State, *Fighting Human Trafficking Inside the United States*, available at <http://usinfo.state.gov/gi/Archive/2004/May/12-381449.html> (last visited May 12, 2006).

28. *Id.*

29. Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003).

30. *Id.* § 105(b), 117 Stat. 653-54.

31. 2004 TIP REPORT, *supra* note 13, at 261.

32. *Id.*

have led to a substantial increase in the prosecution of traffickers as well as effective interventions for victim support.³³ However, there are residual technical problems regarding victim certification for the purpose of the support programs of the government.

A significant approach to combating trafficking has been the creation of a public awareness campaign against trafficking. This specifically involves encouraging victims to come forward, expose the traffickers, and seek protection and security. To this end, the Department of Health and Human Services sponsors a direct hotline for victims to use to report trafficking and seek assistance. Television advertisements are also used to improve public awareness and publicize the availability of the hotline.

The Bureau of Immigration and Customs Enforcement (ICE) is another critical U.S. institution in controlling and suppressing cross-border trafficking. The ICE reports that it is currently intensifying its investigation of trafficking.³⁴ Recent reports implicate several Texas bar owners who ran a sexual slavery ring in that state.³⁵ In New York, the ICE exposed a prostitution operation that lured Mexican girls to the United States and into sexual slavery.³⁶ Also, in New York a prostitution network brought in Korean women who were promised employment as hostesses but later were coerced into prostitution. Among the other initiatives of the Department of Homeland Security has been the launching in 2003 of an operation to target child predators: Operation Predator.³⁷ This operation investigates activities such as online pornography, facilitates the arrest of American tourists in foreign countries who are involved in sexual activity with children, and, more broadly, seeks to control sexual predators within the United States.³⁸

An important aspect of providing protection to trafficking victims and exposing the infrastructure of modern slavery has been the use of the

33. *Id.* at 258.

34. U.S. Immigration & Customs Enforcement, *Backgrounder: Efforts to Combat Human Trafficking* (May 18, 2004), available at http://www.ice.gov/pi/news/factsheets/humantraffcbg_051804.htm.

35. Press Release, U.S. Immigration & Customs Enforcement, ICE Comments on Today's Indictment of 8 People on Conspiracy to Commit Slavery and Trafficking: Contract Employees Allegedly Used Counterfeit Documents To Obtain Employment (Dec. 13, 2005), available at <http://www.ice.gov/pi/news/newsreleases/articles/051213houston.htm>.

36. U.S. Immigration & Customs Enforcement, *Three Plead Guilty To Forcing Young Mexican Women into Sexual Slavery* (June 30, 2005), available at http://www.ice.gov/pi/news/insideice/articles/insideice_041105_web1.htm.

37. U.S. Immigration & Customs Enforcement, *Child Exploitation—Operation Predator*, <http://www.ice.gov/pi/predator/index.htm> (last visited Apr. 15, 2006).

38. *Id.*

so-called “T” nonimmigrant status for trafficking victims.³⁹ This permits the victim to continue to live in the United States after being freed from servitude. Because fear of deportation is very real for victims of modern slavery, this aspect of victim protection may create incentives for victims to come forward, expose the trafficker, and secure protection from future exploitation.⁴⁰

It is apparent that the old poison of slavery comes in new and camouflaged bottles. The international community must develop effective strategies and techniques of intervention if its fundamental policies and laws are to remain effective. Trafficking poses complex problems concerning the enforcement of criminal law within and across state lines. The issue includes the concept of retribution as a form of punishment. However, the complexity, breadth, and frequent mutations of modern trafficking have rendered retribution inadequate as an effective sanctioning policy. Therefore, effective law enforcement must also be victim-centered. If law enforcement can coax the victim forward, authorities can provide the victim with protection. If the victim has information regarding other victims, trafficking operatives, and methods of operation, authorities will be able to increase the scope of protection and better target trafficking operations. To be effective, this policy requires a complex sanctioning process which can operate within and across state lines.

In practice, the policy of perpetrator punishment and victim rescue have been, and remain, cornerstones of the trafficking/sanctioning process. Authorities have employed blind raids in the past as a tool of demonstrating to the public that something is being done about trafficking. In practice these demonstrations have proved largely symbolic. The new thinking looks toward so-called “smart raids” that require careful planning and the use of law enforcement in situations that may be more complex but yield better results. Conducting smart raids is predicated on determining who a trafficking victim really is for proper certification.

