

COMMENTS

Trafficking and Forced Prostitution: A Manifestation of Modern Slavery

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I. INTRODUCTION

The incidence of forced prostitution is a growing concern in the United States and worldwide. Trafficking of humans, oftentimes referred to as the modern slave trade or “modern slavery,” frequently promotes the importation of women into the United States for prostitution.¹ This Comment will discuss the history of forced prostitution both domestically and internationally, its modern occurrence, the Thirteenth Amendment, as well as modern legal mechanisms used to combat forced prostitution and trafficking in the United States and throughout the world.

Throughout, this Comment will explore not only the incidence of human trafficking worldwide, but also the specific experiences of victims to put a face on the crime and suffering. It is important to explore these incidents to better appreciate and scrutinize the many atrocities endured by victims of forced prostitution. It is only when the conscience of the world is aroused that *effective* legal mechanisms can take shape.

II. HISTORY OF TRAFFICKING AND FORCED PROSTITUTION

Modern trafficking for prostitution has many of its roots in arranged international marriages. Many women began immigrating to the United States for purposes of marriage in the early 1600s.² Arranged marriages also occurred between settlers and native inhabitants within the United States.³ For many settlers, marriage to Native Americans was not only good for social and political reasons, but it freed women from the tyrannical grips of Native American men, improving their positions in colonial society.⁴ Such idealism fell short, however, as many of these relationships produced fraught and degrading situations for the Native women, many of whom did not speak English and were unfamiliar with American culture.⁵

Beginning in the late 1700s, similar if not more disparate conditions occurred in the western United States.⁶ Many of these conditions

1. See, e.g., Tiffany St. Claire King, *The Modern Slave Trade*, 8 U.C. DAVIS J. INT'L L. & POL'Y 293, 298-99 (2002).

2. Suzanne H. Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides,"* 70 GEO. WASH. L. REV. 475, 482 (2002).

3. *Id.* at 482-83 (“The creation of familial relationships was thought to reduce hostilities and strengthen alliances between different social groups.”).

4. *Id.* at 483.

5. See *id.*

6. *Id.*

surrounded the conduct of male pioneers who settled much of the California and Oregon Territories.⁷ According to one account, “[W]hite miners began raping and murdering Indians in March, 1849 when Oregon miners raped Maidu Indian women at a village along the American River. When Maidu men tried to rescue their daughters, sisters, and wives, the Oregonians shot them to death.”⁸ In many instances, settlers began selling the victims into prostitution and justified their actions by maligning the Natives as inferior.⁹

The rest of the United States also experienced a strong incidence of forced labor that frequently led to prostitution. From slavery’s inception in the United States, the slave trade from Africa and the Caribbean brought many men and women to the United States, initially as indentured servants to labor in the expansive fields of U.S. farmland.¹⁰ As the slave trade led to the incidence and progress of sexual abuses, “fancy-girl” auctions sold young African women to the highest bidder.¹¹ These slaves were in high demand and commanded lofty prices because the buyers were often wealthy brothel owners or individuals with ulterior motives.¹² “If the prospective bidders had any doubts, they would strip them, especially the nice looking quadroon girls.”¹³ Most of the brothels and boarding houses in operation allowed masters to purchase slaves for sexual leisure, which occurred with great frequency throughout the southern United States, especially in New Orleans.¹⁴

7. *Id.*

8. EXTERMINATE THEM! 2 (Clifford E. Trafeer & Joel R. Hyer eds., 1999).

9. Jackson, *supra* note 2, at 483. “Miners ‘raped Indian women and enslaved children, forcing young girls into prostitution or selling them outright to the highest bidder.’” *Id.* (quoting EXTERMINATE THEM!, *supra* note 8, at 113, 132).

10. *Id.* at 483-84.

11. *Id.* at 484.

12. *Id.*

13. FREDERIC BANCROFT, SLAVE-TRADING IN THE OLD SOUTH 334 n.5 (Frederick Ungar Publ’g 1959) (1931).

14. Neal Kumar Katyal, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791, 798 (1993). *See id.* at 798-99. Regarding slave markets:

Sex and reproduction were at issue every time a female was sold on the market. Advertisements for slaves and the nudges and winks of slave traders highlighted the sexual connotations of slavery. Abolitionists used the lurid detail of slave auctions to compare slavery to concubinage and prostitution. In the ordinary slave markets of every southern state, men bought sex.

. . . As [Frederick] Douglass proclaimed:

I hold myself ready to prove that more than a million of women, in the Southern States of this Union, are, by the laws of the land, and through no fault of their own, consigned to a life of revolting prostitution. . . . I am also prepared to prove that slave breeding is relied upon by Virginia as one of her chief sources of wealth. It has long been known that the best blood of old Virginia may now be found in the slave markets of New Orleans. It is also known that slave

Ordinary slaves were no exception to sexual slavery. Many masters forced their slaves to breed with other slaves to produce offspring for the master to sell on the market.¹⁵ The power of master over slave left little hesitancy in the mind of many slave owners to exploit a slave's sexuality.¹⁶ Furthermore, it was not uncommon for slaves to give birth to children born of the master, likely through little consent by the slave.

In the 1800s, the trafficking of Chinese women became an increasing problem in the western United States.¹⁷ Strict anti-Chinese immigration laws, typified by the Chinese Exclusion Act, prohibited many Chinese settlers from bringing their wives or potential wives into the country.¹⁸ As a result, the demand for prostitutes increased dramatically, and the organized trafficking of women for prostitution logically followed.¹⁹ Many of the women trafficked into the United States arrived under false pretenses, and most were anything but willing to acquiesce to their new situations.²⁰

women, who are nearly white, are sold in those markets, at prices which proclaim, trumpet-tongued, the accursed purposes to which they are to be devoted. Youth and elegance, beauty and innocence, are exposed for sale upon the auction block; while villainous monsters stand around, with pockets lined with gold, gazing with lustful eyes upon their prospective victims. . . .

. . . .

A central concern of the abolitionist movement was to eliminate such abuses. Abolitionists attacked sexual exploitation of women in all forms, whether it occurred in the prostitution houses of the North or in the slave quarters of the South. Abolitionist Henry Highland Garnet claimed that slave women lived "unprotected from the lust of tyrants." Sarah Remond exclaimed that the 800,000 mulattoes living in the United States were all the result of rape. Indeed, in a famous debate on slavery, Reverend Pryne opened one of his speeches by directly attacking Southern Congressmen for raping slaves: "We send to prison . . . our violators of female chastity . . . our abductors of young girls from their homes and parents; while the South sends to Congress her ruffians who commit rape-her robbers of cradles-her violators of wives, sellers of maidens . . . whippers of women."

Id. at 798-801 (citations omitted) (alterations in original).

15. *Id.* at 799-800.

16. *Id.* at 800 ("Southerner Fanny Kemble exclaimed that 'it is notorious, that almost every Southern planter has a family more or less numerous of illegitimate colored children.'").

17. See Jackson, *supra* note 2, at 485-86.

18. *Id.* at 485.

19. *Id.* at 486 ("Newly arrived Chinese girls were sold at auctions held in the presence of police officers and the public on the docks of San Francisco.").

20. *Id.*

Marriage offers were used as bait to entrap Chinese women and girls into prostitution. Parents were convinced to part with their daughters with cold coins or warm promises of a good education, a happy marriage, or a well paying job. Benson Tong, whose comprehensive study of Chinese prostitution in nineteenth-century San Francisco includes bills of sale and debt bondage contracts for Chinese women, concluded that "[a]lmost all Chinese prostitutes . . . traveled unwillingly to the American West." Most women, he determined, did not discover the real purpose of their travel until they had

Forced prostitution later earned the nickname “white slavery.”²¹ Following the ratification of the Thirteenth Amendment, “New abolitionists now crusaded against white slavery, thus emphasizing continuity with old abolitionism. To them any trade in bodies was slavery.”²² Legislation in the early 1900s took notice of the transportation of women for purposes of prostitution. In 1910, Congress instituted the Mann Act to combat, in pertinent part, the transport of women from foreign countries to the United States for prostitution.²³ But rather than actually combat the problem of forced prostitution and trafficking, the law gave law enforcement broad discretion allowing for discriminatory application against immigrants and people of color for purposes of harassment.²⁴

III. MODERN INCIDENCE OF TRAFFICKING AND FORCED PROSTITUTION

A. *Trafficking Defined*

The trafficking of women and occurrence of forced sex continue to be major issues in the United States and throughout the world. According to the United States Congressional Resource Service, human trafficking ranks only behind guns and drugs as the most important source of revenue for organized crime networks.²⁵

The United Nations currently defines trafficking in persons as

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

already set sail on the fifty to one-hundred-day journey to the United States. Some jumped overboard to their deaths when they understood what the future held. This may have been their last chance for escape, as women were often “locked permanently in small rooms and accessed only by men who paid the manager for the key.”

Id. (citations omitted) (alteration in original).

21. Katyal, *supra* note 14, at 805.

22. DAVID J. PIVAR, PURITY CRUSADE: SEXUAL MORALITY AND SOCIAL CONTROL, 1868-1900, at 71 (1973).

23. Jackson, *supra* note 2, at 498.

24. *Id.*

25. Moisés Naím, *The Fourth Annual Grotius Lecture: Five Wars of Globalization*, 18 AM. U. INT'L L. REV. 1, 10-11 (2002) (“Initially tempting the victims with offers of jobs or, in the case of children, with offers of adoption in wealthier countries, human traffickers then keep them in subservience through physical violence, debt bondage, passport confiscation, and threats of arrest, deportation, and violence against the victims’ families back home.”).

exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁶

In a somewhat similar fashion, the U.S. Trafficking Victims Protection Act of 2000 (TVPA) defines trafficking as

- (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.²⁷

B. Trafficking by the Numbers

Some nations are primarily origin nations of trafficking victims, while others serve primarily as destinations. Generally, impoverished and developing nations are hotbeds for the recruitment of individuals who want to escape to the promise of a better future. The majority of trafficked victims originate from nations such as these. For instance, the U.S. government estimates that organized traffickers from the former Soviet Union transport as many as 4000 people to the United States each year.²⁸

One study estimates that as many as 700,000 are trafficked annually.²⁹ Using a "strict definition of slavery," another expert predicts that there are approximately "twenty-seven million enslaved people across the world."³⁰ U.N. estimates place the figure of worldwide trafficking at four million people a year.³¹ In 1998, the United States Department of State calculated that "between 700,000 to 2 million women and children are trafficked each year."³² Other studies have reported the total number of trafficked women as high as four million

26. 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/RES/55/383 (Nov. 15, 2000) [hereinafter U.N. Protocol].

27. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8) (2000).

28. St. Claire King, *supra* note 1, at 298.

29. Press Release, Colin Powell, U.S. Sec'y of State, Release of the 2001 Trafficking in Persons Report (July 12, 2001), *available at* <http://www.state.gov/g/tip/rls/rm/2001/4071.htm>.

30. Jackson, *supra* note 2, at 490.

31. *Id.* at 478.

32. *Id.* (citing 22 U.S.C. § 7101(b)(2)).

annually.³³ Different definitions of “trafficking” help to explain variations in these estimates. That is, some definitions are narrower and therefore categorize fewer victims as “slaves” than other, more inclusive, definitions.³⁴

Regarding trafficking for purposes of forced sex, the Central Intelligence Agency estimates that of the 45,000 to 50,000 women and children trafficked into the United States each year, most are trafficked for purposes of prostitution.³⁵ Officials believe that the majority of trafficked prostitutes from Eastern Europe are smuggled via Russian gangs in connection with gangs in the United States.³⁶ Gangs also play a role in the trafficking of Latin-origin victims as well.³⁷ The United Nations Children’s Fund (UNICEF) estimates that traffickers force almost two million children into prostitution each year (with almost one million children forced into prostitution in Southeast Asia).³⁸ Some 20,000 children from Central America are reportedly smuggled into the United States annually by commercial sex traffickers.³⁹ The presence of international trafficking victims has been reported in at least twenty different states throughout the United States, with the highest incidence occurring in New York, Florida, and California.⁴⁰ Estimates show that of

33. Susan W. Tiefenbrun, *Sex Sells but Drugs Don’t Talk: Trafficking of Women Sex Workers*, 23 T. JEFFERSON L. REV. 199, 208 (2001).

34. Compare U.N. Protocol, *supra* note 26, art. 3, with 22 U.S.C. § 7102(8). Depending on how stringent various definitions of trafficking are, the numbers range significantly based on the source used. For example, if trafficking in one definition entails the *forced* movement from one nation to another, and a second one includes forced *and* all deceptive tactics used in trafficking, the latter will naturally lead to higher numbers of trafficking victims since it also includes victims who willingly left a nation under false pretenses. The first definition would not include victims of trafficking that left willingly, for instance, in a mail-order bride service, or under the false pretense of employment opportunity.

35. AMY O’NEILL RICHARD, CENTER FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME iii (1999), available at <http://www.cia.gov/csi/monograph/women/trafficking.pdf>.

36. *Id.*

37. *Feds Nab More than 100 Gang Members in Raids* (NPR radio broadcast Mar. 15, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4535673> (“Federal authorities are conducting a nationwide crackdown against a Latino street gang involved in murder, drug smuggling and human trafficking. More than 100 members of the gang—known as Mara Salvatrucha, or MS-13—have been arrested in six cities across the U.S. NPR’s Mandalit Del Barco reports.”).