It should be noted that trafficking victims in the United States also have rights under the Thirteenth Amendment of the United States Constitution.⁴¹ A potential diplomatic initiative for the United States may

39. U.S. Dep’t of State, *U.S. Welcomes Efforts against Criminal Groups in Southeast Europe: Dobriansky Says Improved Regional Law Enforcement Cooperation Is Critical* (Oct. 10, 2003), available at http://usinfo.state.gov/dhr/Archive_Index/criminal_groups.html.

40. *Id.*

41. U.S. CONST. amend. XIII.

be to ensure that the Thirteenth Amendment standard is affirmed within international human rights law.

Finally, the nature of the trafficking problem, which attacks the most vulnerable members of society, women and children, must ultimately rely upon effective community responses from within the civil society sector of the community.

In short, both national and international government structures must work with national and global civil society to coordinate efforts to completely eradicate modern slavery—the new scourge of humanity.

IX. TRAFFICKING AND THE POSSIBILITY OF A MORE COMPREHENSIVE DESIGN OF STRATEGIC SANCTIONS

These general points would benefit from a more systematic approach of study of implementation of strategies for policing and eradicating modern slavery. These strategies, this Article submits, must be more contextually framed as part of a broader, comprehensive sanctioning policy as a rational response to modern trafficking. There are at least six interrelated sanctioning objectives on the table currently, all of which would seem to be relevant to the issue of the complexity of modern trafficking and how best to eliminate it. The first is obviously the issue of prevention. It is better to prevent the prohibited conduct from happening in the first place. Second is the issue of deterrence. Effective deterrence policy requires that the potential perpetrator believe there is a high likelihood of detection, apprehension, prosecution, and sentencing. Victims might benefit from publicity campaigns sponsored nationally and internationally about the dangers of recruitment to rosy jobs abroad. Warning the victims may limit the scope of their victimization as trafficking victims.

Third, there is the question of the extent to which the victims can receive material restoration as compensation for the harm suffered at the hands of traffickers and their clients. To the extent that financial law enforcement can track the money laundering activity of trafficking networks, these funds should be used by public and private agencies to provide for victim restoration. A related issue concerns the rehabilitation of the victim and the victimizer. The victimizer may be a child predator or suffer from other forms of pathology. Sending such a person to jail and then releasing that person to the public unrehabilitated may constitute a danger to the public. The complexity of this matter is increased by the necessary issue of the victim's rehabilitation, because if a victim is not rehabilitated, he or she may again fall prey to the next clever predator.

A fifth issue is the need for long-term policy in this area, implementation of which would require a degree of local, national, and global reconstruction of the way people perceive one another. Africans have a concept called “ubuntu” by which they mean that people experience dignity and personhood in relation to other persons. In short, people are people through people. When some sectors of society, either public or private, see other human beings as objects and children as mere playthings, the critical elements necessary to erode any articulate notion of dignity begin to form. It therefore becomes important that women and children not be viewed as things of commerce to be bought and sold at the will of the powerful or the psychopathological. Women and children must be viewed as beings per se, a goal which would be furthered perhaps in part by constraining the use by global communication systems of stereotypes which advertently or inadvertently glorify the interrelation of sex and commerce. Thus, reconstruction toward universal dignity is the exact antithesis of, and therefore possible solution for, slavery and all the new forms of trafficking.

Finally, there is a sanction policy of correction. How can we correct the cultural and social norms responsible for the exploitation of human weakness and vulnerability, leading humanity into a dark and miserable vista of the future?⁴²

The *Tulane Journal of International and Comparative Law* is to be congratulated for giving prominence to a critical human rights problem of our time. The contributions in this volume will add immensely to the public understanding of how the old poison of slavery is being packaged in new bottles to obscure the degradation and despicable comment that trafficking makes on the human prospect. It is a poison that targets the extinction of the most fundamental of all human values: respect.

42. Winston P. Nagan & Lucie Atkins *Conflict Resolution and Democratic Transformation: Confronting the Shameful Past—Prescribing a Humane Future*, 119 S. AFR. L.J. 174, 206 (2001).