38. Jackson, *supra* note 2, at 478 (citing *Trafficking of Women and Children in the International Sex Trade: Hearing on Int’l Relations Before the Subcomm. on Int’l Operations & Human Rights*, 106th Cong. 106-66 (1999) (statement of Dr. Laura J. Lederer)).

39. *Id.* (citing 107 CONG. REC. H2683 (daily ed. May 9, 2000) (statement of Rep. Smith in support of H.R. 3244)).

40. Tiefenbrun, *supra* note 33, at 209.

the two to four million victims trafficked annually, at least 50,000 are women and children trafficked into the United States.⁴¹

C. Underlying Causes of Trafficking

Many factors help explain the increase in human trafficking and forced prostitution. Wealth discrepancies throughout the world contribute to much of this trend, especially in parts of the developing world.⁴² Naturally, impoverished and oppressed people are more likely to be trafficked than citizens living in comfort. The potential to gain vast wealth combined with the difficulty in prosecuting human traffickers attracts many bodies of organized crime, and even corrupt government agencies, to participate in the act of trafficking.⁴³ Many transitional economies, often former socialist states or states suffering economic depression, have a higher incidence of trafficking victims. Economic conditions in these states can lead to individuals taking chances on supposed "job opportunities," and even entice families to sell members to traffickers against their will.⁴⁴ Furthermore, the demand for women of ethnic and cultural diversity in nations where those cultures are perceived to be exotic or particularly intriguing is often a cause of human trafficking.⁴⁵

Another cause of trafficking and forced prostitution lies in the culture of the victims' origin nations. Discriminatory treatment of women in many nations leads to disparate burdens and pressures.⁴⁶ In these situations, where access to education and jobs is at a premium, women feel pressure to seek employment abroad and are particularly lured by the possibility of a better opportunity elsewhere.⁴⁷ This leaves them vulnerable to the fiendish practices of human trafficking organizations, which are quick to use the desperation of women as a tool of deception against them.⁴⁸ As one commentator argues, "[s]ocieties must recognize that the root causes of trafficking often lie in unequal treatment of women and girl-children, discrimination against minorities,

41. Margaret Murphy, *Modern Day Slavery: The Trafficking of Women to the United States*, 9 BUFF. WOMEN'S J.L. 11, 12 (2001).

42. St. Claire King, *supra* note 1, at 302.

43. *Id.* at 299-301.

44. See Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 68-69 (1998).

45. *Id.* ("[R]acial factors can drive international trafficking across borders for the purpose of recruiting foreign women to meet the racial preferences of certain brothel clientele.").

46. St. Claire King, *supra* note 1, at 303-04.

47. See *id.*

48. See *id.* at 303-06.

and economic policies which fail to ensure universal access to education and legal protection.”⁴⁹

The obvious incentive for traffickers is financial gain. As mentioned earlier, the trafficking of humans has become one of the most significant sources of revenue for organized crime networks.⁵⁰ Trafficking of sex workers in particular is highly lucrative, in some studies ranking second only to illicit drug trafficking in profitability.⁵¹ There are varying estimates of what traffickers charge for their victims. Rates throughout the world are said to range from \$15,000 to \$40,000.⁵² The economic incentive is so strong that, especially in the case of developing nations, the government is often complicit with the smuggling.⁵³ This potential has forced much of the world to choose financial gain over the obvious moral, societal, familial, and legal indignation that results from the trafficking of people.

IV. TRAFFICKING VICTIMS

A. *Recruiting Trafficking Victims*

Recruitment of women for trafficking and prostitution comes in many forms. Patterns of slavery generally involve drawing people in from poor areas and introducing them into slavery or selling them to wealthy individuals for labor or sexual servitude.⁵⁴ Many victims are unwilling participants in the act of trafficking to begin with. In this context, traffickers procure or abduct outright victims from their nations of origin.⁵⁵ Other times traffickers secure the complicit transportation of victims through false promises of job opportunities and desirable lifestyles.⁵⁶ For young women, especially, promises made to their

49. *Id.* at 303-04 (citing *Int'l People Trafficking: Hearings Before the Near Eastern and South Asian Affairs Subcomm. of the Senate Foreign Relations Comm.*, 106th Cong. (2000) (statement of Ruchira Gupta, UNICEF Consultant on Violence Against Women) (alteration in original)).

50. *See, e.g.*, Jackson, *supra* note 2, at 478; Jackson's sources find sex trafficking the third most profitable criminal enterprise. "The sex trafficking industry reportedly nets over \$7 billion annually, a level of profit from organized crime surpassed only by international traffic in drugs and weapons." *Id.*

51. Tiefenbrun, *supra* note 33, at 199.

52. *See, e.g., id.* at 209.

53. *See, e.g.*, Chuang, *supra* note 44, at 71 ("For instance, in the trafficking of Burmese women and girls into Thailand, there is 'clear official involvement in virtually every stage of the trafficking process' yet little concerted effort by Thai authorities to investigate and punish such abuses by their own agents.").

54. St. Claire King, *supra* note 1, at 298.

55. *Id.* at 299.

56. Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 6 (2004).

families by traffickers help ease concerns about sending the girls to far off nations.⁵⁷

Recruiters can be anyone from a family friend, an employment agency, or even reputable individuals within the community.⁵⁸ Such individuals frequently use deception as a tactic to lure “willing” women to gainful “work” abroad.⁵⁹ A common example in China involves the promise to rural women of factory jobs elsewhere, when in reality they are trafficked into prostitution.⁶⁰ If traditional methods of luring do not work, which is often the case where victims are uncooperative, outright kidnapping occurs as a method of obtaining women.⁶¹ In Albania, for example, the abduction of girls from school by traffickers has become such a problem that many Albanian families simply do not send their children to school.⁶²

Traffickers use various methods to solicit the compliance of their victims. Once the victims are away from home and in the control of traffickers, further cooperation is coerced. Often traffickers achieve victim compliance by threats to harm the victim, threats to turn them over to officials for deportation, physical abuse, torture, rape, confinement, seclusion, and even threats to the victim’s family in the nation of origin.⁶³ Families of the victims are often helpless to intervene, especially when the traffickers are members of organized crime, wanton criminals, or government agencies.⁶⁴ However, in most cases families simply do not know the condition of their family member victim.

57. *See id.*

58. *Id.*

59. St. Claire King, *supra* note 1, at 300.

60. *Id.* at 310.

61. Murphy, *supra* note 41, at 12. Traffickers employ numerous methods to obtain victims:

Thousands of women enter the United States each year, mostly illegally, and are forced to “work in situations that are often both inhuman, and against American law.” They are brought into the country by various methods. Some are outright kidnapped, while others are given false promises of jobs as domestics or models, and still others are lured under diplomatic guises, under the impression that they will work as support staff.

Id.

62. St. Claire King, *supra* note 1, at 311; *cf.* Jessika Johnson, Note, *Rreshpja v. Gonzales: The Sixth Circuit’s Failure To Consider Gender’s Place in Asylum Claims*, 14 TUL. J. INT’L & COMP. L. 623 (2006).

63. Kim & Hreshchyshyn, *supra* note 56, at 7.

64. St. Claire King, *supra* note 1, at 300. One family’s experience is illustrative:

For example, as Bob Woodruff reported for ABC news, one Albanian family lost three girls to the slave trade. First, 15-year-old Mariana Lleshi “was lured away from her home by a local shop owner who said he wanted to take her away to Italy and marry her.” Next, traffickers kidnapped Marta Lleshi’s 17-year-old sister, and Marta saw who

It is important to note that the presence of consent does not change the culpability of human traffickers. As one can see from the major definitions of trafficking, the consent of the victim is not relevant to criminal culpability.⁶⁵ Indeed any exclusion for consent of the victim would ignore the realities of luring and would likely factor into the strategies of traffickers to avoid legal consequences. Nonetheless, consent has been a pervasive issue in addressing international human trafficking.⁶⁶ This is because consent has long been at the intersection of human rights law and attempts at legalizing prostitution generally.⁶⁷

One common and very easy method used to traffic women into the United States is by visa manipulation.⁶⁸ By this method, various types of visas are obtained on behalf of trafficking victims.⁶⁹ Counterfeit documents generally serve as the basis for obtaining these permits, after which women are forced to overstay and ignore expiration dates.⁷⁰ Riskier methods of trafficking women into the United States include the use of fake passports and oftentimes outright smuggling.⁷¹

B. Maintaining Trafficking Victims

Upon arriving at their destinations, masters submit sex industry workers to cruel and inhumane conditions to keep them afraid and subservient. Methods used include seclusion, torture, beatings, and rape, as well as psychological restraints such as threats to drug them, deport them, and hurt their families.⁷² The facts underlying *United States v. Cadena* give an example of the conditions trafficked women face while in bondage:

[Victims were trafficked] into Florida and the Carolinas to work as prostitutes in brothels for migrant workers. Anyone who attempted to escape was beaten brutally. One young woman was locked in a closet for

did it. Marta Lleshi told the police what she saw, and Marta's mutilated body was soon found in a dumpster.

65. See U.N. Protocol, *supra* note 26, art. 3; Victims of Trafficking and Violence Protection Act of 2000, 18 U.S.C. §§ 1589-1594, 22 U.S.C. §§ 2152(d), 7101-7110, 7102(8)-(9) (2000).

66. Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARV. INT'L J.L. 473, 474-75 (2003).

67. See *id.* at 475; *cf.* Kelly Schwab, *The Sexual Exploitation of Children: Suppressing the Global Demand and Domestic Options for Regulating Prostitution*, 13 TUL. J. INT'L & COMP. L. 333 (2005).

68. See Murphy, *supra* note 41, at 13.

69. See *id.*

70. See *id.*

71. *Id.* at 14.

72. See generally *id.*

fifteen days because she was too exhausted to have sex with another man. These women were subjected to filthy, crowded living conditions in trailers that served as brothels. There, they were forced to have sex with thirty-two to thirty-five men per day. Like many trafficked women, they also endured abortions and rape at the hands of their traffickers.⁷³

The use of too small quarters, beatings, rape, and other inhumane conditions to imprison forced prostitutes is not uncommon in these situations.⁷⁴ The totality of these conditions creates a numb and tortured environment that leaves victims feeling completely demoralized and feeble.

The methodology of imprisonment can often be specific to the trafficking victim. In one example, traffickers in England performed what the victims described as voodoo rituals to scare trafficked women from Africa into submitting to their conditions.⁷⁵ The use of these culture-specific rituals by traffickers is intended to invoke an extra threatening incentive to individuals who might otherwise not feel threatened by physical torture or threats.⁷⁶ Another victim, who was under the impression that she would be pursuing a supermarket job in England, was instead living in fear of death because of these curses after disobeying her captors.⁷⁷

C. *International Origins of American Victims*

Trafficking victims in the United States most often originate from parts of Latin America, Eastern Europe, and Southeast Asia.⁷⁸ Captors force most of these victims into prostitution and other sweatshop-like conditions for labor.⁷⁹ The most common U.S. destinations for trafficking victims are California, New York, and Florida.⁸⁰ The recounting of

73. Kelly E. Hyland, *Protecting Victims of Trafficking: An American Frame Work*, 15 BERKELEY WOMEN'S L.J. 29, 42 (2001).

74. St. Claire King, *supra* note 1, at 308-09.

75. *Id.*

76. *See id.*

77. *See id.* at 309.

78. Baher Azmy, *Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda*, 71 FORDHAM L. REV. 981, 991 (2002). More specifically:

Persons trafficked into the United States come most frequently from Southeast Asia (particularly Thailand, Vietnam and China), Latin America (particularly Mexico) and Eastern Europe (particularly Russia, Ukraine and the Czech Republic) and are most often discovered in New York, California, and Florida. The primary markets for trafficked laborers in the U.S. are domestic service, sweatshops and sex industry (prostitution, stripping, peep shows and massage parlors that include sexual services).

Id.

79. *See id.*

80. *See id.*

trafficking experiences by two victims illustrates some of the actual conditions present in American incidence of trafficking:

Lydia's story: Lydia was 19 when she saw an ad in a Ukrainian newspaper calling for dancers. She answered the ad, and had an interview in what looked like a legitimate employment agency. She was told to get a passport and apply for an entertainer's visa. She was promised the equivalent of \$25,000 per year, an enormous sum by current Ukrainian standards. After she signed a year-long contract, she was shipped, with six other young females, to Haifa, Israel where she thought she was to perform. But when she got there, she was driven to a brothel where her boss burned her passport before her eyes. "I now own you," he said. "You are my property and you will work until you earn your way out. Don't try to leave. You have no papers and you don't speak Hebrew. You will be arrested and deported. Then we will get you and bring you back." Stunned and angry, Lydia refused. She was beaten and raped until several days later she finally succumbed. She was "rescued" two years after [sic] when the brothel was raided by Israeli police. But instead of being freed, she was charged as an illegal alien and now sits in a women's prison in Israel, waiting to be deported.

....

Rosa's story: When I was 14, a man came to my parents' house in Veracruz, Mexico and asked me if I was interested in making money in the United States. He said I could make many times as much money doing the same things that I was doing in Mexico. At the time, I was working in a hotel cleaning rooms and I also helped around my house by watching my brothers and sisters. He said I would be in good hands and would meet many other Mexican girls who had taken advantage of this great opportunity. My parents didn't want me to go but I persuaded them.

A week later, I was smuggled into the United States through Mexico to Orlando, Florida. It was then the men—it was then when the men told me my employment would consist of having sex with men for money. I had never had sex before and I had never imagined selling my body. And so my nightmare began.

Because I was a virgin, the men decided to initiate me by raping me again and again to teach me how to have sex. Over the next three months, I was taken to a different trailer every 15 days. Every night, I had to sleep in the same bed in which I had been forced to service customers all day.

I couldn't do anything to stop it. I wasn't allowed to go outside without a guard. Many of the bosses had guns. I was constantly afraid. One of the bosses carried me off to a hotel one night where he raped me. I could do nothing to stop him.

Because I was so young, I was always in demand with the customers. It was awful. Although the men were supposed to wear condoms,

sometimes they didn't. So eventually, I became pregnant and was forced to have an abortion. They sent me back to the brothel almost immediately.

I cannot forget what has happened. I can't put it behind me. I find it nearly impossible to trust people. I still feel shame. I was a decent girl in Mexico. I used to go to church with my family. I only wish none of this ever happened.⁸¹

As illustrated by these examples, human trafficking can create a system of complete domination and subservience over its victims. Both testimonials illustrate systems of luring used by captors to solicit victims. Lydia and Rosa, both girls living in poverty, sought to expand their opportunities by leaving their native lands for elsewhere. Neither of these women had any reason to suspect their kidnappers' true intentions. Unfortunately for these and many other victims, the optimism from opportunity soon turns into despair. Sexual slavery cases are just one facet of human trafficking in the United States. Traffickers smuggle many victims into the United States for labor as well.⁸²

In addition to the previously discussed conditions, captors often take the passports from their victims and prevent them from making contact with the outside world.⁸³ Captors deny forced servants medical treatment, adequate meals, exercise, clothing, and even the right to worship according to their faith.⁸⁴ These conditions leave victims fearful of both their masters and, since most arrive illegally into the country, the local authority figures as well.

81. St. Claire King, *supra* note 1, at 296 (citations omitted).

82. See iAbolish.org, Country Report-USA: Nearly 150 Years After the 13th Amendment, the U.S. Is Not Yet Free from Slavery, http://www.iabolish.org/slavery_today/country_reports/us.html (last visited Apr. 14, 2006).

In 1989, Nigerian native Beatrice was recruited at age 13 to live with an American child welfare worker and her husband to help with housework and attend school. Her parents, hoping for a better standard of living and a better education for their daughter, agreed. Upon arrival in to the U.S., however, Beatrice found herself enslaved. She was locked in a suburban home, forced to work up to 20 hours a day, and denied education. Beatrice was regularly beaten while forced to hold her hands above her head and kneel on the floor. One day in 1998, after she was beaten for over an hour, Beatrice's screams caught the neighbors' attention. The police were called, and Beatrice was rescued. Beatrice had been held as a slave in the U.S. for nine years.

According to CIA estimates, over 100,000 people are enslaved in the U.S. today. These victims (typically from the third world) are trafficked to locations across the country to work as domestic, sex, factory, or agricultural slaves. Law enforcement authorities have only recently recognized the extent of this modern day slavery, and are just now introducing response programs.

Id.

83. Azmy, *supra* note 78, at 996-99.

84. *See id.*

Even assuming victims are able to escape the shackles of their kidnappers and forced profession, what comes next? The social stigma associated with being a former prostitute can be devastating.⁸⁵ Oftentimes the shame associated with their history forces former victims back into prostitution because they fear that they have no alternative.⁸⁶ Many are left ill, unqualified for most work, shunned by family and friends, and unable to return to their former communities.⁸⁷

V. THE LEGAL FRAMEWORK TO COMBAT TRAFFICKING AND FORCED PROSTITUTION IN THE UNITED STATES

A. *The Thirteenth Amendment*

The Thirteenth Amendment to the United States Constitution provides, in pertinent part, that “[n]either slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”⁸⁸ Additionally, section two of the Amendment empowers Congress to legislate laws necessary to prevent and combat the incidence of slavery.⁸⁹

Debate over the Thirteenth Amendment and its scope persisted for some time after its ratification in 1865. In the *Slaughter-House Cases*, among the most famous Reconstruction-era United States Supreme Court cases, the Court took a narrow view of the Thirteenth Amendment, finding its predominant purpose as merely codifying the freedom of some four million former slaves.⁹⁰ The dissent argued that the Thirteenth Amendment should serve to guarantee a much broader range of freedom and fundamental rights.⁹¹ A later case, *United States v. Harris*, saw a similarly narrow interpretation by the Court.⁹² The *Harris* Court held that the Thirteenth Amendment was not intended to protect the rights of white people.⁹³ The Court, contrary to broader and more equality-driven intentions, held that laws that penalize crimes against whites “cannot be authorized by the [Thirteenth A]mendment which simply prohibits

85. Chuang, *supra* note 44, at 71.

86. *Id.* at 71-72.

87. *Id.*

88. U.S. CONST. amend. XIII, §§ 1-2.

89. *See id.* (indicating that “Congress shall have the power to enforce this article by appropriate legislation”).

90. Azmy, *supra* note 78, at 1001-04.

91. *See id.*

92. *United States v. Harris*, 106 U.S. 629 (1882).

93. *Id.*

slavery and involuntary servitude.”⁹⁴ How this holding applies to the involuntary servitude of whites is ambiguous, though it seems that any application to nontraditional antebellum African-origin slaves is improbable.

Later, in the *Civil Rights Cases*, the Court expanded its Thirteenth Amendment interpretation, albeit not considerably. The Court held that the Thirteenth Amendment is enforceable against private citizens as well as the State and that Congress can regulate private behavior pursuant to section two of the Amendment.⁹⁵ The Court also determined that “the [Thirteenth A]mendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.”⁹⁶ In his dissent, Justice Harlan pleaded for a broader interpretation, labeling the majority’s view excessively narrow and contrary to the broader intentions of the Constitution’s Framers.⁹⁷ The dissent focused on the humanitarian and social concerns of the Framers when creating the Thirteenth Amendment and not on the postwar concession previously alluded to by the Court.⁹⁸

The Court made yet another gradual advancement in Thirteenth Amendment interpretation in the early 1900s. There, the Court used the Thirteenth Amendment to strike down “Black Codes,” which forced black citizens into labor.⁹⁹ In both *United States v. Reynolds* and *Bailey v. Alabama*, the Court ruled against coercive labor tactics that removed the personal rights of workers.¹⁰⁰ In so doing, the Court noted that “[p]eonage is a status or condition of compulsory service, based upon the

94. *Id.* at 641.

95. *See* Azmy, *supra* note 78.

96. *See id.* (citing *Civil Rights Cases*, 109 U.S. 3, 11 (1883)).

97. *See id.* at 1006. In the *Civil Rights Cases*:

Justice Harlan issued a powerful, solitary dissent in which he summoned reason and evidence from the Amendment’s ratification debates. He chided the majority for its unrealistically narrow view of the “freedom” guaranteed by the Amendment, and advanced instead the natural rights and equality-based premises held by the Amendment’s framers. After a long proof of the Amendment’s broad goals, Harlan succinctly concludes, “The Thirteenth Amendment alone obliterated the race line, so far as all rights fundamental in a state of freedom are concerned.” As such, Congress was clearly authorized to prohibit private discrimination under section 2 of the Thirteenth Amendment.

Id. (quoting *Civil Rights Cases*, 109 U.S. at 40 (Harlan, J., dissenting)).

98. *Id.*

99. *See id.*

100. *See* *United States v. Reynolds*, 235 U.S. 133 (1914); *Bailey v. Alabama*, 219 U.S. 219 (1911).

indebtedness of the peon to the master. The basal fact is indebtedness.”¹⁰¹ Thus, the Court determined that, by enacting the Thirteenth Amendment “Congress undertook to strike down all laws, regulations and usages in the States and Territories which attempted to maintain and enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in the liquidation of any debt or obligation.”¹⁰² The Court made little mention of race in its opinion and acknowledged that the opportunity for this variation of slavery is present, and presumably not exclusively against blacks. This interpretation, though broader, is still a small departure from the narrow interpretations of the Reconstruction era.

Interpretation of the Thirteenth Amendment made arguably its biggest advances in the middle of the twentieth century. Throughout this period, and especially following World War II, African-American civil rights became an important issue. United States Department of Justice lawyers, in pursuit of civil liberties, strived to broaden the narrow interpretations of the Thirteenth Amendment undertaken by previous courts.¹⁰³ Progress in this period expanded the reach of the Thirteenth Amendment to scenarios involving forced labor and servitude.¹⁰⁴ These readings of the Thirteenth Amendment are more applicable to the trafficking and forced prostitution of women.

A particularly important decision from this era is *Pollock v. Williams*.¹⁰⁵ At issue in *Pollock* was a Florida statute “making it a misdemeanor to induce advances with intent to defraud by a promise to perform labor and further making failure to perform labor for which

101. *Reynolds*, 235 U.S. at 144.

102. *Id.* at 143.

103. *Azmy*, *supra* note 78, at 1033.

With considerable success in the lower courts, lawyers in the Civil Rights Section attempted to deemphasize elements of voluntariness that had traditionally governed assessment of peonage and involuntary servitude. Instead, the lawyers focused on the actual status of the laborer, emphasizing the isolation, vulnerabilities and other indicia of coercion as well as the conditions of their servitude. The lawyers also emphasized the impact that certain informal structures had on the life of Southern black laborers, such as lack of education, physical or sexual violence, and the harshness of the work; these features were disregarded by the Peonage Cases. The Civil Rights Section thus framed the problem of coercive labor arrangements as a civil rights issue under the Thirteenth Amendment rather than as a free labor issue as conceived by the Peonage Cases, and employed the Thirteenth Amendment in order to relieve some of the oppression and caste status endured by blacks in the South.

Id.

104. *Id.*

105. *Pollock v. Williams*, 322 U.S. 4 (1944).

money has been obtained *prima facie* evidence of intent to defraud.”¹⁰⁶ The Court found that the statute conflicted with the Thirteenth Amendment and antipeonage values. The Court held that “[t]he undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States.”¹⁰⁷ In the decision, the Court also examined forced labor and society’s desire not to allow its occurrence.¹⁰⁸ The Court determined that the incidence of forced slavery negatively affects not only the laborers involved, but also the labor competition.¹⁰⁹ This decision reflects the original Framers’ intent behind the Thirteenth Amendment—one with societal values against slavery and forced labor, not just the narrow freedom granted to former slaves.

B. *The Modern Legal Framework*

The core intent of the Framers of the Thirteenth Amendment must have been to address concerns raised for the incidence of trafficking and forced prostitution. Subjects of trafficking and forced prostitution suffer victimization in their origin countries because of status and despair and in their trafficking countries because the atrocities forced upon them and the lack of an effective support system.¹¹⁰ Although the Thirteenth Amendment was drafted when the Framers’ primary concern was elimination of antebellum slavery, such a narrow interpretation of the Amendment would ignore a modern variant of the same crime.

In *United States v. Booker*,¹¹¹ the United States Court of Appeals for the Fourth Circuit reasoned that a derivative criminal act of the Thirteenth Amendment “must be read not only to render criminal the evil Congress sought to eradicate so long ago, but, as well, its Twentieth

106. *Id.* at 5.

107. *Id.* at 17.

108. *See generally id.*

109. Azmy, *supra* note 78, at 1033-34. The effect on productivity can be far reaching:

When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. Resulting depression of working conditions and living standards affects not only the laborer under the system, but every other with whom his labor comes in competition.

Id.

110. Mary Anne Becker, *A Review of The Prostitution of Sexuality: The Global Exploitation of Women*. By Kathleen Barry, 52 DEPAUL L. REV. 1043, 1049 (2003) (book review).

111. *United States v. Booker*, 655 F.2d 562 (4th Cir. 1981).

Century counterpart.”¹¹² Like those victims of antebellum slavery, modern victims of forced trafficking and prostitution suffer many similar atrocities at the hands of their captors. Traffickers capture or lure victims in both circumstances before taking them against their will to nations abroad, where they are treated as property, beaten, coerced into performing the captors’ tasks, and threatened should they ever try to escape.¹¹³ Some even compare the modern trafficking of prostitution to the “fancy-girl” auctions that took place during antebellum slavery.¹¹⁴

Congress has enacted important legislation to combat modern slavery. In 1996, Congress amended 42 U.S.C. § 1983 under its Thirteenth Amendment powers. Section 1983 provides a private cause of action by citizens against the State or other official bodies for behavior that deprives an individual of his constitutional rights.¹¹⁵ In practice, § 1983 only provides victims of trafficking and forced prostitution a cause of action against law enforcement officials should they fail to investigate or remedy known violations. The authorities are under no real obligation to punish those responsible with criminal sanction, but only to liberate the victims of the trafficking and forced prostitution.¹¹⁶

112. *Booker*, 655 F.2d at 566; Katyal, *supra* note 14, at 807 (noting that “[c]ourts have used the Amendment and its legislative codifications in the criminal code, 18 U.S.C. §§ 1583 and 1584, to outlaw a broad number of practices ranging from migrant farm labor abuses to specific performance in contracts”).

113. *See generally* Murphy, *supra* note 41, at 11.

114. Katyal, *supra* note 14, at 809. Some commentators see parallels between modern trafficking and the “fancy-girl” auctions of old:

The Thirteenth Amendment reaches forced prostitution today. Pimps deprive prostitutes of their free will and their free labor in the same way that Southern slave masters deprived slaves in the 1800s. Both markets traffic in flesh, thriving on bodies and demanding that women be held against their will in sexually coercive situations. In both circumstances, women’s sexual organs are forcibly commodified by slave-traders and pimps. Could the fancy-girl markets have remained after ratification of the Thirteenth Amendment?

Id.

115. 42 U.S.C. § 1983 (1996). Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id.

116. Katyal, *supra* note 14, at 818.

C. *The Trafficking Victims Protection Act*

In 2000, Congress enacted a more focused piece of legislation with the Trafficking Victims Protection Act (TVPA).¹¹⁷ The TVPA creates criminal penalties for individuals involved in procuring forced labor.¹¹⁸ The stated purpose of the legislation is to combat trafficking in persons, which it determines to be a modern manifestation of slavery and one that disproportionately affects women and children.¹¹⁹ This legislation acknowledged the growing concern over trafficking of people, and especially over forced prostitution and its victims. It reflects the idea that the class of involuntary servitude protected against by legislation should be more inclusive than those protected in the past.¹²⁰

The major focuses of the TVPA include trafficking to exploit labor, forced labor, forced rape, trafficking for prostitution, as well as targeting the individuals and groups that promulgate such acts.¹²¹

The legislation as enacted makes a significant contribution to federal law on trafficking, repairing much of the damage done by Kozminski, creating significant institutional changes and directing new resources toward solutions. The TVPA more broadly defines coercion, debt bondage, and involuntary servitude to address modern methods of extracting labor or services through tactics intended to entrap vulnerable people in conditions of servitude. Its scope is broad. While creating a new crime focused specifically upon sex trafficking, the new crime of “forced labor” applies broadly to all people, trafficked or not, immigrants or not, and will assist workers in many contexts where exploitative practices are common.¹²²

The TVPA creates criminal punishment including fines and up to twenty years in prison for those responsible for forced labor within the United States, as well as stricter punishment for individuals whose actions result in the death of their victims.¹²³ This statute leaves no ambiguity as to its purpose, because the statute creates federal criminal consequences for

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

118. *Id.*

119. *Id.* § 7101(a).

120. *See id.* § 7101(13) (“Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In *United States v. Kozminski*, 487 U.S. 931 (1988), the Supreme Court found that section 1584 of Title 18, should be narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.”).

121. Jackson, *supra* note 2, at 537.

122. *Id.* at 538.

123. *Id.*

the actions of those involved in trafficking and labor, victims are not required to bring the charges. Law enforcement, in theory, seeks and prosecutes those responsible. There exists some question, however, about how adamantly government officials will pursue captors who victimize “prostitutes.”¹²⁴ Furthermore, a criminal statute such as this provides no damages to the victims of trafficking.¹²⁵ Victims will still have little to show for their pain and suffering, other than the inevitable trauma that will persist indefinitely. It is notable, however, that the Alien Tort Claims Act provides jurisdiction for civil actions by aliens for torts committed in violation of U.S. or international law.¹²⁶

There exists a great deal of sexual abuse through trafficking of mail-order brides as well. Although these women arrive to the United States through legal mechanisms, they can fall prey to sexual abuse and forced prostitution.¹²⁷ To combat the incidence of sexual abuse in mail-order marriages, the United States enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.¹²⁸ The Act imposes a series of disclosure requirements upon International Matchmaking Organizations that wish to participate in the immigration of mail-order brides.¹²⁹

The mail-order bride industry, like the human trafficking industry at large, thrives on the situational inequalities of its victims. Like the many

124. Katyal, *supra* note 14, at 814.

125. *Id.* at 814-15.

126. 28 U.S.C. § 1350 (2000); *see also* Kim & Hreshchyshyn, *supra* note 56, at 29-30. The Alien Tort Claims Act provides:

[F]ederal jurisdiction for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” The ATCA has emerged as the primary civil litigation tool for addressing human rights abuses. To date, it has provided the only viable claim for trafficked persons to privately enforce a remedy for modern-day slavery. The statute was enacted in 1789 by the first Congress to primarily deal with piracy, but was rarely invoked for almost two centuries. Its reemergence in cases involving international human rights abuses has created much controversy in the courts with conflicting views over the judiciary’s role in adjudicating and enforcing international legal norms.

A valid claim under the ATCA requires that: (1) an alien sues; (2) for a tort; (3) in violation of international law. The third prong is where much of the legal uncertainty arises. Establishing subject matter jurisdiction under the ATCA requires addressing the threshold question of whether or not the tort in question violates “the law of nations.” Precedents established by a line of federal circuit cases, as well as a recent Supreme Court decision, upheld ATCA jurisdiction and conferred a cause of action for a narrow set of human rights abuses.

Kim & Hreshchyshyn, *supra* note 56, at 29-30.

127. Jackson, *supra* note 2, at 475-76.

128. 8 U.S.C. § 1375(a)(3) (2000).

129. Vanessa B.M. Vergara, *Abusive Mail-Order Bride Marriage and the Thirteenth Amendment*, 94 NW. U. L. REV. 1547, 1562 (2000).

victims lured into human trafficking, mail-order brides fall victim to the promises of prosperity abroad. According to one author, legal responses are numerous:

Effective legal responses include altering U.S. immigration laws to provide foreign women with more protection, respecting the regulations and policies of developing nations regarding the trade of women, and implementing an international legal structure that will address the mail-order bride business. In addition, the United States should enact legislation which will provide the prospective brides with equal access to information on the consumer-husbands, the mail-order bride agencies, and immigration laws.¹³⁰

VI. INTERNATIONAL LAW

A. *Historical Background*

The concern over sex trafficking is not exclusive to the United States. The first international legislation dealing with the subject of forced prostitution of women likely appeared in military codes such as the American Lieber Code.¹³¹ The Lieber Code of 1863 prohibited “all rape” during times of war and carried punishment such as death and other severe penalties for its violation.¹³² This code did not pave the way for larger, trafficking-oriented legal structures.¹³³

Concern increased during the late nineteenth century over the exportation of women into brothels throughout the world.¹³⁴ This apprehension led to the International Agreement for the Suppression of White Slave Traffic in 1904.¹³⁵ While this agreement instilled some requirements on its signatories, it was not until 1910 that State signatories were required to criminalize procurement of prostitutes.¹³⁶ In 1910 the International Convention for the Suppression of White Slave Traffic required states to punish parties who “hired, abducted, or enticed for immoral purposes any woman under the age of twenty-one, or used violence, threats, fraud, or any compulsion on a woman over twenty-one for the same purpose.”¹³⁷ This convention fell short of covering the actual

130. Christine S.Y. Chun, Comment, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155, 1207-08 (1996).

131. Tiefenbrun, *supra* note 33, at 213.

132. *Id.*

133. *See id.*

134. Chuang, *supra* note 44, at 74.

135. *Id.*

136. *Id.*

137. *Id.*

act of prostitution within domestic nations, leaving enforcement largely to (often lacking) domestic legislation.¹³⁸

The twentieth century's first significant attempt to curb sex trafficking was the International Convention on the Suppression of the Traffic in Women of Full Age in 1933.¹³⁹ This convention extended punishment of human traffickers to include trafficking of mature women, not just youth.¹⁴⁰ Not long after this convention was introduced during World War II, Japanese and German troops placed many women into bordellos against their will.¹⁴¹ These victims, referred to by the Japanese military as "comfort women," received little international attention following the war.¹⁴²

Later, in 1949 came the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹⁴³ This undertaking of the United Nations Economic and Social Councils was an attempt to merge previous legislation into one focused mission to combat human trafficking for prostitution.¹⁴⁴ The convention called on signatory States to follow certain guidelines in preventing and punishing trafficking.

The year 1957 saw the inception of the Abolition of Forced Labor Convention.¹⁴⁵ It prohibits various forms of forced labor, including compulsory labor as a "method of mobili[z]ing and using labour for purposes of economic development."¹⁴⁶ The United States ratified the Abolition of Forced Labour Convention in 1991.¹⁴⁷

B. Modern International Dynamic

There can be little doubt that to curb the incidence of forced prostitution from trafficking within each nation, this crisis must be dealt with on an international level. As previously discussed, international

138. See *id.* at 74-75. It should be noted that later Conventions such as the International Convention for the Suppression of Traffic in Women and Children (1921) and the International Convention on the Suppression of the Traffic in Women of Full Age (1933), while expanding the scope of measures to more women, fell shy of interfering with domestic enforcement issues. *Id.* at 75.

139. See Michelle O.P. Dunbar, *The Past, Present, and Future of International Trafficking in Women for Prostitution*, 8 BUFF. WOMEN'S L.J. 103, 110 (2000).

140. *Id.*

141. Tiefenbrun, *supra* note 33, at 213.

142. *Id.* at 214. However, it should be noted that many of the victims originating from a number of East Asian nations successfully filed a civil suit in the United States. *Id.*

143. See, e.g., Dunbar, *supra* note 139, at 110-11.

144. See *id.*

145. *Id.* at 114.

146. *Id.*

147. See St. Claire King, *supra* note 1, at 313.

crime organizations are the driving force behind trafficking throughout the world.¹⁴⁸ Although these organizations operate throughout the world, their sources for obtaining victims are generally poor, developing, transitioning, or recovering nations.¹⁴⁹ These organizations are not isolated in any one nation and rely on other groups to promote their trade.¹⁵⁰ In much of Europe and Asia, these organizations are composed of large syndicates, many of which also operate in the United States.¹⁵¹ These operations are large and structured and are so likely to grow that domestic legislation alone is unable to combat their existence.¹⁵² Despite the existence of penal antiprostitution laws aimed at traffickers in more than 150 nations, the structure of trafficking organizations is growing stronger.¹⁵³

In 1979, the United Nations ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁵⁴ The overarching aim of this equality-driven convention was to address existing gender disparity.¹⁵⁵ Article 6 of CEDAW states that signatories shall “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁵⁶ This broad language could be interpreted to cover trafficking of women for a variety of other purposes as well.¹⁵⁷

C. The United Nations Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

In response to the growing need to combat trafficking of women into forced prostitution, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. Protocol).¹⁵⁸ The U.N. Protocol was the first substantively fresh piece of legislation to combat trafficking

148. See *supra* Part III.A.

149. Tiefenbrun, *supra* note 33, at 211.

150. See *id.* at 211-12.

151. *Id.* at 212.

152. See *id.* at 215.

153. *Id.* at 214-15.

154. Chuang, *supra* note 44, at 78.

155. See generally Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) (entered into force Sept. 3, 1981).

156. *Id.* art. 6.

157. Chuang, *supra* note 44, at 78.

158. Abramson, *supra* note 66, at 476, 479. See generally Stacey Antimone, *Sexual Trafficking: The United States' Response to a Growing International Problem*, 24 SUFFOLK TRANSNAT'L L. REV. 149 (2000).

in women since the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹⁵⁹ This U.N. Protocol attempts a new approach to curb human trafficking by rewriting the applicable legislation to obtain broader and more effective enforcement.¹⁶⁰ Initially, the legislation focused only on women and children, but it was later expanded to include men as well.¹⁶¹ As mentioned earlier, the presence of consent was a major issue for those drafting the U.N. Protocol. After much debate, the drafters of the final protocol elected to make consent of the victim irrelevant to traffickers culpability.¹⁶²

The U.N. Protocol aims to accomplish these goals. It seeks to criminalize traffickers, protect individuals who are susceptible or already victimized by trafficking, and construct preventative measures to curb the incidence of trafficking.¹⁶³

VII. CONCLUSION

To many analysts the trafficking of women and children for purposes of prostitution is a modern manifestation of slavery.¹⁶⁴ As discussed in this Comment, it is a major problem not only in the United States but throughout the world. While legislation in the United States has seen mixed results, the problem is a difficult one that the United States cannot properly combat without international cooperation. Because the act of trafficking starts abroad in the country of origin, enforcement in the United States has minimal effectiveness in stopping the institution at large.

Until an international solution is found, the United States may find itself combating the weeds when the roots remain strong. Unfortunately, circumstances such as poverty and sexism in society will often lead to desperate situations for victims of trafficking. Predators of trafficking seem to have little trouble luring prey from these situations into forced

159. See Abramson, *supra* note 66, at 473 n.1 (“The Trafficking Protocol was open for signature between December 2000 and December 2002. As of January 2003, there were 117 signatories and 23 parties to the Trafficking Protocol, which has not yet entered into force.”).

160. For an in-depth analysis of the Protocol, see generally Abramson, *supra* note 66, at 473. See also Antimone, *supra* note 158, at 149.

161. Abramson, *supra* note 66, at 476.

162. U.N. Protocol, *supra* note 26, art. 3(6) (“[T]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) [above, defining traffic in persons] of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”).

163. Abramson, *supra* note 66, at 477-78.

164. See generally St. Claire King, *supra* note 1; Azmy, *supra* note 78; Jane E. Larson, *Prostitution, Labor, and Human Rights*, 37 U.C. DAVIS L. REV. 673 (2004).

prostitution. Unable to lure victims, such persons may even stoop to resort to kidnapping as a means to obtain victims. To stop the flow of trafficking, however, the United States must undertake a solution that addresses the causes of trafficking instead of just its end results. Resolution of this crisis will be a victory for all of society, not just the legislators that lead the charge.